



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Alaska State Office
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Anchorage, Alaska 99513-7504
<http://www.blm.gov/ak>

In Reply Refer To:
AA-6707-EE
9600 (AK9272)

APR 30 2010

Memorandum

To: Anchorage District Manager

From: Stephen B. Hamrick
Deputy State Director, Cadastral Survey

Subject: Navigability of Chuitna River, Township 12 North, Range 11 West, Seward Meridian, Alaska

Reference: Tyonek 1:250,000 Quadrangle Map

The Anchorage Field Office is currently working to resolve the status of two Alaska Native Claims Settlement Act 17(b) easements within the Tyonek area. To proceed, you requested clarification on the federal position of the navigability status of the Chuitna River, specifically within the Interim Conveyance Nos. 1605 and 1606.

Attached you will find the report, "Navigability of Chuitna River," dated April 30, 2010. Most of the lands underlying the Chuitna River were reserved at statehood. In addition, the federal government has consistently held the Chuitna River, in its entirety, was not used nor was it susceptible for use, as a highway of commerce. I affirm those previous administrative determinations, and find the Chuitna River, and all other waterbodies, within Interim Conveyance Nos. 1605 and 1606, to be nonnavigable.

Attachment

cc (w/attachment):
DSD (AK9600)
Field Manager (AK0100)
Group Manager, Realty (AK0130)
Solicitor, Alaska Region

Navigability of the Chuitna River
Township 12 North, Range 11 West, Seward Meridian, Alaska
April 30, 2010

The purpose of this report is to describe the federal position on the navigability of the Chuitna River, in particular, its status within Township 12 North, Range 11 West, Seward Meridian (SM), Alaska. In 1995, the Bureau of Land Management (BLM) issued Interim Conveyance (IC) No. 1605 to the Tyonek Native Corporation (TNC) for the surface estate, and IC No. 1606 to Cook Inlet Region, Inc. (CIRI), for the subsurface estate of certain lands within T. 12 N., R. 11 W., SM. Lands underlying navigable rivers, streams and creeks more than 3 chains (198 feet) wide, as well as lakes more than 50 acres in size, were excluded from the conveyances. Although the Chuitna River and all other water bodies had previously been determined nonnavigable, the conveyance documents stated that the submerged lands beneath such water bodies, if any, would be identified at the time of supplemental survey.¹ To the extent a navigability determination is still needed for the Chuitna River, this report serves that purpose.

The principal water body within IC No. 1605 and IC No. 1606 is the Chuitna River. The river is located about forty air miles southwest of Anchorage, Alaska's largest city. Approximately thirty-seven miles long, it flows southeasterly, emptying into Cook Inlet near the village of Tyonek.² Roughly a six-mile stretch of the river between river miles three and nine is located in the conveyance area. Lone Creek, a tributary of the Chuitna River, and numerous small landlocked lakes are also located within the conveyance area.

The central issue addressed in this report is the navigability of the Chuitna River, specifically the north half of the Chuitna River within the conveyance area. The TNC's position is that the river is nonnavigable.³ The State of Alaska (State) maintains that the river is navigable.⁴ In this case, if the Chuitna River is navigable, then title to the lands underlying the segment of the river not reserved by the United States transferred to the State upon its entry to the Union at statehood (1959). If the Chuitna River is nonnavigable, the United States retained ownership of the riverbed at the time of statehood and properly conveyed title to the submerged lands to the Native corporations.

In addition, the retention or termination of two public easements reserved under Section 17(b) of the Alaska Native Claims Settlement Act (ANCSA) within the conveyance area is dependent upon the navigability status of this portion of the river. The easements consist of a twenty-five-foot-wide trail easement (EIN 50 D9) and a half-acre site easement (EIN 51 D9) in Tract A, T. 12 N., R.11 W., SM. The status of the easements rests on unique language in the BLM decision approving the lands for conveyance (IC No. 1605) to the TNC. The record shows that the State, the BLM, and TNC knew that if the Chuitna River is nonnavigable, the two easements will be terminated. If the river is navigable, the easements will be retained.⁵ The decision specifically states that, for EIN 50 D9, "This trail will be terminated if at a later date it is

¹ IC No. 1605, February 27, 1995, file AA-6707-D (2651), ANCSA files, BLM records, Anchorage (hereafter BLM records). At this time, no supplemental survey has been conducted.

² Orth 1971, p. 217.

³ Tom Harris, CEO, to Thomas P. Lonnie, December 22, 2008, AA-6707-EE, BLM records.

⁴ Dick Mylius, Director, to Thomas P. Lonnie, State Director, April 4, 2008, AA-6707-EE, BLM records.

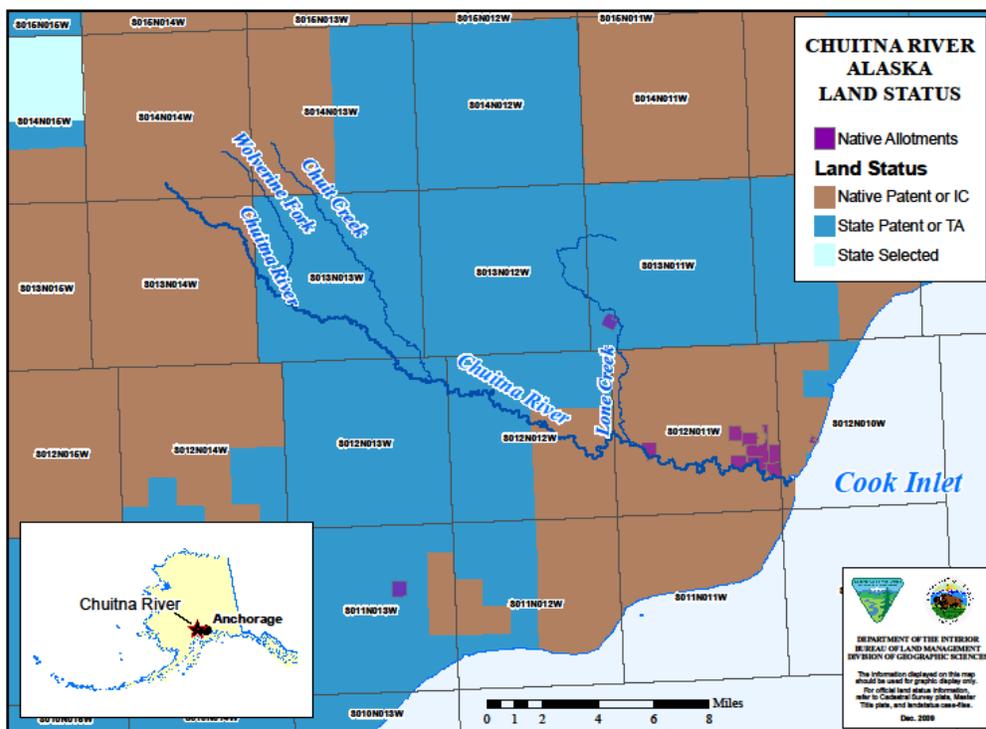
⁵ "Final Easement Recommendations for Lands to be Conveyed to the Tyonek Native Corporation," September 18, 1990, AA-6707-D, BLM records. Public easements can also be reserved to major waterways, 43 CFR 2650.4-7(a). When BLM considers termination of the two easements due to a finding that the Chuitna River is nonnavigable, BLM must also decide whether the Chuitna River, or a portion of, is a major waterway.

determined that the Chuitna River is nonnavigable.” For EIN 51 D9, it states that “This site will be terminated if, at a later time, it is determined that the Chuitna River is nonnavigable.”⁶

Land Status

Overview

The Chuitna River flows through seven townships along its course: Tps. 12 N., Rs. 10, 11, 12, and 13 W.; Tps. 13 N., Rs. 13 and 14 W.; and T. 14 N., R. 14 W., SM. All of the uplands along the river and most of the lands underlying the river have been conveyed out of federal ownership, primarily to TNC, the State, and CIRI.⁷ While IC Nos. 1605 and 1606 expressed a need for further navigability determinations, it is the BLM’s position that the Chuitna River is not navigable, and that the other conveyances along the non-tidal segment of the river included the submerged lands.⁸ Moreover, under Section 5 of the Submerged Lands Act of 1953 the United States retained portions of the riverbed because the submerged lands were either part of an Indian reserve or a military reservation.⁹



General location and land status map

⁶ Decisions, February 1, 1991, and February 22, 1991, and IC No. 1605, February 27, 1995, AA-6707-D, BLM records.

⁷ See BLM Master Title Plats.

⁸ The exception is three Native allotments (AA-6459, AA-7789 and AA-7269) located in T. 12 N., R. 11 W., SM. Cadastral surveyors meandered the river and segregated the submerged lands from uplands where these Native allotment claims about the river (Respectively, Lots 1, 3 and 5, U.S. Survey No. 9519). The fourth Native allotment (A-055082) was surveyed to the midchannel of the Chuitna River and therefore included the submerged lands.

⁹ Submerged Lands Act, Public Law 31, Chapter 65, Secs. 5 (a) and (b), May 22, 1953.

Former Moquawkie Indian Reservation

On February 27, 1915, while Alaska was still a territory, President Woodrow Wilson set aside approximately 25,000 acres of land for use by the United States Bureau of Education, subject to any existing vested right, by Executive Order (EO) No. 2141. During this time, the Bureau of Education was the federal agency responsible for Alaskan Natives' education and welfare. The lands, later known as Moquawkie Indian Reservation, were bounded on the south and east by Cook Inlet and on the north by the middle of the main channel of the Chuitna River from its mouth at the head of tidewater westerly approximately twelve river miles into T. 12 N., R. 12 W., SM. These lands, including the riverbed south of the mid-channel above tidewater, were later surveyed as U.S. Survey No. 1865.¹⁰

The Moquawkie Indian Reservation was abolished on December 18, 1971 under ANCSA and the federally owned lands, including those submerged lands, were now available for selection by the corporation established for the Native village of Tyonek.¹¹ The TNC selected the lands and, in 1978, the BLM transferred the lands including the south half of the Chuitna River to the corporation by IC No. 087. Subsequently, the BLM issued patents to the surface and subsurface estates as described by U.S. Survey No. 1865 to TNC and CIRI, respectively.¹²

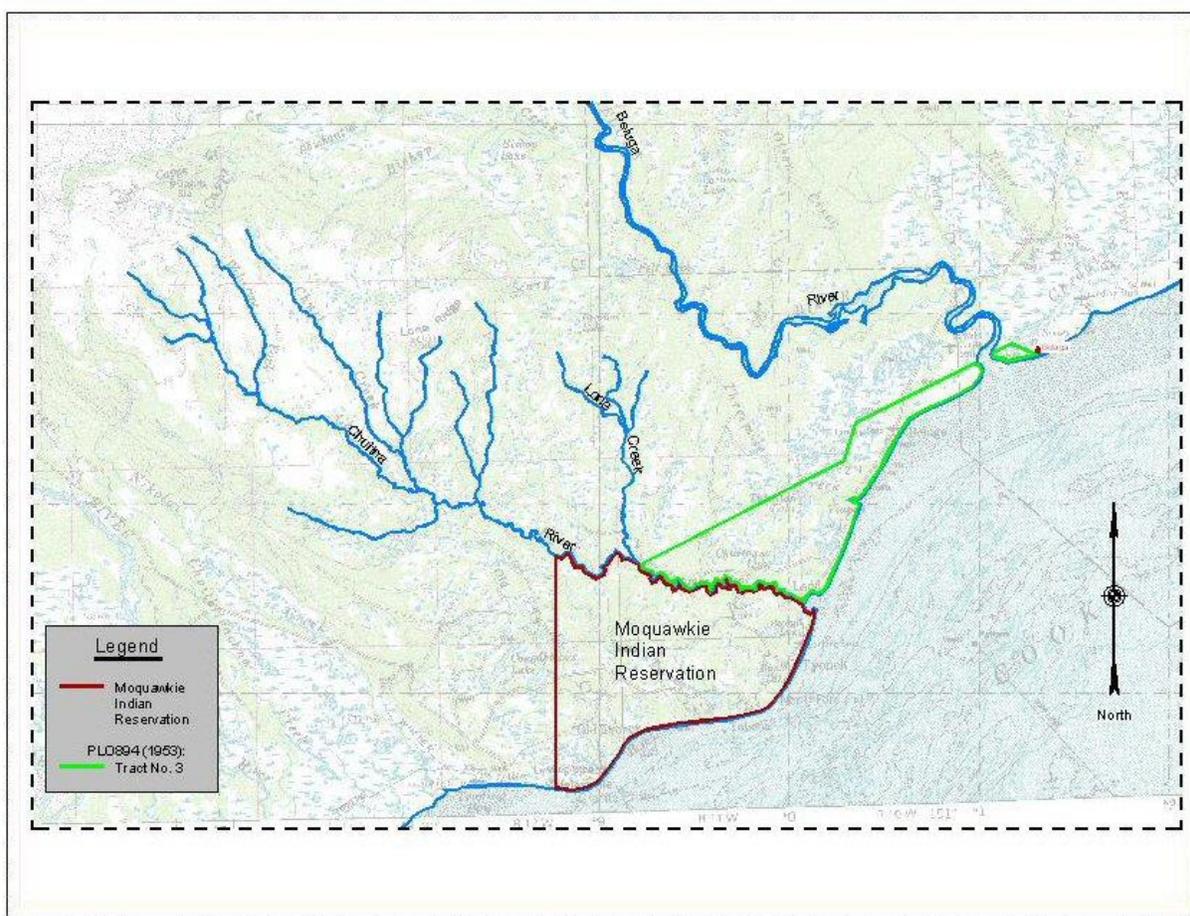
Former Aerial Gunnery and Bombing Range

On August 27, 1941, President Franklin D. Roosevelt signed EO No. 8872 withdrawing 1,210,000 acres of public land for use by the War Department as an Aerial Gunnery and Bombing Range. The range encompassed the area from Cook Inlet west to the highest points on Mt. Redoubt and Mt. Spurr. Essentially the lands surrounding the Moquawkie Indian Reservation, including the bed of the Chuitna River outside of the Indian reservation, were once included in the Aerial Gunnery and Bombing Range.

¹⁰ U.S. Survey No. 1865, Survey executed by Floyd G. Betts, 1930, Survey Plat and Field Notes Approved, October 19, 1938, Survey Plat Accepted March 15, 1939.

¹¹ Sec. 19(a) of the Alaska Native Claims Settlement Act, December 18, 1971, revoked all Indian reservations in Alaska (except Metlakatla) which became public lands until conveyed.

¹² Decisions, December 15, 1977, and March 5, 1980; IC No. 087, March 31, 1978; and Patents 50-95-0019 and 50-95-0020, AA-6707-A (2651), ANCSA files, BLM records.



Map of PLO No. 894 and Moquawkie Indian Reservation

On May 19, 1953, the Secretary of the Interior issued Public Land Order (PLO) No. 894, which transferred jurisdiction of certain lands, withdrew additional lands, and specific to this case, restored to the public domain those lands underlying the river north of the mid-channel of Chuitna River from the vicinity of Lone Creek¹³ downstream to Cook Inlet.¹⁴ That portion of the Chuitna riverbed outside the Moquawkie Reservation and upstream of approximately Lone Creek, remained in the military reserve (EO No. 8872) at the time of statehood. On July 15, 1960 (the year following Alaska's statehood), PLO No. 2162 revoked both EO No. 8872 and PLO No. 894. The State subsequently selected these former military lands in Tps. 12 N., Rs. 10, 11, 12, and 13 W., and T. 13 N., R. 13 W., SM.¹⁵ In the mid 1960s, the BLM conveyed most of the former military reserve lands in Tps. 12 N., Rs. 12 and 13 W. and T. 13 N., R. 13 W., SM., to

¹³ Orth 1971, 592. The USGS reported the name "Lone Creek" in 1958, five years after PLO No. 894 was issued.

¹⁴ In 1956, there was a proposal to withdraw an additional 2,472,800 acres in the Tyonek area for a rocketry range by the United States Air Force. A change in Air Force planning negated the need for the proposed withdrawal, and the proposal was scrapped in 1958. *Anchorage Daily Times*, January 6, 1958, p. 1.

¹⁵ See files A-052985, A-052943, A-052931, A-052932, and A-052938, State selection files, BLM records. Based on our analysis of the former military reserve boundaries, all or most of Lone Creek was included in the military reserve.

the State of Alaska.¹⁶ In 1986, the riparian lands along the uppermost reaches of the river in Tps. 13 and 14 N., R. 14 W., SM (mile 20 to the headwaters) were conveyed to CIRI under ANCSA.¹⁷

Lands Not Reserved at the Time of Statehood

Those lands underlying the north half of the Chuitna River from the vicinity of Lone Creek to its mouth at Cook Inlet (approximately the lower eight miles) were unreserved on January 3, 1959, the date of statehood.

Those unreserved riparian lands in T. 12 N., R. 10 W., SM, have been surveyed and conveyed out of federal ownership. Two small tract surveys – U.S. Survey No. 364, a Soldier's Additional Homestead Claim of the Alaska Packer's Association encompassing Ladd's Station, an old cannery site,¹⁸ and U.S. Survey No. 4544, a homestead entry site¹⁹ -- abut tidal waters and were surveyed to bound the left bank of the river. The remaining riparian lands in this township were surveyed and described as Tract A. Surveyed in 1961, the southern boundary of Tract A was established as the northern boundary of U.S. Survey No. 1865 (Moquawkie Indian Reservation), more particularly described as the mid channel of the Chuitna River as far as the head of tidewater and then southeasterly (downstream) to the right bank of the Chuitna. From this point (Corner No. 3, U.S. Survey No. 1865), the southern boundary of Tract A was surveyed diagonally across the mouth of the Chuitna to Corner No. 4, U.S. Survey No. 4544, on the left bank. Tract A, including U.S. Survey No. 4544, was patented to the State on February 4, 1966.²⁰ The State later reconveyed a portion of the subsurface estate (including its right, title and interest to oil, gas and other reserves) to the United States, which then conveyed it to CIRI on February 10, 1984.²¹

When the BLM surveyed T. 12 N., R. 11 W., SM, in 1961, it divided the area north of Moquawkie Indian Reservation into Tract A, to the west, and Tract B, to the east, both of which were surveyed to the center of the Chuitna River, abutting U.S. Survey No. 1865. A Native allotment located within Tract A, was also surveyed as U.S. Survey No. 4547 with its south boundary to the center of the river.²² The Native allotment was certificated on June 13, 1984.²³

¹⁶ Master Title Plat T. 12 N., R. 12 W., SM, and Patent 50-67-0234, October 20, 1966, AA-52931; Master Title Plat T. 12 N., R. 13 W., SM, and Patent 50-67-0212, October 14, 1966, A-052932; Master Title Plat T. 13 N., R. 13 W., SM, and Patent 50-66-0375, February 18, 1966, AA-52938; State selection files, BLM records.

¹⁷ IC No. 1154, March 21, 1986, AA-24198, BLM records.

¹⁸ U.S. Survey No. 364, Survey Executed by William Muncaster, 1912, Survey Plat and Field Notes Approved February 26, 1915; and Patent 527308, May 3, 1915, J-1782 (2610), BLM records.

¹⁹ U.S. Survey No. 4544, Survey Executed by C. Norman Brown, 1962, Field Notes Approved, July 23, 1964, Plat Accepted July 23, 1964.

²⁰ Application, May 15, 1959, and U.S. Survey No. 4544, Plat, A-048900 (2567); and Patent 50-66-0317, February 4, 1966, A-052985, State selection files, BLM records.

²¹ Deed of Title, December 26, 1978; BLM Decision, January 12, 1981, and IC No. 793, February 10, 1984, AA-24201, ANCSA selection files, BLM records. The BLM first conveyed the subsurface estate of those lands to CIRI by IC No. 148 on January 12, 1979. It issued revised IC No. 793 for those subsurface lands on February 10, 1984.

²² U.S. Survey No. 4547, Survey executed by C. Norman Brown, 1966, Field Notes Approved, December 20, 1966, Plat Accepted, December 20, 1966, and Certificate 50-84-0556, June 13, 1984, A-055082; and U.S. Survey No. 9519, Survey executed by Orrin K. Frederick, 1988, Field Notes Approved April 26, 1989, Plat Accepted, April 26, 1989; Native allotment applications, BLM records.

The United States reserved the coal, oil, and gas within this allotment; then, later conveyed this interest to CIRI on May 16, 1989.²⁴

Lands in Tract A were conveyed to TNC and CIRI by IC No. 1605 (surface estate) and IC No. 1606 (subsurface estate), respectively, of February 27, 1995.²⁵ Tract A, within IC No. 1605 and IC No. 1606, also included roughly a half-mile stretch of the Chuitna riverbed northerly of the mid-channel upstream of the vicinity of Lone Creek (that portion lying outside PLO No. 894) that was in a military reserve at the time of statehood. As previously noted, IC Nos. 1605 and 1606 did not specify what submerged lands within the remainder of Tract A, if any, were excluded from the conveyances; they merely included a general statement that these lands would be identified at the time of supplemental survey.²⁶ As a matter of law, the BLM meanders tidal waters, rivers and streams three chains (198 feet) wide or wider, lakes fifty acres in size or larger, and those waterbodies determined to be navigable, and segregates the uplands from submerged lands.

Lands in Tract B, including the north half of the Chuitna riverbed, were conveyed to TNC and CIRI by IC No. 173 (surface estate) and IC No. 174 (subsurface estate), respectively, on April 6, 1979. The three Native allotments were specifically excluded.

Previous Navigability Determinations

For nearly a century, the United States has treated the lands underlying the Chuitna River as federal lands, and the river as nonnavigable. The south half of the river was withdrawn at the time of statehood for the Moquawkie Indian Reservation. Near the vicinity of Lone Creek and upstream, the riverbed was withdrawn by a military reserve. Outside these pre-statehood withdrawals, both uplands and submerged lands have been conveyed out of federal ownership. With the exception of one administrative determination made during navigability litigation proceedings in the late 1980s, the BLM has consistently determined unreserved segments of the river nonnavigable for travel, trade, and commerce.

The BLM makes navigability determinations in support of land conveyances under ANCSA, the Statehood Act, and the Native Allotment Act. Title to the beds of unreserved, navigable waters passed to the State on the date of statehood under the Alaska Statehood Act. The lands within Moquawkie Indian Reservation and the Aerial Gunnery and Bombing Range (with the exception of that portion released by PLO No. 894) were reserved at the time of statehood; therefore, title to the submerged lands of any navigable waters within those areas did not pass to the State, but remained with the United States. It was not necessary, then, for the BLM to make navigability determinations to support conveyances for those formerly withdrawn lands. The submerged lands in these former reserves were included in conveyances to the State, TNC, and CIRI.

²³ Certificate of Allotment, 50-84-0556, June 13, 1984, A-055082 (2561), BLM records.

²⁴ Patent 50-89-0283, AA-55469.

²⁵ In addition, on January 11, 1996, IC Nos. 1655 and 1656 conveyed the surface and subsurface estate in Secs. 3 and 10 of Tract A to TNC and CIRI, respectively.

²⁶ Decision, February 1, 1991, and IC Nos. 1605 and 1606, February 27, 1995, files AA-6707-B, C, ANCSA files, BLM records.

In accordance with the series of Manuals of Surveying Instructions effective during these periods, General Land Office (GLO) and BLM Cadastral surveyors used the extent of tidal influence as boundaries for U.S. Surveys.²⁷ They excluded tidal portions of the river from surveys in order to recognize the State's rights to those submerged lands. The tidal portion of the Chuitna River was segregated from the uplands in U.S. Survey No. 364, U.S. Survey No. 4544, and IC No. 793, which conveyed the lower half mile of the Chuitna, where the river empties into Cook Inlet in T. 12 N., R. 10 W., SM. The BLM did not segregate the non-tidal portion on the rectangular net township survey. Both the uplands and submerged lands have since been conveyed out of federal ownership in this township.²⁸

The four Native allotment parcels located along the north (left) bank of the Chuitna River in T. 12 N., R. 11 W., SM, were surveyed and Native allotment certificates issued without having made navigability determinations for the river. Although Pat Chuitt's parcel A-055082 (U.S. Survey No. 4547), was described in his application as abutting the left bank of the Chuitna River, the survey instructions intentionally surveyed the parcel to coincide with the north boundary of U.S. Survey No. 1865. The BLM determined that the Chuitna was "not of sufficient size to warrant meandering."²⁹ In accordance with the Requests for Survey for the Native allotment parcels and the Special Instructions for U.S. Survey No. 9519, the Chuitna River was meandered where Seraphim Stephan's (AA-6459), Peter Merryman's (AA-7789) and Evelyn Merryman's (AA-7269) parcels are located -- on the left bank of the river (Lots, 1, 3 and 5, U.S. Survey No. 9519, respectively) in Tract B.³⁰ Certificated Native allotments remain in Trust status with the U. S. Department of the Interior, Bureau of Indian Affairs (BIA).

The BLM has examined the navigability of the Chuitna River in T. 12 N., R. 11 W., SM, several times in connection with land conveyances to the State and Native corporations. In the course of identifying public easements within the Tyonek village selection area in the 1970s, the BLM determined that there were no navigable waters or major waterways within the area to be conveyed (Tracts A and B).³¹ The BLM later incorporated the nonnavigable determination into an appealable decision approving Tract B for interim conveyance to TNC. The decision's navigability determination was not appealed.³²

²⁷ For a complete list of Survey Manuals, reference the BLM *Manual of Surveying Instructions* (2009), Chapter 1.

²⁸ Master Title Plat T. 12 N., R. 10 W., SM, August 29, 2006; U.S. Survey No. 364, Plat and Field Notes; U.S. Survey No. 1865, Plat and Field Notes; U.S. Survey No. 4544, Notes; BLM Rectangular Survey, T. 12 N., R. 10 W., SM, Alaska, Plat Accepted, September 24, 1965.

²⁹ Application, May 1, 1961, and 50-84-0556, June 13, 1984, A-055082; U.S. Survey No. 4547, Plat.

³⁰ Requests for Survey, March 2, 1983, AA-7269; March 11, 1987, AA-7789; May 11, 1987, AA-6459; Amended Special Instructions, August 22, 1988, U.S. Survey No. 9519, Plat; lot 1, 50-93-0122, February 5, 1993, AA-6459, lot 3, 50-89-0325, June 2, 1989, AA-7789, and lot 5, 50-89-0324, June 2, 1989, AA-7269, Native allotment application files, BLM records.

³¹ Patrick Beckley, Realty Specialist, to Files, December 9, 1975, and Robert W. Arndorfer, "Notice of Proposed Easement Recommendations for the Village of Tyonek," December 24, 1975, file AA-6707-EE (75.4), ANCSA files, BLM records. There was no reference to major or navigable water bodies in the "Modified Notice of Proposed Easement Recommendations for the Village of Tyonek," June 30, 1976, "Final Easements for Lands Being Conveyed to Tyonek Village," February 22, 1978, and Amendments of March 8, 1978, and November 17, 1978. A Final Easement memo for the Village of Tyonek dated September 18, 1990, stated that there were no major waterways within the lands to be conveyed in Tract A, T. 12 N., R. 11 W., SM.

³² Decision, August 1, 1978, and IC No. 173, April 6, 1979, AA-6707-B, AA-6707-C, ANCSA files, BLM records.

In the mid 1980s, the BLM again considered the navigability of the Chuitna River in T. 12 N., R.11 W., SM, in connection with a State application for lands under the Mental Health Enabling Act. On July 12, 1984, the BLM determined the river and all other water bodies nonnavigable for what were then State and ANCSA selected lands in Tract A, T. 12 N., R. 11 W., SM. On August 7, 1984, the navigability determination was incorporated into an appealable decision approving the lands for conveyance to the State.³³ Although that decision was not appealed, a 1991 decision which rejected the State selection and approved the lands for conveyance to TNC, did not reference a navigability determination.³⁴

This decision was in accordance with BLM-Alaska's November 1987 policy of deferring navigability determinations until the time of survey.³⁵ Both the decision and IC Nos. 1605 and 1606 stated that submerged lands beneath meanderable water bodies (3 chains wide or wider and lakes 50 acres or larger) and navigable water bodies of less than meanderable size were excluded from the conveyance and that these submerged lands, if any, would be identified at the time of supplemental survey.

In 1997, the BLM found all water bodies less than the meanderable size in T. 12 N., R. 11 W., SM, and throughout the report area (Survey Window 709) to be nonnavigable. However, the Chuitna River was not addressed in that memorandum, pending the receipt of additional information about the river.³⁶ Finally, in 2007, the BLM issued a memorandum affirming its 1984 determination that the Chuitna River was nonnavigable in Tract A, T. 12 N., R. 11 W., SM.³⁷ Since then, the State requested and was granted an opportunity to provide additional information about the Chuitna River for the BLM to consider prior to issuing any decision regarding the ANCSA Section 17 (b) easements. The TNC also provided additional information about the river. We have considered their submissions.³⁸

³³ Robert W. Arndorfer, Deputy State Director for Conveyance Management, to Chief, Branch of State Adjudication, July 12, 1984, Decision, August 7, 1984, A-052943, State selection files, BLM records; and IC No. 1605, February 27, 1995.

³⁴ Decision, February 1, 1991, AA-6707-D, ANCSA files, BLM records.

³⁵ Robert W. Arndorfer to Branch Chiefs (960), November 20, 1987, file 2650, central files, BLM Alaska State Office, Anchorage.

³⁶ Decision, February 1, 1991, and IC Nos. 1605 and IC 1606, AA-6707-D (2651), ANCSA files, BLM records. In 1989, the BLM determined that this reach of the river was susceptible to navigation for canoes and rafts. The determination was never incorporated into a decision or used to support a conveyance. The determination was subsequently revoked as it was based upon a misinterpretation of federal title navigability law. See Wayne A. Boden, Deputy State Director for Conveyance Management, to Chief, Branch of Cook Inlet and Ahtna Adjudication, April 7, 1989, AA-6707, ANCSA files, BLM records. See also Gust C. Panos, Chief, Branch of Mapping Science, to Chief, Branch of Survey Preparation and Policy Interpretation, May 20, 1997, AA-6707 (75.4), ANCSA files, BLM records. This report addressed the navigability of water bodies in 113 townships for Survey Window 709.

³⁷ Dominica VanKoten, Chief, Navigability Section, to Richard Mylius, Director, November 2, 2007, and to Chief, Branch of Survey Planning and Preparation, November 2, 2007, AA-6707-EE (75.4), ANCSA files, BLM records. On October 13, 2006, the BLM issued a determination of nonnavigability for the river in IC No. 1605 based upon a finality policy in effect at the time.

³⁸ Dick Mylius, Director, to Thomas P. Lonnie, State Director, April 4, 2008, w/enclosure, "Report on Use and Navigability of the Chuitna River," September 9, 2008, w/enclosure, "Chuitna River Field Trip Report by Scott Ogan, 9/8/08," February 13, 2009, w/enclosures (Attachments 1-5, as stated), April 10, 2009, w/enclosure (as stated) and July 6, 2009, w/enclosures (as stated); and Tom Harris, CEO, Tyonek Native Corporation, to Thomas P. Lonnie, December 22, 2008, w/enclosures ("TNC Report on Nonnavigability of Chuitna River," Appendix A: "Historic and Contemporary Uses of the Chuitna River, Alaska," and Appendix B: "Chuit River Assessment"), and March 5, 2009, w/enclosure (Appendix A: "USGS Monthly Mean Flow Data Compared)," AA-6707-EE, BLM records.

Neither the U.S. Coast Guard (USCG) nor the U.S. Army Corps of Engineers (USACE) currently lists the Chuitna River as navigable or nonnavigable. The river does not appear on the USACE's 1995 list of navigable waters or on the USCG's 1999 inventory of navigable waters in Alaska.³⁹ It should be noted that these agencies apply different legal standards (Commerce clause) than those used by the BLM (Property clause) for navigability determinations.

Chuitna River Physical Characteristics

Located forty air miles southwest of Anchorage, Alaska, on the western shore of Cook Inlet, the Chuitna River is a non-glacial, meandering, and moderately swift stream. Known locally as the Chuit River, it heads in the foothills (approximately 2,000 feet in elevation) of the Tordrillo Mountains, south of Capps Glacier and Beluga Lake, and flows southeasterly thirty-seven miles to tidewater, draining an estimated 131 square miles.⁴⁰ The mouth of the river is located roughly two miles north of Tyonek village and approximately five miles south of the community of Beluga. The Chuitna River parallels two larger rivers – the Beluga River to the north and the Chakachatna River to the south. Its principal tributaries are Wolverine Fork near the headwaters, Chuit Creek (mile 19.2) and Lone Creek (mile 8.5), all feeding from the north. There are a number of smaller unnamed tributaries as well.⁴¹



Picture of the general vegetation type, logjam, and oxbow of the Chuitna River
9/26/09)

(Photo courtesy of Michael Schoder,

³⁹ See U.S. Army Corps of Engineers website (www.poa.usace.army.mil/reg), and U.S. Coast Guard, “Navigable Waters of the U.S. Within the Seventeenth Coast Guard District (State of Alaska),” revision dated April 15, 1999, in writer’s files.

⁴⁰ USGS, “Water Resources Data for Alaska,” 1979, 1985, and 1987.

⁴¹ The river is shown on the following maps: USGS Tyonek quadrangle, 1958, limited revision 1985, scale 1:250,000, and USGS Tyonek A-4 and A-5 maps, 1958, minor revisions 1966 and 1967, respectively, scale 1:63,360.

One of the first descriptions of the Chuitna River comes from Floyd G. Betts, a GLO Cadastral surveyor. In September and October 1930, Betts executed the survey of the boundaries of the Moquawkie Indian Reservation (U.S. Survey No. 1865), including a traverse of the mid-channel of the Chuitna River from the north-westernmost point of the reserve boundary in Sec. 22, T. 12 N., R. 12 W., SM (approximately three river miles upstream of the lands conveyed by IC No. 1605), downstream to the head of the mean high tide line – a distance of approximately twelve miles. Where he began the survey, the river was low and “not meanderable” according to criteria in the *Manual of Surveying Instructions* (1902).⁴² He wrote:

Chuit River is a clear, cold water stream about two chains [132 feet] wide with a depth from 1 to 3 ft. at normal stage of water, with a fall of ½ ft. on the 100 ft. over sand, gravel and stony bottom. Very few large boulders.

The River bank is well defined, varying from 10 ft. through the low land to high cut banks along the sides of the valley proper.

The Valley on the average is about ½ mile wide with abrupt sides varying from 100 ft. to 300 ft. high, broken by a few side streams from the Tundra flats. Cottonwood, spruce, and birch timber of fairly good size are found in the low lands, on the slopes the timber becomes scrubby and undergrowth abounds.⁴³

In 1978, the U.S. Geological Survey (USGS) estimated the Chuitna River to be approximately thirty to forty feet wide further upstream from IC No. 1605 near Wolverine Fork, where the bottom was comprised of gravel, large cobbles and boulders and forty to fifty feet wide with gravel and cobbles near the confluence of Chuit Creek.⁴⁴ On the basis of color infrared aerial photographs and a 1995 field examination, a BLM navigable waters specialist reported that the channel was also fifteen to fifty feet wide in the area conveyed by IC No. 1605. At some points it was wider and very shallow where riffles extended across the river.⁴⁵

From an over flight and on-the-ground observations, BLM Navigable Waters Specialist Ed Earnhart described the Chuitna as “increasingly swift and shallow” with a rocky bottom about two miles above Lone Creek.⁴⁶ State personnel reported Class III rapids and frequent boulders from their put-in point in Sec. 15, T. 12 N., R. 12 W., SM, until slightly above Lone Creek, where the river widens and changes to Class II. The GLO Cadastral surveyor Betts noted 100-foot-high banks abutting the river near Lone Creek while surveying the northern boundary of Moquawkie Indian Reservation in 1930.⁴⁷

⁴² U.S. Survey No. 1865, Notes, pp. 11, 15; and *Manual of Surveying Instructions* (1902), p. 718, which specifies that navigable rivers and those whose right-angle width is three chains or more wide will have both banks meandered at the ordinary high water mark.

⁴³ U.S. Survey No. 1865, Notes, p. 15.

⁴⁴ USGS “Discharge Measurement Notes,” February 15, March 30, May 11, June 20, July 17, August 14, September 12 and October 16, 1978.

⁴⁵ Color infrared photograph, roll 3383, frame 7129, August 1984; and Earnhart, July 14, 1995, BLM records, Anchorage; and Earnhart, “Navigability Report,” (draft), n.d. (c. 1995), p. 6, in writer’s files.

⁴⁶ Edgar Earnhart to File AA-6707-EE, July 14, 1995, ANCSA files, BLM records.

⁴⁷ “Chuitna River Field Trip Report by Scott Ogan,” September 9, 2008, BLM records; and U.S. Survey No. 1865, Notes, p. 12.

Below Lone Creek, the river channel morphology changes, primarily due to the valley width. Mike Haggerty, a hydrologist under contract to TNC, notes that where the river valley is approximately 1,700 feet wide, the channel is “constrained and is typically bound by a single channel.” Where it flows through a wider valley (4,000 feet wide), with “wide forested floodplains and low terraces,” the channel “exhibits extensive meandering, avulsing, and multi-thread channel attributes.”⁴⁸

The bed of the Chuitna is comprised of sand, gravel, and cobbles over its lower reaches, with large boulders about two feet in diameter in the vicinity of Lone Creek.⁴⁹ Two miles below Lone Creek, the bed is comprised of medium-sized cobbles with bedrock ledges exposed intermittently. The left bank is steep and undercut while the right bank is low and subject to overflow at high water. Just above the USGS gage site (river mile 6.1), the river makes an eighty degree bend to the right. Below the gage, the river is fairly straight for 600 feet downstream to where the channel splits and logs collect on the island between the river channels at medium to high water.⁵⁰

Tidal Influence

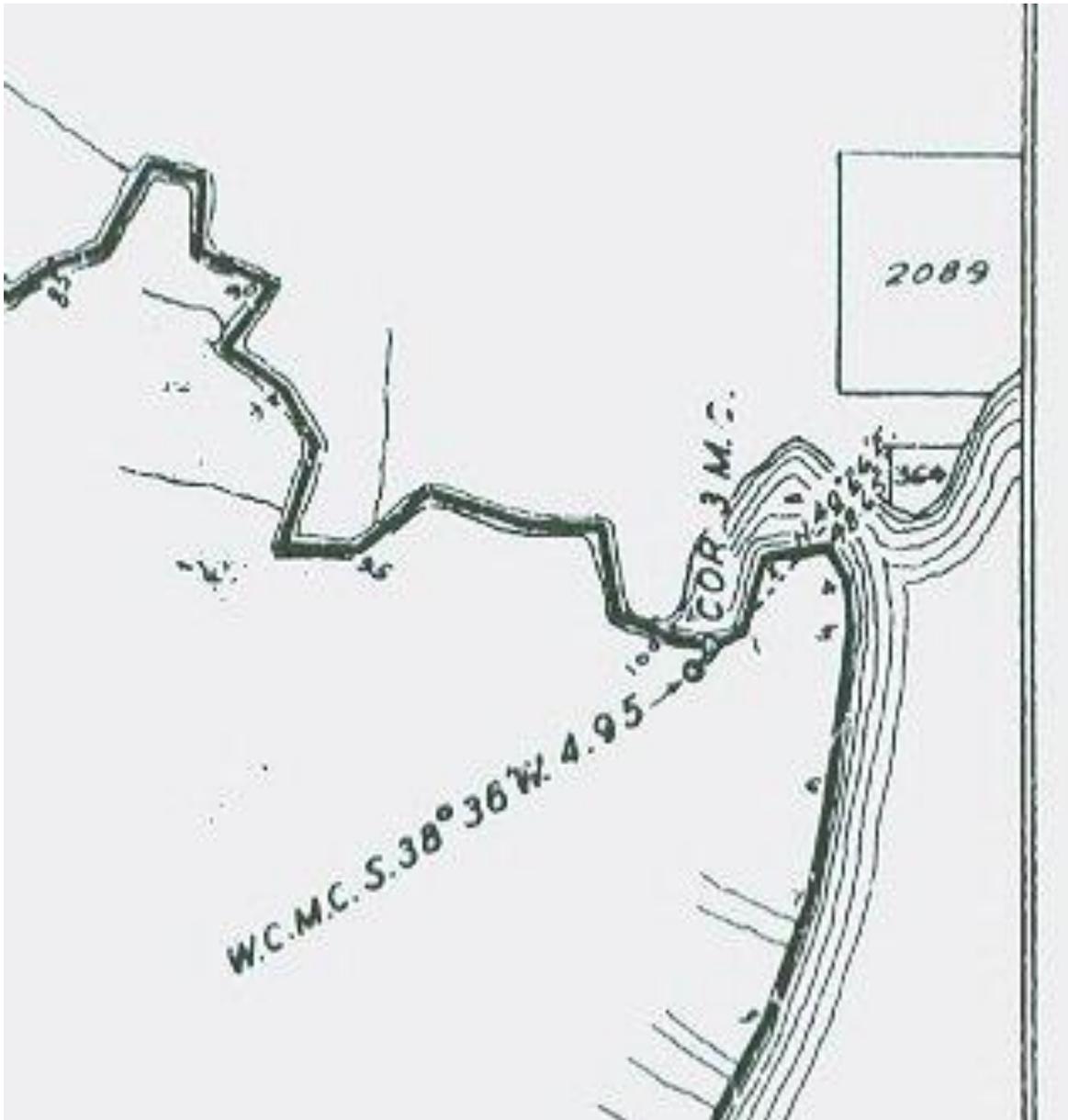
The U.S. Coast and Geodetic Survey’s Coast Pilot report of 1910 and 1916 noted that tides could be felt about a mile up the Chuitna River. Marked by a break in the coastal bluff, the Chuitna River was about eight feet deep at its mouth at high water. In 2008, Haggerty identified the first 1.1 miles as tidal.⁵¹

⁴⁸ Haggerty 2008, pp. 8-9.

⁴⁹ U. S. Survey No. 1865, Notes, p. 15; and Edgar A. Earnhart to File AA-6707-EE (75.4), July 14, 1995, photographs 25-26, ANCSA files, BLM records.

⁵⁰ Scully, September 2, 1976.

⁵¹ U.S., Coast and Geodetic Survey, South coast of Alaska, Washington, 1910, citation in Arctic Environmental Information Data Center (AEIDC), p. 587; U.S., Coast and Geodetic Survey “United States Coast Pilot Alaska, Part II, “Yakutat Bay To Arctic Ocean,” 1916, p. 104; State of Alaska, “Report on Use and Navigability of the Chuitna River,” April 2008, pp. 2; and Haggerty 2008, p. 9.



Portion of U.S. Survey No. 1865 (survey executed in 1930) enlarged to denote tidal zone and survey stations

The GLO Cadastral surveyors noted the extent of tidal influence and surveyed tidal portions of the river. While surveying a parcel at the mouth of the Chuitna in 1912, the surveyors observed the powerful tides in Cook Inlet, recording that the “average tide is about 28 feet between mean high and low water and extreme Spring and late Fall tides average 40 feet between mean high and low water.”⁵² In 1930, GLO Cadastral surveyor Betts excluded tidelands from the survey of the Moquawkie Indian Reservation’s exterior boundaries. He did not record his observations of the river’s flow, but noted that just above tidewater (about a mile upriver; stations 98-99), “the river becomes sluggish and widens out to about 3 chs. [chains].” Betts identified the head of tidewater (mean high) approximately a half mile above the mouth (stations 99-100). From this

⁵² U.S. Survey No. 364, Notes, p. 10.

point in the middle of the “Chuit River,” he headed downstream southeasterly across the channel to Corner No. 3, U.S. Survey No. 1865 (stations 100-101) and surveyed the northern boundary of the reservation along the right bank rather than the mid-channel of the Chuitna River at its mouth at Cook Inlet.⁵³

Gradient

The Chuitna’s gradient varies considerably over its course. The USGS maps indicate a gradient of approximately thirty to forty feet per mile where it flows in a narrow valley from 2,000-foot hills to coastal lowlands. A mile or two above Lone Creek (mile 8.5) in T. 12 N., R. 12 W., SM, the gradient increases to fifty feet per mile (fpm) for a short stretch. Further upstream in the remainder of township, the gradient varies between twenty-five and forty-five fpm. Over the lower eight and one-half miles (below Lone Creek), the gradient averages about twenty-five fpm. Betts reported essentially the same gradient, or a fall of one-half foot per 100 feet through the lower twelve miles or so.⁵⁴

Discharge

From 1975 to 1986, the USGS maintained a gaging station on the north bank of the Chuitna River 2.1 miles below the confluence of Lone Creek (or 6.1 miles from the river’s mouth).⁵⁵ There are no major tributaries below this gaging station. A “cable crossing,” used to take measurements of depth, width, velocity, gage height and discharge when the river was too high to wade, was also located at the gaging station site. The “cableway” or “cable crossing” was a physical structure with a ten-foot steel support on one bank and a fourteen-foot “A-frame” support on the other, a one-inch tramway cable strung between the supports and a standard standup-type car suspended from the cable. The cableway and gage house were built October 15, 1975, and the bubble gage and recorder was installed on May 10, 1976. Both the gaging station and cable crossing were in place from the fall of 1975 to the fall of 1986, when they were damaged in a flood.⁵⁶

In addition to the gaging station below Lone Creek, the USGS also operated two data collection sites – one 0.2 mile downstream from Wolverine Fork in the SW¼, Sec. 20, T. 13 N., R. 13 W., SM, and another 200 feet upstream from Chuit Creek in the SW¼, Sec. 1, T. 12 N., R. 13 W., SM – between 1975 and 1978. There were no physical structures located at either of these locations, however. The USGS accessed the sites by air and a gravel road.⁵⁷

⁵³ U.S. Survey No. 1865, Notes, p. 14.

⁵⁴ U.S. Survey No. 1865, Notes, p. 15; and USGS Tyonek quadrangle maps.

⁵⁵ The site was located in the NE¼NE¼, Sec. 29, T. 12 N., R. 11 W., SM. USGS site number 15294450, <http://www.waterdata.usgs.gov/ak/nwis/inventory/>; and D.R. Scully, USGS, “Description of Gaging Station on Chuitna River near Tyonek, Alaska,” September 2, 1976, revision, C.S. Savard, August 7, 1984, with hand-written notations regarding the September 30, 1986 discontinuation and October 21, 1986 removal of gaging equipment.

⁵⁶ Scully, September 2, 1976; and USGS, “Discharge Measurement Summary Sheet” for year ending September 30, 1986, Station No. 15294450, last notation October 21, 1986.

⁵⁷ USGS site numbers 15294432, 15294433 and 15294450, <http://www.waterdata.usgs.gov/ak/nwis/inventory/>; USGS, Water Resources Data for Alaska, 1978, pp. 184, 185, 283, 284; USGS, “Hydrologic Reconnaissance of the Beluga, Peters Creek, and Healy Coal Areas, Alaska,” p. 8; and Scully, September 2, 1976.

The maximum discharge recorded at the Lone Creek station was 4,800 cubic feet of water per second (cfs). This occurred on September 15, 1982. The minimum discharge recorded was 30 cfs on December 9, 1979.⁵⁸ The mean monthly discharges between January and December for the period of record (1975-1986) range between a low of 79 cfs in March and a high of 981 cfs in June, with May and June having the highest discharge rates. The Chuitna River's mean annual daily discharge is 359 cfs. The average discharge during normal water (between June and October) is 514 cfs.⁵⁹ The USGS data noted that the Chuitna River is subject to ice jams, which, when they break up, significantly increase discharge rates.⁶⁰

Seasonality

High water on the Chuitna River results from melting snow in spring and rainstorms in fall, typically exhibiting its highest water levels during late May or early June. Spring high water generally lasts from two to six weeks. Low water typically occurs in late August and early September and is followed by another high water period from fall rains. Because the Chuitna River is a high groundwater stream, runoff from rains is very rapid, unpredictable, and may last less than forty-eight hours.⁶¹

Depth

At normal flows, stream depths in the Chuitna River range from about one to three feet deep for the most part. This is substantiated by surveyor Floyd Betts' measurements while surveying the reserve boundaries in 1930,⁶² and USGS measurements taken at several sites between 1976 and 1986. In the upper reaches near the confluence of Wolverine Fork, the river averaged 1.27 feet deep, ranging from nine inches to two and a half feet in depth, between October 1976 and October 1978.⁶³ In the fall of 1978 the USGS found the river to be just over a foot deep midway along its course near the confluence of Chuit Creek as well.⁶⁴ According to an ADF&G employee, the river, at high stage in June, may be up to four feet deep with pools six to eight feet deep.⁶⁵

The BLM, the State, and TNC have all conducted field examinations on the river. On June 13, 1995, Jack Frost and Ed Earnhart, both BLM Navigable Waters Specialists, and Don Standifer of TNC, flew up and down the river in a helicopter, recording their observations, taking photographs of the river, from tidewater upstream to beyond Lone Creek. The only craft they observed on the river was "a small orange raft" with two men "fishing in the tidal water at the stream's mouth." The helicopter landed twice so that the specialists could measure stream depths. At the mouth of Lone Creek, the river was about two feet deep and its bottom consisted

⁵⁸ From statistics in USGS, Water Resources Data Alaska, 1979, 1985, 1987, reporting for those three water years.

⁵⁹ USGS, site number 15294450, http://waterdata.usgs.gov/ak/nwis/monthly/?referred_module=sw

⁶⁰ USGS, "Discharge Measurement Notes," October 18, 1977.

⁶¹ USGS, "Hydrologic Reconnaissance of the Beluga, Peters Creek, and Healy Coal Areas, Alaska," pp. 8, 17.

⁶² U.S. Survey No. 1865, Notes, p. 15.

⁶³ USGS "Discharge Measurement Notes," August 20 and October 19, 1976, April 5, July 18, August 19, September 16, and December 13, 1977, February 15, March 30, May 11, June 20, July 17, August 14, September 12 and October 16, 1978.

⁶⁴ USGS "Discharge Measurement Notes," September 12 and October 16, 1978.

⁶⁵ Steven L. Willis to File AA-6707 (2561), April 7, 1989, file AA-6707 (2561), ANCSA files, BLM records.

of “fifteen-inch boulders.” About two miles below Lone Creek, the river was “two feet deep between riffles.” Given the strong current and large rocks on the stream bottom, Frost was unable to get a sure footing in order to measure to depth in the main channel. Their pilot, who was very familiar with river conditions, thought the river was about “a third above the normal level for this time of year.”⁶⁶

On June 16, 2008, the State conducted its own field examination. State Natural Resource Manager Scott Ogan and hydrologist Terry Schwarz floated approximately a six-mile-stretch of the river on either side of Lone Creek with commercial guide Garret Jones in order to obtain physical character and hydrologic information about that reach. From a put-in point 0.7 of a mile above the boundary of State and TNC lands in T. 12 N., R. 12 W., SM, they floated downstream in a twelve-foot Avon inflatable raft to the former “cable crossing” with a stop at Lone Creek. At the time, the river was turbid and high (“almost bank to bank”) from snowmelt. Schwarz twice attempted to take measurements at the put-in, but was unable to do so because the river was too deep and swift to wade. According to the trip report, the river here “was estimated to be 100 feet wide and up to 3.5 feet deep at this location.” They estimated that the river to be 120 feet wide and up to three feet deep at Lone Creek.⁶⁷



BLM photograph: Lone Creek (left) and the Chuitna River near their confluence

⁶⁶ Edgar Earnhart to File AA-6707-EE, July 14, 1995, ANCSA files, BLM records. This report includes 26 color photos of the river from its mouth to above Lone Creek.

⁶⁷ Ogan, September 8, 2008, pp. 1, 2, file AA-6707-EE (75.4), ANCSA files, BLM records.

On October 20 and 21, 2008, Mike Haggerty, a TNC contracted hydrologist, conducted a field survey of several reaches, the longest extending from about a mile upstream of the bridge crossing to tidewater. In this lower reach he found that “shallow riffles, less than 1 ft depth were infrequent throughout. . . .” At several observation points he noted depths up to 1.5 feet on average. Above the bridge, he recorded depths as little as six inches to three and half feet on average. Most deep spots seemed to range from 2.5 to 3 feet.⁶⁸



BLM photograph: Power line crossing and tidal zone in the background

Obstructions, Impediments and Improvements

Our research has shown that the river was in its natural and ordinary condition at the time of statehood. That is, there are no known manmade improvements or obstructions to navigation. There are several coal veins in the river channel, where people have noted the existence of waterfalls over the veins. The GLO Cadastral surveyors surveying Moquawkie Indian Reservation observed these coal veins in 1930 and discussed them in the field notes. Two of the more prominent veins running north-south across the channel -- one located at river mile 5.5 and another two or three miles above Lone Creek -- were noted to the survey plat. The most downstream coal seam was described as being 100 feet wide with a five-foot waterfall running over it at low water. The uppermost seam was described as being twenty feet wide.⁶⁹

⁶⁸ Haggerty 2008, pp. 12, 25 and 40. See figure 9, p. 13, for reaches field surveyed.

⁶⁹ U.S. Survey No. 1865, Plat and Notes, pp. 11, 13, and 15.



BLM Photograph: View of the coal seam on the Chuitna River

During the 1995 BLM field examination when the river was about a third above normal water conditions, a BLM Navigable Waters Specialist observed downed cottonwood trees in and along the channel, and the coal seam jutting from the riverbed at mile 5.5, which they recorded in photographs. At the time, the coal seam was the most prominent and stable landmark in the stream. No waterfall was in evidence then, however. The top of the coal vein exhibited a saw-toothed pattern with the “teeth” standing slightly above the water column.⁷⁰ An ADF&G 1961 stream survey reported waterfalls of about six feet (most likely over a coal seam) located about two miles “above the North boundary of the reservation.”⁷¹

⁷⁰ Edgar Earnhart to File AA-6707-EE, July 14, 1995, ANCSA files, BLM records. See photograph 19.

⁷¹ Ducker 1985, p. 59.



BLM Photograph: Rock garden located upstream of Lone Creek

In June 2008, when the river was high, State employees who floated down the river reported the presence of boulders in the river channel in the vicinity of Lone Creek. According to their field trip report, “The river consisted of Class III rapids until slightly above Lone Creek. At that point, the river widened, changing the water to Class II. While boating the Class III waters, the crew encountered frequent boulders that required diligent attention to maneuver around, but still navigated the river with little difficulty.”⁷²

Impediments in the river include sweepers and log jams, which are occasionally cleared out in times of very high water. As high water erodes, cuts banks, or creates a new channel, trees lining the river eventually topple and either become sweepers or are carried downstream, forming log jams. The logs and sweepers have appeared over the years at various locations between miles four and nine. However, they were not prevalent in the BLM’s 1984 color infrared photograph,⁷³ and at no point was the channel fully blocked when examined by the BLM in June 1995.⁷⁴

⁷² Ogan, September 8, 2008, file AA-6707-EE (75.4), ANCSA files, BLM records. The Whitewater Classification System rates rapids in a series of six Classes (I-VI) with Class I considered *Easy* and Class VI considered *Extreme and Exploratory*. The American Whitewater Association has interpreted the Whitewater Classification System’s Class III rapids, as *Intermediate*, moderate with irregular waves, and Class II as *Novice*, straightforward rapids amidst wide clear channels. See <http://www.intladventures.com/activities/riverclassification.htm>.

⁷³ Edgar A. Earnhart to File AA-6707-EE, July 14, 1995, photographs 9, 14, 20, and July 19, 1995, ANCSA files; and Color Infrared (CIR) photograph, 1:60,000 scale, roll 3383, frame 7129, August 1984, BLM records, Anchorage.

⁷⁴ Edgar A. Earnhart to File AA-6707-EE, July 14, 1995, ANCSA files, BLM records. See photographs 1-26.



BLM Photograph: Logjam in the Chuitna River just upstream from the power line

On October 21 and 22, 2008, Haggerty inspected several reaches of the river and found numerous cottonwood deadfalls and a few logjams. According to Haggerty, frequent erosion in the river's floodplain oftentimes fells the trees, which often pile up, resulting in channel-spanning logjams – or what he referred to as Large Woody Debris (LWD). His uppermost observations were made on a half-mile reach below U.S. Survey No. 4547 (in Segment 3 as described in the report). Most of his observations were made from about a mile below the former USGS gaging station site to a point three to four miles downstream (in Segment 2 as described in the report). Haggerty found four logjams blocking the channel, three that “were definitive barriers to navigation.” The fourth was “a potential barrier to navigation,” although a portion of a log jam had been cut and removed, “apparently for navigation purposes.” Most of the channel-spanning logjams were located in Segment 2, which spans most of the river from below the USGS gaging station downstream to the tidal segment. Above this reach in Segment 3 (upstream to Lone Creek), downed trees were along the river, but did not span the channel, probably because of high discharges in this reach or the presence of smaller trees.⁷⁵

⁷⁵ Haggerty saw evidence of individuals removing portions of logs that blocked the channel at three locations. Haggerty 2008, Figures 8, 9, 10, and pp. 16, 18, 28, 40 and 41.

History of Tyonek Area

Early Settlement

The pre-history of the upper Cook Inlet region is largely unknown.⁷⁶ Although the Tubughna (“beach people”) band of the Dena’ina can be traced back 500 to 2,000 years to the Upper Cook Inlet region, the Dena’ina (Tanaina) Athabascans, like other Alaskan Native peoples, kept no written records. Their history and traditions have been passed down orally from generation to generation in the form of songs, place names and storytelling.⁷⁷

It was not until the Russians and British began exploring the upper Cook Inlet region that the Dena’ina, “the only Athabascans to live at tidewater,” were exposed to European cultures.⁷⁸ During the 17th century, Russia expanded eastward along the North Pacific Ocean. Interested in learning whether Russia and America were joined by a land bridge or separated by sea, Tsar Peter the Great ordered the first Russian expeditions to Alaska. The discovery of fur-bearing animals, especially sea otters, led to more Russian interest and further expansion to the western hemisphere.

By the 1770s and 1780s, the Russians had reached the Kenai Peninsula and Prince William Sound. Competition for furs led to the formation of forty private exploration companies, which operated in the territory between 1743 and 1799. One of the more noteworthy enterprises, the Lebedev-Lastochkin Company, whose “crews had been exploiting fur seal rookeries in the Pribilof Islands since 1786,” set up Fort St. George in 1787 in Cook Inlet.⁷⁹ Two other prominent companies, the Shelikhov-Golikov and the Mylnikov, merged in 1799 to form the Russian American Company, which operated until the United States purchased Alaska in 1867.⁸⁰

Captain James Cook was the first European to enter the inlet that would eventually bear his name, making contact with the Natives, believed to be the Dena’ina, when he ventured up Cook Inlet in 1778. Looking for passage from the Pacific to the north, Cook led two small British ships, the *Endeavor* and *Resolution*, up the inlet, exploring and mapping it. Captain George Vancouver, also of Britain, was the next to head up Cook Inlet in 1794 to disprove any claim of a northwest passage. A map resulting from his 1794 exploration of Cook Inlet on the *Discovery* depicts a “Russian Factory” at North Foreland on the western shore of Cook Inlet a few miles south of present-day Tyonek (Sec. 1, T. 11 N., R. 11 W., SM) and another due south along the eastern shore of Cook Inlet at the mouth of the Kenai River. The “factories” were reportedly trading stations of the Lebedev-Lastochkin Company.⁸¹

The Tyonek region offered abundant resources for the upper Cook Inlet Dena’ina, who hunted harbor seals and beluga whales in the inlet, netted hooligan and nettlefish at Tyonek, gathered razor clams along the beaches to the south, harvested salmon with dipnets from pole platforms extending into the inlet and with basket traps and weirs in small streams and lake outlets and

⁷⁶ Darbyshire and Associates 1981.

⁷⁷ Kari 2003, pp. xv, 16, 22; and Fall, Foster and Stanek 1984, p. 18.

⁷⁸ Lord 2004, p. 6.

⁷⁹ Black 2004, p. 102.

⁸⁰ “Russian exploration of the Northwest Coast of North America”; and Dmytryshyn 1988, pp. xl, xli and xlv.

⁸¹ Kari 2003, pp. 17, 63, 66, and 345-347; and Orth 1971, p. 40.

hunted caribou, sheep and bear to the west.⁸² The Dena'ina had a unique way of fishing for salmon in tidewater or in the inlet. They constructed *tanik'edi* or dipnetting docks out of spruce, which were then located at about five sites in the inlet -- one at the mouth of Tyonek Creek.⁸³

Before contact with westerners, the Upper Cook Inlet Dena'ina used four main types of boats for transportation and subsistence: birchbark canoes, skin boats, sealskin kayaks, which were easy to portage on inland waters, and the larger umiak-style skin boat. They made three different styles of kayaks or baidarkas – one-, two- and three-hole – which were used in the region until the 1910s. They also had log rafts called “hnes...for one-way river travel on larger rivers.” Post-contact, the Dena'ina added terms for other watercraft, including dories, scows, schooners, sloops, and various motorboats and fishing boats, to their vernacular.⁸⁴

Tyonek Natives typically made summer hunting trips into the headwaters of the Chakachatna Basin and the Susitna Natives hunted in the upper Skwentna Basin. Both groups eventually gave up those difficult expeditions in the early 1900s, however, in exchange for making a living in various other activities with westerners.⁸⁵

Other than the short-lived Russian fort or trading settlement at Tuiunuk (Tyonek), which was destroyed “due to dissention between the Natives and Russians” in the 1790s,⁸⁶ there is no evidence of a permanent Russian post or store in upper Cook Inlet prior to the 1867 U.S. purchase of Alaska. The Alaska Commercial Company (ACC), which succeeded the Russian-American Company, opened the first permanent store in the region at Tyonek's original location around 1875 and people began congregating there.⁸⁷ The largest trading company in Alaska, the ACC operated the store at Tyonek from 1875 to 1909, when the ACC moved its store from Tyonek to Beluga. A. C. Muller believed that the Tyonek Indians would also move to Beluga, as they were left without a store and means of income.⁸⁸ As of 1912, however, there was no Alaska Commercial Company store at Beluga.⁸⁹

During the latter part of the nineteenth century, Tyonek was an important settlement in Cook Inlet. Canneries were established in the area, and prospectors explored the many streams. Alaska Commercial Company records show that by 1876, people were arriving at Tyonek and then heading up the Yentna and Susitna Rivers in search of gold. Once gold was discovered at Resurrection Creek in the late 1800s, Tyonek became a major port for prospectors and goods entering the region.⁹⁰ By 1896, Tyonek was reportedly the largest town on Cook Inlet due to the

⁸² Kari 2003, pp. 23, 55.

⁸³ Kari 2003, pp. 64-66, 75.

⁸⁴ Kari 2003, pp. 76, 99, 102-104.

⁸⁵ Capps 1935, p. 34.

⁸⁶ Darbyshire and Associates 1981.

⁸⁷ Kari 2003, pp. 17, 56.

⁸⁸ A. C. Muller to the Commissioner of Education, July 28, 1909, Records of the Bureau of Education, Record Group (RG) 75, BIA microfilm Roll 25 (hereafter BIA microfilm Roll 25). Beluga, 12 miles from Tyonek, was the transfer point from inlet to riverboat in the region.

⁸⁹ N.H. Cooper, Teacher, “Special Report on Commercial Conditions,” July 12, 1912, BIA microfilm Roll 25; U.S. Survey No. 1865, Notes, p. 11, 13, and 15.

⁹⁰ Darbyshire and Associates 1981; Kari 2003, pp. 17 and 21; and Lord 2004, p. 160.

influx of prospectors and adventurers.⁹¹ In the early 1900s, it was the Upper Cook Inlet's commercial distribution center for freight before Kenai became an important port.⁹²

The village of Tyonek was first reported as "Toyonok" by Alaska's first census enumerator, Ivan Petroff, in 1880. Located near the mouth of Old Tyonek Creek along Cook Inlet (Sec. 18, T. 11 N., R. 11 W., SM), the Tanaina Indian village reportedly had a population of "2 white, 6 creoles and 109 natives" that year.⁹³ At the time of the 1890 census, there were 115 inhabitants and 21 houses. Besides hunting and trapping, residents caught king salmon to sell to the local canneries. All were members of the Russian church.⁹⁴

Gold Rush Era, 1898-1914

At the turn of the twentieth century, Ladd and Tyonek were the principal settlements in the vicinity of the Chuitna River. Ladd (also known as Ladds, Ladd Landing and Ladd Station), located at the mouth of the Chuitna River until the 1910s, was the smallest and most northern of four historic villages in the Tyonek area.⁹⁵ The USGS maps show the site just north of the mouth of the Chuitna River along Cook Inlet in T. 12 N., R. 10 W., SM.⁹⁶ Named after operator C. D. Ladd, the former Native village, trading post, warehouse and fishing station was in existence in 1895. Ladd operated the Ladd Company saltery here, believed to have been established in 1890. It produced about 100 barrels of salmon for local use in 1897.⁹⁷

The Ladd Company saltery was purchased in 1899 and operated as a cannery in 1901 and 1902, when it was abandoned.⁹⁸ Reports from the Alaska Division of Fisheries noted three canneries in existence in the upper Cook Inlet region in the early 1900s: the Pacific Steam Whaling Company's at Fort Kenai, and the Alaska Salmon Association's canneries at Kasilof and the mouth of the Chuitna River. By 1905, none remained.⁹⁹ The Alaska Packers Association had a ten-acre tract of land at Ladd in the 1910s, surveyed as U.S. Survey No. 364 in 1912. The surveyor noted that the location had two houses, remnants of the abandoned cannery plant. He

⁹¹ Lord 2004, p. 160.

⁹² Charles M. Robinson to W. T. Lopp, Chief of Alaska Division, Bureau of Education, November 25, 1914, BIA microfilm Roll 25.

⁹³ Orth 1971, p. 1001.

⁹⁴ Hodge 1910, p. 860. The village population has varied from as few as 50 in 1920, 136 in 1939, 187 in 1960, and 232 in 1970 to as many as 239 in 1980. (Orth 1971, p. 1001; and Darbyshire and Associates 1981) In 2004, 193 people called Tyonek home. (Lord 2004, p. 163)

⁹⁵ Kari 2003, p. 68.

⁹⁶ USGS, Tyonek 1:250,000 quadrangle map, 1958, minor revisions 1985, and USGS Tyonek A-3 1:63,360 quadrangle map, 1958, minor revisions, 1966.

⁹⁷ Moser 1899, p. 143; U.S. Coast and Geodetic Survey 1916, p. 104; and Frank T. Bell, Commissioner, to L.C. Pendell, Stockton, California, November 9, 1937, Miscellaneous Correspondence (M-R), #509, Selected Records from Alaska Division, CCF, RG 22, National Archives, Washington, DC.

⁹⁸ Ibid.

⁹⁹ Howard M. Kutchin, "Report on Alaska Fisheries of Alaska, 1900," Reports and Related Records, Entry 91, Item 423, Box 64, and "Report on the Salmon Fisheries of Alaska, 1905," Entry 91, Item 424, Box 64, Division of Alaska Fisheries, Bureau of Fisheries, RG 22, NA; and "Report of John J. Coyle, Assistant Agent for Protection of Salmon Fisheries of Alaska," Entry 91, Item 422, Box 64, Reports and Related Reports-Reports of Agents for the Salmon Fisheries of Alaska, 1902, RG 22, NA, Washington, D.C.

identified a small Native village with a few uninhabitable shacks adjoining the survey to the north.¹⁰⁰

Tyonek has had three locations since the late 1800s, shown as Old Tyonek, Tobona and Tyonek on USGS maps. Originally situated along Beshta Bay near the mouth of Old Tyonek Creek (known locally as Roberts Creek) in Sec. 18, T. 11 N., R. 11 W., SM, the village known as Old Tyonek was abandoned around 1900 due to erosion for a place three or four miles up the coast. Tobona was the second site, located in Sec. 14, T. 11 N., R. 11 W., SM, near locally known Timber Camp (Tyonek Timber).¹⁰¹ In the early 1900s, the Bureau of Education established a school here, obtaining an unoccupied log building from the War Department, which discontinued its use in 1907.¹⁰² In 1908, President Theodore Roosevelt signed EO No. 965, which reserved the two-acre tract of land surrounding the school building for educational purposes. In 1904, the United States surveyed two tracts of lands (Tracts A and B) at “Tyonok” (Tobona), for the Russian Greek Church Mission Reserve (U.S. Survey No. 194). The surveyor’s notes and plats show the location of a church, school building and military barracks and stable (both abandoned) adjoining the reserve.¹⁰³ After Tobona was flooded in the early 1930s, the village moved to its present site atop a bluff a few miles up the coast at the mouth of Indian Creek in Sec. 1, T. 11 N., R. 11 W., SM, about half-way between Tyonek Creek and the Chuitna River.¹⁰⁴ The local newspaper reported in November 1931 that the residents of Tyonek were preparing to relocate the village to higher ground a few miles north. The townsite was being surveyed, streets cleared, homes built, a sawmill set up, and new quarters for the cooperative store erected.¹⁰⁵

Tyonek and vicinity was the jumping off point for several well-known exploring expeditions to Mt. McKinley and Interior Alaska. None of these expeditions reported using boats on the Chuitna. In 1898 Ladd served as a base camp for Capt. Edwin F. Glenn, who conducted a military reconnaissance known as Cooks Inlet Exploring Expedition in 1898 and 1899. He set up a permanent camp at Tyonek, deploying detachments to explore the countryside northward in search of the shortest route from tidewater to the Yukon River at the mouth of the Tanana River.¹⁰⁶ On June 1, 1902, Alfred H. Brooks and a USGS reconnaissance party landed at Tyonek with an outfit of twenty packhorses. From Tyonek the party traveled north to the Skwentna and Kichatna Rivers, thence westerly and northerly to the Tanana River and Rampart on the Yukon River.¹⁰⁷

In 1903 and 1906 Dr. Frederick Cook led Mt. McKinley climbing expeditions from Tyonek. In 1903, he landed at Tyonek with an expedition of five men and fourteen horses with the objective of climbing Mt. McKinley. He followed Lt. Joseph Herron’s U.S. Army Expedition of 1899 and

¹⁰⁰ U.S. Survey No. 364, Notes, p. 11.

¹⁰¹ Darbyshire and Associates 1981, Kari 2003, p. 56; and USGS Tyonek 1:250,000 map, 1958, limited revisions 1985, and Tyonek A-4 1:63,360 quadrangle map, 1958, minor revisions 1966.

¹⁰² Telegram, Acting Commissioner to Bureau of Education, August 10, 1908, and letter, Secretary of War to War Department, August 11, 1908, BIA microfilm Roll 25.

¹⁰³ U.S. Survey No. 194, Survey executed by Albert Lascy, 1904, Field Notes Approved, November 26, 1906, Plat Approved, November 26, 1906. The plat of U.S. Survey No. 1865 shows “Tyonek Village” adjacent to Tracts A and B of U.S. Survey 194, although the village had moved by then.

¹⁰⁴ USGS Tyonek A-4 quadrangle map, 1958, minor revisions 1966.

¹⁰⁵ *Anchorage Daily Times*, November 20, 1931, p. 8.

¹⁰⁶ Orth 1971, p. 14, 560; Ducker 1985, p. 59; and Glenn 1900, 713-717.

¹⁰⁷ “Notes of Exploration by the U.S. Geological Survey,” p. 454.

Brooks' 1902 expedition.¹⁰⁸ In 1906, Cook and party made another attempt to climb Mt. McKinley. They left Tyonek on June 3, sending a pack train overland, while a power boat -- a forty-foot gasoline launch with a twenty-five-horsepower motor -- crossed Cook Inlet and proceeded about 100 miles up the Susitna and Yentna Rivers. Two months later, they returned to Tyonek on the boat, having floated down the Yentna.¹⁰⁹ The last known exploration departing from Tyonek occurred in 1927, when geologist Stephen R. Capps led a USGS party on a topographic mapping expedition of the area. Traveling on the launch *Alaska* from Anchorage, they set up camp at Tyonek and headed northwesterly on horses.¹¹⁰

Establishment and Survey of Moquawkie Indian Reservation, 1914-39

During the early 1910s, U.S. government officials' concern over the fate of the Tyonek Natives and others in Cook Inlet grew as they listened to Congress debate whether the federal government should construct a railroad in Alaska from tidewater at Seward to the navigable rivers in Interior Alaska. In 1914 the debate ended when Congress enacted legislation authorizing the government to build the railroad, leaving the President with the authority to choose the route. In 1915, the President chose the Seward-Fairbanks route. The decision sparked a land rush to Cook Inlet, where the government's main construction camp at Ship Creek (later named Anchorage) was to be located. Fearful that others may fish, hunt, or even settle on Native lands, government officials proposed to protect the Natives from these developments by establishing one or more Reserves in the Cook Inlet area.

Charged with promoting the well-being of Alaskan Natives, the U.S. Department of Interior's Bureau of Education wanted to attract groups of Natives to large self-sustaining communities in Alaska. The Bureau of Education planned to provide superior opportunities in these communities (or "reserves") by introducing Natives to western culture, setting up "well-equipped schools" and cooperative stores and by fostering "commercial enterprises such as fisheries and sawmills."¹¹¹

In 1914, Charles Robinson, the Bureau of Education teacher at Tyonek, looked for a suitable site in the upper Cook Inlet region where a Native reservation could be established. He scouted locations that had good hunting and fishing grounds, a good source of fresh water, and where a Native village could be located and industries developed. The Bureau hoped that the reservation would attract Natives from around the Inlet. After canvassing the region, Robinson felt that the best location on either side of Cook Inlet near the center of a Native population was in the vicinity of Tyonek and Moquawkie – two coastal settlements or villages. (A diagram of the proposed reservation shows Tyonek just north of the mouth of Tyonek Creek and the much larger Moquawkie a few miles northeast.¹¹²) He ruled out other locations such as Kenai, Homer,

¹⁰⁸ Miller 1996, 79-87.

¹⁰⁹ Parker 1907, p. 57. A photo on page 56 shows the small steamer operating between Tyonek and Seldovia in front of the village of Tyonek on the beach with a bluff behind the village.

¹¹⁰ *Anchorage Daily Times*, June 9, 1927, p. 8; and "Geologic Map of the Mount Spurr Region, Alaska" in Capps 1935.

¹¹¹ P.P. Claxton, Commissioner, Bureau of Education, "Proposed Moquawkie Reservation;" and Ducker, "Creating Tyonek Reserve."

¹¹² P.P. Claxton, Commissioner, Bureau of Education, "Proposed Moquawkie Reservation," Executive Order 2141, February 27, 1915.

Ninilchik, Susitna and Knik for various reasons and chose the Tyonek/Moquawkie area for its excellent fishing grounds and absence of weirs and traps along the coast. Given its protection from blizzards and tides and its proximity to fresh water, he felt that Moquawkie was a more desirable location than Tyonek and recommended a tract of land comprising about sixteen square miles bounded on the north by the Chuitna River and including the village of Tyonek and the site of Moquawkie.¹¹³ Robinson noted that the proposed tract also had coal as an available source of fuel and income in both coal veins and flotsam on the beach.¹¹⁴

Robinson's recommendation for the Native reservation was endorsed. On February 27, 1915, President Woodrow Wilson signed EO No. 2141 withdrawing the 25,000-acre tract of land which Robinson proposed, using the center of the main channel of the Chuitna River as the northern boundary, rather than the north or south bank. Created by executive order rather than by treaty or congressional statute, Moquawkie was not a true reservation, where aboriginal land claims are extinguished and "...the land is held in trust for the use and benefit of the Native occupants."¹¹⁵

It was Robinson's intent for the reserve to include exclusive rights for Native Alaskans to set nets, weirs and traps, etc., for fishing and hunting within its confines.¹¹⁶ His duties were to "...look after all Indians, furnish them protection, provide food when necessary, and protect their fishing..." under special rights secured by an Act of Congress and overseen by the Secretary of the Interior. The ancient rights dated back to a period before the Russian occupation of Alaska and included canoe landings, villages and village sites and hunting privileges.¹¹⁷ In order to ensure that the Indians had reliable supplies and a market for their goods, Robinson helped organize a cooperative company for the Natives during his tenure as teacher.¹¹⁸ During the three years he taught at Tyonek school, Robinson also helped establish and manage viable industries for the Indians. Under his watchful eye, they fished for king salmon using nets and small dories, and made snowshoes, which they sold through the cooperative store.¹¹⁹ Efforts to provide a source of materials and income for the locals continued with Robinson's replacement, David Dunagan, who helped organize the "Tyonek Native Cooperative Store."¹²⁰

In an effort to provide a livelihood for Tyonek Indians, in 1923, J. A. McGill, a local businessman, secured a seven-year lease from the Bureau of Education to build a salmon cannery on the reservation, with hopes that the American Packing Company could get its affairs in order and run it. It would employ local Natives, much like the cannery at Metlakatla in southeast Alaska, which paid royalties on fish trap licenses, rentals, wages and lumber (pile) work.¹²¹ Also, in 1925 and 1926, the Bureau of Education requested proposals for a fishing concession known as the Moquawkie Reservation Fish Concession to be operated on the reservation during

¹¹³ Charles M. Robinson, Teacher, to W. T. Lopp, November 25, 1914, BIA microfilm Roll 25.

¹¹⁴ Ibid.

¹¹⁵ Case 1984, pp. 85, 86.

¹¹⁶ Charles M. Robinson, Teacher, to W. T. Lopp, November 25, 1914, BIA microfilm Roll 25. Robinson ruled out other locations such as Seldovia, Kustatan, Beshta, Suitna, Beluga and Point Possession. It is unclear from his letter whether he intended to use the left or right bank of the Chuitna River as the northern boundary of the reservation since "left" bank is typed in the metes and bounds description, yet "right" is handwritten above.

¹¹⁷ *Anchorage Daily Times and Cook Inlet Pioneer*, June 23, 1916, p. 1.

¹¹⁸ Charles M. Robinson to Chief of Alaska Division, Bureau of Education, May 22, 1915, BIA microfilm Roll 25.

¹¹⁹ Charles M. Robinson, to W. T. Lopp, June 12, 1915, BIA microfilm Roll 25.

¹²⁰ David F. Dunagan, Teacher, to Commissioner of Education., n.d., BIA microfilm Roll 25.

¹²¹ *Anchorage Daily Times*, November 21, 1923, p. 3.

those fishing seasons. The concession would include rights to construct and operate two hand fish traps and red and king salmon gill nets, with the Bureau of Education reserving rights to nets sufficient to supply fish for the Native reservation.¹²²

In order to preserve salmon runs, in 1928 the Bureau of Fisheries prohibited all commercial fishing within one statute mile and the use of traps for commercial salmon fishing within two statute miles of the Chuitna River.¹²³ In 1930, the Tyonek Indians had a contract for salmon from their fish traps with Farwest Fisheries, Anchorage's largest cannery. A number of packers or canneries operated in the Cook Inlet salmon canning district under permits issued by the Department of Commerce in the early 1930s. These included Northwestern Fisheries, Alaska Packers, Libby, McNeil & Libby, Fidalgo Island Packing Company, and Emard, Toman, Gorman, Alaska General Fisheries and the Al Jones Cannery at Kustatan.¹²⁴ The Tyonek Native Store Association administered sealed bidding for the rights to operate fish traps on Moquawkie Indian Reservation.¹²⁵

In 1930, the GLO Cadastral surveyors surveyed the reservation as U.S. Survey No. 1865 under Special Instructions dated July 23, 1928. The survey plat, accepted in 1939, portrays the center of the Chuitna River as the northern boundary of the reservation. At the time of survey, Tyonek was the only village on the reserve. Several fish traps were located along the coast southwest of the village. The village had a good government school and was accessible by dog team in the winter and by boat during the summer from Anchorage.¹²⁶ A seventy-mile-long trail suitable for dog sleds between the communities of Nancy and Tyonek, called the "Nancy-Tyonek" trail, was in existence in 1927 and crossed the lower Chuitna River about five miles from Tyonek as it followed the Cook Inlet shore.¹²⁷

In the early 1930s, the Natives living in or near the Moquawkie Indian Reservation, also referred to as Tyonek Natives, were believed to be better off than other Cook Inlet Natives living in Port Graham, Seldovia and Kenai, given the natural resources available and the independence afforded them. They enjoyed fishing privileges without interference from outsiders, including exclusive use of fish trap locations and gill nets along the reserve's coast, from which they derived income. They also leased fish traps to the Libby, McNeill and Libby cannery. Their fishing operations netted them both food and income. Coal and timber were plentiful. And a new school had been built at Tyonek's new location.¹²⁸ A fourth class Post Office was established in 1933.¹²⁹ Those living in Susitna Station, located on the lower reaches of the Susitna River, moved to Tyonek in 1934.¹³⁰ According to a local newspaper in 1937, the U.S.

¹²² *Anchorage Daily Times*, March 4, 1925, p. 5.

¹²³ Henry O'Malley to Dr. John J. Tigert, May 3, 1928, File Cook Inlet Questionable Streams 1928, Box 83745, RG 22, Federal Records Center, Seattle, Washington.

¹²⁴ *Anchorage Daily Times*, March 28, 1930, pp. 2 and 5, November 21, 1923, p. 3, and August 14, 1933, p. 4.

¹²⁵ *Anchorage Daily Times*, March 10, 1932, p. 2.

¹²⁶ U.S. Survey No. 1865, Plat, and Notes, p. 20.

¹²⁷ Edman, Hudson and Johnson 1960, pp. 29, 30.

¹²⁸ R.L. Cole, Master, USFS "Teal," to Dennis Winn, October 27, 1932, Entry 92, Box 44, General Records-Survey of native villages, 1931-1932, RG 22. The Bureau of Education had a new five-room school built in Tyonek by Anchorage contractors Anderson and Johnson in 1932. *Anchorage Daily Times*, June 23, 1932, p. 4.

¹²⁹ *Anchorage Daily Times*, October 11, 1933, p. 6.

¹³⁰ Kari 2003, p. 68.

Civilian Conservation Corps built an airstrip and road connecting the landing field and the village of Tyonek.¹³¹

The Natives of the Moquawkie Indian Reservation were officially organized under the Indian Reorganization Act of June 18, 1934.¹³² Under a May 1, 1936 amendment, the Department of Interior approved Tyonek Native's Corporate Charter and Constitution and By-Laws in May 1939, paving the way for Tyonek Natives to establish its village council -- The Native Village of Tyonek.¹³³

Through the years, several attempts were made to increase the size of the Moquawkie Indian Reservation. Shortly after the reservation was established, the Natives wanted to secure exclusive fishing rights for red salmon. One suggestion was to expand the reservation along the eastern shore of Cook Inlet between East Foreland and Point Possession.¹³⁴ Another was to add a strip of land along the beach between the Kasilof and Kenai Rivers or on Kalgin Island.¹³⁵ In his first annual report to the Bureau of Education since arriving in Tyonek in June 1917, teacher David Dunagan also recommended that the reservation be extended, suggesting lands south along the inlet twelve miles to the McCarthy River to include more fishing grounds.¹³⁶ No addition ensued, however.

Between 1937 and 1946, there was another grassroots effort to increase the size of the Moquawkie Indian Reservation. This time, with approval and support from the Alaska federal authorities, the Natives sought to enlarge their 25,000-acre reservation to 1,170,000 acres to protect their traplines, include clam beds, and add fishery areas to their lands.¹³⁷ That never materialized and with the outbreak of war and the establishment of the Aerial Gunnery and Bombing Range (EO No. 8872) in 1941, discussions to enlarge the Moquawkie Indian Reservation ended.

¹³¹ *Anchorage Daily Times*, December 8, 1937, pp. 1, 10.

¹³² Don C. Foster, General Superintendent, to Major General Howard A. Craig, October 25, 1946, file No. 68931, RG 75, National Archives. The Act of June 18, 1934 was amended by Acts of June 15, 1935, and May 1, 1936.

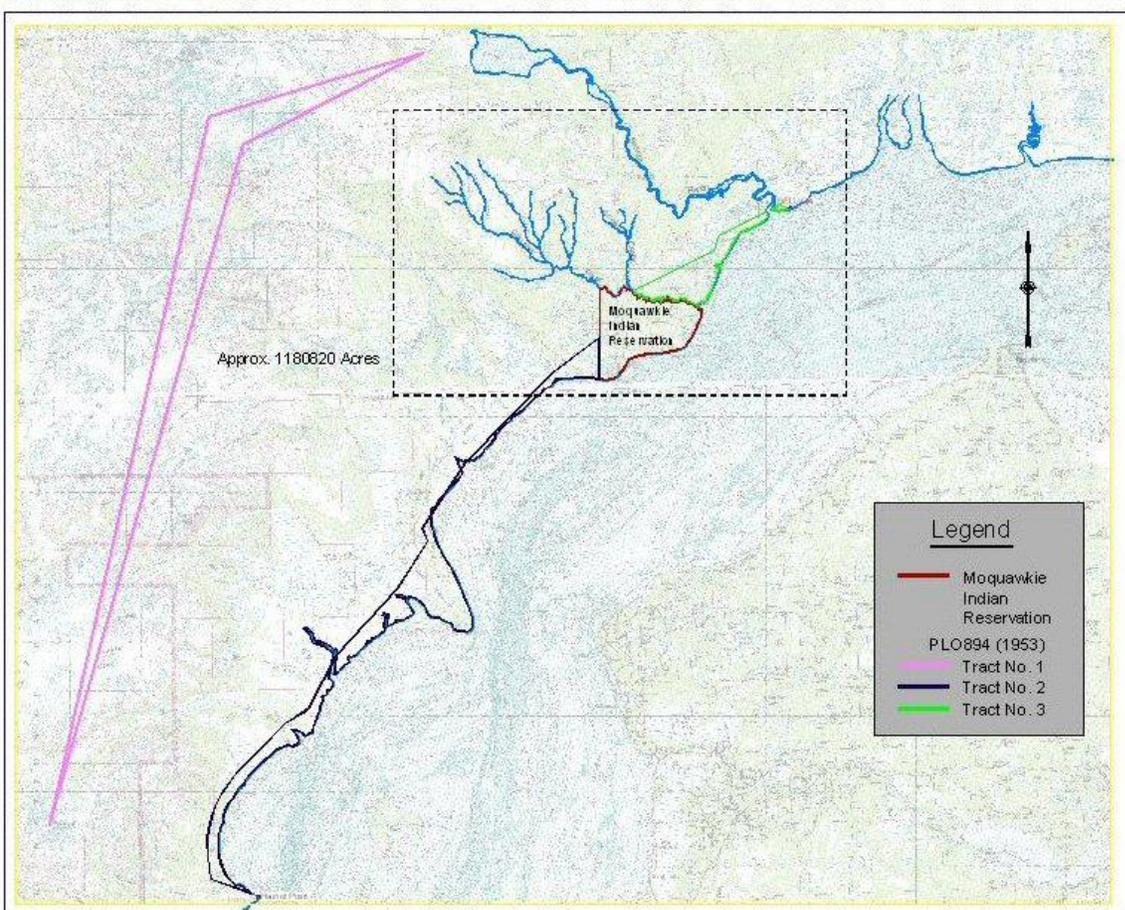
¹³³ *Ibid*; Martin G. Slapikas, Executive Director, to John Hall, Director, Technical Services, Tyonek Native Corporation, August 13, 1976, file AA-6707-EE, BLM records; Darbyshire 1981; and Lord 2004, p. 161.

¹³⁴ Dr. H.O. Schaleben, Superintendent, S.W. District, to Chief of Alaska Division, Bureau of Education, July 8, 1915, and "Memorandum Regarding Suggestion of Dr. H.O. Schaleben of the Bureau of Education to Extend the Tyonek Reservation on Cook Inlet, Alaska," July 21, 1915, BIA microfilm Roll 25.

¹³⁵ Dr. H.O. Schaleben, Superintendent, S.W. District, to Chief of Alaska Division, Bureau of Education, July 21, 1915, BIA microfilm Roll 25.

¹³⁶ David F. Dunagan to Commissioner of Education, Washington, D.C., n.d., BIA microfilm Roll 25.

¹³⁷ William L. Paul, Field Agent, Indian Reorganization Department, to Office of Indian Affairs, February 18, 1937, and William Zimmerman, Jr., Assistant Commissioner, to the Secretary of the Interior, July 22, 1937, file No. 68931, RG 75, National Archives.



Map of bombing range

WWII-Statehood Period, 1940-1958

There is little documentation regarding the effects of the Second World War and the ensuing Cold War on the Tyonek Natives. By the mid 1950s, however, Tyonek's economy and standard of living were clearly in trouble. There was more competition for fish, stricter regulations for controlling catches and food shortages resulting from poor fishing and other factors.¹³⁸ These challenges along with work opportunities in Anchorage led some Natives to leave the area for the city or other villages. By 1955, the population of Tyonek was 110 people – down from 150 in the 1950 census. With fur prices low, there was little trapping. The chief activity among the Tyonek Natives continued to be salmon fishing in Cook Inlet.¹³⁹

¹³⁸ *Anchorage Daily Times*, December 3, 1955, pp. 1, 11.

¹³⁹ *Anchorage Daily Times*, January 17, 1955, pp. 5, 7, 16.

Things were about to change dramatically for the territory and the region, however. In 1957, the Richfield Oil Company, predecessor to Atlantic Richfield Company (ARCO) and then Conoco-Phillips, discovered oil at the Swanson River field on the Kenai Peninsula. The following year, Unocal discovered natural gas on the Kenai Peninsula. These two commercial discoveries, which led oil and gas companies to begin filing lease applications, were keys to development of the area.¹⁴⁰

Post-Statehood Period, 1959-Present

Not long after Alaska became a state on January 3, 1959, the Tyonek area became the focus of oil and gas exploration following the Kenai Peninsula discoveries. The petroleum industry got underway in the Cook Inlet region with Richfield Oil Company's discovery in the Swanson River Field. In 1963 oil was discovered beneath Cook Inlet, which continues to be a center of oil and gas exploration in Alaska today.¹⁴¹

On July 15, 1960, PLO No. 2162 revoked EO No. 2141 and PLO No. 894, thus releasing the former 1,210,000-acre Aerial and Gunnery Range (EO No. 2141 and PLO No. 894), and opening the lands to selection by the newly admitted State of Alaska and for oil and gas exploration.¹⁴² The following year, the State held a competitive oil and gas lease sale on 60,000 acres selected under the Mental Health Enabling Act. The lands, to be leased in 640-acre tracts, were located in the northeast portion of the old bombing range north of the Moquawkie Indian Reservation. In the western portion of the "Old Tyonek" bombing range, 197,000 acres of land were opened non-competitively to general grant leases.¹⁴³

In 1963, the Department of the Interior opened Moquawkie Indian Reservation lands to oil, gas and coal leasing. Interior's leasing plan stipulates that any monies derived from lease sales were to be placed into escrow, pending termination of Tyonek Natives claims.¹⁴⁴ The lease sale was postponed by two lawsuits challenging the Bureau of Indian Affairs' right to lease the reserve's lands – one brought by Tyonek Indians and another by six major oil companies. The Tyonek Natives sought to halt the sale as they pressed for more favorable terms for Tyonek; the oil companies wanted to stop the opening of their bids until the suits were resolved.¹⁴⁵ Court battles ensued, but the Tyonek Natives prevailed in a 1965 landmark case regarding oil and gas reserves, winning the right to negotiate leases. This federal court decision allowed them to sell the rights to drill for oil and gas beneath reservation lands, which the Tyonek Natives did to a group of oil companies for \$12.9 million, making the Tyonek Natives one of the richest "American Indian tribes" at that time.¹⁴⁶

¹⁴⁰ "Cook Inlet Oil and Gas," 2004; and USGS B&W 1:40,500 aerial photograph, June 10, 1957, Mission 209 (M-209), Roll 21, Frame 2853.

¹⁴¹ *Fairbanks Daily News-Miner*, April 3, 1971, p. 13; and "Cook Inlet Oil and Gas" 2004.

¹⁴² *Anchorage Daily Times*, February 8, 1960, p. 3, and July 19, 1960, p. 1; and PLO No. 2162, July 15, 1960.

¹⁴³ *Fairbanks Daily News Miner*, April 19, 1961, p. 2.

¹⁴⁴ *Fairbanks Daily News Miner*, January 2, 1963, p. 1.

¹⁴⁵ *Fairbanks Daily News Miner*, April 4, 1963, p. 3, April 22, 1963, p. 2, and April 24, 1963, p. 9.

¹⁴⁶ Darbyshire and Associates, 1981; James H. Ducker, "Creating Tyonek Reserve," and *Fairbanks Daily News-Miner*, May 4, 1964, p. 3, May 7, 1964, p. 1, May 13, 1964, p. 1, June 3, 1964, p. 6, June 6, 1964, p. 7, January 9, 1967, p. 12, January 20, 1967, p. 1, and April 3, 1971, p. 13.

As a result of its new-found wealth, the village of Tyonek underwent a building boom in 1965 when sixty homes were built and electrical power was finally brought in.¹⁴⁷ However, the Moquawkie Reservation never did draw the large number of Natives from the region as Bureau of Education officials had anticipated, and was abolished in 1971 with the passage of ANCSA.¹⁴⁸ The Bureau of Indian Affairs certified the village as eligible for land benefits under ANCSA on September 14, 1973 and a village corporation was officially incorporated under the laws of the State of Alaska as The Tyonek Native Corporation (TNC).¹⁴⁹ The TNC selected and ultimately received patent to the Moquawkie Reservation lands as part of its 112,500-acre ANCSA entitlement.¹⁵⁰

Chuitna River: Evidence of Pre-Statehood Use

The historic record contains little evidence of boat use on the Chuitna River prior to Alaska becoming a state. According to ethnohistorian James Fall, Tyonek Natives relied upon trails and not the Chuitna River to access inland points.¹⁵¹ From his explorations in the area in the late 1890s, Captain Edwin F. Glenn recorded in 1898 that the Chuitna River was nonnavigable.¹⁵² Before statehood, there were no known settlements located along the river. The nearest settlement was the former cannery at Ladd Station, located on the coast north of the river's mouth. In 1912, William Muncaster, the GLO Cadastral surveyor who surveyed the Alaska Packers Association homestead claim at Ladd, reported that Cook Inlet was navigable for deep draught vessels at any time, but that the waters within one half mile of the coast were unsafe for boats because of the extreme tides. Muncaster noted that small power boats drawing six to seven feet of water could come within fifty feet of the shore on flood tide and within 600 to 700 feet on low tide, and that small boats could land safely on the beach at any time. He also noted that the lower half-mile of the Chuitna River was navigable for launches and "power boats of light draft" at high tide, and that small dories and skiffs could likely ascend much further.¹⁵³

Trapping and Hunting

Tyonek trappers also visited the Chuitna River drainage area. According to elder Shem Pete, most of the upland hunting in the Tyonek area took place near Chuit Creek. Ground squirrels and large game were taken in fall, although beaver were once hunted in many of the region's lakes. Meat was typically hauled overland between Lone Ridge and Tyonek along a major trail running from the Tyonek pump house to the uplands along Chuitna River. This trail reportedly once had a branch from Lone Ridge north to the Talachulitna River, crossing the Beluga River along the way.¹⁵⁴ In 1930, GLO Cadastral surveyors surveying the Moquawkie reservation

¹⁴⁷ *Fairbanks Daily News-Miner*, November 18, 1965, p. 7, and December 13, 1965, p. 3.

¹⁴⁸ James H. Ducker, "Creating Tyonek Reserve."

¹⁴⁹ Certificate of Eligibility, September 14, 1973, AA-6707 (2311), BLM records, Anchorage.

¹⁵⁰ Robert E. Sorenson, Chief, Branch of Lands and Minerals, to Tyonek Native Corporation, October 26, 1977; and Tom Snelling, Executive Director, Tyonek Native Corporation, December 29, 1977, AA-6707 (2311), BLM records, Anchorage; Darbyshire, 1981; and Case, 1984, p. 83. (Section 19 of ANCSA abolished reservations, December 18, 1971.)

¹⁵¹ Wolfe 2008: pp. 16-18, summarizes interviews with James Fall.

¹⁵² Ducker, 1985, p. 59.

¹⁵³ U.S. Survey No. 364, Notes, pp. 10, 11.

¹⁵⁴ Kari, 2003, p. 69.

boundaries noted a trapper's cabin -- the only report in this period of cultural features on or along the river -- just north of the Chuitna River near the western boundary of the reservation.¹⁵⁵

Beaver were reportedly prevalent in 1917, but lynx, ermine, foxes and muskrats were also brought in during the 1920s. There was a good catch of mink during the 1925 trapping season as well.¹⁵⁶ By 1923, the Tyonek Natives brought in several thousand dollars worth of furs, significantly helping their store.¹⁵⁷

During the late 1920s and early 1930s, Frank S. Smith and family owned a homestead along Cook Inlet, approximately a quarter mile north of the Chuitna River's mouth.¹⁵⁸ The Smiths made their living gardening, fishing and trapping. During the winter, they relied upon dog teams to travel to Eklutna, a Native village on the Alaska Railroad north of Anchorage, where they picked up supplies.¹⁵⁹ A small gas boat was their only means of summer transportation to Anchorage. The 1930 survey of the homestead shows the boundaries and the location of improvements, including a house, a foundation, a carpenter shop, dog kennels and a hay field as well as two trails leading from the house -- one paralleling the shoreline north and another leading west inland through the survey.¹⁶⁰ In May 1934, Frank Smith died in a drowning accident; subsequently, his wife and three young sons likely left the area.¹⁶¹

All four Native allottees (Tyonek residents) with parcels along the Chuitna River reported using their parcels for trapping both prior to and after statehood. Pat Chuitt's Native allotment, located at approximately river mile seven, is the uppermost parcel. According to a BLM report:

Pat Chuitt claimed to use his 160-acre-parcel along the north shore of the Chuitna River in T. 12 N., R. 11 W., SM, for trapping mink and beaver between November and April each year since 1940. When providing evidence of use and occupancy to the BLM in 1967, he gave no indication of how he accessed his parcel. His son, Pat Chuitt, Jr., later told a BLM employee that his family has not used the river for transportation, however. A BLM Mineral Report stated that the parcel [A-055082] is accessible by helicopter or by vehicle along a seasonal gravel road running from Tyonek to Beluga and then along the Chuitna through the parcel.¹⁶²

Inspecting the parcel in 1973, the BLM field examiners noted two cabins (or remnants), a gravel pit and a gravel road -- known locally as the Pan Am Road -- running northwesterly across Pat Chuitt's allotment. The BLM examiners described the parcel as hilly with a steep canyon abutting the river along the parcel's southern edge.¹⁶³

¹⁵⁵ U.S. Survey No. 1865, Notes, pp. 11 and 20.

¹⁵⁶ *Anchorage Daily Times*, April 30, 1917, p. 6, April 2, 1925, p. 3, April 9, 1925, p. 4, April 21, 1925, p. 5, and December 24, 1927, p. 6; and Betts, 1938, p. 20.

¹⁵⁷ *Anchorage Daily Times*, April 6, 1923, p. 3.

¹⁵⁸ Patent No. 1083878, June 1, 1936, A-07753, BLM records.

¹⁵⁹ *Anchorage Daily Times*, March 4, 1926, p. 8, and March 12, 1926, p. 8.

¹⁶⁰ U.S. Survey No. 2089, Survey executed by Floyd G. Betts, 1931, Field Notes Approved, October 19, 1938, Plat Accepted, January 27, 1933; and U.S. Survey No. 1865, Notes, p. 15.

¹⁶¹ *Anchorage Daily Times*, May 31, 1934: 8, June 1, 1934, 6.

¹⁶² Dominica VanKoten, Chief, Navigability Section, to Chief, Branch of Survey Preparation and Planning, November, 2, 2007, AA-6707-EE, BLM records.

¹⁶³ Native allotment Field Report, February 14, 1973, and Mineral Report, file A-055082, BLM records.

The three allottees with parcels further down the left bank of the Chuitna River in Tract B, T. 12 N., R. 11 W., SM, reported similar uses. Seraphim Stephan claimed to have used his parcel (U.S. Survey No. 9519, Lot 1) as early as 1949 for hunting, fishing, berry picking and trapping. Stephan said that he accessed his land, which he typically used in fall and winter, “by dog-team and snow-shoeing,” and then along an oil company road after its construction in 1965. There was no mention of boating to the parcel, and at the time of field exam, the applicant requested that public access be reserved along the existing roads and seismic trails.¹⁶⁴

The Merrymans, who own the two parcels adjacent to Stephan’s, used their parcels for the same purposes, but they did not state how they accessed the lands. Peter Merryman claimed use of his parcel (U.S. Survey No. 9519, Lot 3) for subsistence hunting, fishing and berry picking between June and October beginning in 1957.¹⁶⁵ And Evelyn Merryman, whose parcel (U.S. Survey No. 9519, Lot 5) is furthest downstream and adjacent to her husband’s, claimed use of her land for subsistence hunting, fishing, berry picking and trapping since 1953.¹⁶⁶

Fishing

Most fishing occurred in the tidal reaches of the river and along the coast. The lower Chuitna was a popular fishery for the Dena’ina, who, before contact with non-Natives, reportedly used dip nets while walking downstream. According to Athabaskan elder Shem Pete’s account, fish traps and fish pits were located along the river, which had an especially important run of silver salmon.¹⁶⁷ Local resident Sava Stephan said that seals went up the “Chuit River” to eat jellyfish, although it is not reported how far. Stephan recalled walking “all the way” up the river to an unidentified lake. He stated that he and his father also used to pack a canoe upriver to get to the lakes upstream.¹⁶⁸

Although fish traps were once located along the coast near the Chuitna River, none were located along the river. In the early 1920s, George Bolga reportedly had fish traps at the Chuitna River.¹⁶⁹ The 1930 GLO Cadastral survey of the Moquawkie Indian Reservation shows several fish traps in Cook Inlet along Moquawkie Indian Reservation’s coastal boundary. None were shown along the Chuitna River.¹⁷⁰ Sometime early in this decade, the federal government evidently ordered that these traps halt operations, because in May 1927, the Department of Commerce reopened an area which had been closed to fish traps within the two-mile limit of the mouth of the Chuit [sic] River. According to the local newspaper, that was an important ruling for the Natives of Tyonek reserve, and one that permitted “operation of the Smith-Everett trap above the mouth of the river.”¹⁷¹ The local newspaper reported that Frank Smith’s fish trap was “considered among the most valuable sites of the kind on Cook Inlet.”¹⁷² The Department of

¹⁶⁴ Application, December 14, 1970, Field Report, March 7, 1973, and Affidavit, January 15, 1977, AA-6459, BLM records.

¹⁶⁵ Application, December 13, 1971, and Field Report, March 8, 1973, AA-7789, BLM records.

¹⁶⁶ Application, April 20, 1971, and Field Report, March 7, 1973, AA-7269, BLM records.

¹⁶⁷ Kari 2003, p. 68. For a discussion of Tyonek Natives’ use of the Chuitna River in connection with fishing and hunting, see Wolfe 2008, pp. 4-5.

¹⁶⁸ Kari 2003, p. 68.

¹⁶⁹ *Anchorage Daily Times*, June 5, 1922, p. 4.

¹⁷⁰ U.S. Survey No. 1865, Plat.

¹⁷¹ *Anchorage Daily Times*, May 7, 1927, p. 5.

¹⁷² *Anchorage Daily Times*, June 1, 1934, p. 8.

Commerce subsequently amended those regulations to exclude salmon fish traps within one statute mile of the river's mouth.¹⁷³ When the operation of traps was later prohibited in those waters, seining followed.¹⁷⁴

The Dena'ina also regularly hunted for small beluga whales in the inlet between May and August each year. This was typically done on broad tidal flats at stream mouths along the western shores of Cook Inlet from the mouth of the Susitna River to the Chuitna River, as well as at the Kenai River area on the eastern side of the inlet. Although "spearing trees" were initially used, the Dena'ina began shooting beluga whales once firearms were available.¹⁷⁵

Coal and Oil

Reports of coal and possibly oil also attracted non-natives to the Tyonek area and the Chuitna River. As early as 1920, oil seepages were reported along the beaches on the western shore of Cook Inlet a little below Tyonek and for fifteen miles along the coast, in addition to being found on the surface of creeks draining into the inlet.¹⁷⁶ Interest in the oil deposits spread, and by 1920, W. M. Sinclair and his partners had staked oil claims in the Tyonek-Beluga fields at Beluga, Tyonek, and at the mouth of the Little Susitna River. They reached these places by dog team.¹⁷⁷ Ultimately, these prospects were never developed.

The Beluga Coal area is one of five major coal regions in Alaska, containing several districts or coal fields.¹⁷⁸ The Chuitna River is located in the Susitna Coal Field, one of the largest sub-bituminous coal deposits in Alaska. The coal, an inferior brown lignite covered by gravel, occurs in the bluffs at Tyonek and extends both along the coast and inland seven or eight miles, to a point about ten miles up the Chuitna.¹⁷⁹ The USGS reported that in 1908 an estimated 400 to 500 tons of this low-grade lignite were taken from the Tyonek beach annually and used domestically and as fuel for local steamboats.¹⁸⁰ As late as 1917, the coal was still in demand in the area. A local newspaper reported that Captain Jack A. Curley was building a fifty-foot-long scow and an eighty-ton barge in order to transport coal from Tyonek to Anchorage twice a week.¹⁸¹

Coal seams in the Chuitna River itself have long been known. In 1925 the U.S. Bureau of Fisheries hired Charles Robinson and his son to blast a coal ledge which hindered the ascent of red salmon about six miles up the Chuitna River from its mouth. Beaver dams were also broken up on several other streams as well as on one small tributary to the Chuitna River.¹⁸² According to GLO Cadastral surveyor Betts, although the numerous veins of coal found along the river had

¹⁷³ *Anchorage Daily Times*, May 21, 1927, p. 3.

¹⁷⁴ *Anchorage Daily Times*, May 31, 1934, p. 8.

¹⁷⁵ Kari 2003, p. 75.

¹⁷⁶ *Anchorage Daily Times*, February 17, 1920, p. 6.

¹⁷⁷ *Anchorage Daily Times*, March 14, 1920, p. 10, and May 13, 1920, p. 3.

¹⁷⁸ Scully 1981, pp. 1, 3.

¹⁷⁹ Stone 1904, p. 154.

¹⁸⁰ Atwood 1908, pp. 120, 121.

¹⁸¹ *Anchorage Daily Times*, July 31, 1917, pp. 7, 12. It was not reported, however, whether he succeeded in his plans.

¹⁸² R.L. Cole, Master, USFS Kittiwake, to Commissioner of Fisheries, Washington, D.C., November 30, 1925, Reports of Bureau of Fisheries Agents, 1917-1929, RG 22, National Archives, Washington, D.C.

no commercial value, it was, "... used considerably by prospectors, trappers and the Natives."¹⁸³ At least one coal mine used by Natives was located in the northwest corner of the Moquawkie Indian Reservation. In 1960, the Pan American Petroleum Corporation requested a right-of-way from the Village of Tyonek to construct an access road across the Moquawkie Indian Reservation lands. The road was to follow in part an old dog sled trail from Tyonek to the coal mine.¹⁸⁴

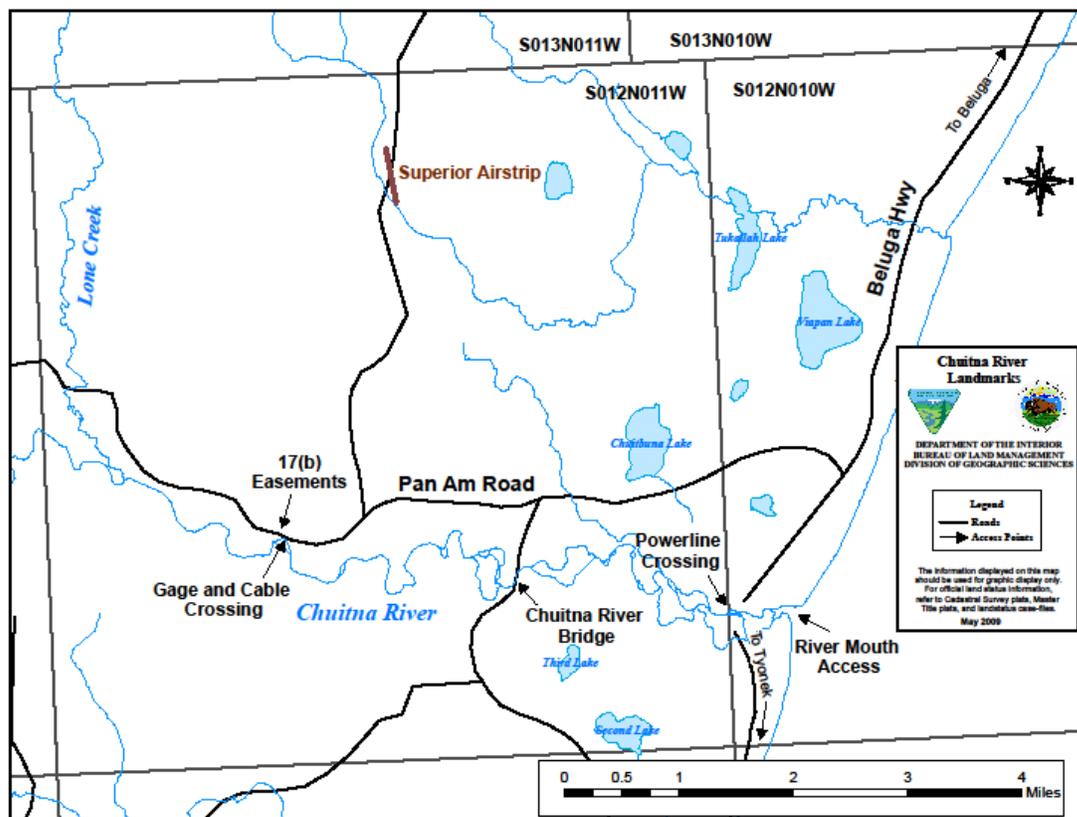
The available records do not indicate how the coal was transported. It is noteworthy, however, that the records on the nearby and much larger Beluga River show that coal there was transported by small boat. According to the USGS, boat transportation on the Beluga River was difficult and dangerous through narrow reaches and rapids.¹⁸⁵ In August 1954, F. F. Barnes of the USGS inspected a coal seam on the Beluga River approximately twenty-two river miles from its mouth. He was taken to the site by Joe Schneller of the Two Joe Fish Company. On this inspection, Barnes reported that the Beluga River was "unusually high." The group used Schneller's twenty-two-foot dory powered by two twenty-five-horsepower outboard motors to reach the site, which was accessible only in high water periods. According to Barnes, the site "... is accessible by small boats, but only during high-water periods, as the river has a steep gradient, marked by many rapids, and the channel contains many large glacial boulders and blocks of coal, which make navigation difficult and hazardous at times of low water." Barnes did not consider the Beluga River, which is considerably larger than the Chuitna, to be a navigable stream.¹⁸⁶

¹⁸³ U.S. Survey No. 1865, Notes, p. 15.

¹⁸⁴ D.L. Simasko, Land Department, to Irving W. Anderson, March 21, 1960; and Alfred P. Steger to Director, Bureau of Indian Affairs, April 6, 1960, file A-051475 (2821), State selection files, RG 49, National Archives, Anchorage.

¹⁸⁵ Atwood 1908, pp. 120, 121.

¹⁸⁶ Barnes 1955, pp. 1, 2, 7.



Location Map

Chuitna River: Evidence of Post-Statehood Use

Since statehood in 1959, the Chuitna River area has seen a seasonal influx of oilmen, miners, loggers, and construction workers. Oilwells and prospect holes were drilled; roads, trails, and airfields were built or improved; and a power line and gas pipeline were constructed from Beluga to Granite Creek, crossing the Chuitna River at its mouth.¹⁸⁷ The Chuitna River was not used as a route of travel and transportation to support these activities.

Since the 1960s, however, the Chuitna River itself has attracted sport fishermen, most of them from Anchorage. Later, it also attracted a few guiding operations. Sport fishermen visit the river during the open season to fish for king and coho salmon, with the vast majority of them fishing from the stream banks and gravel bars or by wading into the river. There are reports of fishermen, guides, and recreationists boating the Chuitna River post-statehood.

It is reported that most people access this side of Cook Inlet by airplane or helicopter. Three gravel airstrips are located in the area: 1) northeasterly of the Chuitna River near the community of Beluga, 2) Superior airstrip, along a gravel road north of the river in T. 12 N., R. 11 W., SM,

¹⁸⁷ Marathon Oil installed a gas pipeline between Beluga and Granite Point about 1992 that runs under the Chuitna just above its mouth. Edgar A. Earnhart to File AA-6707-EE, September 27, 1995, BLM records.

and 3) south of the river near the village of Tyonek.¹⁸⁸ Planes are also known to have landed on the Pan Am Road and gravel bars in the Chuitna River, while floatplanes have landed at the mouth of the river and on Viapan and Chuitbuna Lakes north of the river.

Several roads provide access to the Chuitna River from Beluga, Tyonek or the airstrips. A light-duty road follows the coast from the community of Beluga to the mouth of the Chuitna River. Another road follows the coast from Tyonek to the mouth of the river. A bridge does not connect the two roads, however. An unimproved road, called the Pan Am Road,¹⁸⁹ branches off the Beluga road and runs along the benches approximately 100 feet above the Chuitna River, paralleling the river for approximately seven miles to the north into T. 12 N., R. 12 W., SM. A spur of this road extends northerly to the Superior Airstrip. Finally, an unimproved road sometimes called the Chuitna River Road runs from Tyonek northerly to the Chuitna River. It crosses the Chuitna River about 3.5 miles above its mouth over a bridge known locally as Chuit River Bridge -- the only bridge on the river. From the bridge, the road continues north (through Lot 1, U.S. Survey No. 9519) to connect with the Pan Am Road. Constructed by Alaska Wood Products in 1998 in connection with its timber operations in the area, the bridge is owned by TNC.¹⁹⁰

Oil and Gas Exploration

Between 1957 and 1970, the United States issued a number of oil and gas leases in the Chuitna River area (Tps. 12 N., Rs. 10 and 11 W., SM). Standard Oil Company of California, ARCO Alaska, Inc., Chevron USA Inc., Conoco Phillips Alaska, Inc., Shell Oil Company, the Municipality of Anchorage's Municipal Light and Power, and a few private individuals applied for the leases, some of which adjoined the Chuitna River.¹⁹¹

During this time, several unimproved roads and an airstrip were constructed to support oil and gas exploration activities. In the 1960s, Superior Oil Company of Houston, Texas, filed applications for right-of-way permits for two roads with the State. One application was for an access road north of the Chuitna River (primarily the Pan Am Road) in to the "Chuit State Well Sites" in T. 12 N., R. 11 W., SM. The other application was for an all-weather oilfield road running perpendicular to the aforementioned application. This one presently known as the road

¹⁸⁸ State of Alaska, "Report on Use and Navigability of the Chuitna River," April 4, 2008, p. 2.

¹⁸⁹ The Pan Am Road is also known as the Pan American Highway. See Edgar A. Earnhart to File AA-6707-EE, p. 7, September 27, 1995, BLM records.

¹⁹⁰ Matt Mead, Attorney, e-mail messages to Susan DiPrete, May 12 and 13, 2009, AA-6707-EE, BLM records; and Wolfe 2008, p. 3. A 1984 color-infrared aerial photograph and the USGS Tyonek quadrangle map show two of the airstrips and a number of these roads. USGS Tyonek quadrangle map, 1:250,000 scale, 1958, limited revisions, 1985; CIR 1:60,000, August 1984, roll 3383, frame 7129; and *Alaska Atlas & Gazetteer*, 2001, maps 81, 82.

¹⁹¹ With the exception of one current producing lease (A-29656) in the Beluga River Unit on the Kenai Peninsula, the cases were closed, and many of the files destroyed on December 5, 1994, during the BLM's Records Improvement Project. A partial list of the casefiles includes: AA-2033, AA-5845, AA-5846, A-029649, A-029650, A-29650-A, A-029654, A-29654-A, A-029655, A-029656, and A-64359, all (311111), BLM records. For a complete list of oil and gas lease casefiles, see the BLM-Alaska's Case Retrieval Enterprise System (ACRES). The State of Alaska's status plat for T. 12 N., R. 11 W., SM, shows oil and gas leases abutting the Chuitna River in Tracts A and B of the township. Kenneth H. Hallback to Robert E. Sorenson, February 25, 1976, file AA-6707-A/1 (2651), BLM records; and Status Plat, T. 12 N., R. 11 W., SM, August 11, 2005, State of Alaska records, Anchorage.

to Superior airstrip, connects to its Three Mile Creek State No. 1 well site in T. 12 N., R. 11 W., SM.¹⁹² Both the Pan Am Road and the road to the Superior airstrip are recognized by the BLM and the State as valid public easements and the roads continue to be in use today.¹⁹³

The Chugach Electric Power Association, Inc., which began operating a power plant near the community of Beluga, in 1968, was the first significant development associated with the discovery of natural gas in the area. Gas reserves continue to be explored today.¹⁹⁴ According to the State's Alaska Oil and Gas Conservation Commission's (AOGCC) website, there are a number of oil and gas well sites in the Chuitna region. Of eleven sites identified in T. 12 N., R. 11 W., SM, six are exploratory oil wells, five of which have been drilled and plugged. Four other sites are described as developmental, indicative of a possible oil or gas discovery. One is designated a service well in support of oil and gas operations.¹⁹⁵

Coal Mining

Scientists continued to explore coal deposits in the Chuitna and Beluga River areas after statehood. In 1961 and 1962, geologists with the U.S. Steel Corporation conducted field investigations of the deposits; in 1962 and 1963, the Utah Construction and Mining Company examined coal deposits with the aid of a portable drill. The geologists found the thickest and most widely exposed coals, ranging from 20 to 52 feet thick, in the Chuitna River area when traced for about seven miles along the river. Economically-viable beds were primarily confined to the southeastern parts of the river basins and to the uplands just south of Capps Glacier (located near the headwaters of the Chuitna River).¹⁹⁶ Given the proximity to a deepwater port, low transportation costs and Pacific Rim demand, there was growing interest in developing the coal reserves. This led the U.S. Geological Survey to conduct a hydrologic reconnaissance of streams in the area between 1975 and 1978.¹⁹⁷

There are current State issued leases for the Chuitna Coal Project – located about ten miles inland from the coast north of the Chuitna River. PacRim Coal, L.P., a Delaware company, holds leases on more than 20,000 acres. PacRim Coal, L.P. proposes to develop one of America's largest open-pit coal mines in an area north of the Chuitna River in T. 13 N., R. 12 W., SM. Plans call for stripping sub-bituminous coal below wetlands (about twelve miles up the Chuitna River and its Lone Creek tributary) and transporting the coal chips over a twelve-mile-long conveyor belt to tidewater at the abandoned site of Ladd Landing. It would then continue via a trestle to a coal export terminal in the inlet. PacRim intends to build a road,

¹⁹² Right-of-Way Permit, July 31, 1962, (#17152), diagram, n.d., and Roscoe E. Bell, Director, to The Superior Oil Company, October 15, 1963 (re: ADL 17152), AA-6707-A/1 (2651); and Application (#35684), May 1, 1967, and E. L. Moses, Jr., The Superior Oil Company, to Mr. F. J. Keenan, Department of Natural Resources, May 3, 1967, file AA-6707-EE/3 (75.4), BLM records.

¹⁹³ BLM 17(b) public easement 8C5, ADL 17152 (Pan Am Road), and ADL 35684. State of Alaska Right-Of-Way Permit, August 26, 1962, Alaska Division of Lands (ADL) #17152; and Gary L. Cunningham to Robert Lloyd, August 25, 1995, ADL #35684, AA-6707-EE (75.4), BLM records.

¹⁹⁴ OASIS Environmental Inc. 2007, p. 11.

¹⁹⁵ <http://doa.alaska.gov/ogc/> Formed in 1959, the AOGCC is the regulatory agency that verifies and permits all oil and gas activity on State lands and waters.

¹⁹⁶ Barnes 1966, pp. C5, C24.

¹⁹⁷ Darbyshire 1981; and Scully 1981, pp. 1, 3.

airstrip, coal-storage facility and lodging for 350 workers at Ladd.¹⁹⁸ A proposed twelve-mile-long, all-weather access road would connect Ladd Landing with the mine.¹⁹⁹

There is opposition to the proposed coal mine. In 2007, American Rivers, a conservation organization which focuses on maintaining healthy rivers, listed the Chuitna River as one of “America’s most endangered rivers.” According to American Rivers, “the proposed mine will destroy this wild river’s surrounding watershed and dump billions of gallons of mining waste into rich fisheries habitat every year.” Local residents and others with an interest in the Chuitna area formed the Chuitna Citizens NO-COALition to stop development of the coal strip mine. In June 2007, the NO-COALition filed the first “unsuitable lands petition” in the State with the Alaska Department of Natural Resources (DNR).²⁰⁰ When those efforts failed, the coalition petitioned the State Superior Court to have the land within the Chuitna River watershed designated unsuitable for the coal mine on March 17, 2008.²⁰¹ The Chuitna Citizens and the DNR settled their disagreements when DNR withdrew its decision that the lands were exempt from the unsuitability process.²⁰² The settlement was approved by the Court of the State of Alaska, and the case was dismissed on December 16, 2008.²⁰³

Logging

During the 1970s, logging companies constructed an extensive road system in the Chuitna River area. At the time, there was a network of gravel roads north and south of the Chuitna River.²⁰⁴ Kodiak Lumber Mills, also known as Tyonek Timber Company, built a private dock at North Foreland, which is located approximately two miles south of Tyonek, and a road running northwesterly to what were then State-owned lands north of the Moquawkie Indian Reservation. The road was constructed under a lease agreement with TNC.²⁰⁵ By 1981, Kodiak Lumber Mills, which held leases on state lands for its supply of lumber, was operating a camp, chip mill, and dock at Timber Camp near Tobana.²⁰⁶

¹⁹⁸ *Anchorage Daily News*, April 8, 2007 and July 12, 2008.

¹⁹⁹ U.S. Environmental Protection Agency 2006, p. 12.

²⁰⁰ *Chuitna Citizens NO-COALition Newsletter*, p. 3.

²⁰¹ <http://www.adn.com/money/industries/mining/story/349459.htm>. See also *Anchorage Daily News*, April 17, 2007.

²⁰² *Chuitna Citizens NO-COALition Newsletter*, p. 3

²⁰³ Alaska Superior Court No. 3AN-08-6009CI, December 16, 2008.

²⁰⁴ Fall, Foster and Stanek 1984, pp. 13, 39, 140, 142.

²⁰⁵ Darbyshire 1981; and Curtis V. McVee to Ray McCord, Chairman, Board of Directors, Tyonek Native Corporation, September 30, 1974, and Benjamin O. Walters, Jr., to Curtis V. McVee, October 3, 1974, file AA-6707-EE/1, BLM records.

²⁰⁶ In the 1970s, a commercial timber harvest of beetle-kill was held west of Tyonek. The trees were converted to wood chips and shipped from North Foreland, located one and one-half miles south of Tyonek. See OASIS Environmental Inc. 2007; Darbyshire 1981; and Fall, Foster and Stanek 1984, p. 46.



BLM photograph: Winter road crossing at the Chuitna River

On October 6, 1986, during a Kenai Peninsula Borough Planning Commission meeting, timber, next to coal, was identified as the resource with the greatest potential to be developed on the west side of Cook Inlet. During that meeting it was noted that the Division of Forestry expected a pending timber sale to occur the following spring. After the sale takes place the State planned to put in ninety miles of roads and “a timber haul crossing” bridge over the river near a canyon when the sale went through. Although crossing the Chuitna River was cited as a potential problem during the discussion on the timber sale, two Kenai Peninsula Borough commissioners noted that the lower river could be driven over “with a four-wheel-drive truck” as is done “all summer and winter.”²⁰⁷ In 1998, Alaska Wood Products built a permanent bridge over the Chuitna River about three and a half miles from its mouth.²⁰⁸ In a 2007 land use report prepared by OASIS Environmental Inc., for DRven Corporation, the upper Chuitna River coal lease area was also identified as a potential timber harvest or experimental forest site.²⁰⁹

Sportfishing/Recreational Use of Chuitna River

In 1961, the ADF&G identified the Chuitna River as a highly productive water body, particularly for anadromous fish, supporting runs of all five species of salmon in Alaska -- Chinook (King), Sockeye (Red), Coho (Silver), Pink (Humpy), and Chum (Dog) -- as well as Rainbow Trout,

²⁰⁷ Kenai Peninsula Borough, Meeting of the Planning Commission, Meeting Minutes, October 6, 1986, pp. 2-5.

²⁰⁸ Matt Mead, Attorney, e-mail messages to Susan DiPrete, May 12 and 13, 2009, AA-6707-EE, BLM records; and Wolfe 2008, p. 3.

²⁰⁹ OASIS Environmental Inc. 2007.

Dolly Varden (char) and Round Whitefish. . Anadromous fish ascend the six-foot-high falls caused by the coal seam two miles above the north boundary of the former Moquawkie Indian Reservation.²¹⁰ King Salmon typically start running in early June and taper off towards the end of the month. Silver Salmon are next, typically running from mid-July until as late as November or December. Red Salmon, which are prevalent from mid-July to mid-August, enter the river on incoming tides, but few travel very far upstream from the mouth. Pink Salmon run in June and July.²¹¹



BLM photograph: Fishermen in tidal zone of the Chuitna River

Although it is not known when sport fishermen began visiting the Chuitna River in significant numbers, according to a 1961 survey report, the ADF&G recognized that the river was gaining popularity as a fly-in fishing spot for South Central Alaska anglers. State biologists noted that during the open season one or two planes carrying sport fishermen landed at Chuitna River each weekday; whereas between five to twelve planes were reported to have landed during the weekends.²¹²

Since then, participation in sport fishing has increased substantially. In 2006, the State reported that sport fishermen have spent over 3,000 angler days at the Chuitna River, taking over 6,000 salmon annually.²¹³ Most fishing occurs in the tidal zone where the salmon are fresh from the ocean starting their spawning run. Fishermen usually stand along the shoreline, the streambed, or tidal flats; occasionally, they will use various small craft, including small inflatable rafts,

²¹⁰ Baxter 1961, p. 2.

²¹¹ Baxter 1961, pp. 2, 3, 4.

²¹² Baxter 1961, p. 1; Ducker 1985, pp. 59, 60.

²¹³ Michael L. Menge, Commissioner, Alaska Department of Natural Resources, to Henri Bisson, State Director, BLM-Alaska, May 1, 2006, file AA-6707-EE, BLM records.

during high tide. The tidal zone is also easily accessible by road from either Beluga or Tyonek. Beluga residents usually use trucks and All-Terrain Vehicles (ATVs) to access the river, which they then “walked along...to fish.”²¹⁴ Pilot James Pzsint said that, up until 1993 or 1994, he landed his plane at Tyonek village and then followed the road to the river, when the village gated the road and began charging a fee to access the river. Thereafter, he landed on the beach and “sometimes at a clear area up from it.”²¹⁵

The Chuitna River’s tidal zone is a popular fishing location. Most fishermen access this area via small planes or helicopters from Anchorage or the Kenai Peninsula. Close by, there are many places to land aircraft capable of “off airport” operations, making the Chuitna River’s tidal zone easily accessible by foot or vehicle. Although there is excellent fishing upstream of the tidal zone, access is limited and it is difficult to reach these areas. Access to these areas is primarily by wading or using small airplanes and helicopters to land on gravel bars. Boats are rarely used for the purposes of accessing fishing in the nontidal waters. After a major flood in 1986 resulted in significant changes to the Chuitna River’s morphology, it was reported that pilots were able to land on various reaches of the river as far upstream as Lone Creek. Ronald Stanek of Tyonek explained in 2008:

The 1986 flood not only straightened it [the river] out, it created all these braided channels and widened it. Just shortly after that, people were landing with Supercubs just below Dennis Torrey’s place [Chuit River Lodge]. They were landing in here. Just below Dennis you get on this bluff here and you can look down. The river had straightened out and you could land with a Supercub there on the gravel. People were doing that. Then they started coming in with helicopters, hauling in fishermen, because they could get into there, down into the channel of this area, because the trees were washed away. Businesses in Anchorage and in Kenai were flying fishermen over in helicopters. It’s a very common practice to go to the west side of Cook Inlet in helicopters on fishing trips. They were also flying them to the Theodore River and the Lewis River for kings. There are trails all through this Chuit River area. Seasonal trails, side trails for walking and four-wheelers.²¹⁶

In addition to walking up and down the lower reaches of the Chuitna River in the channel, on its gravel bars, or on adjacent trails, people also access various points along the river over roads and trails constructed since statehood. Although not all of the access areas are public easements, the noted access included the following:²¹⁷

- 1) A section line easement located near the mouth on the east side of the western boundary of T. 12 N., R. 10 W., SM.
- 2) An unimproved road known locally as Chuit River Road, leaving the Pan Am Road about a mile west of Chuitbuna Lake and running southwesterly through Lot1, U.S. Survey No. 9519 (AA-6459), to a bridge over the Chuitna River.
- 3) At Mile 7 on the Pan Am Road, in T. 12 N., R. 11 W., SM, a trail or trails descend to the river at the former location of the USGS gaging station or cable crossing. The most

²¹⁴ Wolfe 2008, p. 5.

²¹⁵ Edgar A. Earnhart to File AA-6707-EE, September 27, 1995, ANCSA files, BLM records.

²¹⁶ Wolfe 2008, p. 7.

²¹⁷ According to Wolf, “Trails and ATV tracks followed the river’s south edge between the bridge and mouth. TNC [Tyonek Native Corporation] recently cleared and widened the south-side trails to improve access by ATVs and four-wheel-drive trucks.” Wolf 2008, 6; Alaska Department of Fish and Game, “Chuit River: Easement Descriptions.”

popular trail is the ANCSA 17(b) trail (EIN 50 D9) and its accompanying 17(b) site easement (EIN 51 D9).

4) Lone Creek at Mile 9 on the Pan Am Road provides access to the river for canoes and rafts.

5) Trails also descend from the road to the river in T. 12 N., R. 11 W., SM, at least one of which runs through Pat Chuitt's Native allotment.²¹⁸

The State and TNC disagree on the validity of the ANCSA 17(b) easements (#3 above). The TNC recognizes only two public access easements as valid. One is the north side of the river from the river's mouth to the powerline; the other is the Marathon section line easement leading to the pipeline (and pipeline) crossing.²¹⁹

During the late 1970s, the BLM adjudicated TNC's land selections under ANCSA and, in the process, considered various proposed Sec. 17(b) easements. The BLM received numerous reports of use of the Chuitna River for sport fishing in justification for the proposed easements. The State's Fish and Wildlife Protection office reported increased sport fishing on the river during the summers of 1974, 1975 and 1976, with the heaviest use during silver salmon season in August. Most of the fishing occurred on the lower river, with as many as thirty-five to forty sport fishermen observed some weekends on the lower two miles.²²⁰ In 1977, while evaluating proposed easements on the former Moquawkie Indian Reservation, the Federal-State Land Use Planning Commission (F-SLUPC) found high numbers of recreational users of the Chuitna for fishing, floating in inflatable rafts and photography, primarily by Anchorage residents, although other users included Beluga Power Plant employees, Tyonek Timber workers, oil drillers and Tyonek Natives. Most use occurred on the lower three miles of the river.²²¹

In 1977, the BLM issued a decision approving the former Moquawkie Indian Reservation lands for conveyance to TNC without an easement along the south bank of the Chuitna River. The State and a group of individuals filed appeals with the Alaska Native Claims Appeal Board (ANCAB). To support its claim for these easements, the ADF&G provided fifty-nine questionnaires documenting public use of the river and access information to ANCAB. Of the fifty-nine responses, all but two provided information specifically about the Chuitna River.²²² Those fifty-seven respondents stated they used the Chuitna River, although fifteen did not specify a particular reach. More than half of the reported use was fishing along the lower five or

²¹⁸ Wolfe 2008, 6; Alaska Department of Fish and Game, "Chuit River: Easement Descriptions."

²¹⁹ The latter borders on Kenai Borough land. Tom Harris to Dick Mylius, July 6, 2007, file AA-6707-EE, ANCSA files, BLM records.

²²⁰ Terry C. Jordan, 1st Sgt., to Stanley Kubik, Sport Fish Area Biologist, October 29, 1976, file AA-6707-EE, BLM records.

²²¹ Enzo Becia, Natural and Physical Sciences Planner, to John L. Hall, Director of Technical Services, Federal-State Land Use Planning Commission for Alaska, n.d., file AA-6707-EE, BLM records.

²²² A number of the same individuals who fished from both banks of the Chuitna also filed appeals with ANCAB, protesting the lack of public access easements along the Chuitna River. The ADF&G's appeal was dismissed on March 9, 1978, and the appellants' appeal was similarly dismissed on March 29, 1978, based upon the ruling that recreational use does not constitute a property interest. Decision, December 15, 1977, file AA-6707-A; and Frank A. Stefanich to Alaska Native Claims Appeal Board, January 17, 1978, file AA-6707-A/2; and "Present Recreational Use on Alaskan Water," (4) and "Documentation of Water Oriented Recreation Use in Alaska," (55), files AA-6707-A/2 and AA-6707-EE, BLM records. See also Final Order Dismissing Appeal, 2 ANCAB 325 (March 9, 1978), and Decision and Order Dismissing Appeal, 2 ANCAB 350 (March 29, 1978), BLM records.

six miles of the Chuitna River, typically from the north and south banks. Eighty-five percent of the respondents selected “Access For Fishing” as the most prevalent type of use (vs. “Boating,” “Floating,” etc.) on the questionnaires. Most of the users reportedly traveled by small plane from Anchorage for the pristine wilderness fishing experience the Chuitna River offered. Once there, most walked along the north and south banks of the Chuitna River.²²³

Four individuals (less than ten percent of the respondents) reported boating on the Chuitna River -- two by floating the river and two traveling under power. All were residents of Anchorage. One individual (an ADF&G employee) floated much of the river from somewhere in T. 13 N., R. 13 W., SM, to tidewater. One individual reportedly floated from Lone Creek to the mouth. Another claimed to have taken a power boat from the mouth to the headwaters; however, no details of this trip were provided. And a fourth noted that he had taken both powerboats and float trips on the lower five or six river miles.²²⁴

In the late 1980s and early 1990s, the BLM adjudicated TNC’s land selections in Tract A, T. 12 N., R. 11 W., SM. This effort included researching potential easements and investigating the navigability of this reach of the Chuitna River. Information gathered from these studies confirmed that most local sport fishermen’s boat use was confined to the tidal reaches of the river, although some people occasionally took small recreational boats up the river as far as the cable crossing (river mile 6.1). Recreationists also used inflatable rafts and small canoes on the river from Lone Creek downstream, usually putting in either at Lone Creek (river mile 8.5) or at the former cable crossing. Take-out points are at the former cable crossing, the road crossing (river mile 3.5), or tidewater.²²⁵ Above Lone Creek, the Chuitna River may be rafted, but it is generally considered to be impracticable because this reach is too swift, shallow, and difficult to access.

Citing the Chuitna River’s importance as a salmon and trout fishery, the State continued to advocate for public access into the 1980s. In 1982, 1983 and 1984, ADF&G biologists assessed recreational fishing activity on the river by floating from Lone Creek to tidewater in an eight-foot raft and in 1985 from Wolverine Fork (near the headwaters) to tidewater. Noting that fly-in anglers reached the river from numerous trails along the Pan Am Road, the ADF&G reported that individuals were also “floating the Chuitna River in canoes and fishing from Lone Creek to tidewater.” The assessment also recognized that helicopter access for float trips was becoming more popular.²²⁶ A year later, Al Goozeman of Tyonek reported that he had floated the river in a canoe and a two-man raft to mile four or five, although he did not state where he put-in. He noted that canoes would hit the bottom at various places and once observed a skiff under power on the river “scraping bottom and tearing up the fishing holes.”²²⁷

²²³ Questionnaires: “Present Recreational Use on Alaskan Water,” (4) and “Documentation of Water Oriented Recreation Use in Alaska,” (55), files AA-6707-A/2 and AA-6707-EE, BLM records.

²²⁴ Ibid. Elizabeth Roger of Seattle reported that she arrived by power boat, although it is unclear whether she boated on the river as she noted fishing from the north and south banks over the lower five or six miles.

²²⁵ The distance between Lone Creek and the cable crossing is 1.2 miles, according to Torrey.

²²⁶ Dimitri Bader, ADF&G Habitat Biologist, to Sandra Dunn, BLM Assistant District Manager, June 22, 1989, file AA-6707-EE (75.4), BLM records.

²²⁷ Steven L. Willis, Land Law Examiner, to file AA-6707, April 7, 1989, BLM records.

Between 1995 and 1997 the BLM conducted telephone interviews, made a field trip to the river, and analyzed a number of questionnaires describing local residents' use of the Chuitna River. On June 13, 1995, Ed Earnhart and Jack Frost, BLM Navigable Waters Specialists, and Don Standifer, TNC Representative, conducted an overflight of the river by helicopter from tidewater to beyond Lone Creek. The only craft they saw on the river was "a small orange raft fishing in the tidal water at the stream's mouth."²²⁸

Subsequently, over a four-month period in 1995, Earnhart conducted telephone interviews with approximately twenty individuals familiar with the Chuitna River. Dennis Torrey, Michael Grant, and Rebecca Smith recalled float trips down the river from the vicinity of Lone Creek to the Tyonek road crossing. Torrey, who offers a guiding service, said that since moving to the area in 1974, he had made a total of up to thirty float trips from Chuitna's downriver to either the cable crossing or the road crossing using a variety of crafts, including a two-man raft, a seventeen-foot Grumman canoe, and less often a fifteen-and-a-half-foot Pelican fishing boat. Grant accompanied Torrey on some of these trips in a seventeen-foot Coleman canoe down the Chuitna River to the road crossing and, after the road was gated, down to the river's mouth. Smith, whose family runs a lodge (U.S. Survey No. 364) at the river's mouth, recalled a spring 1984 float trip from the vicinity of U.S. Survey No. 4547 to the mouth with five people in the raft. In the first week of July 1993, brothers Donald, Frank, and Jason Standifer of Tyonek ran the river from a point about a quarter mile above U.S. Survey No. 4547, to the road crossing in a four-man inflatable raft, encountering boulders, a coal seam, and trees.

Several Anchorage residents told Earnhart that they had taken boats up the Chuitna River as far as the cable crossing. In the mid 1980s, Richard Faulkner took a boat up the river to the vicinity of the cable crossing, killed a moose, and returned downstream with the carcass. In the early 1990s, when the river was high, he twice took an eighteen-foot riverboat with a thirty-five-horsepower motor with a lift up the river to the cable crossing. James Pазsint also claims to have ascended the river in various fourteen and sixteen-foot boats and rafts but did not mention how far upstream he had been. In one conversation, Earnhart noted that Pазsint said "he sometimes combines hunting moose with his fishing. When fishing for rainbow trout in September he sometimes went up in a boat so he would have it there to bring the moose out, should he chance on to one. He has been a number of times to Lone Creek, but never beyond. I asked about the possibility of not being able to get his boat back down. He said there was no trouble, but then when the water was low, you couldn't handle much of a load. He said there would be no problem with a fifty-horsepower jet." Pазsint also mentioned that he had been on Faulkner's riverboat.²²⁹

²²⁸ Edgar Earnhart, Navigable Waters Specialist, to file AA-6707-EE, July 14, 1995, BLM records.

²²⁹ Earnhart also asked people their opinion about the river's boatability. Of the nine individuals who provided opinions only, four considered the river nonnavigable, stating that either they knew of no use or that it was too difficult to boat above the mouth given the presence of logjams, falls and shallow stretches further upstream. One considered the river marginal for boats with 1,000-pound loads above the old bridge. On the other hand, four maintained that the river was boatable. One believed that jet boats carrying three drums of fuel could travel to the boulders below Lone Creek; another said it was navigable for rafts and canoes; and a third simply asserted that it was navigable in IC No. 1605. One individual believed that people used the river in the early 1900s when a cannery operated at Ladds at the mouth of the river. Edgar A. Earnhart to File AA-6707-EE, July 19, 1995, September 27, 1995, October 17, 1995, and October 31, 1995, BLM records.

In 1997, upon learning of BLM's study of the river's navigability, Beluga residents Candy and Joe Caraway submitted forty-five questionnaires completed by local residents describing their use of the Chuitna River to the BLM. Most claimed recreational use of the river in small inflatable rafts, drift boats, and canoes. In most cases, they did not specify which portion of the Chuitna River was used. There were several reports of people using fourteen- and twenty-foot flat-bottomed aluminum boats and twenty-two- and twenty-eight-foot dories on the Chuitna River; however these reports did not state what type of propulsion was used. One of the respondents indicated using a powerboat, specifically stating the use of a sixteen-foot Lowe with a fifty-horsepower Johnson motor with a jet drive.²³⁰

In a November 1997 letter to the BLM, the State asserted that the Chuitna River was a highway of commerce. To support its claim, the State provided additional use information obtained from telephone interviews with eleven of the forty-five local users who had previously submitted information to the BLM. The individuals provided the State with essentially the same information: six had visited the Chuitna River since the 1970s; the remainder, during the 1980s or 1990s; they primarily used small boats, inflatable rafts, and canoes for fishing and other recreational activities; most reported accessing the river at the cable crossing and floating down in inflatable rafts or canoes; and four reported accessing the river at Lone Creek or beyond and floating downstream in inflatable rafts.²³¹

Several of the individuals stated that they had taken boats with motors up the river from its mouth to the cable crossing. Lawrence Heilman said he used a sixteen-foot drift boat with a fifteen horsepower motor (prop); and Don Puckett, a twenty-foot skiff with a forty-horsepower motor (prop), loaded with four or five people. James Pазint essentially repeated what he told BLM in 1995 – that he had “boated the river a couple of times a year since 1971 to about three years ago, travelling from the mouth to the cable crossing and as far up as Lone Creek.” James Pазint described his use of fourteen- and twenty-foot motorized boats and a fourteen-foot inflatable raft with a jet unit, but the State's letter does not clearly state on what reach of the river they were used.

Several of the individuals reported boating up the river to Lone Creek. In 1997, the State reported:

'Beluga' Lou Sudano and his sons Thomas and Mark have regularly traveled by boat on the Chuitna River since 1979. They access the river primarily at the mouth, but have also put-in at the cable crossing and the pipeline, and have traveled as far up as Lone Creek. Lou has used the river every year since 1979 or 1980 to the present. He has navigated as far as Lone Creek in a 15-foot Avon inflatable raft with a 50 hp Johnson jet motor for fishing, hunting, and guiding. Lou has carried four to five people and a moose, estimating a load of 1000 pounds or more. Thomas has navigated on the river an estimated 60 times in the past 18 years, travelling usually from the cable crossing to the mouth in a 15-foot inflatable raft with a

²³⁰ Questionnaires (45), 1997, file AA-6707-EE, BLM records. Although the BLM issued a navigability determination for water bodies in the area on May 20, 1997, it did not address the Chuitna River, pending the receipt of additional information. Gust C. Panos, Chief, Branch of Mapping Science, to Chief, Branch of Survey Preparation and Planning, May 20, 1997, file AA-2653 (2620), BLM records.

²³¹ Troy Franklin of Beluga said that he had “rafted on the river from the headwaters to the Chuit Crossing with a party of four people and two rafts in June of 1977.” See Jane Angvik to Gust C. Panos, November 4, 1997, file AA-6707-EE, BLM records. In 2008 the State reiterated that statement, noting that the group put in “many miles above Lone Creek and IC 1605.” State of Alaska April 2008, p. 18.

motor and in a 15-foot canoe. Mark has boated on the river every year since 1989 for fishing and hunting. Mark used several crafts including a 16-foot Lowe aluminum boat with 50 hp Johnson outboard motor, and an 8 to 10-foot inflatable raft with a 5 or 15 hp motor. He has carried up to five people in his boat with an estimated total weight of 1450 to 1500 pounds. Each of the Sudanos mentioned a few areas where they encountered logjams or drag areas but that these areas did not hinder their navigation of the river.²³²

Five individuals claimed their boats and rafts carried 1,000 pounds or more, although at least one included the motor in the estimate of total weight. Four believed they carried less than 500 pounds or less, and two gave no estimates.²³³

In 2008, the State indicated additional boating activity in the vicinity of Lone Creek:

Richard Faulkner was an avid user of the Chuitna River before, he says, residents of Tyonek interfered with his access. Mr. Faulkner normally used an eighteen foot riverboat driven by a thirty five horsepower Evinrude with a propeller and lift. He regularly used the boat up to the cable crossing. He described bringing a moose down river one year. He noted that in the Lone Creek area the main channel was boatable for much of the summer season, but that the narrower northern channel, about 20 feet wide, was only useable by him during high water.²³⁴

In 2006, Stephen R. Braund and Associates, an Anchorage research firm, studied subsistence uses along the Chuitna River by the residents of Tyonek and Beluga over a two-decade period (1987-2006). The study was undertaken as part of the Chuitna Coal Project.²³⁵ Local residents “were asked to identify areas for fishing and hunting during the previous twenty years (1987-2006) and “to identify the kinds of wild resources harvested in each area, as well as the travel method for the activity.” A total of fifty-nine people participated in the survey -- thirty-five people at Tyonek and twenty-four at Beluga. Although half of the Tyonek and eighty-three percent of the Beluga participants identified the Chuitna River as a destination for fishing, reports of boat use were minimal. No one from Beluga reported using a boat on the river. Instead, they traveled by truck to locations near the Chuitna and then walked or took an ATV to fishing spots.²³⁶ Three Tyonek residents reported using boats on the Chuitna River. In addition to fishing from a canoe anchored in the river, one individual also used a canoe to hunt birds at the mouth. Another used a snowmachine and a small inflatable raft for hunting beaver along the river during January, February and May. And one reported descending the river once from the bridge to the mouth.²³⁷

The TNC disputes the assertion that the Chuitna River is navigable, and in December 2008 provided additional information to support their position for the BLM’s consideration. The TNC submitted a report containing both use and hydrologic studies of the river. In addition to citing the Braund report, Dr. Robert Wolfe, a former ADF&G director of research, interviewed fifteen residents of Tyonek about their knowledge of boating on the Chuitna River for the historic and contemporary use assessment in October 2008. Not one individual interviewed “reported

²³² Jane Angvik to Gust C. Panos, November 4, 1997, file AA-6707-EE, BLM records.

²³³ Ibid.

²³⁴ State of Alaska, “Report on Use and Navigability of the Chuitna River,” April 4, 2008, p. 17, file AA-6707-EE, BLM records.

²³⁵ Matt Mead, Attorney, e-mail message to Susan DiPrete, May 13, 2009, AA-6707-EE, BLM records.

²³⁶ Wolfe 2008, p. 8.

²³⁷ Ibid.

observing boats for fishing or for accessing fishing areas along the Chuitna River.”²³⁸ Following are excerpts of those interviews:

Tyonek resident Ronald Stanek’s statement is quoted at length because it provides a snapshot view of current fishing activities on the Chuitna River.

The local residents from Beluga and Tyonek have Honda [ATV] trails, four-wheeler trails that go everywhere. You can come down here [at the south river mouth] and cross out on the gravel, on the flats when the tide goes out. You can cross on the gravel. There’s a road that comes from the airstrip. And also you can come up and get off the bridge. Of course the road goes all through the village. It goes from there down to the mouth. Then they go upriver on their Hondas. It’s the same with people over here [on the north side]. They come down. Access is by ATVs. Near the mouth there’s a little place where people camp. I guess it’s state land. There’s a cabin there. Some people land their airplanes on the beach and walk up there.

There are people that use it for just their personal use, for their home consumption, and then there are a couple of guiding operations at Beluga that take people over to the river. Like the Carraways [sic], they have a business. They take people over there. And there are a couple others at Beluga that do it. Some people from Anchorage go over and guide people over there. They have vehicles that they leave near the airstrip. There’s a parking area. They take their clients there and take them over fishing. Dennis Torrey [of Chuit River Lodge], he drives them. There are roads. There are logging roads. And there are a couple trails that go down to the river. Otherwise, he [Torrey] takes them out with a four-wheeler. They walk. He’s got four-wheel trails all through the woods out there, up in his area. But the Tyonek people fish primarily down in here [near the mouth], on stretches down here. When the kings first start coming in is when you want them, when they are bright. They’re at the mouth here. This is where most of the fishing goes on, down in here [near the mouth].²³⁹

Max Chickalusion, who has guided for the Tyonek Lodge since before 1996, expressed strong doubts that the river was used, or could be used, by boats. He said:

In all my life I’ve been on there, since I was a kid, like fourteen, fifteen years old, I never ever seen anybody, even though there’s been a lot of people on the river there, I’ve never seen anybody with a boat or any kind of raft or anything on the river. . . . If anybody ever came with a boat up the river there, the Chuitna, if anybody ever came with a boat up there, they’d probably come up maybe that far [a quarter mile], that’s all, not even to the tree line there [at the river mouth]. That’s about as far as you can make it.

All the years I’ve been there I’ve never seen anybody using a boat, a raft on there for their guiding. . . . We got a canoe over there [at the Tyonek lodge]. We were going to try it too [on the river], but it’s too dangerous, even when the water’s high, because of the logjams and stuff.²⁴⁰

When the stream is running normal [in June], up to the middle of June, say around the 20th, there’s only about four foot of water in there, maybe the deep holes, maybe five foot of water. Where you’ve got straight places where the water’s coming down there, you can wade across it, like two or three foot. That’s June. In July month you’ve got no water in there. In August month you got no water in there. There’s not enough. You can wade across anyplace there with boots. Probably around the 15th of June on through, you can probably cross the river anyplace with boots on there. I don’t see how it’s possible for them to drag one of those boats, to use a boat down there.²⁴¹

²³⁸ Wolfe 2008, p. 8. See Wolfe 2008, pp. 8-18 for Tyonek residents’ statements. Some challenged the veracity of statements of boat use provided to BLM.

²³⁹ Wolfe 2008, pp. 6-7.

²⁴⁰ Wolfe 2008, p. 9.

²⁴¹ Wolfe 2008, p. 11.

Chickalusion pointed out that in addition to encountering shallow water, potential boaters would be deterred by logjams, many of which “have been there forever,” and the fast current occurring after heavy rains. He claimed that “the log jams are real big up in there.” He identified a notable logjam at the mouth, another approximately at rivermile 1.5 “that’s impossible to get anything through” and another “big one” at rivermile three or four. As for boating the river at flood stage, it “would be too dangerous anyways. The water’s too swift and too dangerous to do it.”²⁴²

Tyonek residents acknowledged their use of boats on the river, but claimed it was rare, usually experimental or for an adventure, and that all attempts were unsuccessful.

Katherine Chickalusion recalled that her husband, Jason Standifer, and several relatives attempted to take a skiff or canoe down the river from the bridge site when he was a kid in the mid 1960s. “They ran into a lot of logs and a lot of shallow places along the way,” she said. “That’s pretty far from the mouth. They couldn’t make it all the way down.” In the 1990s, Harriet Kaufman recalled, her husband and two other men attempted to reach the site of a helicopter crash with a skiff. “They carried the skiff most of the way. . . . It ran aground all the way. They went down there early in the morning. It was after seven that evening when they came back home. He said that was the most work he ever did in the river in his life.” Another reported that he and a partner attempted to raft down the river in an inflatable raft from the bridge, “but found the way impassable because of logs and shoals.” Others described failed attempts to descend the river in canoes or smaller craft. Logs and shallow water were impediments.²⁴³

Guided Sport Fishing

Today, some sport fishing guides offer trips to the Chuitna River. Based on 2008 and 2009 Internet postings or websites, most guides appear to have their headquarters across Cook Inlet on the Kenai Peninsula, in Anchorage, or in the Matanuska Valley. A few are located near the Chuitna River. Two of these -- the Tyonek Lodge and Dennis Torrey -- seem to focus their businesses solely upon the Chuitna River.

While it is not known when sport fishing guides began visiting the Chuitna River, certainly their numbers increased after 1983, the year the State reopened the river for king salmon fishing from its mouth to Lone Creek.²⁴⁴ The State closed several rivers and streams in the area to king salmon fishing from 1964 through 1982, because of low stock.²⁴⁵ Biologist Dave Watsjold noted that the ADF&G maintained a headquarters north of the river and began patrolling it in ATVs in 1983 in connection with king salmon fishing. He knew of no guides working on the river in 1984, however.²⁴⁶ In 1995, the TNC restricted access to the south side of the river, resulting in fewer guides visiting the nontidal reaches of the river.

²⁴² Ibid.

²⁴³ Wolfe 2008, pp. 12 and 13.

²⁴⁴ Because of overharvesting by the commercial fishery in the 1950s and 1960s, the Alaska Board of Fisheries closed Cook Inlet streams to king salmon fishing, including subsistence, in 1964. Fall, Foster and Stanek 1984, pp. 32, 33; and Ivey 2008, Appendix A1.

²⁴⁵ Ivey 2008, Appendix A1.

²⁴⁶ Robert W. Arndorfer to Chief, Branch of State Adjudication, July 12, 1984, file A-052943, State selection files, BLM records. Watsjold referred to an access road from “Chevron” airstrip, which may be the Superior airstrip.

Today, most guides fly their clients in with small planes, landing on the beach at low tide, at Chuit Lake on floats, or at the Sinclair (Superior) landing strip.²⁴⁷ The anglers are then transported to the north bank of the river. At least one guide, Mark Glassmaker, has accessed the area by floatplane, landing on a nearby lake, and then utilized a helicopter to shuttle clients to fishing holes in the river.²⁴⁸ In the summer of 2007, the TNC reported that several “commercial helicopter fishing expeditions” had landed on the corporation’s lands on the south side of the Chuitna River.²⁴⁹ TC Guide Service of Wasilla, Alaska, advertises guided fly-fishing on the lower eight miles of the Chuitna, which it says has a great run of King Salmon, as well as Rainbow Trout and Dolly Varden. According to TC Guide Service, it is possible to wade over the river runs and cross most of the riffles.²⁵⁰

The principal sport fish guiding businesses located near the Chuitna River are: Viapan Camp; “the Smith’s lodge;” Tyonek Lodge; and Chuit River Lodge. Ted Taylor and Tamara Schmid run Viapan Camp on Viapan Lake about four miles north of the mouth of the Chuitna. In 1995, Schmid said that they sometimes took clients to the lower part of the river. In the past, they had also used three-man rafts to motor up to the power line and the road crossing. It is not clear whether these trips were family outings or for guiding their clients.²⁵¹

The Smith family has operated a lodge located at the mouth of the Chuitna on the north bank (U.S. Survey No. 364) since 1986. During the fishing season, they typically drive clients to where the pipeline crosses the river so they can fish along the river on foot without using boats or rafts, which the Smith’s lodge does not provide. During the fall hunting season, the parties are provided with ATVs. According to Clark Smith, Sr., if Chuitna River access problems were resolved, the family might consider offering rafting trips down the river, possibly from the State lands upstream of Lone Creek or, more likely, from the cable crossing.²⁵²

Tyonek Lodge, a subsidiary of TNC, has been offering guided fishing packages on the Chuitna River since 1996. According to the Tyonek Lodge website, in 2009, “The [Chuitna] river is completely accessible by foot. No boats are used and all you need is a good set of waders to fish each and every hole.”²⁵³ At one time, the lodge operators attempted to use a cataraft on the river reach below the bridge but found “it was impossible to drag that over the log berms.”²⁵⁴ On its

²⁴⁷ In 1995, Tim Karlovich of Jayhawk Air said that he regularly flew people to the Chuitna River, landing them on the sandy beach at the river’s mouth at low tide. Edgar Earnhart to File AA-6707-EE, July 19, 1995, BLM records. See also Dominica VanKoten to Chief, Branch of Survey Planning and Preparation, November 2, 2007, and Edgar Earnhart to File AA-6707-EE, September 27, 1995, October 17, 1995 and October 31, 1995, AA-6707-EE (75.4), BLM records.

²⁴⁸ Mark Glassmaker, Owner/guide of Alaska Fishing with Mark Glassmaker, *Alaska Fishing on the Chuitna River*, date printed off the internet site June 24, 2008, <http://www.mgfalaska.com/chuitna-king/html>.

²⁴⁹ Tom Harris, CEO, Tyonek Native Corporation, to Dick Mylius, July 6, 2007, file AA-6707-EE, ANCSA files, BLM records.

²⁵⁰ http://www.tcguideservice.com/flyin_trips.html

²⁵¹ Edgar A. Earnhart to File AA-6707-EE, July 19, 1995, and September 27, 1995, file AA-6707-EE, BLM records.

²⁵² Edgar A. Earnhart to File AA-6707-EE, July 19, 1995, and September 27, 1995, and October 31, 1995, file AA 6707-EE, BLM records.

²⁵³ <http://www.tyoneklodge.com>

²⁵⁴ Wolfe 2008, pp. 13-14. The Lodge reportedly also had a canoe, which it opted not to use. (Wolfe, p. 9)

website Fishing International describes the Chuitna River as an ideal fly fishing river – suitable for walking and wading – and small enough to ford at the riffles in waders.²⁵⁵

Dennis Torrey states that he has used the river since 1974 and has operated the Chuit River Lodge since 1979.²⁵⁶ Located on Pat Chuitt’s Native allotment parcel (U.S. Survey No. 4547) in T. 12 N., R. 11 W., SM, Torrey’s lodge consists of seven cabins, allowing Torrey to optimally handle twelve guests at a time.²⁵⁷ Clients, supplies, fuel, etc., are usually transported to the lodge from the Beluga airstrip and then via the Pan Am Road.²⁵⁸ When Torrey began guiding in 1979, his clients fished for silver salmon; in 1983, they started fishing for king salmon.²⁵⁹ To access the river, Torrey built a trail, consisting of steps and a rope guide, to Lone Creek. (There is another trail to the river about 100 yards above his lodge.) Canoes can be taken down the trail but not up, because it is too steep.²⁶⁰



BLM photograph: Dennis Torrey’s lodge located on a bluff overlooking the Chuitna River

²⁵⁵ <http://www.fishinginternational.com/location/alaskachuit.htm>

²⁵⁶ Edgar A. Earnhart to File AA-6707-EE, September 27, 1995, October 31, 1995, and Dennis Torrey to Senator Ted Stevens, c. March 2006, file AA-6707-EE, BLM records. One summer, Torrey reportedly operated the lodge with Clark Smith, Jr., offering float trips as “Alaskan Odysseys” for an outfit of fifteen from Utah and others from outside.

²⁵⁷ There is dispute between Pat Chuitt and Dennis Torrey regarding title to the parcel. Dennis W. Torrey d/b/a Chuit River Lodge vs. Alice Bismark, 2 ABR 45, U.S. District Court, Alaska (1991).

²⁵⁸ Dennis Torrey to Senator Lisa Murkowski, January 18, 2006 (email), to Governor Frank Murkowski, January 20, 2006, file AA-6707-EE, BLM records.

²⁵⁹ Edgar A. Earnhart to File AA-6707-EE, September 27, 1995, BLM records.

²⁶⁰ Edgar A. Earnhart to File AA-6707-EE, July 19, 1995, BLM records.

Of all the fishing guides on the Chuitna River, Torrey appears to be the only one who has occasionally used rafts and canoes to conduct his business. Over the course of several interviews, Torrey described his use of the river to BLM Navigable Waters Specialist Ed Earnhart. Earnhart summarized these interviews as follows (date of interview in parentheses):

His clients are mainly seeking king salmon. They fish from the shore of Lone Creek and Chuit River as well as in the Chuitna. It isn't worthwhile to try floating or boating to fish. However, when asked about boating on the Chuitna, he said that it is possible from below the lodge, sometimes to the mouth in canoes or small rafts with two people in them. He has been down the river to the Tyonek road crossing nineteen or twenty times in the years he has been there. He said he had floated it in a two-man raft and once in a Grumman canoe with three people in it. He believes this could be done about a total of six weeks out of the year when the water is at a moderate level, it being too swift in high and too shallow in low water, for any boats.²⁶¹ (July 5, 1995)

The boats he has used over the years are a fifteen and one-half-foot Pelican and a seventeen-foot Grumman canoes [sic]. He no longer has the Pelican, but the Grumman is still usable after thirty years. He still has a two-man raft.

He said they often put in about 1.2 miles above the 'cable crossing' and float down there. The 1.2 miles is the distance he gave as that from Lone Creek to the cable crossing. He said that the coal chunks in the channel are below the cable crossing. They can be boated over in high water or dragged past other times. (July 6, 1995)

... he has used the river since 1974. Starting in 1979, he took people out for silver salmon with raft and canoe trips from near the lodge to the road crossing. For several years Clark Smith, Jr., shared doing raft trips with him. There was more need for the floats after the south shore was closed to non-village people by Tyonek. In 1983 [Torrey] expanded the operation when the river was opened for of [sic] king salmon fishing. They sometimes went down from on Lone Creek in canoes. . . . they took about three or four hours, maneuvering to where there were good fish holes. It was the only way to get to some of the better holes without trespassing. In an aside, he said it cost him \$5,000 in court because he once went through the barrier at the road crossing. (August 1, 1995)

... he charged \$75 per person per day in 1983 for his raft trips fishing for kings, and later raised it to \$125. One year they had a party of fifteen from Utah for kings. . . . You could usually raft the Chuitna for about five good weeks in spring, but later in summer, such as now, one would have much wading and dragging to get the raft down.²⁶² (August 7, 1995)

It seemed that he advertises mostly by word-of-mouth, but . . . he said that he was written up in either Sports Afield, or Western Outdoors, in 1983 when the river was opened for Kings. He listed the offering as Chuit River Lodge, and Chuit River Float Trips. The trips originally were run from the cable crossing to the road, the former being the only handy point for access and the later [sic] at a flat point where you could get right out of the raft or canoe.²⁶³ His former wife, Alice, is from the village. He sometimes used the river to get to and from the village, for which he was once acting postmaster for two weeks when 'Alice's parents were away.'

As for paying customers, he said a number of them came from Anchorage.

²⁶¹ Edgar A. Earnhart to AA-6707-EE, July 19, 1995, BLM records. When Earnhart contacted him on July 6, 1995, Torrey revised the number of times he had floated the river, citing twenty-nine or thirty times. In this memo, Earnhart referred to Torrey as "Correy."

²⁶² In the late 1980s, Cary Carrigan, a local announcer, produced a videotape to advertise Torrey's business.

²⁶³ On September 8, 1995, Michael Sharon, a client of Torrey's, confirmed that he had descended the river in mostly inflatable rafts. They put-in either at the gauging station landing site or about a half mile below Lone Creek at 'Flat Rock.' He and others "often floated to the road crossing before it was gated." Edgar A. Earnhart to File AA-6707-EE, September 27, 1995, BLM records.

I [Earnhart] asked if he had used canoes or rafts before the Tyonek people closed off the south bank. He said that to reach some fishing holes, to get back and forth, he had.

The summer he operated the lodge with Clark Smith, Jr., they billed the float trips as ‘Alaskan Odysseys.’ That was when they had the fifteen who came from Utah. They had others from outside.²⁶⁴ (September 8, 1995)

Clark Smith, Jr., confirmed that he had worked for Torrey part of the season of 1991 or 1992. Earnhart described Smith’s experience that summer as follows:

Tom (last name unknown) from Utah also worked with him that spring and summer guiding people on floats, first for king salmon then for silver salmon later in the season. They usually floated from the ‘cable crossing’ area down to the vicinity of the powerline crossing. Only once did they get held up by a log. The log was about five inches in diameter and was easily cut with a little sportsman handsaw. The people floated were paying customers of Correy [sic]. The early floats for kings were three times in a six-man raft, carrying four people each time. They later went down with two to a canoe. He also floated from a distance up Lone Creek through the rougher water, class 3. The impediments in the river include the boulders about a half mile below Lone Creek, and the logjams. It is several feet deep around the boulders and in high water you go over them. The logjams generally have channels around the ends, with rare exceptions as noted above. I asked his opinion about use of the river going upstream. He said that people don’t go up it much, he thinks, in part at least, because Dennis is so difficult and treats it as his domain. He was firm that boats, especially jet boats, can run the river.²⁶⁵

In addition to Torrey, Lawrence Heilman and Lou Sudano of Beluga have also guided on the Chuitna River. Heilman has guided on the lower reaches of the Chuitna River six days a year. In 1997, he informed the State Division of Lands that he usually took two clients and their gear from the river’s mouth as far upstream as the cable crossing in a sixteen-foot drift boat with a fifteen-horsepower Evinrude outboard motor (propeller), estimating a total load of 1,000 pounds including the motor. Some years, he had to drag his boat over logjams. Little is known about Sudano’s operations. According to the State’s letter, “Lou has used the river every year since 1979 or 1980 to the present. He has navigated as far as Lone Creek in a 15-foot Avon inflatable raft with a 50 hp Johnson jet motor for fishing, hunting, and guiding.”²⁶⁶

In 2008, the State provided additional information about the Chuitna River in a report of a mid-June float trip when Scott Ogan and Terry Schwarz of the State and Garret Jones, a guide with Arctic Wild, a commercial rafting company in Fairbanks, descended a portion of the river in a twelve-foot Avon inflatable raft. According to a February 2009 letter, the purpose of the trip was to “obtain more physical information above Lone Creek, the only portion of the river within IC 1605 lacking information. . . . TNC claims ownership, rightly or wrongly, at locations where a helicopter can land on the riverbed below that public easement site.”²⁶⁷

The three men floated approximately four miles of the river. They reached the launch site by helicopter, landing on a river gravel bar approximately 0.7 mile upstream from the boundary of

²⁶⁴ Edgar A. Earnhart to File AA-6707-EE, September 27, 1995, BLM records.

²⁶⁵ Edgar A. Earnhart to File AA-6707-EE, October 17, 1995, BLM records.

²⁶⁶ Jane Angvik to Gust C. Panos, November 4, 1997, and State of Alaska, “Report on Use and Navigability of the Chuitna River,” April 4, 2008, p. 16, file AA-6707-EE (75.4), BLM records. The 2008 report identifies the people who conducted the interviews.

²⁶⁷ Ogan 2008, p. 1, and Dick Mylius to Thomas P. Lonnie, February 13, 2009, p. 2, file AA-6707-EE, BLM records.

TNC (lands upstream of Lone Creek) and took out at the cable crossing. At the time, the river was turbid and high (“almost bank to bank”) from snowmelt. At the put-in and again at Lone Creek, Schwarz, a hydrologist, attempted to take measurements, but found that the river was too deep and too swift to wade. By their estimate, the river at the launch site was about 100 feet wide; at Lone Creek, 120 feet wide. Depths ranged from up to 3½ feet deep at the put-in site and up to 3 feet deep at Lone Creek. Using the International Whitewater Scale, they described much of this reach as Class III rapids. The reach from a point “slightly above Lone Creek” to the cable crossing, they described as Class II waters. Although the State representatives “encountered frequent boulders that required diligent attention to maneuver around” in the Class III section, they succeeded in descending the reach “with little difficulty.” They reported encountering no difficulty in rafting the remaining distance to the former Cable Crossing.²⁶⁸

Conclusion

The federal test of navigability is found in *The Daniel Ball*, 77, U.S. (10 Wall.) 557 (1870). The Court stated: “Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.”

In assessing the navigability of inland water bodies, the BLM relies upon this test as well as federal statutes, federal case law, and the advice of the Interior Department’s Solicitor’s Office. Relevant federal statutes include the Submerged Lands Act of 1953 and the Submerged Lands Act of 1988. 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”) provide valuable guidance on applying title navigability law in Alaska.

The record shows that most of the lands underlying the Chuitna River above tidewater were reserved at the time of statehood and that the Chuitna River was not used, nor was it susceptible for use, as a highway of commerce at the time of statehood.

The north half of the Chuitna River, from the head of tidewater in Sec. 30, T. 12 N., R. 10 W., SM, upstream approximately eight river miles (near its confluence with Lone Creek), was the only segment unreserved at the time of statehood. The south half of the Chuitna River from the head of tidewater upstream approximately twelve river miles was reserved by EO No. 2141 (Moquawkie Indian Reservation, 1915). From the vicinity of Lone Creek, the north half of the river, following the Moquawkie Indian Reservation, and then continuing upstream for the entire bed, was reserved at the time of statehood by EO No. 8872 (Aerial Gunnery and Bombing Range, 1941).²⁶⁹ Title to reserved portions of the bed did not pass to the State of Alaska in 1959 under the Equal Footing Doctrine or the Submerged Lands Act of 1953.

²⁶⁸ Ogan 2008, and Dick Mylius to Thomas P. Lonnie, September 9, 2008, File AA-6707-EE (75.4), BLM records.

²⁶⁹ More specifically, the only portion of the riverbed unreserved at the time of statehood was that segment north of the mid-channel from the vicinity of Lone Creek downstream, where PLO No. 894 partially revoked EO No. 8872 in 1953.

The history of the Tyonek area has revealed no evidence of use of the Chuitna River as a highway of commerce. Just forty miles from Anchorage, Alaska's population center, Tyonek near the Chuitna River is one of the oldest settlements in Cook Inlet. More than 200 years ago, Russian explorers and fur traders established fur factories and trading companies along the coast. In the late 1800s and early 1900s, commercial fishermen built a saltery and a cannery at Ladd, near the mouth of the Chuitna River. From this time until statehood, commercial fishing was the primary source of income for the Tyonek Indians. From Tyonek, an important marine port in upper Cook Inlet during these decades, government parties and adventurers traveled overland to unexplored country to the north, while traders and prospectors continued their journeys in smaller boats to trading posts on Knik Arm and the Susitna River drainage. The government created the Moquawkie Indian Reservation at Tyonek for the benefit of the area Natives.

Following the discovery of oil and gas on the Kenai Peninsula and in the upper Cook Inlet in the late 1950s, oil companies competed for the right to explore reservation lands. Oil and gas exploration and development in the area led to the construction of airstrips and roads. In the 1970s and 1980s, logging operations in the upper Chuitna River area contributed to an expansion of the road system as well as a bridge over the Chuitna and a dock at North Foreland. Today, plans to mine coal beds in the upper Chuitna River area and move coal over an above-ground trestle to tidewater for shipping are being developed. No activity or development is known to have been associated with the Chuitna River.

The historic record shows that travel in the Chuitna River area has customarily been overland. Although the Dena'ina used birch bark canoes, skin boats, sealskin kayaks and log rafts for travel on inland waterways, we found no evidence of them boating on the Chuitna River. Instead, they used dipnets to fish for salmon while walking along the river as well as basket traps and weirs in small streams and lake outlets. Tyonek residents also used fish traps and weirs in the river and traveled overland on trails in connection with subsistence hunting and trapping activities in the area. The four Native allotments located along the Chuitna River are currently accessed by road. Before there was a road, two allottees (Chuitt and Stephan) stated that they used dogteams or snowshoes to reach their land. The Merryman's two allotments are located next to Stephan's. Although it is not documented how the allotments were reached before the road was constructed, one may reasonably assume that they accessed their allotments in much the same way as Stephan did.

Since the early 1900s, the federal government has consistently held the position that the Chuitna River is not navigable for title purposes. Recognizing States' rights (and future States' rights) to the lands underlying tidewater, the GLO Cadastral surveyors identified and segregated the tidal zones. Through various orders, the federal government established boundaries which recognize the riparian owner's right to the lands underlying the Chuitna River, citing boundary lines at mid-channel and surveying the boundaries as such. If the surveyors had found the Chuitna to be navigable, the boundary would have been the ordinary high water mark.

Since statehood, the primary activity along the Chuitna River has been sport fishing. Historically, most people have gained access to the river from Tyonek or Beluga by vehicle and fished the tidal zone and in the lower reaches by standing on the banks or by wading in the river. Fishing has occasionally been conducted from small boats or inflatable rafts in the tidal zone. Since the late 1970s, following the construction of roads and trails along the Chuitna River,

fishermen have also accessed other reaches of the river as far upstream as Lone Creek. The two most popular points of access are located at rivermile 6, where the USGS operated a gaging station from 1975 to 1986, and near rivermile 8, where Pat Chuitt's Native allotment is located.

A few recreationists, including sport fishermen, sightseers, and adventurers, have taken small boats up and down the Chuitna River to or from these access points during higher water levels. Given that the Chuitna River is a small river; it is no surprise that small, shallow-draft vessels such as canoes, inflatable rafts, and small boats were typically used on the river. The river is generally about one to three feet deep with shallower stretches over riffles, allowing for it to be waded or driven across in places. While some individuals have descended the river from Lone Creek and Chuitt's Native allotment in inflatable rafts, most people use only the lower five or six river miles. There are a few instances of larger boats being used on the river, such as one incident where a powerboat reportedly was taken to the headwaters, but these are exceedingly rare. Several individuals claimed to have used sixteen-foot jet boats and twenty-two- to twenty-eight foot dories, although no details about their experiences were provided, and no other evidence to support this claim was found.

Sport fishing guides take clients to the Chuitna River for King and Silver Salmon fishing. Nearly all of the guides fly their clients in from Anchorage or the Kenai Peninsula and then accompany them overland to various fishing locations. Most of these guides do not use boats, and advertise a fishing experience of walking and wading the lower eight to ten miles of the river. There are some guides who offer boat services to their clients. These trips are typically in small inflatable rafts or canoes, and are operated primarily on portions of the lower reaches of the Chuitna River.

The use and character of the Chuitna River distinguishes it from another Alaska river it has been compared with, the Gulkana River. The Gulkana is a larger river that is much more heavily used by local residents and commercial recreation operators. While there was little or no historical evidence of use of the Gulkana River for commerce prior to statehood, it was found navigable due to its susceptibility for use as a highway of commerce over which trade and travel may be conducted.²⁷⁰ The parties to the Gulkana case stipulated that the river was used or susceptible to use by the same or similar type of water crafts used at present for commercial recreational purposes (e.g., guided fishing or hunting trips). However, the pertinent facts vary greatly between the Gulkana and Chuitna Rivers. The Gulkana “displaces 3,600 to 4,800 cubic feet per second from May to September, decreasing to 200 to 300 cubic feet per second from November through April...”²⁷¹ Whereas the Chuitna displaces an average of 600 cubic feet per second from May to September and 130 cubic feet per second from November through April.²⁷² In its lower 30 miles, the Gulkana River “is 125-150 feet wide and 3 feet deep.”²⁷³ This compares to a narrower and much shallower average channel width of thirty to forty feet and depth of one to three feet for the smaller Chuitna.²⁷⁴ Moreover, in the Gulkana case, “hunters and fishermen

²⁷⁰ *State of Alaska v. Ahtna, Inc.*, 891 F.2d 1401 (9th Cir. 1989).

²⁷¹ *Ibid.*, 1402.

²⁷² USGS Surface-Water Monthly Statistics for Alaska, <http://waterdate.usgs.gov/ak/nwis>.

²⁷³ *State of Alaska v. Ahtna, Inc.*, 891 F.2d 1401 (9th Cir. 1989).

²⁷⁴ USGS “Discharge Measurement Notes,” February 15, March 30, May 11, June 20, July 17, August 14, September 12 and October 16, 1978; and Haggerty, 2008, pp. 25, 26, 30, 32, 34, 35, 37, 38 and 40. Measurements were taken in the vicinity of IC No. 1605.

traveled the River ... (emphasis added).”²⁷⁵ The pattern of use on the Chuitna River was not, however, to travel the River. Rather, the normal use pattern was to access the shoreline or a small portion of the River for fishing, hunting or other recreational activity.

Moreover, there is no agreement among interested parties that the Chuitna River is even boatable on a practical basis. Tyonek and Beluga residents dispute the State of Alaska’s claims that the river is a practicable route of boat travel. They insist that the use of boats on the river is very rare and the river is very difficult to navigate with even the smallest boats due to the strong current, shallow water, and logjams. The river rises after the spring breakup and after rainfalls, but the current is too strong at these times and the high water periods are too short for navigation. Several individuals shared accounts of the dangers and difficulties, such as canoers and rafters frequently encountering logjams and very shallow stretches, which required them to drag the boats across the riffles. Some local residents acknowledged that they have used or attempted to use boats on the river, but these trips were rare and in some cases, experimental. In any case, they were difficult trips, usually unsuccessful, and not worth the effort.

The BLM has also made administrative navigability determinations for the Chuitna River to support the conveyance of lands. On December 9, 1975, the BLM determined the Chuitna River nonnavigable based upon travel, trade and commerce. On July 12, 1984, the BLM determined the river and all other water bodies nonnavigable within T. 12 N., R. 11 W., SM, based on its restrictive physical characteristics, obstructions, lack of historical information, and evidence that travel was conducted overland on the many unimproved roads running parallel to the river. On April 7, 1989, the BLM determined the Chuitna River to be navigable, based upon its susceptibility to canoe and raft navigation. This criteria, however, and determinations based upon it, are not valid as the determinations were not based on proper application of the law. In addition, the April 7, 1989, navigable determination was never used as the basis for a federal action or decision. On October 13, 2006, the BLM identified the Chuitna River as nonnavigable based upon previous determinations in accordance with the BLM’s policy regarding the Submerged Lands Act of 1988, which was in place at the time. On November 2, 2007, the BLM affirmed the July 12, 1984 determination that the Chuitna River was nonnavigable in Tract A., T. 12 N., R. 11 W., SM.

Through these determinations, the federal government has consistently held that the Chuitna River was not used or susceptible of being used as a highway of commerce at the time of statehood. Under the doctrine of administrative finality, the BLM will follow the prior determinations, so long as there is no new evidence that would warrant a change in that determination. Based on our thorough review and consideration of past determinations and all facts of record, BLM again confirms the Chuitna River is nonnavigable in its entirety. Even if portions of the Chuitna were navigable, all submerged lands, except the north half of the Chuitna from tidewater upstream approximately eight miles, were reserved in such a way at the date of Alaska statehood that kept the submerged lands from passing to the State of Alaska.

²⁷⁵ *State of Alaska v. Ahtna, Inc.*, 891 F.2d 1401 (9th Cir. 1989), 1403.

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