



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Alaska State Office  
701 C Street, Box 13  
Anchorage, Alaska 99513

IN REPLY REFER TO

2620 (932)  
map 119  
upper yukon

MAR 28 1980

## Memorandum

To: State Director

From: Chief, Division of Resources

Subject: Navigable and Nonnavigable Waters in the Black River Basin,  
Eastern Alaska

Attached is a staff report on the physical character and historic uses of water bodies in the Black River basin. On the basis of this report, we recommend that the Black River to Wood River, the Salmon Fork to the International Boundary, the Grayling Fork to the International Boundary, Bull Creek to Section 5, T. 13 N., R. 31 E., F.M., and interconnecting sloughs of these streams, be determined navigable waterways. The streams appear to meet the standards of navigability as set forth in Departmental guidelines and clarified by the Alaska Native Claims Appeal Board in its decision of December 14, 1979, on the navigability of the Nation and Kandik Rivers.

We have considered all lakes and other tributaries of the Black River, and recommend that they be determined nonnavigable. None appear to be susceptible to navigation.

Your concurrence with these recommendations is respectfully requested.

I Concur:

11

Robert L. Anderson 3-28-80  
ACTING State Director Date

Enclosure



# United States Department of the Interior

IN REPLY REFER TO

BUREAU OF LAND MANAGEMENT

Alaska State Office  
701 C Street, Box 13  
Anchorage, Alaska 99513

2620 (NAV) (932)  
F-21779-55

MAR 28 1980

## Memorandum

To: Chief, Division of Resources (930)  
Through: Chief, Branch of Lands and Minerals (932)

From: Historian

Subject: Navigable and Nonnavigable Waters in the Black River Basin,  
Eastern Alaska

This report describes the physical character and historical uses of the Black River and its tributaries, as well as lakes in the Black River basin. A number of these water bodies are located in areas selected by Doyon, Ltd. under the provisions of the Alaska Native Claims Settlement Act. Some have been identified by the State of Alaska in their Water Delineation Maps submitted to the Bureau of Land Management (BLM) by letter dated April 16, 1973, to be navigable. If the water bodies are or were navigable, title to the submerged lands passed to the State of Alaska on January 3, 1959, the date of Alaska Statehood.

While we have not exhausted all sources of information, we are reasonably satisfied that the information in this report is sufficient to make reliable determinations of navigability and nonnavigability on the basis of the U.S. Department of the Interior's guidelines and the Alaska Native Claims Appeal Board's decision of December 14, 1979 on the navigability of the Nation and Kandik Rivers. Briefly stated, we have found evidence to support a determination that the Black River to Chalkyitsik was navigable. In addition, our information indicates that the Black River to Wood River, the Salmon Fork to the International Boundary, the Grayling Fork to the International Boundary, and Bull Creek through the area of selection, were susceptible to navigation at the time that Alaska became a State. We have discovered no information to support the view that the numerous creeks and lakes in the Black River basin are or were susceptible to use for the purpose of travel, trade, and commerce.

### I. DESCRIPTION OF THE AREA

Dominated by the high, rugged Ogilvie Mountains in the east, and the lower mountains bordering the Yukon River in the south and the Porcupine River in the north, the Black River basin trends westward, eventually to merge with the Yukon Flats near the village of Chalkyitsik. West of the International Boundary, the basin is characterized by steep and rolling hills, broken by wide valleys which are occupied by the Black River and its principal tributaries, Wood River, Grayling Fork, Bull Creek, and the Salmon Fork, as well as extensive swamps and innumerable small lakes. West of Chalkyitsik, thousands of lakes, most of them being very small but some having a diameter of one mile or more, occupy the broad plain of the Yukon Flats.

Stands of mature spruce trees are scattered throughout the basin, especially along the river. The river banks also support growths of cottonwood and, on well-drained grounds, some birch. Stands of birch and aspen are also common in areas burned by forest fires. Thickets of willows prevail along the lakes, sloughs, and river bars. Black spruce is common in the poorly drained areas. Large grass or sedge meadows are common a short distance from the rivers. Below Chalkyitsik, muskeg and meadows are prevalent.

Temperatures in the area may vary from 80°F. in the summer to minus 50°F. in the winter. The first killing frost usually occurs in early September; the last chilling frost in late May. Annual precipitation is light, about seven inches. Much of the basin falls within a permafrost province; only four to 15 inches of ground thaws each season.

The basin supports a wide variety of game, including moose, black bear, hare, porcupine, squirrel, mink, marten, lynx, wolf, fox, beaver, muskrat, ptarmigan, grouse, and others. The rivers and lakes contain a large variety of fish, including salmon, sheefish, whitefish, and northern pike. Many varieties of migratory waterfowl pass through the basin in the spring and fall.

Besides fur and fish, few natural resources of commercial value are known to exist in the basin. Potential commercial stands of timber may be located along the upper and lower reaches of Black River. The records of the U.S. Bureau of Mines do not indicate past or present mining claims in the lands selected by Doyon, Ltd. Mineral potential near T. 15, 16 N., R. 27, 26 E., F.M., is completely unknown, but lands in the vicinity of T. 23 N., R. 28 E., F.M., are believed to have a reasonably high potential for base metal deposits, such as copper and lead. Lands in the vicinity of T. 23 N., R. 28 E., F.M. fall within the Kandik Petroleum Province. 1/

## II. THE RIVERS

Draining an area in excess of 6,500 square miles, the Black River is more than 300 miles long. From its source in the low mountains bordering the Yukon River, the Black River flows northerly in a narrow valley for about 25 miles before entering a wide valley where it receives the waters of the Grayling Fork from the east. The river continues in the same general direction for another 75 miles before joined by the Salmon Fork, another eastern tributary, a short distance above the abandoned Salmon Village. At this point the river swings definitely westward, meandering in a broad valley to enter the Yukon Flats a short distance below Chalkyitsik. Winding through the flats, often doubling back upon itself, the river finally empties into the silt-laden Porcupine River, about 25 miles above its mouth.

Both the Grayling Fork and the Salmon Fork, the largest tributaries of Black River, head in the Ogilvie Mountains in Yukon Territory, Canada. From the mountains the Grayling Fork flows northwest until it reaches a point east of the boundary and enters a broad valley. Passing north of Steamboat Mountain and entering a wider lake-studded valley, the river swings northwest, then southwest in a broad arc to join the Black River at

its rivermile 225. Approximately 86 miles of the river is located in the United States. The Salmon Fork flows through a narrow valley in a southwesterly direction to a point near the mouth of Runt Creek (rivermile 52) where it swings westerly into a wide valley. It then flows northwesterly to empty into the Black River at its rivermile 150. Approximately 74 miles of the river is located in the United States.

At a normal stage of water, the Black River has two mouths, which are about two miles apart and locally known as the north and south mouths. At high water the channels to the mouths form a floodplain about nine miles long. The western part of the river has an average width at normal water of 150 yards. For 35 miles upstream, high bars of fine gravel are found on the inner side of every bend. For the next 40 miles, gravel bars are less common, and the river banks are usually lower and grass-covered. 2/

The first high bluff on the river is located about six miles above Chalkyitsik, on the left limit; it is the northwest end of a timber-covered ridge between 120 and 150 feet high, and marks the eastern edge of the Yukon Flats for some distance south of Black River. The river flows for a short distance at the foot of the ridge, which has a steep and rocky slope of about 70 feet. About 13 miles above Chalkyitsik, on the north side of the river, the river flows at the foot of a steeply sloping ridge in a series of riffles and slack water where the streambed is rocky and in places quite shallow. Below the ridge, where the river flows out into the flats, there is a mile-long bar, locally known as Deadman Riffle. Upstream from the ridge for 10 miles, the valley on both sides of the river is wider, flat, timber-covered, and dotted with many small lakes, some of which, especially in the south, are more than a mile long. 3/

Most of the river as far as Chalkyitsik (rivermile 82) is deep, but in several places the stream widens out and the water is shallow as it flows over gravel bars. Above Chalkyitsik, the river is generally shallower. Water depths up to five feet may occur following the spring breakup of the river ice and after periods of heavy rainfall. The current is sluggish, almost nonexistent in the deeper spots. Shallow riffles occur in intervals below Chalkyitsik. Above the village, the river is an endless succession of riffles, each with its own deepest channel. As the stream becomes shallow, it also becomes more rocky. The most troublesome and dangerous riffles, the ones with no usual channel, are usually named. These places---Deadman Riffle, Pete Nelson Riffle, for example---are well-known reference points along the river course. 4/

The gradient of the river for 255 miles is estimated to be 2.5 feet per mile. The descent is not, however, an even one. Richard K. Nelson, an anthropologist with some experience on the river, observed that the Black River and Salmon Fork descended by "steps." He described this characteristic more fully as follows:

Every few hundred yards to a mile there is an abrupt slope in the bottom, where the current is fast and the water is shallow. These places are marked by swift, rippling

water. Most riffles have a definite channel, sometimes two feet or more deep, sometimes just a few inches deep. The channel is marked by a distinct convergence of the swiftly flowing water through a definite place, generally indicated by markedly higher ripples and darker water. Channels can be anywhere - in the middle of the river or right along the bank. 5/

Channels running along the bluffs tend to be deeper and the current is usually stronger.

A non-glacial stream, the Black River is highly responsive to rainfall and snowmelt. During periods of heavy rainfall, the water depth may rise several feet in a matter of a few days. Floods are common after the spring breakup of the river ice. Like most of the streams in interior Alaska, it is frozen from October to May. While no stream gauge records exist for the Black River, it has been estimated to have a maximum discharge of 14,000 cubic feet per second, and a minimum discharge of 100 cubic feet per second. It is a relatively clear stream with 10 to 100 parts per million of sediment, which contributes to the brown color of the water. 6/

### III. COMMUNITIES

Until the early 1940's, when the U.S. Geological Survey and the Army Air Force began to take aerial photographs of the Porcupine River Basin which became the basis for modern topographic maps, the Black River basin was an unknown area to all but local Indians and white trappers. From the 1840's to the 1890's, the Hudson Bay Company dominated the Porcupine River fur trade, and in the course of trade with the Indians doubtless learned a great deal about the Black River. The extent of their knowledge is difficult to determine, the records of the Company being located outside the United States and thus not readily available to Alaska researchers. Nevertheless, maps of the period illustrate the course of the Black River, indicating that the traders were well aware of the Black River and its principal tributaries.

Like their Russian counterparts, the Hudson Bay Company traders seldom traveled up the tributaries of the major waterways to trade with the Indians, content to conduct their trade at the trading post at Fort Yukon, and later along the Porcupine River. Directed by the War Department in 1869 to remove their post at Fort Yukon to Canada, the Company established business at Howling Dog Rock or Red Gate on the Porcupine River where they remained for the next 15 years. About 1887, the post buildings were burned, and a new post known as Old Rampart at the mouth of Salmon Trout River was established. In 1889, however, the U.S. Coast and Geodetic Survey determined that the International Boundary was located about 35 miles east, farther up the Porcupine River. Thus, after only one winter of operation, the post buildings were taken down and transported to what was called Rampart House, just east of the 141st meridian.

After a few years, in 1893, the Hudson Bay Company abandoned Rampart House. The post subsequently became a Church of England Mission and still later a small trading post operated by Dan Cadzow. Operating on the Porcupine River as early as 1900 out of Fort Yukon in a large poling boat,

Cadzow leased the buildings at Rampart House in 1904, where he remained until his death in 1929. Cadzow used poling boats to supply his post until 1914, when he purchased a small sternwheel boat, the Rampart, which was 42.9 feet long with breadth of nine feet. In 1939, when a U.S. Geological Survey party visited Rampart House, they found the place entirely deserted, although they were told that a small number of Indians lived there during the trapping season. 7/

The introduction of the fur trade on the Porcupine River was to have a significant impact on the local Indians, including those on Black River. Most of what we know about the Indians comes from Richard K. Nelson, an anthropologist who lived at Chalkyitsik at various times in 1969-1971 for a total period of nine months. He published the results of his work in Hunters of the Northern Forest in 1973. According to Nelson, the Black River Indians or Tranjik Kutchin were for many years a semi-nomadic people, living in small scattered groups along the Black River. Like many other Athapascan groups, they traveled far up to the headwaters of the river in the fall, where they spent the winter hunting. In the spring, they descended the river in light canoes and spent the summer fishing on the lower stretches of the river. Sometime in the first quarter of the present century, the Indians apparently began to inhabit larger and more permanent settlements. The principal village, Salmon Village, was located near the confluence of the swift Salmon Fork and the sluggish Black River. A few people lived in the village most of the year. A few more lived there when they were not out on their trapline cabins or at Fort Yukon.

In the same period, some people lived at Chalkyitsik, located about 66 miles downriver. For many years the place was known as Fishhook Village, after an excellent fishing spot just outside the mouth of a creek which enters the Black River across from the village. Chalkyitsik was essentially a fish camp, a place where people congregated to catch large runs of whitefish that descended the little creek each fall.

In the early 1940's, Chalkyitsik became the principal village on the river. The reasons behind the rise of Chalkyitsik are not entirely clear. According to Nelson, the deciding factor was the construction of a school. In 1940 or 1941, a boat loaded with materials for a school at Salmon Village was only able to reach Chalkyitsik due to shallow water. The Indians wanted the school, and so they went to Chalkyitsik and built the school. Nelson wrote: "This year marked the real beginning of Chalkyitsik, or Fishhook as it was known then, and signaled the decline of Salmon Village." 8/ Some people remained at Salmon Village for a number of years, but their numbers declined with time, the majority eventually moving to Chalkyitsik. One spring, however, the river changed its course, leaving Salmon Village on a shallow slough. The village was practically inaccessible by boat, so most of the people moved to Chalkyitsik or Fort Yukon. 9/

Chalkyitsik's rise may not have been so rapid as Nelson suggests. Beginning in the 1900's, white prospectors and trappers began to explore the Black River basin, and some operated trading posts on the lower stretch of the river. About 1900, seven men went up the river on a prospecting expedition. Six of the party died; and the sole survivor

drifted downstream in a canoe until he was rescued. 10/ In the summer of 1900, at least one party occasionally traded with the Indians. In his recently published reminiscences, Bill Walker recalled his trip to Fort Yukon in the summer of 1900, where he learned that his brother Harry and a Ted Crompton were on the Black River. While at Fort Yukon, he met the trader Dan Cadzow who agreed to take Walker as well as four trappers named Campbell Young, Ed Brush, Harry Anthony, and one Adams to the mouth of Black River in his big poling boat. Landed at the mouth of the river, Walker and Young walked along the bank to Ted Walker's cabin. The Walker brothers spent the winter on Black River, and although they devoted most of their time to trapping, they did on occasion barter for furs with the Indians on the upper river. 11/

In later years, a few trading posts were operated on the river. In 1910, a man named Smith operated a trading post at Chalkyitsik. In 1939, there was a white man named Jack Kennedy at Salmon Village who also may have operated a trading post. In the early 1940's, a store was also located at Chalkyitsik by Nine Druck. According to the only white man then residing in the village, the store used to do a big business; but the owner died and his son did not care for the business and lost most everything before entering the Army. His mother operated the store until her death in 1944. Evidently the store seldom opened for business during the winter of 1944-45, the executor spending most of his time on his trapline. In 1946, C. Masten Beaver and his wife Helen moved from Fort Yukon to Chalkyitsik, where they started a trading post. According to Nelson, there were two stores in the village in the late 1960's and early 1970's, one being privately owned and the other a village-owned cooperative. 12/

There are very few descriptions of Chalkyitsik available. In 1945, V. L. Dotts of the Alaska Indian Service reported that the entire population of Chalkyitsik, numbering about 80, lived in 15 log homes. With only one exception, the population consisted of Indians - 38 males and 41 females. Almost half of the population were under the age of 24. The Indians lived in the village about 11 months of the year. In May, everyone moved to Marten Hill where they lived in tents until the floods following the spring breakup of the river ice passed. As the village was located on an elbow of an "S"-shaped curve in the river, the river ice always formed a jam at the breakup, causing water to back up and flood the village. In 1944, the water reached a depth of 18 inches in the schoolhouse. 13/

The village had an elementary grade school with 26 pupils. In addition, the teacher conducted a night school for the adults. Nearly all of the Indians were members of Saint Stephen's Mission Episcopalian Church of Fort Yukon. The minister visited the village about once a year. When not on his trapline, Moses Peter, a local resident, conducted services. The village planned to construct a building for a church in the summer of 1945. 14/

In 1945, the people of Chalkyitsik derived about half of their food from local sources. These included moose, rabbits, muskrats, fish, game birds, ducks, squirrels, wild berries, and rhubarb. The balance of the food supply was obtained from stores in Chalkyitsik, Fort Yukon, and Fairbanks. Most of their income came from trapping fur-bearing animals. About 14 families had an income on an annual basis. Two families earned between

\$300-\$399; six between \$400-\$499; four between \$500-749; and two between \$750-\$1499. Trade commodities included the pelts of beaver, coyote, fox, lynx, marten, mink, muskrat, squirrel, weasel, wolf, and wolverine. Some people also earned money in skin sewing and snowshoe construction, as well as from the sale of wood to the elders. 15/

Twenty-five years later, the village had not changed a great deal. Generally about 95 people resided at the place. At the south end of the village, there is a ridge called Marten Hill, on top of which are located the school buildings and an airstrip. The village consisted of 26 houses, two stores, two church buildings, a community hall, and outbuildings. Most residents ordered merchandise from Fort Yukon or Fairbanks and paid the air freight costs to the village. They still depended a great deal upon local food sources, especially moose. In 1969-70, most of the 22 adults in the village did some moose hunting, but of these only eight men hunted frequently. About 36 moose were taken in a 10-month period. 16/

Trapping remained a major occupation. According to Nelson, "They still consider winter and early spring the trapping season, and they refer to themselves first and foremost as trappers. Fur is a main source of income for a fair number of Chalkyitsik men....[But]with easy access to jobs and welfare, many now devote only a limited effort to obtaining fur." 17/ In the summer of 1969, almost all the men were employed on fire-fighting crews, and earned between \$1,000 to \$3,000 each. Of the 25 potential trappers, only six men made a major effort to trapping on long lines, and running them frequently. Six men did not trap, and the remainder engaged in limited or very limited trapping. 18/

#### IV. TRANSPORTATION

Beginning in the late 1930's or early 1940's, airplane service to Chalkyitsik was available, small airplanes landing on the river in the summer and on the river or nearby lakes in the winter. Wien Airlines and Jim Dodson made occasional trips, as did a company based in Fort Yukon. No regular airplane service was available, all planes being chartered. Twenty-five years later, no regular flights to Chalkyitsik were available. However, the village did have a landing strip, and many villagers were dependent upon airplanes to bring merchandise from Fairbanks on Fort Yukon. Airplanes continue to be an important mode of travel to Chalkyitsik as well as to other upriver points. Today, trappers on the Grayling Fork and upper Black River generally charter airplanes to transport much of their supplies and equipment to their headquarters in the winter. 19/

Despite the growing importance of the airplane as a mode of travel, the people of Chalkyitsik remain largely dependent upon the Black River as a summer and winter route of travel. The importance of the river in the lives of the Indians is clearly reflected in their annual subsistence cycle. In the summer, the period of least economic activity, nearly all travel is done by boat. Residents make regular trips to Fort Yukon, a two-day journey by boat, where they visit relatives, seek employment, or fly to the cities or coastal canneries for waiting jobs. Most of the men devote their summers to wage labor in distant communities or join firefighting crews. Before their departure, they may hunt grouse and



waterfowl near Chalkyitsik, set fishnets in the river before the salmon arrive, and make an occasional hunting trip up Black River for moose. As fall approaches, the men return to the village and prepare for the fishing season and the onset of winter. Trips are made in boats up Black River to cut dry spruce along the banks for firewood. This is also done to a lesser extent immediately after the spring breakup of the river ice. Most firewood is, however, collected during the winter months. 20/

In the fall, much time is devoted to fishing, moose hunting, and waterfowl hunting. The salmon run usually begins in July or early August and ends in mid-October. Nets are set in the river for salmon, pike, and whitefish. Some fishing is done on nearby lakes, particularly Chattritt Lake, where pike and whitefish are usually available in large numbers. Most whitefish are taken from Chalkyitsik Creek, a narrow and shallow creek, suitable for the use of small fish traps. Some men will also ascend Black River or Salmon Fork in August and September to hunt bear and particularly moose. Moose are hunted to a point 35 to 45 miles up the Salmon Fork, and about the same distance up Black River beyond Salmon Village. As many as five full-grown moose and a calf may be carried in a 24-foot river boat, but usually three or four are considered a full load. Occasionally an empty boat is towed along upriver to increase the carrying capacity. Waterfowl are also hunted on the lakes and rivers. Migratory waterfowl are especially plentiful on Ohtig Lake, about four miles south of Chalkyitsik. In August or September, hunters will carry light canoes to the large and shallow lake, and take large numbers of birds. Sometimes they will haul a motorboat to the lake, and cruise around shooting ducks. One hundred or more ducks may be shot in a day.

In November, during the freezeup period, practically all travel in boats comes to halt. Preparations are made for the winter. During the winter, the people cut and haul wood, hunt small game, and trap mink, marten, lynx, wolf, and wolverine. In late winter before the snow is gone, some men will also hunt moose.

In the spring, the men trap beaver and muskrat. Before 1969, when the practice was outlawed, muskrats were hunted on the lakes in light canoes. In addition, some men hunt bears while the lakes are frozen, and later from boats on the rivers and lakes. Following the spring breakup of the river ice, fish nets are again set in the river, and some pike and whitefish are caught.

Navigation on Black River to Chalkyitsik is not difficult. Writing from Chalkyitsik in 1945, V. L. Dotts reported that Black River was the principal route for the transportation of freight. During the season of open navigation, from June 1 to September 15, a river boat from Fort Yukon arrived at Chalkyitsik about five times with mail and freight. The boat or scow was small, with a carrying capacity not exceeding four tons. To this day, residents frequently visit Fort Yukon in riverboats. 21/

Above Chalkyitsik, navigation on the Black River was limited primarily to hunters and trappers. In the late 1900's, the river was investigated by the International Boundary Commission as a potential route of travel to the boundary. In 1909, the Commission surveyed, cleared, and set monuments on the line north of the Yukon River for a distance of about 40

miles. Following the season's work, the Canadian attache chartered a launch at Dawson with the object of making a reconnaissance trip up the Black River and determining its suitability as a supply route to the crews on the boundary. The launch was 20 to 30 feet long, gasoline-powered, and driven by a propeller; it carried four or five men and a canoe. It is unknown precisely how far the launch was taken up the Black River, but the evidence suggests that it was not far. According to the Commission's report, the Canadian attache demonstrated that the river would not be a practicable route of travel unless it was found to be almost impossible to transport supplies overland from the Yukon River. The river was reported to be shallow in many places, and useable by powerboat only during a short period immediately following the spring breakup of the river ice. 22/

In the summer of 1910, crews on the boundary were supplied overland from the Yukon River via Tatonduk River, the Commission using 75 horses to transport the men and supplies to the end of the previous season's work. In addition, one small party was sent up the Porcupine River by boat to Rampart House. From that point, the party took a pack train of six horses to the boundary line. By the close of the season, the topographic parties had carried the map work from the Yukon River to a point across "the main Black River," a distance of more than 100 miles. And the laborers had cleared the line from the 1909 terminus to Orange Creek (Grayling Fork), a distance of 61 miles. 23/

In preparation for the 1911 season of work, the Commission had two launches, the Aurora and the Midnight Sun, built at Whitehorse, Canada. The Commission hoped to use these launches to supply various sub-bases on the boundary line, particularly at the point where the line crosses Old Crow River, about 65 miles north of Rampart House, and possibly up the Black River to the monumenting and vista-clearing parties on the boundary line. Each launch was 40 feet long and nine feet wide, and was designed to draw about 18 inches of water, although both exceeded this somewhat. Each was powered by a 24-horsepower gasoline engine driving a sternwheel, and equipped with a power capstan for "tracking" or "lining" upstream.

As in previous years, a party with horses was landed at the mouth of Tatonduk River; and for the first time, a party was sent up the Kandik River in poling boats to the boundary line. These parties continued the work of setting monuments and cutting the line. By the close of the season, they had cleared the line as far as Salmon Trout River, and had selected the monument sites. Only a few monuments had been set, however, as the party on the launch Aurora, which carried the cement and monuments, failed to reach the line via Black River. Arriving at the mouth of Black River on June 20, the Aurora was taken up the Black River for a distance of about 200 miles, or about  $\frac{2}{3}$  of the estimated distance to the boundary line. On June 29, the launch began the descent of the Black River, unable to go any farther due to the fast falling water. The launch was then taken up the Porcupine River to Rampart House, where much of the freight was taken overland by packhorse to the parties in the south. 24/

While low water halted the progress of the Aurora up Black River, one party may have reached the boundary line in poling boats when the water stage was still high. In early June, the Canadian geologist D. D. Cairnes and his assistant M. Y. Williams traveled by horse from the Yukon River to

arrive at the headwaters of Siwash Creek (Bull Creek), a tributary of Grayling Fork, on June 18. According to Richard O. Stern, who obtained a copy of Cairnes' journal, packers had been moving outfits and supplies up Black River, and on June 15 Alex Stewart and his men arrived in camp with a small poling boat and a scow, containing together about two tons of outfit and supplies. A close reading of Cairnes' journal suggests, however, that the packers were not on a tributary of the Black River, but rather on the Kandik River. 25/

In 1912, the Commission made a last attempt to transport supplies and material on Black River to the boundary line. In late May, one party on the launch Falcon ascended the Black River a distance of about 275 miles, or an estimated distance of 30 miles short of the boundary line. Poling boats were then used to transport about three tons of supplies to the line. According to James D. Craig, "These supplies could have been taken all the way to the line by launch, except for the fact that owing to the very light snowfall of the mild winter of 1911-12, the period of high water in the spring was not very much shorter than usual, but the water never reached anything like its usual high spring stage." 26/ Unfortunately, Craig failed to identify the particular tributary of the Black River on which the launch and poling boats were taken. However, only the aggregate lengths of Black River and Grayling Fork approximate the distance traveled by the party of 1912. It is probable therefore, that the launch was taken a short distance beyond Bull Creek on the Grayling Fork, and the poling boats were used the remaining distance on the Grayling Fork to the boundary line.

Perhaps the best account of the difficulties of boat navigation on the upper Black River comes from Evelyn Berglund Shore in her reminiscences, Born on Snowshoes, published in 1954. Shore entered the Black River country with her family in 1928, and was to remain there until 1941. Together with three aged white trappers named Pete Nelson, John Roberts, and Bill O'Brien, the Shore family were the only white residents on the upper Black River. Pete Nelson's home was located some distance below Salmon Village on the right bank of Black River. John Roberts' cabin was located on the Salmon Fork, about 0.5 mile above Runt Creek, which was known to Mrs. Shore as Wind Creek. Bill O'Brien's cabin was located some 12 miles upriver from Roberts' cabin. The Shore family resided in the home of John Roberts.

In 1928, the Shore family met Roberts, Nelson, and O'Brien at Fort Yukon, and decided to accompany the old trappers to Black River. The Shore family loaded their supplies and outfit onto Roberts' boat, a 34-foot launch powered by a 15-30 Universal inboard engine, and on July 1 left Fort Yukon for the Black River. Roberts towed a scow and his 30-foot poling boat, as well as the boats of Nelson and O'Brien, who usually accompanied Roberts on his annual journey to Fort Yukon for supplies. On this occasion, the party was made up of nine people and numerous dogs on five boats.

After a week and an estimated 160 miles of travel, the party reached Pete Nelson's cabin. Leaving the trapper's boat and supplies at the cabin, the party continued upstream, and eventually reached the confluence of Salmon Creek and Orange Creek (Black River). Shore recalled that the country was

quite different here. On the Salmon Fork, the cutbanks were covered with spruce trees as on the Porcupine River, but there were large stands of white birch on higher grounds, and the wide gravel bars were bordered by willows and cottonwood. Near the mouth of the Salmon Fork, the rolling hills of spruce, aspen, and birch could be seen in the distance. Farther upriver, the ridges became higher and rocky bluffs became more numerous. The current was swift, and drift piles along the banks were more frequent.

The trip to the mouth of Salmon Fork was apparently uneventful, since Shore did not record any difficulties. On the Salmon Fork, however, the party were forced on several occasions to make camp on the river bank or bars for extended periods of time, awaiting high water so that they could navigate shallow stretches. One day the party came upon a shallow stretch which they could not navigate. An attempt was made to pole the scow, then loaded with three or four tons of supplies, through the shallow water; but the effort failed when the scow was damaged by a submerged log. Eventually the water rose, and having repaired the scow, the party continued upriver in the launch with the scow in tow. Shortly the party came upon another short stretch, this one well known to Roberts as he indicated that they were only 20 miles from his cabin. This time the party was forced to camp on a gravel bar for two weeks, patiently waiting for rain and higher water. The rains finally came, raising the water level, and the party successfully navigated the river to Roberts' home. Taking advantage of the high water, Roberts took Bill O'Brien in the launch with O'Brien's boat in tow to his cabin, located about 12 miles upriver.

Upon his return, Roberts assisted Shore's father in constructing an addition to the old trapper's cabin which was to serve as the family's home. Evidently the cabin was located near the river bank, for Evelyn Shore recalled that after a three-day period of heavy rainfall, the river left its bank and flooded the cabin to a depth of one foot. In September, Roberts and several members of the family went on a moose hunting trip in the poling boat. They lined the boat up Salmon Fork, traveling six miles the first day and some unknown distance the second day when they bagged a moose. Some of the meat was stored in a cache, and the remainder taken down the river in the poling boat to Roberts' cabin, which they reached in two days.

After a winter of trapping and hunting on the Salmon Fork, Roberts and the Shore family returned to Fort Yukon with the opening of navigation in the spring. After about three weeks at Fort Yukon, where they visited friends and purchased supplies, they returned to Salmon Fork with Pete Nelson. However, Shore's father remained at Fort Yukon, where he subsequently died after a long illness. 27/

For the Shore family, subsequent years on the Black River were governed largely by routine. Mrs. Shore succinctly described their lifestyle as follows: "In the next twelve years our lives were an unvarying routine: up the river in the summer; a fall of woodcutting, meat-cutting, toboggan-building, berry picking; a long, hard, cold winter of running the traplines; a spring of beaver trapping, wolf skinning, closing-up; a fast trip downriver; a brief few weeks in Fort Yukon, and up the river again." 28/ The trips were made in the launch with the scow in tow. Besides

Roberts, the Shore family, and numerous dogs, the launch could carry 28 cans of gasoline on the upriver trips. The scow was used to haul supplies, sometimes amounting to a ton. Pete Nelson always accompanied Roberts and the Shore family on the upriver trips with his poling boat.

The journey from Fort Yukon to the Salmon Fork were always long and difficult, especially on the Black River where shallow water frequently forced the traveler to make camp for days, sometimes weeks, until rain raised the water level. Shore did not record how long these journeys took, or where their camps were usually established. She did note, however, that they usually camped on Twentymile Bar, a gravel bar on the Black River about 20 miles from the Porcupine River. In addition, temporary quarters were also maintained near a bluff (probably Pink Bluff) located about a mile by land or two miles by river from their cabin. The river ran swift and forcefully against the bluff, and so Roberts and the Shore family generally relayed their supplies in small lots from the bluff to their cabin rather than risk the loss of supplies with an upset boat in the swift water. It usually took six trips in the motor boat to relay the supplies. When the water was low, four dogs were used to track the poling boat loaded with supplies around the bluff, while the trappers lined the motor boat and scow over the riffle. The boats were usually left in a small slough just above the big bluff. The poling boat would be used at times for moose-hunting trips up the Salmon Fork. 29/

The trips from the Salmon Fork to Fort Yukon were in contrast quite short. The trappers always started downriver as soon as the river was clear of ice and the water was high. Evelyn Shore recalled that the trip to Fort Yukon, which she estimated to be some 280 miles from their home, seldom took more than three days. One year, she recalled, they descended the Salmon Fork and Black River in four hours. She was surely exaggerating in this case. Generally, they required about five hours to reach Pete Nelson's cabin, where they spent the night. On the second day, they usually made camp on Twenty-Mile Bar, located about 20 miles from the Porcupine River. By early afternoon on the third day they would reach Fort Yukon. 30/

Evelyn Shore left the Salmon Fork in 1941, and apparently never returned. Her family and John Roberts moved to Fort Yukon a year or two later. Pete Nelson reportedly committed suicide at his cabin rather than starve to death after breaking his leg. Bill O'Brien apparently moved into Canadian territory east of the International Boundary where his trapline was located in 1938, shortly after his cabin on the Salmon Fork was washed away by the river.

It is presently unknown whether other trappers resided on the Salmon Fork after the Shore family, Roberts, and O'Brien left the area. It is known, nevertheless, that residents of Fort Yukon and Chalkyitsik periodically ascend the Black River to its headwaters for the purpose of hunting and trapping. According to Nelson, some men from Chalkyitsik ascend the Black River or Salmon Fork as early as August but usually in September for the purpose of hunting moose and bear. Most of the hunters take their moose in areas at least 35 miles up the Black River or more than a day's travel from Chalkyitsik. Most hunting is done on the Salmon Fork for a distance of 35 or 40 miles, and about the same distance on the Black River beyond

Salmon Village. In the spring, hunters from Chalkyitsik also ascended the Black River in search of bears. 31/

Today, there are at least three trappers who spend their winters on the upper Black River and on Grayling Fork. Fred Thomas' headquarters are located at the mouth of Grayling Fork. Albert Thomas of Fort Yukon and "the Henry family" of Chalkyitsik are located on the Grayling Fork, one of them near the mouth of Bull Creek. All three trappers charter airplanes to travel to and from their cabins. Fred Thomas transports up to half of his outfit to his headquarters by airplane in the winter, and uses a 22-foot aluminum riverboat to transport the remainder. He usually takes one to three loads of supplies up the river by boat each summer. 32/

The limit of navigation on the Black River, Grayling Fork, and Salmon Fork is summarized by Fred Thomas of Fort Yukon. Writing to the BLM on the subject of easements in 1976, Mr. Thomas reported that one "can almost always get as far as Grayling river with a light boat. Of course if its a dry summer, the river gets pretty low." With a good stage of water, one can also ascend the Grayling Fork as far as Bull Creek, and the Black River as far as Wood River. Beyond the mouth of Wood River, "its no good." Although he had never been on the Salmon Fork, Mr. Thomas reported that in the past trappers ascended the river to the International Boundary, and that hunters from Chalkyitsik ascend the river each fall to hunt moose. According to these hunters, Mr. Thomas said, the Salmon Fork is a swift river with "lots of snags and drift pile." 33/

Boat traffic on the Black River, especially above Chalkyitsik, and its tributaries is largely dependent upon weather and river conditions. Brisk winds and steady rainfalls will often be enough to keep the most ambitious navigator off the river. Experienced men will usually begin river trips when the water stage is high. Seasonally, the water is highest at breakup time and remains fairly high through June. The water is usually low during the remainder of the summer, except after periods of heavy rainfall when the water level rises quickly. In the fall, when the moose hunting season opens, the men of Chalkyitsik watch the water stage closely during their upriver journeys, since the falling water level could make it difficult for them to return downriver with a boat heavily loaded with meat.

The older, more experienced men know the location of every riffle along the river, and generally know the whereabouts of the channels if they exist. They negotiate shallow stretches by moving slowly up the channel, sometimes lifting the engine somewhat so that the propeller clears the bottom. In the case of a swift stretch, the boat may make little or no progress, and may even begin drifting downstream. It is then that the men use six-to-eight foot poles to push the boat forward, while one man keeps the engine running. According to Nelson, "Some years the water is so shallow that hunters must wade across every riffle, which is extremely laborious but necessary if they are to get moose." 34/ Of course, if the water is extremely shallow, and the boat scrapes the river bottom, the men reluctantly get out of the boat and pull the boat by hand or with ropes across the shallows.

The downstream journey is comparatively easy. Approaching shallow water, the men simply lift the engine and the boat floats over the shallow spots. If a heavily loaded boat scrapes the river bottom, the men are quick with the poles to push the boat over the shallow spot. Any delay might mean that the boat will get stuck, and the swift water will rush over the stern and swamp the boat.

There are other dangers of navigation. The channels of the Black River constantly change, especially in the spring, forcing the men to keep a sharp eye on the location of channels. Last year's deep channel may be this year's shallow, and the deep channel located on the other side of the river. Also, the men must be prepared to navigate sharp bends, where fast water tends to run right along the outside of the bend. In these places, common on the Salmon Fork, the men must take care as their boat may be swept into a bank, sweepers, or a snag, with the possibility of damage to the boat or even upsetting the boat. 34/

The people of Chalkyitsik have long used the Black River and its principal tributaries as routes of travel, and as a result acquired a wealth of invaluable knowledge about the rivers and their unique characters. Traveling with the Indians, Nelson was struck by the extent of their knowledge, and wrote:

But despite its changes, the Indians who have traveled up and down the Black River all their lives know exactly where to expect riffles, how to locate river channels, and just how long it will take to get from one place to another. I have seen them navigate flawlessly by dim moonlight, when the usual indicators were lost in darkness. An important part of navigation is long-term experience in the area, so that a knowledge of the local 'landscape' is acquired. 36/

Nelson's remarks doubtless apply to the Black River --- not to the Salmon Fork. Given its swift character, the Salmon Fork is unlikely to be navigated in moonlight. Nevertheless, Nelson is probably correct in saying that local residents are quite familiar with the character of the Salmon Fork, and know what to expect in the way of dangers when on the river.

Historically, the Indians of Black River have used a variety of boats. The Kutchin hunting canoe were essentially the same used by most northern Athapascan Indians. The canoe ranged in length from 12 to 18 feet, and in beam from 24 to 27 inches with a depth of nine to 12 inches. In some areas, somewhat larger canoes were used to transport families and cargo. These ranged in length from 20 to 25 feet, with a beam approaching 30 inches. In early times the canoes were covered with birchbark; but later canvas was used. These canoes are still in use at Chalkyitsik today. Local residents use the extremely light canoes (25 to 30 pounds) to portage from one lake to another, or to portage across long river meanders. The canoes range in length from 13.5 to 14 feet, and in width 26.5 to 28 inches. In 1969-70, Nelson counted about 10 such canoes in the village of Chalkyitsik.

Until the late 1940's, the Indians also used moose-skin boats. These canoes were built in the field, and used to transport game meat for short

distances. The larger canoes were also used to transport people and their goods down the Black River from the headwaters each spring. The canoes came in a variety of sizes. Some were six to seven feet long; some 12 feet or more long; and the largest ranged in length from 20 to 25 feet, and in width four to five feet.

In more recent times, most travel on the Black River is done in typical riverboats of interior Alaska. Inboard and outboard motor-powered boats were first used on Black River on a customary basis in the late 1920's; but it was not until the 1960's that many Indians possessed these craft. According to Nelson, about three such boats were available at Chalkyitsik in the late 1950's. Twenty years later, there were 17 such boats at the village. These wooden boats ranged in length from 18 to 24 feet, and in width four to five feet. The boats have flat bottoms and square bows, and are powered by outboard engines (15-25 horsepower) mounted on "lifters," which are devices designed to lift the engines to a desired level whenever crossing shallow places. 37/

Evidently in the 1970's, the Indians began to purchase aluminum riverboats which are popular on the market today. In early July 1979, Jack Mosby of the U.S. Heritage Conservation and Recreation Service observed three aluminum riverboats, all ranging in length from 20 to 24 feet, at Chalkyitsik. There may have been more of such boats, for many of the men were at the time away on firefighting crews near Big Delta. Also, Mr. Mosby met Fred Thomas twice on the Black River: once when Mr. Thomas was bound to his trapping headquarters on the Grayling Fork in a heavily loaded boat, and again when Mr. Thomas was returning to Fort Yukon with a load of 55-gallon gasoline barrels. On both occasions, Mr. Thomas and Mr. Johnson were using a 24-foot aluminum boat equipped with a 25-horsepower Evinrude engine on a "lift." Mr. Thomas claimed to have used 39 gallons of gasoline on the run from Fort Yukon to a point above Chalkyitsik. 38/

While boat traffic on the middle and upper Black River is primarily related to hunting and trapping activities, there is a possibility that recreation boating may develop in the future. In 1979, the U.S. Heritage Conservation and Recreation Service sent a small party to Black River to study the river and make recommendations as to its potential classification as a Wild and Scenic River. On June 26, 1979, the small party was landed by hydroplane on a small, deep, horseshoe-shaped lake in Section 34, T.18 N., R. 24 E., F.M. The party consisted of Jack Mosby and JoAnn Duner of the Service and Lon Swenson and Roger Kaye of the U.S. Fish and Wildlife Service. Crossing the short portage, about 150 feet in distance, to the river, the party found the water in the river to be very high, about five feet deep. The river was 75 to 100 feet wide, and there was little current. According to Fred Thomas, whom Mr. Mosby met on the river below Nelson Bluff, the water was the highest he had seen in three years. However, on the first day of the trip, Mr. Mosby recorded in his journal the observation that the water was probably six to 10 inches higher after the spring breakup of the river ice.

Descending the Black River in two 17-foot Grumman canoes, the party enjoyed high water and a sluggish current during the 12 days that they were on the river. For the most part the trip was uneventful. Mr. Mosby himself described the river as confined, monotonous, and not very



interesting. Dense vegetation lined the high banks, making it virtually impossible to obtain a view of the landscape. Occasionally, they saw moose, beavers, eagles, and the like, as well as forest fire burns and cabins used by trappers during the winter. They saw the first cabin, the one used by Fred Thomas during the winter, on the second day of their trip. The cabin was located just below "The Reef."

On June 29, they arrived at the confluence of the Black River and Salmon Fork. The party attempted to reach the Salmon Fork by way of the southern channel, but found it blocked. According to Mr. Mosby, the Black River at the confluence of the Salmon Fork is about 300 feet wide with high cut banks and a bottom of small gravel. The water was about five feet deep, and the current averaged between one to two miles per hour in short stretches.

On the following day, they paddled up the shallow slough to the site of Old Salmon Village, where they found the remains of eight cabins as well as a cemetery. Mr. Mosby believed that the village site was not usually accessible, as the entrance to the slough was only twelve inches deep. Continuing downstream they stopped briefly to take a photograph of the one remaining cabin at Salmon Village and later visited a relatively new cabin, then unoccupied, which was owned by Paul Thomas. About a mile further, the party met two men with an airplane on a gravel bar. The man had landed the airplane on the bar due to lack of fuel, and were apparently waiting for another airplane to arrive with a load of gasoline.

Passing Nelson Bluff on July 1, the party encountered numerous gravel bars, some extending in places almost across the river. Several cabins were seen. One cabin, evidently occupied in 1940's, was in danger of falling into the river as a result of the river cutting into the bank. On July 2, the party stopped at Dahteh, an old fish camp, and found a cabin recently used by a trapper. Several high bluffs were passed, and the party noticed a slight increase in the river current.

While camped on a gravel bar in Section 32, T. 22 N., R. 20 E., F.M. on July 3, the party met Fred Thomas and a Mr. Johnson who were enroute to Grayling Fork in a heavily loaded boat. Mr. Thomas had spent the night near Chalkyitsik, and had taken three hours to reach the party's campsite. He stated that he had already used 39 gallons of gasoline on the trip from Fort Yukon. After having breakfast, Mr. Thomas continued the upriver trip, and the party departed for Chalkyitsik, arriving there on July 4. Four days later, they reached the Porcupine River by paddling against the current up the north channel of the Black River. Water from the Porcupine River was flowing into the channel. On July 10, the party finally reached Fort Yukon. 39/

#### IV. CONCLUSIONS

Historically, the fur trade has been the dominant economic activity in the Porcupine River basin. From the 1840's to the 1890's, the Hudson Bay Company enjoyed virtually absolute control of the fur trade from its post at Fort Yukon, later moved to various places on the Porcupine River, on the American side of the International Boundary, and ultimately to Rampart

House just east of the International Boundary. When the Hudson Bay Company quit the Porcupine River, independent traders and/or prospectors quickly occupied the basin. One of the traders, Dan Cadzow, established himself at Rampart House, from which point he developed and maintained trade relations with Indians on the Porcupine River and its tributaries until his death in 1929.

The central depot or supply point for the basin was and is Fort Yukon at the mouth of the Porcupine River. Traders in the Porcupine River basin customarily traveled in bateaus and later pole boats to Fort Yukon, where they shipped their furs to distant cities and purchased supplies for another season. Beginning in the early 1900's, however, small steamboats were introduced to the Porcupine River. In 1914, for example, Cadzow purchased the steamboat Rampart, which he customarily used on the trip between Fort Yukon and Rampart House until the late 1920's. In later years, river transport companies, such as Kirk's River Freighting Service, operated on the river, transporting freight and mail to Old Crow in boats with a draft of about three feet.

The Black River country was an important area in the Porcupine River fur trade. Indians doubtless traveled to Fort Yukon to trade in the nineteenth century, and certainly did so after the turn of the century, even though prospectors turned traders established stores on the river in the 1900's. Before and for many years after the introduction of trading posts on Black River, Indians in the basin lived in scattered bands, trapping during the winter and moving to fishing spots in the summer. The location of a trading post at Fishhook, located near a favorite fishing spot, must have attracted many Indians to the place, resulting in a permanent community. With the construction of a school at Fishhook in the early 1940's, Indians in the upper sections of the basin moved downriver to the village, now known as Chalkyitsik.

While the airplane has become an increasingly important factor in the last 40 years, much travel in the Black River basin was and is conducted in boats. Residents of Chalkyitsik frequently travel to Fort Yukon during the summer in boats large and small. Most of the freight for Chalkyitsik in the 1940's was hauled in boats. According to an agent of the Alaska Indian Service, the boats customarily transporting freight to Chalkyitsik were small, with a capacity of not more than four tons. The boat usually made five trips each summer to the village.

Boat travel on the Black River above Chalkyitsik was conducted primarily by hunters and trappers. From the 1920's to the early 1940's, trappers living on the Salmon Fork relied entirely on the Salmon Fork and Black River as routes of travel to and from Fort Yukon, using poling boats, a scow, and a motor-powered launch. One trapper named Bill O'Brien lived on the Salmon Fork near the International Boundary for a number of years; he traveled each spring to Fort Yukon to replenish his supplies and sell his furs, returning to his trapping headquarters in his poling boat or with John Roberts and his motor launch, which could be taken to O'Brien's cabin when the water was high. In recent times, hunters of Chalkyitsik also ascend the Salmon Fork in wooden riverboats for unknown distances.

In the case of the Black River above the mouth of Salmon Fork, the historic record indicates a considerable amount of boat traffic, consisting principally of hunters and trappers in wooden riverboats and aluminum boats. In their search for moose and other game, hunters of Chalkyitsik may ascend the Black River as far as the mouth of Grayling Fork. Fred Thomas, a trapper with his winter headquarters at the mouth of the Grayling Fork, has in recent years transported considerable amounts of supplies from Fort Yukon to his headquarters in a light aluminum riverboat. In a letter to the BLM in 1976, he indicated that a boat could be taken up the Black River as far as the mouth of Wood River. Boats could not be used beyond that point.

In the same letter, Mr. Thomas reported that it was possible to take a boat up the Grayling Fork to the mouth of Bull Creek. Apparently this is the limit of Mr. Thomas' travel on the Grayling Fork, for there is evidence that boats may be taken up the river to the International Boundary under the right set of river conditions. Taking advantage of the spring runoff in 1912, a small party connected with the International Boundary Commission transported a load of freight in a launch up the Black River and Grayling Fork to some place near the mouth of Bull Creek. Poling boats were then used to transport three tons of freight to the boundary line. According to one report, the launch could have been taken the entire distance to the boundary line if it had not been for the low water resulting from the small amount of snow that had fallen the previous winter. The same launch was subsequently used by the Commission for a short time on the Porcupine River in transporting freight and mail from Fort Yukon to Rampart House.

Navigation on the Black River and its principal tributaries may be difficult and sometimes hazardous. Navigators must contend with shallow water, sweepers, swift currents, snags, wind, and constantly changing channels. As Richard Nelson has shown in some detail in his book, Hunters of the Northern Forest, some Indians of Chalkyitsik have considerable experience in navigating the rivers, and as a result of that experience know what problems may be encountered on the rivers, and how to overcome them. Most local residents evidently ascend the rivers when the water is high --- shortly after the spring breakup of the river ice and after a period of rainfall. Depending upon the amount of snowmelt and rainfall, the water may reach depths of five feet or more, permitting navigation far into the upper reaches of the rivers. If the water level should drop suddenly, the travelers simply pole the boats over the shallow stretches or wait for the rains to raise the water level. As Evelyn Berglund Shore recalled, the wait may be a matter of a few days or several weeks; but eventually the water would rise, and the journey continued.

The degree of reliance upon the Black River as a route of travel is indicated moreover by the absence of summer trails or roads in the basin, as well as dams and other improvements to navigation. The historical records indicates that overland travel in the summer in the basin is very difficult, owing to dense vegetation, swamps, and hills. With the exception of short portages across long river meanders and to nearby lakes, the rivers are the only summer routes of travel in the basin.

There are many lakes in the Black River basin. The majority are located near the principal rivers, and tend to be small and shallow. The larger lakes, including Ohtig Lake, Chahalie Lake, and Tiinkdhul Lake, are located considerable distances from the rivers. Local residents frequently travel overland to these large but shallow lakes, where they hunt big game and waterfowl, and fish for northern pike from small canoes. Occasionally men have hauled a motorboat to Ohtig Lake, on which they cruise about shooting ducks and other game. Many of the small lakes near the rivers are also accessible by land from the rivers. Men may have portaged to some of the lakes with canoes in order to shoot beaver or muskrat but the historic record does not reveal specific instances of this practice.

In addition, many of the lakes in the Black River basin have sufficient depth and length to be practicable landing fields for small amphibious airplanes as well as airplanes equipped with pontoons. It is entirely possible that airplanes may be landed on these lakes, thereby permitting access to hunting, fishing, and trapping grounds, as well as to the Black River and its principal tributaries. There is, however, little evidence available to indicate use of these lakes as aviation fields. In view of its location near Chalkyitsik, Marten Lake might be a suitable aviation field. However, the record indicates that most airplanes land on the Black River.

#### V. RECOMMENDATIONS

A. It is recommended that the Black River, from its confluence with the Porcupine River to the mouth of Wood River, a distance of approximately 271 miles, be determined navigable. Boats ordinarily used on the Porcupine and Yukon Rivers in the transportation of freight have been used on a frequent basis from Fort Yukon to Chalkyitsik. Boats of similar size and capacity have been used by trappers and hunters as far as the mouth of Grayling Fork. Under the right set of river conditions, these boats may be used as far as the mouth of Wood River if the need should arise.

B. It is recommended that the Salmon Fork to the International Boundary, a distance of approximately 74 miles, be determined navigable. From the 1920's to the 1940's, trappers on the rivers used poling boats, a scow, and a launch to transport supplies from Fort Yukon to their cabin near the mouth of Runt Creek. In the same period, one trapper who lived about 12 miles upriver from Runt Creek customarily used a poling boat to travel to and from Fort Yukon. The physical character of the river is such that trappers may have used poling boats to the International Boundary line whenever the water level was high. The historic records indicate that in 1928 a launch was in fact taken up the Salmon Fork for a distance of approximately 64 miles in high water.

C. It is recommended that the Grayling Fork to the International Boundary, a distance of approximately 86 miles, be determined navigable. At least one trapper has traveled up the Grayling Fork to the mouth of Bull Creek (rivermile 46). In the spring of 1912, when the water level was high, a launch was taken to a point near Bull Creek. Freight on the launch was then transported by poling boat to the International Boundary.

D. It is recommended that Bull Creek be determined navigable. We have found no actual instances of boat traffic on Bull Creek; but given its physical character, which is similar to that of Grayling Fork, and the nature of boat navigation on the upper Black River, it is apparent that boats with considerable loads of freight could be used on Bull Creek if the need arose. The limit of navigation appears to be located in Section 5, T. 13 N., R. 31 E., F.M.

E. It is recommended that all tributaries of the Black River, Grayling Fork, Salmon Fork, and Bull Creek be determined nonnavigable. These tributaries are generally short, shallow, and very swift, and drain very small basins. It is highly improbable that even canoes could be used on these creeks.

F. It is recommended that all lakes in the Black River basin be determined nonnavigable. With few exceptions the lakes are landlocked. Even the exceptions are practically landlocked, as the outlets are very shallow and some (e.g., Dempsey Creek) are filled with boulders. Some of the large lakes, such as Ohtig Lake and Chahalie Lake, are of sufficient size and depth for use by hunters and trappers in canoes. It is known that light motorboats are used occasionally on Ohtig Lake in connection with duck hunting. However, the lakes are too small, and the natural resources too limited, to be used for travel, trade, and commerce.

## FOOTNOTES

1. James C. Barker to Federal/State Land Use Planning Commission, January 3, 1977, File Serial No. F-21779-55, Alaska Native Village Selection Applications, Fairbanks District Office, Bureau of Land Management, hereinafter referred to as ANCSA file. Mr. Barber was a mining engineer with the U.S. Bureau of Mines.
2. Gerald FitzGerald, Reconnaissance of Porcupine Valley, Alaska. U.S. Geological Survey Bulletin 933-D (Washington, 1944), p. 230.
3. Ibid.
4. Richard K. Nelson, Hunters of the Northern Forest (Chicago, 1973), pp. 49-50.
5. Ibid.
6. U.S. Department of the Army, Terrain Study of Yukon Flats District (Washington, 1958), p. 53.
7. FitzGerald, op. cit., pp. 221, 225; Box 1, Dan Cadzow Collection, Yukon Archives, Whitehorse, Yukon Territory, Canada.
8. Nelson, op. cit., p. 17.
9. Ibid., p. 18.
10. Thomas Jenkins, The Man of Alaska: Peter Trimble Rowe (New York, 1943), p. 89.
11. Doris Anderson, Ways Harsh and Wild: Adventure and Hardship During the Yukon Gold Rush (Vancouver, 1973), pp. 50-53.
12. Christian L. Larson to Commissioner of Fisheries, September 20, 1918, Reports and Related Records, Yukon River, Preliminary Investigation, 1918, Records of the Division of Alaska Fisheries, Records of the Fish and Wildlife Service, Record Group 22, National Archives Building, Washington, D.C.; Albert E. Tritt Journal, Vol. 2, p. 130, University of Alaska Archives, Fairbanks; Alaska Indian Service, "Post-War Planning Survey-Fishhook," File No. 431, Box 1610, Records of the Juneau Area Office, 1909-74, Records of the Bureau of Indian Affairs, Record Group 75, Federal Archives and Records Center, Seattle, WA; C. Masten Beaver, Fort Yukon Trader: Three Years in an Alaskan Wilderness (New York, 1955), pp. 163 ff; Nelson op. cit., p. 20.
13. Alaska Indian Service, op. cit.

14. Ibid.
15. Ibid.
16. Nelson, op. cit., pp. 19, 20, 85.
17. Ibid., p. 17.
18. Ibid., pp. 150-151.
19. Ibid., pp. 18, 20; Alaska Indian Service, op. cit.
20. The description of subsistence activities is taken from Nelson, passim.
21. Alaska Indian Service, op. cit.
22. International Boundary Commission, Joint Report Upon the Survey and Demarcation of the International Boundary Between the United States and Canada Along the 141st Meridian from the Arctic Ocean to Mount St. Elias (The Commission, 1918), p. 47 and photographs.
23. Ibid., pp. 51, 54-55.
24. Ibid., pp. 59-60, 62; Richard O. Stern, "Historic Uses of the Kandik and Nation Rivers, East-Central Alaska," September 1978, p. 38, unpublished manuscript on file in the Alaska Resources Library, Anchorage.
25. Stern, op. cit., p. 37.
26. Quoted in Stern, pp. 44-45.
27. Evelyn Berglund Shore, Born on Snowshoes (Cambridge, 1954), pp. 35-47.
28. Ibid., p. 56.
29. Ibid., p. 86.
30. Ibid., p. 155.
31. Nelson, op. cit., p. 89.
32. Roger Kaye, personal communication, March 17, 1980.
33. Fred Thomas to BLM, April 28, 1976, ANCSA File.
34. Nelson, op. cit., p. 50.
35. Ibid., pp. 48-50.

36. Ibid., p. 51.
37. Ibid., pp. 43-48.
38. Jack Mosby, Fieldbook on Black River Trip, June 23 - July 10, 1979. Original book available at Heritage Conservation and Recreation Service, Anchorage.
39. Ibid.





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F-19155-6 (2652)  
F-21779-6 (75.4)  
2628 (962)(NAV)

Memorandum

**JUL 22 1983**

To: Assistant Deputy State Director for Conveyance Management (960)  
From: Deputy State Director for Conveyance Management (960)  
Subject: Final Navigability Determination for Doyon, Ltd. and Chalkyitsik Native Corporation

Following is the final navigability determination for water bodies within 20 townships selected by Doyon, Limited and Chalkyitsik Native Corporation under Secs. 12(a) and (c) of ANCSA. This memorandum is subsequent to the Draft Navigability Determination of February 7, 1983 and Chalkyitsik Village meeting held on June 14, 1983 in Rampart. The lands under selection are described as:

Doyon, Limited (F-19155-6)  
Fairbanks Meridian, Alaska (Unsurveyed)

T. 19 N., R. 21 E.  
Secs. 1 to 36, inclusive.

T. 21 N., R. 21 E.  
Secs. 1 to 36, inclusive.

T. 23 N., R. 21 E.  
Secs. 1 to 36, inclusive.

T. 20 N., R. 20 E.  
Secs. 1 to 36, inclusive.

T. 22 N., R. 20 E.  
Secs. 1 to 36, inclusive.

T. 19 N., R. 19 E.  
Secs. 1 to 36, inclusive.

T. 23 N., R. 19 E.  
Secs. 1 to 36, inclusive.

T. 20 N., R. 18 E.  
Secs. 1 to 36, inclusive.

T. 22 N., R. 18 E.  
Secs. 1 to 36, inclusive.

T. 19 N., R. 17 E.  
Secs. 1 to 36, inclusive.

T. 21 N., R. 17 E.  
Secs. 1 to 36, inclusive.

T. 23 N., R. 17 E.  
Secs. 1 to 36, inclusive.

T. 22 N., R. 16 E.  
Secs. 1 to 36, inclusive.

Aggregating approximately 292,489 acres.

Chalkyitsik (F-14846-A&B)  
Fairbanks Meridian, Alaska (Unsurveyed)

T. 21 N., R. 16 E.  
Secs. 1 to 36, inclusive.

T. 23 N., R. 16 E.  
Secs. 1 to 36, inclusive.

T. 20 N., R. 17 E.  
Secs. 1 to 36, inclusive.

T. 21 N., R. 18 E.  
Secs. 1 to 36, inclusive.

T. 23 N., R. 18 E.  
Secs. 1 to 36, inclusive.

T. 21 N., R. 19 E.  
Secs. 1 to 36, inclusive.

T. 21 N., R. 20 E.  
Secs. 1 to 36, inclusive.

Aggregating approximately 68,362 acres.

The principal water body within the report area is the Black River and its interconnecting sloughs. The BLM State Director determined the river to be navigable from Porcupine River to Wood River on March 28, 1980, on the basis of a staff report entitled "Navigable and Nonnavigable Waters in the Black River Basin, Eastern Alaska." The Porcupine River and its interconnecting sloughs were determined by the BLM on April 21, 1983 to be navigable to the International Boundary.

The Black River is a long, meandering, slow-moving, non-glacial stream, varying its course and rate of flow depending on rainfall and snowmelt. As a result of these fluctuations, the river has created many oxbow lakes and dead-end sloughs which reportedly become part of the navigable Black River during periods of high water. At the Chalkyitsik village meeting on June 14, 1983, Corporation

President Woodie Salmon identified a number of these lakes and sloughs as boatable. Local residents use them for hunting and fishing. As spokesman for the Chalkyitsik board, Mr. Salmon noted that he would like to see the lakes and sloughs which he identified on BLM's easement map be determined navigable.

Secondary water bodies include the Little Black River and its two distributaries, Grass River and Sucker River. Although Little Black River and Grass River are designated as major waterways for easement purposes, all three water bodies were recommended to be nonnavigable by a Draft SD memorandum addressing Final Easements for Doyon, Limited (April 27, 1979). Furthermore, Mr. Salmon emphasized that transportation on the Grass River is out of the question. Even in winter, travel is conducted overland as the river twists and turns so. Mr. Salmon described the river as shallow, windy, and obstructed by drift piles, and capable of supporting only light canoe traffic. The Little Black and Sucker rivers exhibit similar characteristics. Mr. Salmon's testimony and our own observations from a June 14, 1983 flyover uphold our earlier recommendation that the rivers be determined nonnavigable.

Lesser water bodies include Fishhook Creek, Big Creek, and a host of unnamed streams, all of which are small, meandering, and slow-moving. No evidence of boat use on these streams is known to exist.

The principal lake is Ohtig Lake, which was previously determined to be nonnavigable on March 28, 1980. Ohtig Lake, a relatively large lake popular for duck-hunting, is located four miles south of Chalkyitsik. A tractor trail, built 30 years ago for the purpose of hauling freight to Prudhoe Bay, provides access from the village to the landlocked lake. Though Mr. Salmon did not identify any boat use on Ohtig Lake, it is known that Chalkyitsik residents have taken canoes and occasionally river-type boats overland to the lake to hunt ducks and to their Native allotments on the lake shores. The boats on Ohtig Lake are used for subsistence and recreational purposes. Though boats typical of those used on the Black River have reportedly been transported to the lake by heavy equipment, the boats have not been used for travel, trade, and commerce on Ohtig Lake. No permanent improvements are known to have existed or to exist on the lake.

There are a number of smaller lakes and sloughs which were identified as having Native allotments located along their banks ("Alaska's Upper Yukon Region: A History" by James H. Ducker, 1982, Addendum). Though the water bodies are important for supporting Native allotments, from the regional report we know that access to the allotments is primarily by snowmobile, floatplane, dogsled, or canoe. Several of the allotments are reportedly accessed by riverboat on occasion, even though USGS inch-to-mile maps indicate that the water bodies are landlocked. Since travel to Native allotments is conducted overland or in canoes, we will adhere to our original recommendation that all lakes in the region are nonnavigable. Any sloughs which are identified as being part of either the Black or Porcupine rivers at the time of survey will automatically become navigable. The aforementioned lakes and sloughs are identified as:

Waterfall Lake and three unnamed lakes, Secs. 10 and 11, T. 23 N., R. 18 E., FM.

<u>Unnamed lake</u>	Secs. 26, 27, 34, 35, T. 23 N., R. 17 E., FM.
<u>Unnamed lake</u>	Sec. 2, T. 21 N., R. 20 E., FM Sec. 35, T. 22 N., R. 20 E., FM
<u>Unnamed lake</u>	Sec. 2, T. 21 N., R. 19 E., FM.
<u>Unnamed slough</u>	Secs. 5, 7, 8, T. 21 N., R. 19 E., FM.
<u>Unnamed lake</u>	Sec. 6, T. 21 N., R. 19 E., FM Sec. 31, T. 22 N., R. 19 E., FM
<u>Unnamed lake</u>	Sec. 1, T. 21 N., R. 18 E., FM Sec. 6, T. 21 N., R. 19 E., FM Sec. 36, T. 22 N., R. 18 E., FM
<u>Unnamed Lake</u>	Secs. 25-16, 21-22, T. 21 N., R. 18 E., FM
<u>Chatritt Lake</u>	Secs. 18, 19, T. 21 N., R. 18 E., FM Sec. 24, T. 21 N., R. 17 E., FM
<u>Unnamed lake</u>	Secs. 5-8, T. 21 N., R. 18 E., FM
<u>Applevun Lake</u>	Secs. 9, 10, 15, 16, T. 21 N., R. 17 E., FM
<u>Unnamed Lake and slough</u>	(allotment in NW $\frac{1}{2}$ NE $\frac{1}{2}$ , Sec. 4) T. 21 N., R. 16 E., FM
<u>Unnamed lakes</u>	Secs. 4 and 9, T. 21 N., R. 16 E., FM
<u>Vunle Lakes</u>	T. 19 N., R. 19 E., FM

While many lakes within the report area are capable of and probably do support floatplane use, none are known aviation fields. All of the lakes are considered to be too small and isolated to be highways of commerce for boats.

#### Determinations

- A. The Porcupine River and its interconnecting sloughs are navigable (April 21, 1983), including the following dead-end sloughs:

T. 23 N., R. 16 E., FM.	Sec. 12
T. 23 N., R. 17 E., FM.	Sec. 7
T. 23 N., R. 17 E., FM.	Secs. 3, 4, 9, and 16
T. 23 N., R. 18 E., FM.	Secs. 18 and 19

Cadastral Survey will ultimately determine which sloughs and dead-end sloughs are actually part of the Porcupine River at the time of survey.

- B. The Black River and its interconnecting sloughs are navigable (March 28, 1980). Certain oxbow lakes and dead-end sloughs which are also considered

to be part of the navigable Black River are recommended to be determined navigable; however, the final determination of lateral extent of the river will be made by Cadastral Survey at the time of survey. The location and description of the lakes and sloughs in question (as shown on USGS 1:63,360 quadrangles) are as follows:

T. 22 N., R. 16 E., FM

Single and double-lined slough Secs. 27, 28, 33, and 34.

T. 21 N., R. 17 E., FM

Double-lined slough Secs. 2, 3, 10, and 11.  
Double-lined slough Secs. 4 and 5.

T. 22 N., R. 17 E., FM

Slough and lake system Secs. 20, 21, 28, 29, 32, and 33.  
Slough and lake system Secs. 24 and 25.  
Single-lined slough Sec. 35.

T. 21 N., R. 18 E., FM

Chalkyitsik slough Sec. 13.

T. 22 N., R. 18 E., FM

Slough and lake system Secs. 19 and 30.

T. 21 N., R. 19 E., FM

Oxbow lake Secs. 4, 5, 8 and 9.  
Chalkyitsik slough Secs. 7 and 18.  
Double-lined slough Secs. 8, 17 and 18.

T. 22 N., R. 19 E., FM

Double-lined slough Sec. 25.  
Double-lined slough Secs. 33 and 34.

T. 21 N., R. 20 E., FM

Oxbow lake Secs. 4 and 9.

T. 22 N., R. 20 E., FM

Lake Secs. 19, 20, 29 and 30.

- C. Little Black River, Grass River, Sucker River, Fishhook Creek, and Big Creek and all their tributaries are determined nonnavigable given their physical characteristics, absence of evidence of use, and the information provided by local residents.

- D. The previous determination declaring Ohtig Lake and all other lakes within the Black River basin to be nonnavigable is upheld. These lakes are too small and isolated to be considered highways of commerce for boats.

/s/ ROBERT W. FAIRBANKS

cc:

Mr. Ron Swanson  
Navigability Project Leader  
State of Alaska  
Pouch 7-005  
Anchorage, Alaska 99510  
(w/maps)

Land Exchange/Entitlement Unit  
Land Management Section  
Alaska Department of Natural Resources  
Division of Land and Water Management  
Pouch 7-005  
Anchorage, Alaska 99510  
(w/maps)

FORT YUKON (C-1) QUADRANGLE  
ALASKA

R 17 E 1:50,000 SERIES

144°00' 66 45

780,000 FEET

4,650,000 FEET

T 22 N

R 16 E

FORT YUKON D-11

R 16 E 10

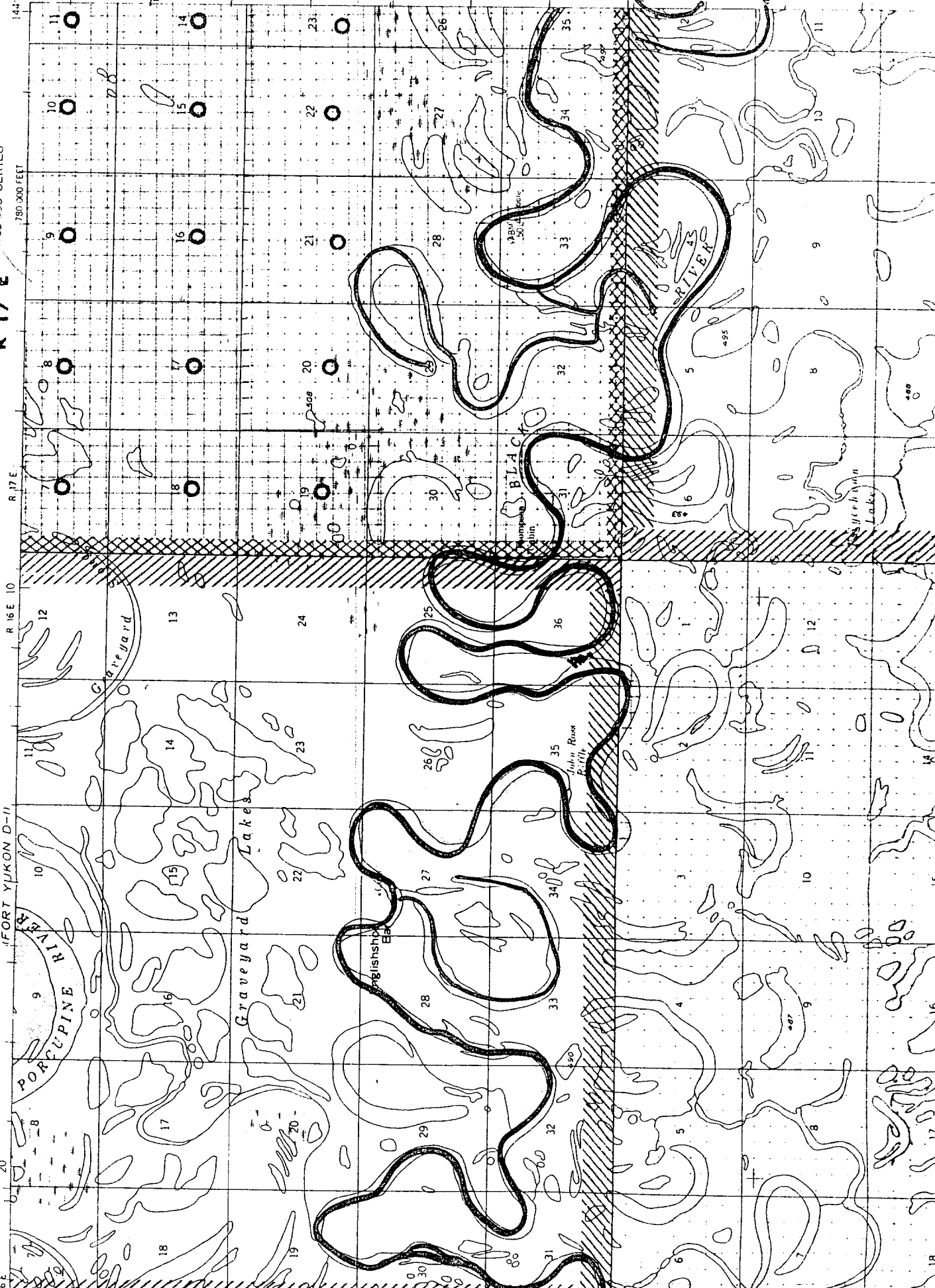
R 17 E

144°00' 66 45

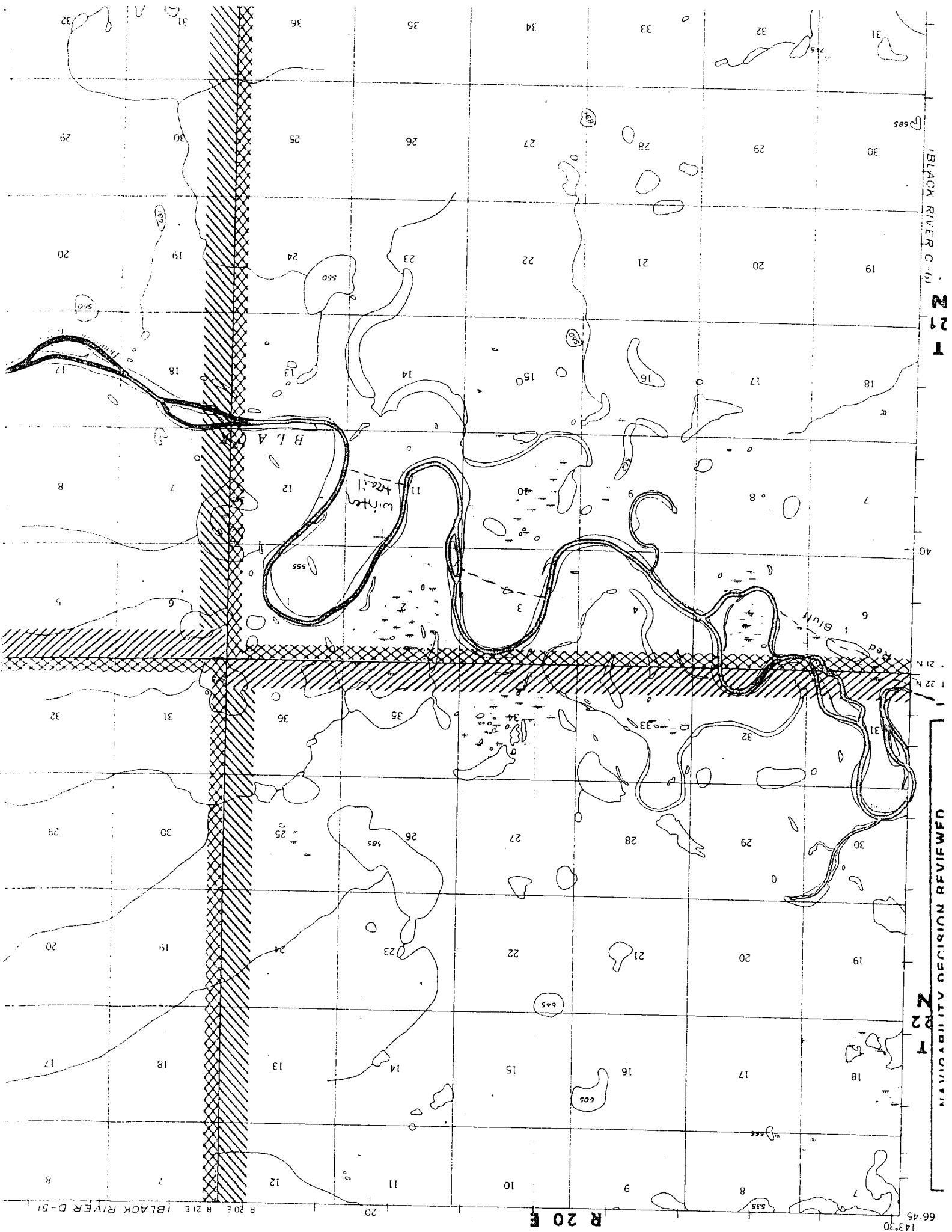
780,000 FEET

4,650,000 FEET

T 22 N



18145



BLACK RIVER C-61

R 21 E

R 20 E

NAVIGABILITY DECISION REVIEWED

R 21 E

R 20 E

143°30'

R 20 E

143°45' R 20 E R 21 E BLACK RIVER D-51

1°22' N

1°21' N

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BLACK RIVER D-51

BLACK RIVER C-61



BLACK RIVER (C-6) QUADRANGLE

ALASKA

1:63,000 SERIES

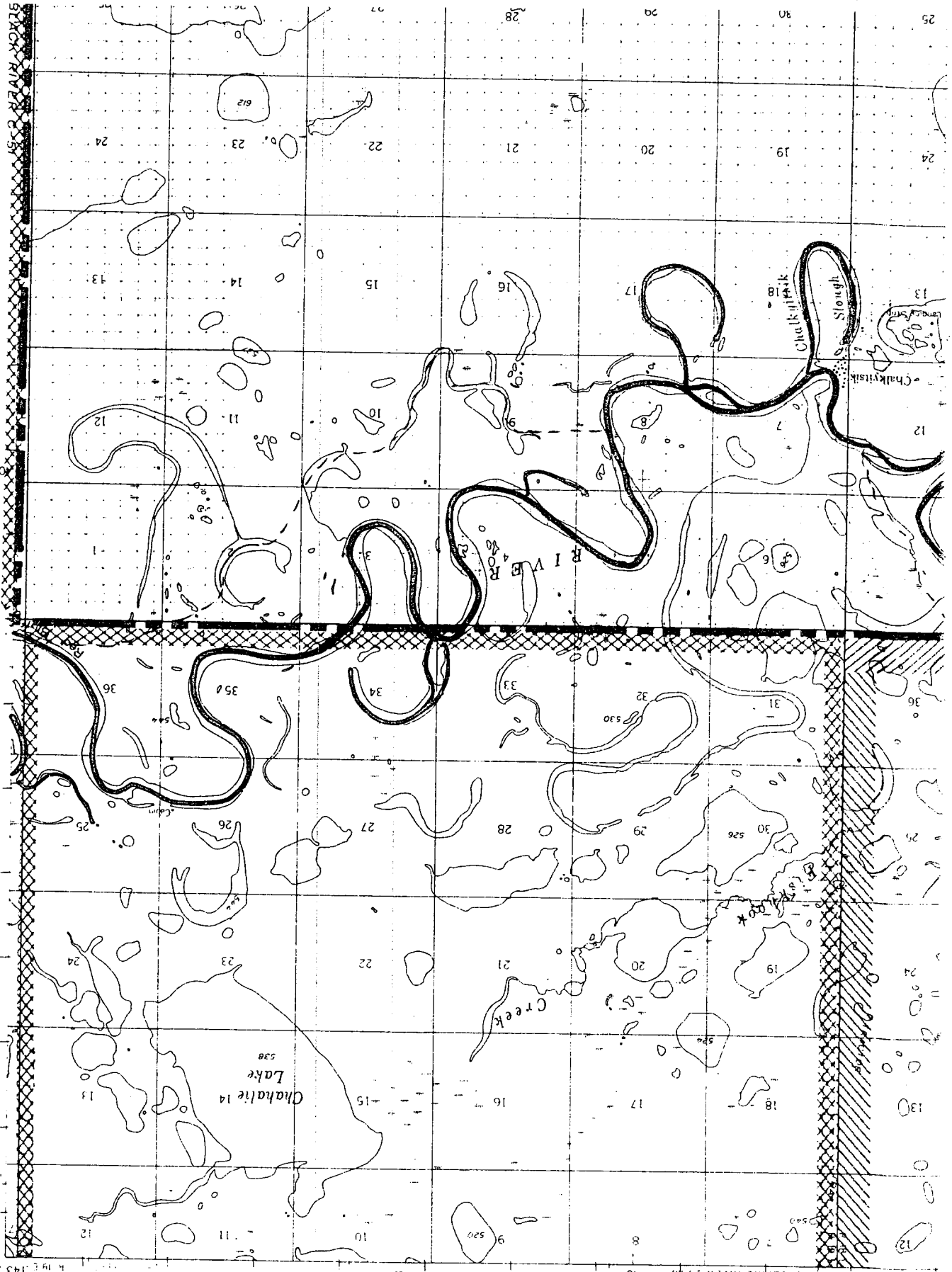
R 19 E

66 45 30 143 30

N 22 T 1

N 22 T 1

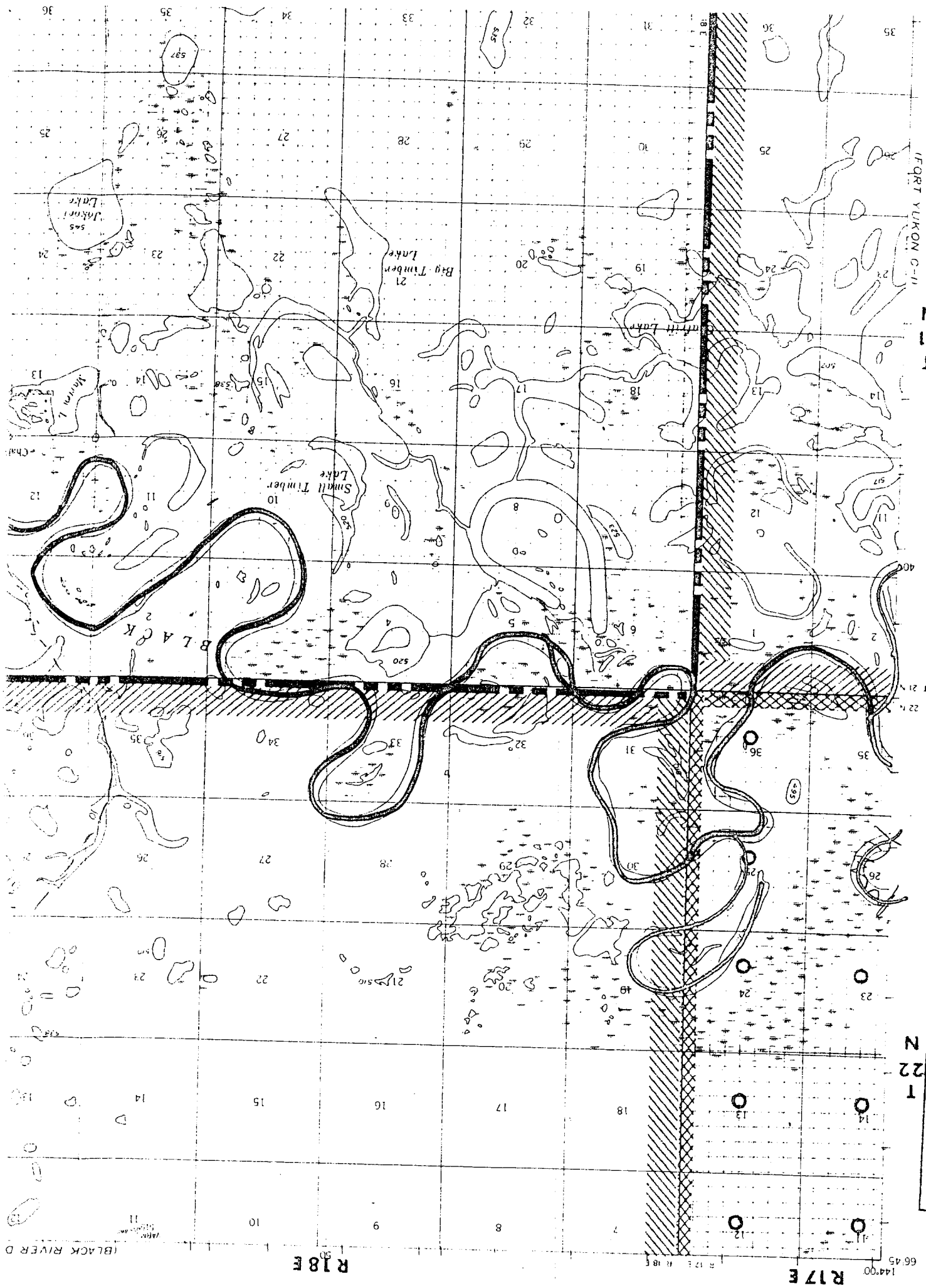
N 21 T 1



BLACK RIVER D-51

VER D-61

BLACK RIVER D-51



VILLAGE	DATE	INITIALS

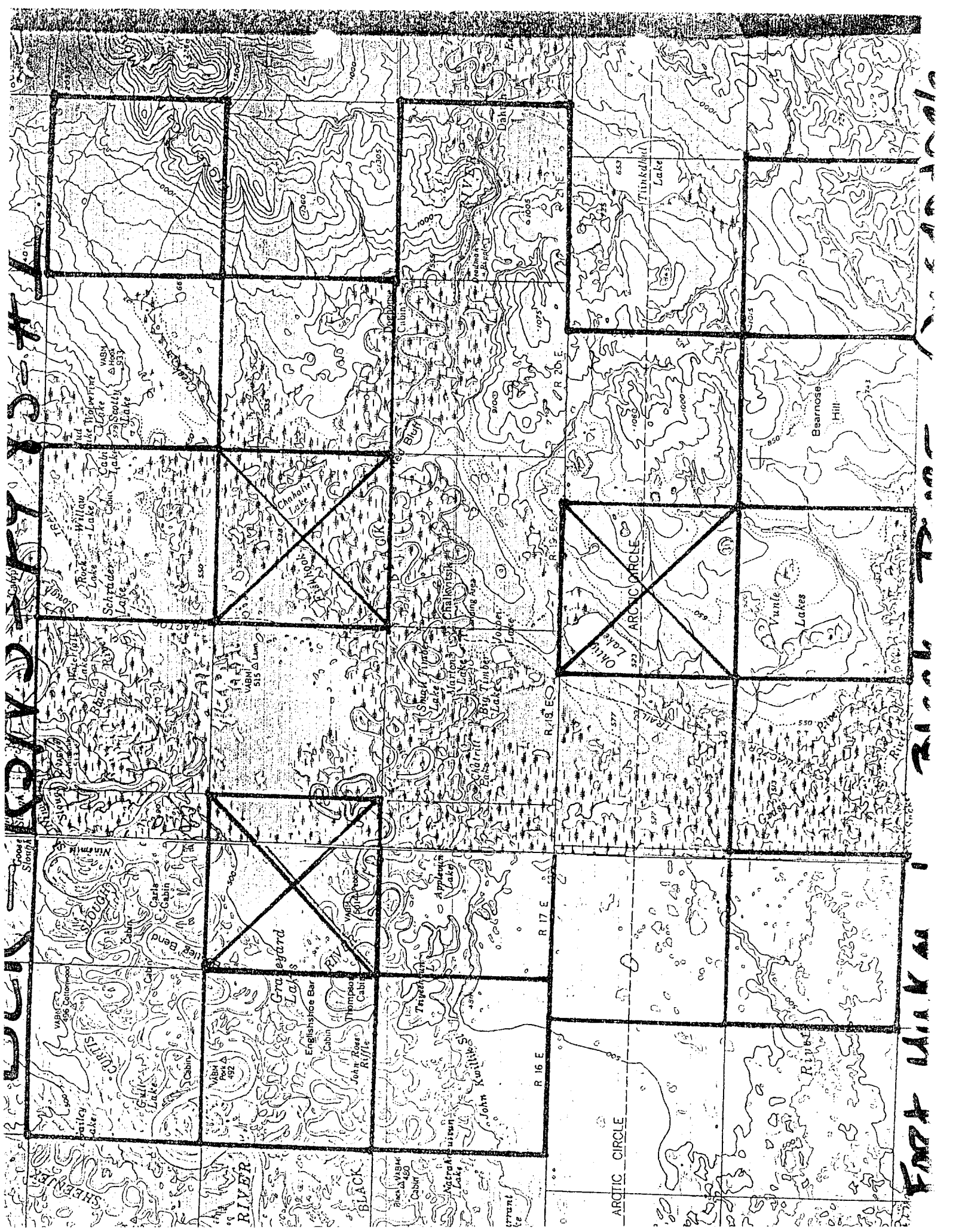
Submerged lands beneath waters determined navigable due to ( or success... )

2 2 1

2 2 1

NAVIGABILITY DECISION REVIEWED

144 00 R17E 50 R18E 66 45



CAMP

LAKES

TRAIL

ARCTIC CIRCLE

ARCTIC CIRCLE

ARCTIC CIRCLE

ARCTIC CIRCLE

R 16 E

R 17 E

R 18 E

R 19 E

T 23 N

T 24 N

T 25 N

YUKON RIVER

GRAYGARDEN LAKE  
CHALKNISK LAKE  
VUNTUT LAKES  
KASILOF RIVER  
ARCTIC CIRCLE

YUKON RIVER  
KASILOF RIVER  
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ARCTIC CIRCLE

YUKON RIVER  
KASILOF RIVER  
ARCTIC CIRCLE

201 F.3d 1154  
00 Cal. Daily Op. Serv. 699, 2000 Daily Journal D.A.R. 1087  
(Cite as: 201 F.3d 1154)

**State of ALASKA, Plaintiff-Appellee,**

**v.**

**UNITED STATES of America; Bruce Babbitt, Secretary of the Interior; Tom Allen, Alaska State Director, Bureau of Land Management; Robert Barbee, Field Director, Alaska Field Office, National Park Service, and David Allen, Alaska Regional Director, United States Fish and Wildlife Service, Defendants-Appellants.**

**No. 96-36041.**

United States Court of Appeals,  
Ninth Circuit.

Argued and Submitted Dec. 2, 1997

Filed Jan. 28, 2000

State of Alaska brought action against United States to quiet title to three riverbeds. The United States District Court for the District of Alaska, James K. Singleton, Chief District Judge, entered judgment on the pleadings quieting title in State based on navigability at statehood. United States appealed. The Court of Appeals, Kleinfeld, Circuit Judge, held that: (1) District Court had jurisdiction over State's claims with respect to Kandik and Nation riverbeds, inasmuch as United States claimed interest in them, and (2) District Court lacked jurisdiction over State's claims with respect to Black riverbed, inasmuch as United States did not claim interest in it.

Affirmed in part; reversed and remanded in part.

**[1] FEDERAL COURTS k776**

170Bk776

A dismissal on the pleadings is reviewed de novo.

**[2] NAVIGABLE WATERS k36(7)**

270k36(7)

United States "claimed an interest" in Kandik and Nation riverbeds within meaning of Quiet Title Act, and district court thus had jurisdiction over State of Alaska's action to quiet title to riverbeds, where Bureau of Land Management (BLM) had taken position before Alaska Native Claims Appeal Board that Kandik and Nation Rivers were not navigable at statehood and thus belonged to United States, United States refused in present action to file disclaimer because it wanted to retain power to assert future claim, and United States pleaded that it did not consider itself bound by its sometime position that rivers were navigable. 28 U.S.C.A. § 2409a(a). See publication Words and Phrases for other judicial constructions and definitions.

**[3] UNITED STATES k125(6)**

393k125(6)

The Quiet Title Act must be construed strictly because it waives sovereign immunity. 28 U.S.C.A. § 2409a.

**[4] QUIETING TITLE k18.1**

318k18.1

In enacting the Quiet Title Act, Congress had the purpose of furnishing a means by which state governments could remove clouds on their title created by federal assertions of claims. 28 U.S.C.A. § 2409a.

**[5] QUIETING TITLE k7(1)**

318k7(1)

Once the United States has formally asserted a claim to an interest in land, a state government is entitled to treat the land as "real property in which the United States claims an interest" subject to Quiet Title Act, regardless of whether the United States has ceased actively to assert its claim. 28 U.S.C.A. § 2409a(a).

**[6] FEDERAL COURTS k624**

170Bk624

Court of Appeals would not consider for first time on appeal issue whether district court should have permitted United States to amend its answer in quiet title action to respond to State of Alaska's averment that rivers were navigable at statehood, and that State thus had title to riverbeds, inasmuch as review was not necessary to prevent miscarriage of justice or to preserve integrity of judicial process; United States had taken positions on both sides of the proposition and had obdurately refused to answer averment of navigability. 28 U.S.C.A. § 2409a.

**[7] FEDERAL COURTS k624**

170Bk624

Where a party does not ask the district court for leave to amend a complaint, a request on appeal to remand with instructions to permit amendment comes too late.

**[8] NAVIGABLE WATERS k36(7)**

270k36(7)

United States did not "claim an interest" in Black riverbed within meaning of Quiet Title Act, and district court thus lacked jurisdiction over State of Alaska's action to quiet title to riverbed, even though United States had expressly reserved right to assert that Black River was not navigable at statehood and that United States thus had title to it, where United States had never expressly asserted claim to riverbed; reservation of rights was not to revert to position previously held but to adopt position never previously taken. 28 U.S.C.A. § 2409a(a).

See publication Words and Phrases for other judicial constructions and definitions.

**[9] UNITED STATES k125(22)**

393k125(22)

A colorable claim that land is Indian trust or restricted land defeats Quiet Title Act jurisdiction,

but a claim that is not even colorable does not. 28 U.S.C.A. § 2409a(a).

**[10] NAVIGABLE WATERS k36(7)**

270k36(7)

Judgment quieting title in navigable rivers in State of Alaska would not be amended to exclude Indian lands from its scope pursuant to Quiet Title Act's prohibition against suits to quiet title with respect to Indian lands, inasmuch as riverbeds of Alaska navigable rivers could not contain Indian lands; such lands were held in trust for Alaska by United States prior to statehood and passed to Alaska on statehood, Alaska Native Allotment Act did not reserve title to submerged lands for future allotment awards, and lands granted as Native allotments excluded lands under navigable waters. 28 U.S.C.A. § 2409a.

\*1156 Jeffrey C. Dobbins, Department of Justice, Washington, DC, for the defendants-appellants.

Joanne Grace, Assistant Attorney General, Anchorage, Alaska, for the plaintiff-appellee.

Appeal from the United States District Court for the District of Alaska James K. Singleton, Chief District Judge, Presiding

Before: REAVLEY, [FN1] BOOCHEVER and KLEINFELD, Circuit Judges.

FN1. The Honorable Thomas M. Reavley, Senior United States Circuit Judge for the 5th Circuit, visiting judge.

KLEINFELD, Circuit Judge:

This case involves a dispute between a state government and the federal government over title to the beds of three rivers. The issues arise under the Quiet Title Act.

**FACTS**

Judgment was on the pleadings, under Federal Rule of Civil Procedure 12(c), so we take the facts as pleaded.

Three remote Alaskan rivers are at issue, the Kandik, Nation and Black. They are about 200 miles east and a little north of Fairbanks, Alaska, near the border with the Yukon Territory. Alaska was admitted to the Union as a state on January 3, 1959. Navigability as of that date determines which government owns the riverbed. If the river was navigable at statehood, then the state owns the bed; if not, the federal government owns it. It is undisputed that when the Union was created, each of the thirteen original states retained title to the lands covered by navigable waters, and that under the "equal footing doctrine" each new state succeeds upon statehood to the federal interest in these lands. The Submerged Lands Act gave Alaska title to the beds of navigable rivers on January 3, 1959. [FN2]

FN2. 43 U.S.C. §§ 1301-1315; State of Alaska v. Ahtna, Inc., 891 F.2d 1401 (9th

Cir.1989).

The State of Alaska pleads that the three rivers were navigable at statehood. The United States does not deny the fact. That would be the end of the case, but for the intricacies of the Quiet Title Act. [FN3] Under that statute, as is explained in more detail below, the federal government takes the position that its sovereign immunity \*1157 shields it from the state government's claims until the federal government itself makes a claim. Because Alaska is very large, much of it is wilderness, and there are innumerable waters, the federal government has not had time yet to determine what claims it wishes to make. Therefore, the state government must wait until the federal government makes a claim, if it ever does, before settling whether it has title.

FN3. 28 U.S.C. § 2409a.

#### The Kandik and Nation Rivers

Alaska pleads that the United States has asserted claims to two of the three rivers. The context was a dispute with a native corporation after the Alaska Native Claims Settlement Act was passed. That act provided that Alaska Native regional groupings and villages were to establish corporations, which would receive about \$1 billion in cash and forty million acres in land. [FN4] Their land selections were limited to those lands not already owned by someone else, such as the State of Alaska.

FN4. 43 U.S.C. § 1601 et seq.

When Doyon, Ltd., a regional corporation in Interior Alaska, made its land selections, the Bureau of Land Management ("BLM") made a decision that the Kandik and Nation Rivers were nonnavigable at statehood. Doyon did not claim the rivers. What it claimed was that the rivers were navigable at statehood, so the state owned them. Doyon's interest was in claiming navigability, so that it could get more land outside the riverbeds, and not have the riverbeds charged against its acreage entitlement. But the Bureau of Land Management claimed that the rivers were nonnavigable at statehood, so that Doyon would be stuck with them and its dry land acreage entitlement reduced accordingly.

Doyon appealed the BLM decision. The administrative law judge took extensive evidence and decided in favor of Doyon. He found that the rivers were navigable at statehood, so the state owned them, they were unavailable for selection by Doyon, and they could not count against Doyon's entitlement.

The area has temperatures varying from 70 below Fahrenheit to 90 above. Much of the time all water is frozen, but when it rains, permafrost prevents water from soaking into the soil. The streams vary a great deal, sometimes braided and nearly dry, sometimes flooding, sometimes blocked by log-jams, sometimes open and four or five feet deep. Few if any people lived in the area in the 1950's, but people did live there by hunting, fishing, trapping and trading in the 1930's, 1940's, and 1960's. The Kandik was used by a man who had a supply contact with the International Boundary Commission in 1910-1912 to pole and line two tons of supplies upstream

to the Yukon border by scow. It took a month to get the supplies upstream, but only six hours to get down, because a cloudburst immediately before the return trip made the river high and swift. The ALJ concluded that it was likely that supplies were similarly brought up the Nation River to Hard Luck Creek.

Fur prices stimulated the heaviest trapping in the area in the 1920's, 1930's, and 1940's. During that period sternwheelers would deliver supplies at the mouths of the Nation and Kandik, and the trappers would haul them upstream by boat or canoe in the summer, or dogsled in the winter. There were two known trappers on the Kandik in the 1920's and 1930's, and both poled boats up the stream. A trapping family used a boat with an inboard motor to get supplies up the Nation. Several other trappers used boats and canoes to get supplies up the Nation and furs down ( to be taken to Eagle for sale to middlemen) in the 1930's.

The ALJ found that after statehood, the Kandik and Nation became popular recreational streams. This popularity was measured by Alaska standards, with at least two parties on the Kandik in 1978, when the evidence was taken, and three parties in one day on the Nation.

**\*1158** The ALJ made a finding of fact that both rivers, the Kandik and Nation, were "navigable all the way from the Yukon River to the Canadian border." He expressly determined that the test was navigability for purposes of title in the State of Alaska; navigability in each river's natural condition at the time Alaska obtained statehood. Because there were (and are) no roads in the area, people bringing supplies upstream or furs and game downstream could hardly put their canoes on car-tops and drive them from one good channel to another; they had to get them from the mouth to their cabins, and the cabins to the mouth, dealing with shallows by such means as poling and lining. Although a decline in fur prices had caused all activity on the rivers to cease as of the time of statehood, their use before and after showed that they remained navigable. That the rivers were frozen for seven months of the year did not defeat navigability, because the rivers were the only means of ground transport (as opposed to bush planes) between breakup and freezeup.

The BLM, having lost on its claim of nonnavigability before the ALJ, filed exceptions, maintaining its position of nonnavigability which would cause the riverbeds to be charged against Doyon's entitlement. The Alaska Native Claims Appeal Board adopted the ALJ's findings, conclusions and recommended decision. [FN5] The BLM took exception on the basis that use by a few trappers was not enough to establish historical navigability. The Appeal Board held that because there were no settlements on either river at any time, that a few trappers used the rivers showed the existence rather the nonexistence of navigability. During the twenty years before fur prices dropped, 21 trappers used the Kandik, and 7 used the Nation, by the canoes, motor boats and pole boats that were regularly used to transport freight in that region, which in the Alaska wilderness was enough to establish historical navigability.

FN5. 86 Interior Dec. 692 (1979).

The Black River



As explained above, Doyon won its case establishing that the Kandik and Nation Rivers were navigable at statehood, so the rivers belonged to the State of Alaska and could not be counted against Doyon's acreage. The Bureau of Land Management had fought the case, claiming that the Kandik and Nation were nonnavigable at statehood, so belonged to the United States (and after its land selection, Doyon). After Doyon won the Kandik and Nation Rivers case, the BLM had its historian prepare a study of the Black River. It is another obscure river in the exceedingly lightly populated eastern part of Interior Alaska.

The Black flows about 300 miles toward the northwest, from some mountains north of the Yukon, past an abandoned Indian village called Salmon Village, through the Yukon Flats near the presently occupied village of Chalkytsik, and into the Porcupine River about 25 miles upstream from where the Porcupine flows into the Yukon. Before the Alaska Purchase in 1867, the Hudson's Bay Company maintained an important post at Fort Yukon just below the confluence of the Porcupine and Yukon Rivers, and mapped the Black River, so probably was buying furs from trappers up the Black. The economy probably declined after the United States purchased Alaska, because the War Department compelled the Hudson's Bay Company to move its trading post up the Porcupine River to Rampart House, on the other side of the Yukon Territory border.

During the first half of the century, local Athabascans, the Tranjik Kutchin, traveled upriver in the fall in canoes for winter hunting in the headwaters, and came downriver in the spring for fishing. White trappers and prospectors explored the area beginning in the first decade of the twentieth century, and operated several trading posts from time to time along the river. Trading posts sold some supplies to \*1159 the local Athabascans in exchange for furs they trapped.

After a school was built at Chalkytsik (formerly the summer fish camp known as Fishhook Village), the local Indians began settling there year round. By 1945, Chalkytsik had about 80 people, and by 1970, the population had risen to about 95 people, with 26 houses, two stores, and two churches. Pilots started flying bush planes in around 1940, and by 1970 bush planes were the usual means for trappers to bring in supplies and bring out their furs. Trapping was the main industry, but a considerable portion of village income was earned by firefighting. In the summer, when trapping and hunting are no good, the villagers made regular boat trips down the Black River and the Porcupine to Fort Yukon to visit relatives and fly out for jobs. But the river continued to be used for these purposes as well.

The BLM State Director decided in 1980 that the Black River was navigable at statehood from the Porcupine up to Wood River, based on its historian's report. Part of the river consists of dead-end sloughs and oxbow lakes during the summer, but at the request of the Village of Chalkytsik, the BLM determined that they were navigable too.

The State of Alaska's complaint pleads, and the United States admits, that the United States "does not consider itself bound" by these past determinations that all three rivers were navigable at statehood. The state claims that its inability to ascertain with finality whether the United States concedes navigability at statehood for purposes of title in the state impedes its land and water resource management and its ability to provide public information. It therefore sought a

declaratory judgment against the United States and the native regional and village corporations owning land along the rivers, Doyon and Chalkytsik, to establish that the three rivers as described above were navigable at statehood, and that the state held title to their beds.

The federal government and the Native corporations moved to dismiss. Their theory was that because the United States was not at that time asserting a claim, sovereign immunity had not been waived under the Quiet Title Act, so the court had no jurisdiction to establish that the United States' claim, if it ever chose to assert one, was invalid. The Native corporations stood to obtain title to the riverbeds, apparently in addition to the title they had already obtained to other land on the assumption that they would not receive the riverbeds, if the rivers were held to be nonnavigable at statehood.

The district judge denied the motion to dismiss. [FN6] He reasoned that "the lack of a binding determination regarding the navigability of the affected rivers leads precisely to the kind of cloud on the State's title that quiet title statutes exist to remedy," and there was a ripe controversy because the United States refused to bind itself by disclaiming an interest, and "behind the rhetoric ... there was in fact a dispute between the parties over ownership of the riverbeds." The United States refused to admit or deny the State of Alaska's averment that the three rivers were navigable at statehood, on the theory that navigability was a pure question of law. The district court held that it was a question of fact or a mixed question, so that it had to be denied or else be deemed admitted. Less abstractly, the district judge characterized the United States as "playing dog in the manger." That refers to a dog that finds food for chickens and ducks in a manger, does not eat it, but keeps the ducks and chickens out so that they cannot eat the food to which they are entitled. "When the United States casts itself in the role of dog in the manger, [it has] made a sufficient 'claim' to the grain it will not consume" for its claim to be \*1160 cognizable under the Quiet Title Act, and "we should send it on its way." Judgment was entered quieting title to the riverbeds of the three rivers in the State of Alaska based on navigability at statehood. The United States has appealed, but the Native Corporations affected have not.

FN6. The United States filed an interlocutory appeal, before judgment was entered. It was dismissed because there was no final judgment. *Alaska v. United States*, 64 F.3d 1352 (9th Cir.1995).

#### ANALYSIS

[1] We review dismissal on the pleadings de novo. [FN7]

FN7. *McGann v. Ernst & Young*, 102 F.3d 390, 392 (9th Cir.1996).

##### I. "Claims an interest."

The Quiet Title Act allows suits against the United States to adjudicate disputed titles in real property "in which the United States claims an interest." [FN8] The United States argues that because it refused to take a position in its answer as to whether it claimed or did not claim an interest in the riverbeds, they were not land in which it "claims an interest," so the district court lacked jurisdiction.

FN8. 28 U.S.C. § 2409a(a).

[2][3] The United States' argument is that it currently makes no formal assertion of any claim to the rivers, that the final determinations in the disputes regarding Doyon's objection to counting the Kandik and Nation riverbeds against its acreage established that it had no claim as of that time, and it has not interfered with any assertion of a claim or usage by the state of the three rivers. The United States also argues that until it "claims an interest," the dispute is not ripe for purposes of Article III jurisdiction. We need not consider the Constitutional argument, because it is in this case nothing more than a restatement of the statutory argument, and the case can be resolved fully on the statutory questions. The Quiet Title Act must be construed strictly because it waives sovereign immunity, [FN9] but that is too general a point to resolve the case. There is no controlling authority closely in point, and neither side cites any, on the question of what conduct by the United States amounts to "claim[ing] an interest" for purposes of Quiet Title Act jurisdiction.

FN9. *Block v. North Dakota*, 461 U.S. 273, 287, 103 S.Ct. 1811, 75 L.Ed.2d 840 (1983).

The United States argues as a matter of policy that we should be chary of allowing the State of Alaska to burden the federal government by requiring it to study all the waters of its expanse on pain of losing title to them. Basically it says it has to be a "dog in the manger," because the State of Alaska is too big for it to know about in any detail. This is a serious point, though in the forty years since statehood, with its enormous fleets of federal aircraft, satellite photographs, archives of aerial photographs, and large staffs of employees patrolling Alaska, the federal government has not been entirely helpless in its ability to make decisions about its interests in the state.

There is also a serious policy concern in favor of allowing resolution of disputes based on the United States' inchoate claim to everything in Alaska but what it has disclaimed. Eventually all the witnesses will be dead, reducing the reliability of litigation. Someone who used one of these rivers in 1959 at age 20 is now 60. The population in the area was so sparse at all relevant times--probably no more than a couple of hundred people who might have used the three rivers during the relevant time, most too young to have relevant knowledge or too old to have survived the forty years since statehood--that a few deaths by old age can remove most or all the knowledgeable witnesses. Also, a state entitled as of 1959 to all the incidents of ownership in its rivers, yet still deprived of clear title forty years later, is effectively deprived of what it is entitled to under the equal footing doctrine.

For the Nation and Kandik Rivers, there can be no question that the United States did in fact actively assert a claim of ownership. The Bureau of Land Management took the position in the Doyon case, before the administrative law judge and \*1161 before the Alaska Native Claims Appeal Board, that the Kandik and Nation were not navigable at statehood. Its argument for why that should not satisfy the "claims an interest" requirement of the Quiet Title Act floats away when we try to get hold of it. The United States government, by its own litigators, in a formal, considered way, for the purpose of reducing the amount of dry land it had to give Native corporations, did claim an interest (which would pass to Doyon) in the riverbeds.

That the United States does not say the same thing now as then does not eliminate the cloud on the State of Alaska's title that its claim created. After all, the federal government has now taken three positions: (1) the rivers were not navigable at statehood, so we retained ownership, and now Doyon owns them so they reduce the amount of dry land Doyon can get from us; (2) the rivers were navigable at statehood, so we did not retain title and they do not count against Doyon's acreage (after the BLM lost at two levels in the administrative adjudication against Doyon); (3) we refuse to take a position on whether the rivers were navigable at statehood, so the State of Alaska cannot settle title one way or the other. These positions are not consistent, and have nothing in common except that (1) and (3) served whatever was the federal government's interest at the time. There is apparently nothing to stop the United States from taking again the position at any time in the future, that the rivers were not navigable at statehood. Its first position, against Doyon, establishes that at least one federal bureau's personnel believed that that is the correct position.

[4] By reading the statute itself and performing the traditional exercise of attributing a rational purpose to the legislature, we can attribute to Congress a purpose of furnishing a means by which state governments can remove clouds on their title created by federal assertions of claims. [FN10] The United States has claimed nonnavigability, implying federal ownership, before, and expressly reserves the freedom to assert it again. If the state cannot get Quiet Title Act jurisdiction, then the potential claim will lurk over the shoulder of state officials as they try to implement a coherent management plan for state waterways. To oppose any management initiative that differed from federal policies, the federal government could revive its claim, and thereby prevent state regulation of the affected river and destroy coherence in state policy to the extent that its program for some rivers was coordinated with its program for others. Congress expressly provided a scheme by which the state governments can quiet titles against federal claims. When the state governments were frustrated by the statute of limitations in the Quiet Title Act, Congress removed it to give states more power to quiet title against the federal government. [FN11] Congress must have meant to empower state governments to eliminate clouds on their claimed title to state lands, yet it would have accomplished very little indeed if the United States could obtain a dismissal of any state quiet title suit by adopting a litigation position of refusing to state whether it asserted a claim or not.

FN10. Longview Fibre Co., v. Rasmussen, 980 F.2d 1307, 1311 (9th Cir.1996).

FN11. P.L. 99-595, 100 Stat. 3351 (1986).

Both sides urge us to examine snippets of legislative history. Even were legislative history to be determinative, there is nothing in any of the snippets cited answering the question of just what the United States must do to "claim[ ] an interest" for purposes of Quiet Title Act jurisdiction. The United States quotes one snippet that says "claims an interest," as the statute does, as though the identical words in the legislative history somehow explain or strengthen the words in the statute. They do not.

The United States argues that because the Alaska Native Claims Appeal Board made the final

decision for the Department of the Interior, [FN12] once it decided the case \*1162 against the BLM, the BLM's claim was no longer the position of the Department. That argument does not go far enough, because until the Board ruled, the BLM's position was the position of the Department. There can be no question that from the time the BLM asserted its position until the time Doyon defeated it before the Board, the Department actively and positively asserted claims on behalf of the United States to the Kandik and Nation riverbeds. And a past assertion of a claim by the Bureau of Land Management has been held to be sufficient to amount to an assertion of a claim for statute of limitations purposes. [FN13]

FN12. 43 C.F.R. § 4.1(b)(5) (1980).

FN13. See, e.g., *Knapp v. United States*, 636 F.2d 279, 283 (10th Cir.1980).

[5] Once the government has formally asserted a claim to an interest in land, a state government is entitled to treat the land as "real property in which the United States claims an interest" [FN14] regardless of whether the United States has ceased actively to assert its claim. Because the United States has asserted a claim, and retains authority to assert it again, the past assertion operates as a present cloud on the state's title. If the United States does elect to drop its claim, it can unilaterally destroy jurisdiction over the Quiet Title Act suit simply by filing a disclaimer. [FN15] Once it files a section (e) disclaimer pursuant to the statute, then it becomes plain that it no longer "claims an interest" for purposes of section (a). The coherent scheme of the Quiet Title Act requires the filing of a section (e) disclaimer to eliminate the title dispute arising out of the government's claim.

FN14. 28 U.S.C. § 2409(a).

FN15. 28 U.S.C. § 2409a(e).

By contrast, in the case at bar, the United States once actively claimed in litigation that it owned the riverbeds, and in this litigation when put to the test by the district court refused to file a disclaimer, because it wanted to retain the power to assert a claim in the future. Since the statute provides that the United States can destroy jurisdiction by filing a disclaimer, it would be illogical to construe it to mean that the United States can also destroy jurisdiction by filing a refusal to make a disclaimer.

Our recent decision in *Leisnoi, Inc. v. United States* [FN16] facilitates decision. In *Leisnoi*, the federal government had never at any time asserted a claim. A Native corporation sued to quiet title because a private individual had filed a lawsuit in state court asserting that the Native corporation did not properly obtain its conveyance from the United States, and that the United States should decertify the Native corporation and revoke its conveyance. In contrast to the case at bar, the United States expressly and consistently denied that it had any claim, and filed a disclaimer of interest in the Quiet Title Act lawsuit. We held that the case was properly dismissed for lack of jurisdiction, and that the district court properly refused to confirm the disclaimer because it had no jurisdiction to do so, because the government had never disputed the Native corporation's title. Although the private claimant purported to dispute the title on behalf

of the United States, at the time the Quiet Title Act lawsuit was dismissed the state court had rendered judgment against his claim and expressly removed any claim the private claimant had placed on the Native corporation's title.

FN16. *Leisnoi, Inc. v. United States*, 170 F.3d 1188 (9th Cir.1999).

By contrast with *Leisnoi*, in the case at bar the United States rather than a private party has disputed the State of Alaska's title. Nor has it clarified and dissipated any ambiguity in its previous assertion of title to the Nation and Kandik Rivers. In *Leisnoi* the United States attempted to file a formal disclaimer of all interest under the Quiet Title Act. [FN17] As is often true in cases filed by private citizens nominally on behalf of the United States, the private citizen's claim did not \*1163 at all represent any position that the United States had ever taken, and there was and had been no dispute at all between the United States and the defendant in the "on behalf of" lawsuit.

FN17. 28 U.S.C. § 2409a(e).

By contrast, in the case at bar, the United States itself has formally claimed that the Kandik and Nation were nonnavigable at statehood so that it retained title and the State of Alaska did not obtain title. The United States formally admitted the State of Alaska's averment that the United States "does not consider itself bound for purposes of title by the BLM's past navigability determinations." [FN18] That is, the United States pleaded that it did not consider itself bound to maintain its sometime position that the rivers were navigable. In response to the State of Alaska's averments that the Kandik, Nation and Black were navigable at statehood, the United States pleaded that these allegations of navigability "consist of conclusions of law not requiring an answer." [FN19] This was not merely an early pleading before the United States settled on its position; it was the considered position of the United States maintained to preserve what it saw as a right to elect at any time in the future to assert nonnavigability. The Supreme Court has held that navigability "involve[s] questions of law inseparable from the particular facts to which they are applied," and navigability of a particular river "is, of course, a factual question." [FN20] Thus the district court was correct under Rule 8 [FN21] in treating the government's "failure to deny" the factual averments of navigability as admissions of the fact, and the express reservation of its right to change its position and assert nonnavigability as maintaining the dispute. The United States can no more refuse to answer the mixed question averment of navigability than a personal injury defendant could refuse to answer the mixed question averment that it had acted negligently. There remains a live dispute between the United States and the State of Alaska regarding whether the Nation and Kandik Rivers were navigable at statehood. That suffices for jurisdiction under subsection (a) of the statute. [FN22]

FN18. Amended complaint ¶ 30; Answer ¶ 30.

FN19. *Id.* ¶¶ 21, 22, 23.

FN20. *United States v. Appalachian Electric Power Co.*, 311 U.S. 377, 404-05, 61 S.Ct. 291, 85 L.Ed. 243 (1940); see also *New York State Dept. of Environmental*

Conservation, 954 F.2d 56, 60 (2d Cir.1992).

FN21. Fed.R.Civ.P. 8(d).

FN22. 28 U.S.C. § 2409a(a).

[6] The United States, in its brief before us, argues that "even if the question of navigability requires an answer, the district court should have permitted the United States to amend its answer to provide one." That would be a strong argument, had the United States asked the district court for leave to amend. But it did not. Even after it lost in district court on navigability, and filed a motion for reconsideration, the United States did not seek leave to amend. The United States stuck so firmly to its contention that it did not have to answer the navigability averment, that it never asked for permission to answer the averment even after the district court decided it had to answer. Where a party never asked for permission, its argument that the "district court should have permitted" is without force.

[7] "We have permitted only narrow and discretionary exceptions to the general rule against considering issues for the first time on appeal. They are (1) when review is necessary to prevent a miscarriage of justice or to preserve the integrity of the judicial process...." [FN23] In two other cases, *Black* and *Jackson*, we held that where a party did not seek leave to amend a pleading in the lower court, we would not remand with instructions to grant leave to amend. [FN24] Where a party does not ask the \*1164 district court for leave to amend, "the request [on appeal] to remand with instructions to permit amendment comes too late." [FN25] This case does not fall within the exception for miscarriages of justice and preserving the integrity of the judicial process. The United States has at various times taken positions on both sides of the proposition that the *Kandik* and *Nation* Rivers were navigable at statehood. There is no injustice in holding the United States to a determination of navigability based upon its obdurate refusal to answer the averment of navigability; the United States reached the same conclusion in the determination of the Alaska Native Claims Review Board, an adjudicative organ of the Department of the Interior.

FN23. *Jovanovich v. U.S.*, 813 F.2d 1035, 1037 (9th Cir.1987).

FN24. *Black v. Payne*, 591 F.2d 83, 89 (9th Cir.1979); *Jackson v. American Bar Association*, 538 F.2d 829, 833 (9th Cir.1976).

FN25. *Jackson*, 538 F.2d at 833.

#### The Black River

[8] The Black River is a harder case for the State of Alaska, because the federal government held off on asserting its position until after *Doyon's* administrative litigation was resolved as to the *Nation* and *Kandik*, and then threw in the towel without forcing *Doyon* through another administrative proceeding. It is plain from the record that the United States applied the administrative decision for the *Kandik* and *Nation* Rivers in deciding what its position would be on the Black River, and would probably have followed it had it come out the other way. That

cuts in favor of jurisdiction, because the state officials know that the federal government considers the Black to be like the Kandik and Nation, and if it asserts a claim on those rivers, it will most probably assert a claim on the Black. **But the United States has never, so far as the record shows, expressly asserted a claim on the Black, which cuts against jurisdiction.**

Arguably under our decision in *Shultz v. Department of Army*, [FN26] the United States has not done enough to make a cause of action regarding the Black River to accrue, for purposes of the statute of limitation. But it is possible that a claim is substantial enough for jurisdiction even if limitations against a private litigant has not yet begun to run. We distinguished between easement cases like *Shultz* and disputes over title that would give rise to possessory rights in *Michel v. United States*. [FN27] Also, because Congress in 1986 eliminated the Quiet Title Act statute of limitations where state governments bring the suits, the "claims an interest" language in the jurisdiction-granting subsection [FN28] has been cut loose from the jurisdiction-terminating provision barring private actions unless brought within twelve years of "the date upon which it accrued." [FN29]

FN26. *Shultz v. Department of Army*, 886 F.2d 1157 (9th Cir.1989) (even building a fence, gate, and guardhouse were not enough to put a person on notice that the army claimed the right to control a right of way).

FN27. *Michel v. United States*, 65 F.3d 130 (9th Cir.1995).

FN28. 28 U.S.C. § 2409a(a).

FN29. 28 U.S.C. § 2409(g).

We have held that the statute of limitations portion of the Quiet Title Act "does not require that the United States communicate its claim in clear and unambiguous terms," which argues in favor of jurisdiction, but that a cause of action does not accrue for limitations purposes "when the United States' claim is ambiguous or vague." [FN30]

FN30. *State of California v. Yuba Goldfields, Inc.*, 752 F.2d 393, 397(9th Cir.1985).

Our recent decision in *Leisnoi* [FN31] seems to us to be an insuperable barrier to jurisdiction regarding the Black River. *Leisnoi* holds that because subsection (a) of the Quiet Title Act requires that title be "disputed," [FN32] there must be a dispute between the United States and the plaintiff in the Quiet Title Act suit. [FN33] There has never \*1165 been a dispute between the United States and the State of Alaska over the Black River. The United States reserves the right to start a dispute, and has not disclaimed any interest. There may well be a dispute at some time, considering that the federal position on the Black simply followed the administrative determination on the Kandik and Nation, and it has taken conflicting positions on those rivers. But whatever dispute there may be, it has not yet occurred. The express federal reservation of rights is not to revert to a position previously held, as with the Kandik and Nation, but to adopt a position never previously taken.



FN31. *Leisnoi, Inc. v. United States*, 170 F.3d 1188 (9th Cir.1999).

FN32. 28 U.S.C. § 2409a(a).

FN33. *Leisnoi*, 170 F.3d at 1191-92.

This is not to say that the State of Alaska ought not to be able to sue to quiet title in the Black River. Arguably it should. Forty years after statehood, it ought to be able to manage its property knowing what is its property. And the litigation, if there is to be litigation, ought to take place while witnesses with personal knowledge are still alive to testify. The district court's concerns about the federal "dog in the manger" posture are well taken. But the statutory language as construed in *Leisnoi* nevertheless leaves the district court without jurisdiction to quiet title in the Black River. A title cannot be said to be "disputed" by the United States if it has never disputed it. The statute as it stands does not enable us to repair this practical problem. We are compelled to reverse the district court's judgment insofar as it spoke to the Black River, and remand the case so that the claim can be dismissed for lack of jurisdiction as to the Black River.

## II. Indian lands.

The United States argues that, to the extent we affirm, the district court should be required to reword its judgment to exclude Indian lands from its scope. The Native corporations have not appealed.

The United States argues that because the Quiet Title Act does not permit suit against it to quiet title with respect to "trust or restricted Indian lands," [FN34] the district court erred in not entering a judgment excluding such lands. [FN35] The United States did not plead or otherwise allege that there are any trust or restricted Indian lands affected by the judgment, but its answer did say that "preliminary research indicates the possible presence of individual landowners or Native allotment claimants on the specified rivers."

FN34. 28 U.S.C. § 2409a(a).

FN35. Appellant's Brief, 40-41.

[9][10] A "colorable" claim that land is Indian trust or restricted land defeats Quiet Title Act jurisdiction, but a claim that is not even "colorable" does not. [FN36] There can be no Indian lands in the bed of a navigable river, because such underwater lands as a matter of law were held in trust for the state by the United States prior to statehood, and passed to the State of Alaska on statehood. [FN37] The Alaska Native Allotment Act did not reserve title to submerged lands for future allotment awards. [FN38] Lands granted as Native allotments exclude lands under navigable waters. [FN39]

FN36. *State of Alaska v. Babbitt*, 182 F.3d 672 (9th Cir.1999).

FN37. *Montana v. United States*, 450 U.S. 544, 551-52, 101 S.Ct. 1245, 67 L.Ed.2d 493

(1981); *Shively v. Bowlby*, 152 U.S. 1, 49, 14 S.Ct. 548, 38 L.Ed. 331 (1894); *Pollard v. Hagan*, 44 U.S. (3 How.) 212, 11 L.Ed. 565 (1845).

FN38. 43 U.S.C. §§ 270-1, 270-3 (1970) (repealed in 1971).

FN39. *In re Frank Rulland*, 41 IBLA 207 (1979); *In re Hermann Kroener*, 124 IBLA 57, 62 (1992); *State of Alaska*, 119 IBLA 260, 271 (1991).

There being no colorable claim to any Indian lands in the beds of the Kandik and Nation Rivers, the district judge did not err in rejecting the United States' proposed language in the judgment.

#### **\*1166 CONCLUSION**

The judgment is **AFFIRMED** with respect to the Kandik and Nation Rivers and **REVERSED** with respect to the Black River. As to the Black River, the matter is remanded to the District Court with instructions to dismiss for lack of jurisdiction.