



RECEIVED
 2022 JUL 28 PM 1:47
 BLM ALASKA STATE OFFICE
 PUBLIC INFO CENTER
 AK-954

July 28, 2022

Mr. Steven Cohn,
State Director
Bureau of Land Management
222 West Seventh Avenue, Suite 13
Anchorage, Alaska 99513-7504

Re: Application for Recordable Disclaimer of Interest for the Unuk River in Southeast Alaska

Dear Mr. Cohn:

Pursuant to 43 CFR § 1864, the State of Alaska (State) files this application for a recordable disclaimer of interest (RDI) for the lands underlying the Unuk River.

I. Description of Waterway.

This application is submitted for the submerged lands between the ordinary high-water lines of the Unuk River beginning at the edge of the Sixty Foot Boundary Reserve (Proclamation 810) at the Canadian Border to the limit of tidal influence with Burroughs Bay included within Township 067 South, Range 092 East, Copper River Meridian (CRM); T. 067S., R. 093 E., CRM; T. 066 S., R. 093 E., CRM; T. 066 S., R. 094 E., CRM. This application includes the submerged lands and beds of all anabranches, braids and channels that carry water from the navigable river and thus are a part of the navigable river. A map highlighting the Unuk River along with a legal description of the townships and ranges underlying each waterbody is enclosed with this application.

II. Waiver Requests.

A. Survey Requirements.

As previously discussed with the Bureau of Land Management (BLM) Alaska State Director, the State requests a waiver under § 1864.1-2(d) of the requirement of 43 CFR § 1864.1-2 (c)(1) for a description based on a public land survey or certified metes and bounds survey. The map and legal description submitted with this RDI application sufficiently identify the land subject to this application, but if not, the recordable disclaimer can be worded appropriately to fit the circumstances without requiring a public land survey. The submerged lands for which this RDI is sought

are identified by name or, if unnamed, readily identified as the Unuk River. Navigable waterways, such as the Unuk River, are typically ambulatory, thus making a public survey of them problematic and unnecessary. The U.S. Department of the Interior has issued RDIs to the State for the beds of navigable water bodies in the past without requiring a public land survey of the system or any part of it, and judgments, decisions, and decrees of the U.S. District Court, U.S. Ninth Circuit Court of Appeals, and U.S. Supreme Court finding title in the State to the beds of navigable waters have not required a public land survey.¹

III. Basis of the State's Request for a Recordable Disclaimer of Interest.

A. Navigable Waterway.

The State's RDI application for the submerged lands of the Unuk River is supported by the Equal Footing Doctrine, the Submerged Lands Act of 1953, the Alaska Statehood Act, the Alaska Right of Way Act of 1898, and other title navigability law. The BLM may disclaim interest in the submerged lands on any or all those grounds.

Because these waterbodies were navigable on January 3, 1959, when Alaska became a state, the State of Alaska owns the riverbeds by virtue of the Equal Footing Doctrine and the Submerged Lands Act. *Alaska v. Ahtna, Inc.*, 891 F.2d 1401, 1404 (9th Cir. 1989), *cert. denied*, 495 U.S. 919 (1990). The constitutional Equal Footing Doctrine "guarantees to newly admitted States [like Alaska] the same rights enjoyed by the original thirteen States and other previously admitted States." *Id.* (citing *Utah v. United States*, 482 U.S. 193, 196 (1987)). "One of these rights is title ownership to the lands underlying navigable rivers." *Id.* The Submerged Lands Act of 1953 confirmed and extended "title to and ownership of the lands beneath navigable waters within the boundaries of the respective States." *Id.* (citing 43 U.S.C. § 1311(a)). "Congress explicitly provided for this rule to apply to Alaska when Alaska became a State in 1959." *Id.* (citing 48 U.S.C. Chapter 2 ("the Statehood Act") note 6(m) prec. sec. 21 (1982)). The rule includes state ownership of tidelands and the beds of marine waters up to three miles seaward of Alaska's coastline. *Id.*; 43 U.S.C. §§ 1301(a), 1311(a); *United States v. California*, 436 U.S. 32, 35 n.7, 37 (1978). In addition, in the Alaska Right of Way Act of May 14, 1898, 30 Stat. 409, 43 U.S.C. §§ 942-1 to 942-9, Congress recognized application of the equal footing doctrine to Alaska. It expressly reserved, as a matter of federal law: "the title of any State that may hereafter be erected out of the Territory of Alaska, or any part thereof, to tidelands and beds of any of its *navigable waters*, . . . *it being declared that all such rights shall continue to be held by the United States in trust for the people of any State or States which may hereafter be erected out of said Territory.*"

¹ See, e.g., *Alaska v. United States*, 546 U.S. 413, 415-17 (2006); *Alaska v. Ahtna, Inc.*, 891 F.2d 1401 (9th Cir. 1989); *Alaska v. United States*, 662 F. Supp. 455 (D. Alaska 1987).

B. Valid Pre-Statehood Withdrawals by the United States Government.

Applicant is aware of Presidential Proclamations 810 and 1196 reserving a 60-foot public reservation by the United State Government that would defeat state title to the subject submerged lands. *See Alaska v. United States*, Case No. 3:15-cv-0226-RRB (July 26, 2016) (August 12, 2016); *see also State of Alaska*, 102 IBLA 112, 116 (1988) (Katalla River); *State of Alaska*, 150 IBLA 112, 126 (1999) (Katalla River); *see generally Montana v. United States*, 450 U.S. 544, 554 (1981); *Utah Division of State Lands v. United States*, 482 U.S. 193, 202 (1987); *United States v. New Mexico*, 438 U.S. 696, 707 n. 14 (1978).

IV. Reason for the State's Request for a Recordable Disclaimer of Interest.

Title to these lands vested in the State of Alaska at statehood without any conveying document. The lack of any title document or judgment creates a cloud on the State's title. A RDI for this land will help lift the cloud on the State's title stemming from the lack of any permanent determination of ownership and correct any conflict and uncertainty in the public's understanding of title and use, without the time, expense and trouble of engaging in quiet-title litigation.

V. Determining Navigability of Water Bodies under Current Law.

The question of navigability for the purpose of state ownership is decided according to federal law. *Ahtna, Inc.*, 891 F.2d at 1404 (citing *Holt State Bank*, 270 U.S. 49, 55-56 (1926)). The Supreme Court expressed the basic test for navigability in *The Daniel Ball*, 77 U.S. (19 Wall) 557, 563 (1870), as follows:

Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Id. This test is applied in multiple situations, including when answering questions of title to river or streambeds under the equal footing doctrine. *See PPL Montana, LLC v. Montana*, 132 S. Ct. 1215, 1228 (2012).

Case law subsequent to *The Daniel Ball*, including *Ahtna, Inc.* and the U.S. Department of the Interior's decision in *Appeal of Doyon, Ltd.*, 86 Interior Dec. 692, 698 (AN CAB 1979), explained the meaning of that basic test. The physical character of the waterway, and in particular its capacity to be navigated, is an important factor when considering navigability for title. In the Supreme Court's most recent decision regarding navigability for title, *PPL Montana, LLC v. Montana*, it again emphasized that rivers and streams are not only navigable if they were *used* for commerce, but

also if they were *susceptible* of being used as highways of commerce at the time of statehood. 132 S. Ct. at 1233.

And, as previously stated by the Ninth Circuit in *Ahtna, Inc.*: “Although the river must be navigable at the time of statehood, . . . *this only means* that, at the time of statehood, *regardless of the actual use of the river*, the river must have been *susceptible* to use as a highway of commerce. * * * [I]t is not even necessary that commerce be in fact conducted . . . ‘The extent of existing commerce is not the test.’” 891 F.2d at 1404 (quoting *United States v. Utah*, 283 U.S. 64, 75, 82-83 (1931) (emphasis added)). Rather, it is enough to show:

the capacity of the rivers in their ordinary condition to meet the needs of commerce as they may arise in connection with the growth of the population, the multiplication of activities, and the development of natural resources. And this capacity may be shown by physical characteristics and experimentation as well as by the uses to which the streams have been put.

Utah, 283 U.S. at 83. Present-day recreational use is relevant to determining whether a river was susceptible to commercial use at the time of statehood if: “(1) the watercraft are meaningfully similar to those in customary use for trade and travel at the time of statehood; and (2) the river’s post-statehood condition is not materially different from its physical condition at statehood.” *PPL Montana, LLC*, 132 S. Ct. at 1233; see *Alaska v. United States, No. 3:17-cv-0090-HRH (Sept. 9, 2017)* (Knik).

Although lengthy portages, or the need to bypass a river segment, may defeat navigability for title for that particular river segment, *id.* at 1231–32, the presence of rapids, sandbars, and other obstructions, which may make navigation difficult, but not impossible, does not destroy title navigability, see *Utah*, 283 U.S. at 86. In *Utah*, a case addressing navigability for title, the Supreme Court stated: “the mere fact of the presence of . . . sandbars causing impediments to navigation does not make a river non-navigable.” 283 U.S. at 86. Although “the presence of sandbars must be taken in connection with other factors making for navigability,” the “essential point is whether the natural navigation of the river is such that it affords a channel for useful commerce.” *Id.*; see also *Oregon v. Riverfront Protection Association*, 672 F.2d 792, 795 (9th Cir. 1982) (relying on the use of the McKenzie River in Oregon for log drives to determine the river navigable for title and stating that the “use of the river need not be without difficulty, extensive, or long and continuous.”); *Doyon, Ltd.*, 86 Interior Dec. at 697 (“Although rapids, shallow waters, sweepers, and log jams make navigation difficult on both [the Kandik and Nation Rivers], the evidence shows that these impediments do not prevent navigation.”).

Boat use is not the only method for proving a river or stream’s ability to serve as a highway for useful commerce. In *Oregon v. Riverfront Protection Association*, the Ninth Circuit considered evidence of the transporting of logs (downstream traffic) on

the McKenzie River relevant to determining the river's potential use for commerce. 672 F.2d at 794–96. The court further found that the seasonal and sometimes difficult nature of these log drives did not destroy navigability. *Id.* at 795–96 (holding that “notwithstanding [the] difficulties, thousands of logs and millions of board feet of timber were driven down the river” and this use was not “occasional” as it occurred over a three-month period for over seventeen years).

Applying these standards to Alaska, the courts and U.S. Department of the Interior have found waterways navigable for title based on their susceptibility to use for navigation by river boats, inflatable rafts, or canoes having a capacity for “commercial” loads of about 1000 lbs. of supplies or recreationists. *Ahtna Inc.*, 891 F.2d 1401 (Gulkana River); *Appeal of Doyon*, 86 Interior Dec. 692 (Kandik and Nation Rivers); Feb. 25, 1980 Memorandum from Regional DOI Solicitor John (“Jack”) Allen to BLM Alaska State Director re “Kandik, Nation Decision on Navigability.” *See also Alaska v. United States*, Case No. 3:12-cv-00114-SLG (May 3, 2016) pp. 10-19 (Mosquito Fork); *Alaska v. United States*, 201 F.3d 1154 (9th Cir. 2000); August 18, 1983 Recommended Decision by DOI Administrative Law Judge Luoma in *Appeal of Alaska*, Interior Board of Land Appeals No. 82-1133 (recommending that the Matanuska River be determined navigable) & July 19, 1990 Memorandum of BLM Alaska State Director E. Spang (Matanuska River is navigable), BLM Files AA-11153-23, -31; *Appeal of State of Alaska & Collier*, 168 IBLA 334 (2006) (noting navigability standards).

VI. Evidence of Navigability.

A. Physical Characteristics.

Hydrologic Summary – Unuk River

River Basin: The Unuk River is a large transboundary river in Southeast Alaska. It is located approximately 60 miles northeast of Ketchikan and has a total watershed area of 956 square miles (Figure 1). The headwaters of the Unuk River are in the Coast Mountains of central British Columbia and the river flows to the southwest approximately 72 miles into Burroughs Bay in Southeast Alaska. The watershed is dominated by mountains, temperate rainforests, glaciers and snowfields.

Channel Description: The Unuk River is a powerful, glacier-fed river that is braided for most of its course. The exception is along two canyons formed within recent lava flows. In these two unnamed canyons, the river becomes constricted into a single turbulent channel. The first canyon is located between river mile 18 and 21 (in the US), and the second canyon is between river mile 31 and 35 (in Canada). Due to the glacial nature of the river, the sediment load and turbidity is high, especially during melt season. The average gradient of the entire river is 47 feet per mile, while downstream from the US-Canada border the approximate average gradient is 17 feet

per mile. The USGS took 49 discharge measurements year-round at gage site 15015595, where the average width is 252 feet and ranged from 110 to 509 feet, and the average depth (calculated from measured channel area divided by measured width) is 5.7 feet and ranged from 1.5 to 10.9.

Lakes: The Unuk Watershed contains 15 named lakes and 15 lakes over 0.1 square miles. The largest of these lakes is Blue Lake at 0.62 square miles.

Climate: The Unuk River watershed is in the maritime climate zone, which is characterized by plentiful rainfall and mild temperatures. There is one weather station in the Unuk Watershed that was operated by Environment Canada's Meteorological Service of Canada (Figure 1, MSC 1078L3D). This station is located near river mile 57 between Eskay Creek and Tom Mackay Creek (56 ° 39' 09" N and 130 ° 26' 46" W). It operated from November 1989 to February 2007 and is summarized in Table 1. The closest National Weather Service COOP is located at Beaver Falls, which is 53 miles southwest of the outlet of the Unuk River, with weather data from this site summarized in Table 2.

Figure 1: Map of Unuk River Watershed.

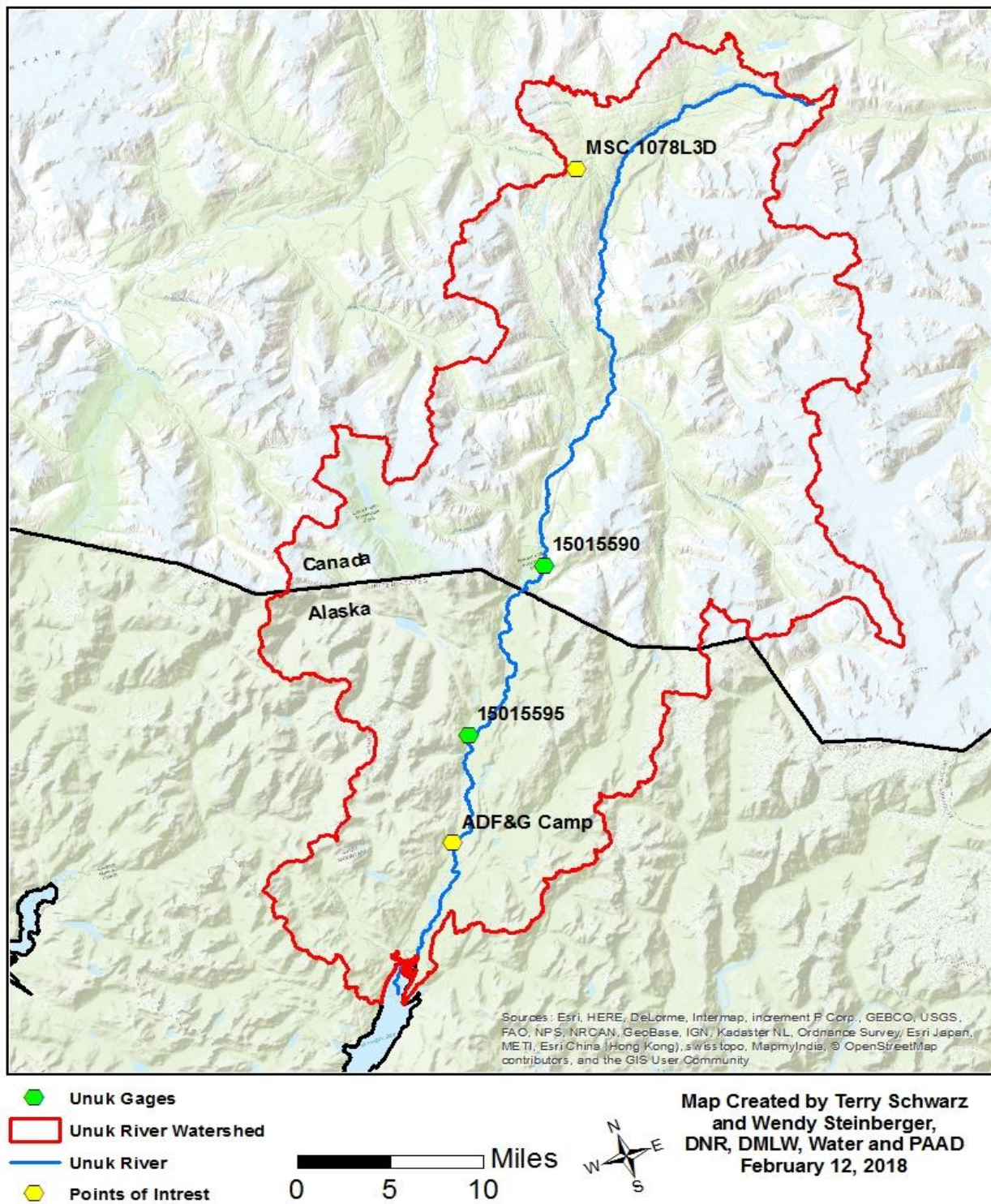


Table 1: Summary of Environment Canada's MSC station 1078L3D Unuk River Eskay Creek from November 1989 to February 2007.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Ave Max. Temp (F)	29.0	30.6	31.7	34.6	36.8	38.5	39.8	39.3	36.7	33.8	30.7	29.8
Ave Min. Temp (F)	25.9	26.9	27.7	30.0	31.9	33.6	35.3	35.3	33.5	30.9	28.1	26.8
Ave Temp (F)	27.4	28.9	29.7	32.3	34.3	35.7	37.5	37.1	35.0	32.4	29.4	28.3
Ave Total Rain (in)	0.3	0.2	0.1	0.7	2.9	2.5	3.2	5.6	8.5	5.4	0.7	0.0
Ave Total Snow (in)	9.3	7.6	6.4	2.7	0.8	0.0	0.0	0.0	0.3	3.6	7.0	9.6
Ave Total Precip (in)	9.5	7.8	6.2	3.5	3.6	2.5	3.2	5.6	8.8	9.1	7.6	9.7

Table 2: Summary of National Weather Service COOP station 500657 from May 7, 1948 to June 3, 2016.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	An n
Ave Max. Temp (F)	36.6	40.2	43.3	49.6	56.5	61.9	65	65.1	59.5	50.7	42.5	38.4	50.8
Ave Min. Temp (F)	27.8	30.4	31.7	35.2	40.9	47.1	51.4	51.9	47.8	40.8	33.9	30.2	39.1
Ave Total Precip (in.)	15.41	12.11	12.54	9.72	7.5	5.95	5.62	10.13	15.74	23.33	17.93	17.02	153

Ave Total Snow (in.)	17.4	14.6	6.1	1.3	0.1	0	0	0	0	0.2	5	12.8	57.5
Average Snow Depth (in.)	6	7	4	1	0	0	0	0	0	0	1	3	2

Available Stream Flow Data: The United States Geologic Survey (USGS) and the Water Survey of Canada (WSC) have both operated stream gages on the Unuk River (Summarized in Table 3). The USGS gage is located at approximately river mile 18 and was reactivated in November 2017 after being operational from April 2003 to September 2007. The WSC gage is located at approximately river mile 31.5, which is 2 miles upstream from the US-Canada border and was active from 1957 to 1998. Table 4 provides available monthly and annual flow values from daily statistics data of the Canadian gage data, and Table 5 shows monthly and annual flow values from daily statistics data of the USGS gage (annual flow data available only from November 2017 to October 2021 because the gage did not operate between December and February from 2003 to 2007). Mean daily hydrographs for the WSC and USGS gages are found in Figures 2 and 3, respectively. Flow duration curves for the open-water season (May through September) are shown in Figures 4 and 5. The WSC gage is a conservative proxy for all flows in the United States. Below the WCS gage and before the US-Canada gage, there are only two creeks that contribute to the Unuk River Boulder Creek from the east and the outlet of Border Lake to the west. Mean annual discharge at the Canadian gage is 3686 cubic feet per second (cfs) and the 50% exceedance flow during the open-water season (May to September) is 6922 cfs. Once the river reaches the USGS gage ~13 miles downriver of the WCS gage, the mean annual discharge from November 2017 to October 2021 is 5244 cfs and the open-water season 50% exceedance flow is 9580 cfs.

Table 3: Summary of stream gages on the Unuk River.

Gage Station ID	Latitude	Longitude	Elevation	Drainage Area (mi²)	Period of Operation
Unuk River near Stewart (WSC 08DD001, USGS 15015590)	56° 21' 05"	130° 41' 30"		571	1957 to 1998
Unuk River Near Blue River Near Wrangell AK	56°14'26"	130°52'49"	150	745	4/30/2003 to Present

(USGS 15015595)					
--------------------	--	--	--	--	--

Table 4: Monthly and annual stream flow values calculated from daily statistics data at WSC gage 08DD001 (USGS number 15015590), Unuk River Stewart from 1957 to 1998.

	Max Flow (cfs)	Mean Flow (cfs)	Min Flow (cfs)
JAN	2796	765	236
FEB	3911	691	242
MAR	1575	612	259
APR	3007	1197	432
MAY	9734	3922	1591
JUN	15244	7524	4206
JUL	14113	8698	5273
AUG	14334	7866	4115
SEP	16764	5690	2183
OCT	16446	4140	1412
NOV	6646	1917	690
DEC	3313	1065	387
ANN	9003	3686	1759

Table 5: Monthly and annual stream flow values calculated from daily statistics data at USGS gage 15015595, Unuk River near Blue River, near Wrangell, from April 2003 to October 2021. Annual flow data available only from November 2017 to October 2021 and gage was not operational from October 2007 to October 2017.

	Max Flow (cfs)	Mean Flow (cfs)	Min Flow (cfs)
JAN	1967	1395	930
FEB	993	720	519
MAR	2383	1055	495
APR	4294	2283	1028
MAY	9216	6454	3693
JUN	14313	9823	6529
JUL	16294	11371	8505
AUG	14998	10380	7605
SEP	13509	7940	4053

OCT	9805	5293	2466
NOV	8675	3914	1730
DEC	3885	2100	1167
ANN	8381	5244	3240

Figure 2: Daily hydrograph data for WSC gage 08DD001, USGS gage number 15015590, from 1957 to 1998.

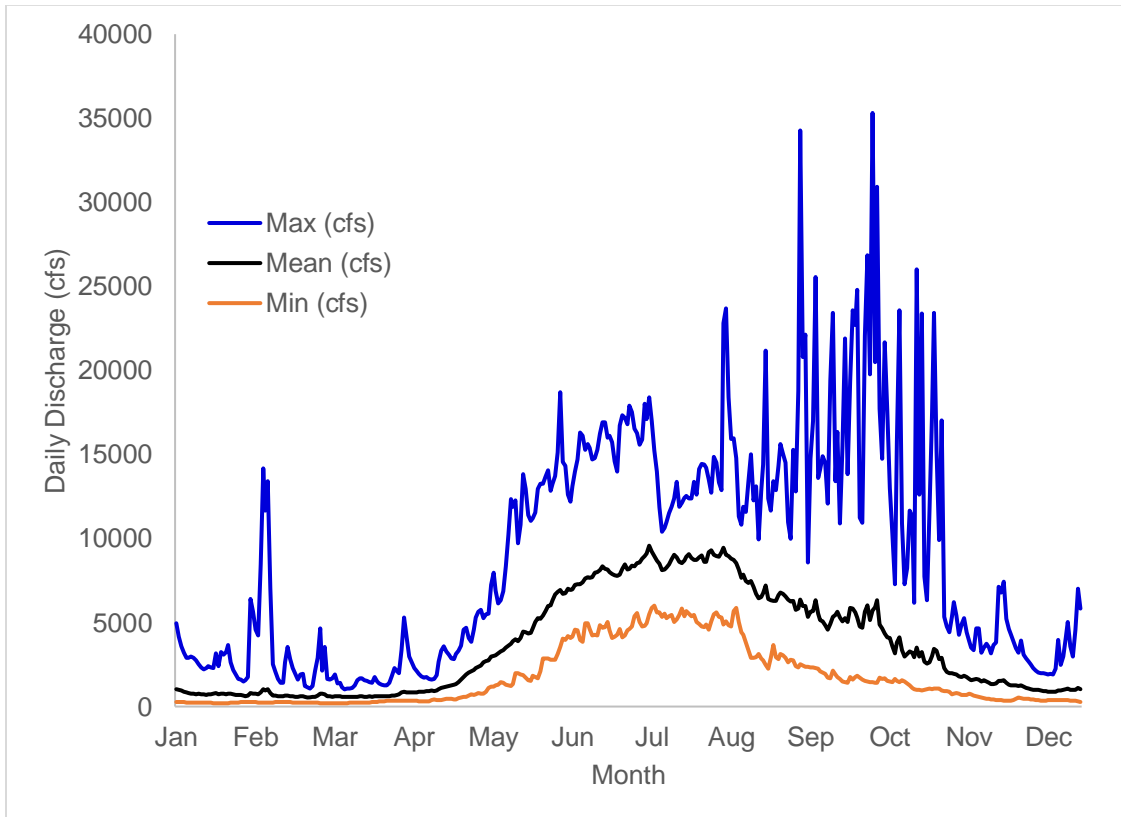


Figure 3: Daily hydrograph data for USGS gage 15015595 from April 2003 to October 2021. Annual flow data available only from November 2017 to October 2021 and gage was not operational from October 2007 to October 2017.

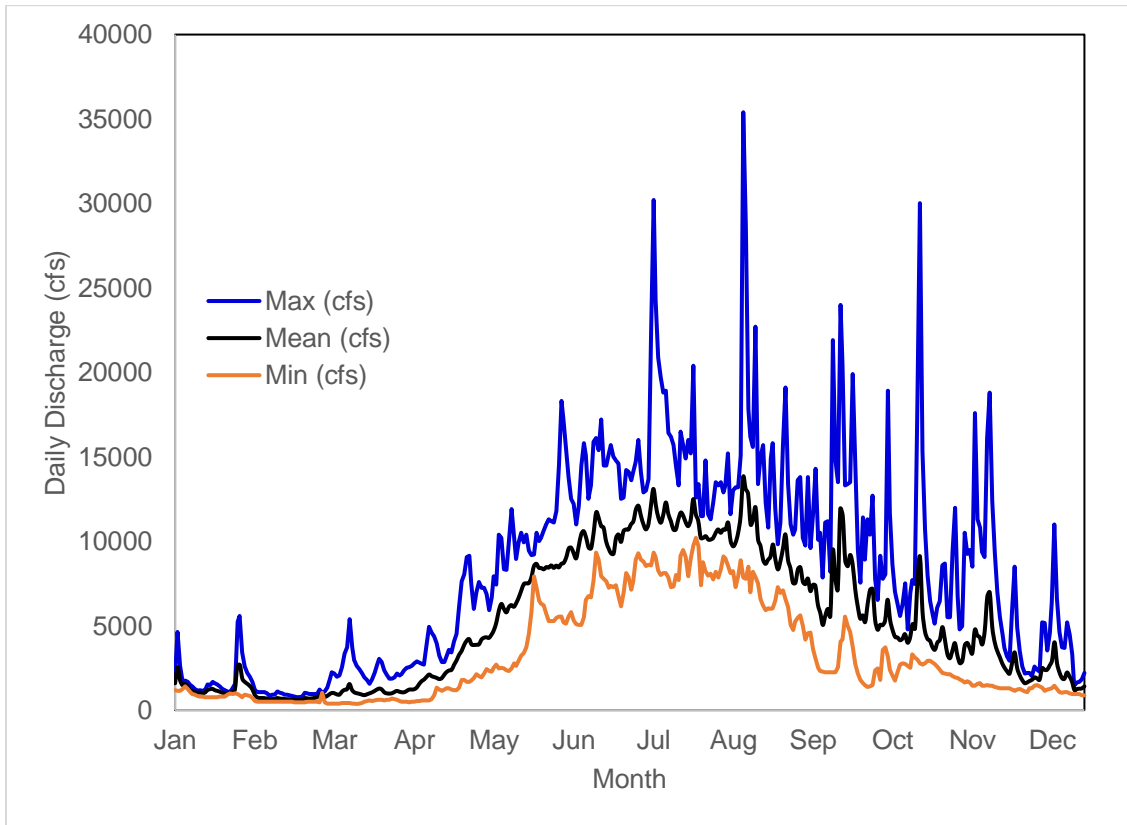


Figure 4: Open-water (May to September) flow duration curve for WSC gage 08DD001 (USGS number 15015590), Unuk River Stewart from 1957 to 1998. Please note that mean daily discharge on y-axis is in logarithmic scale.

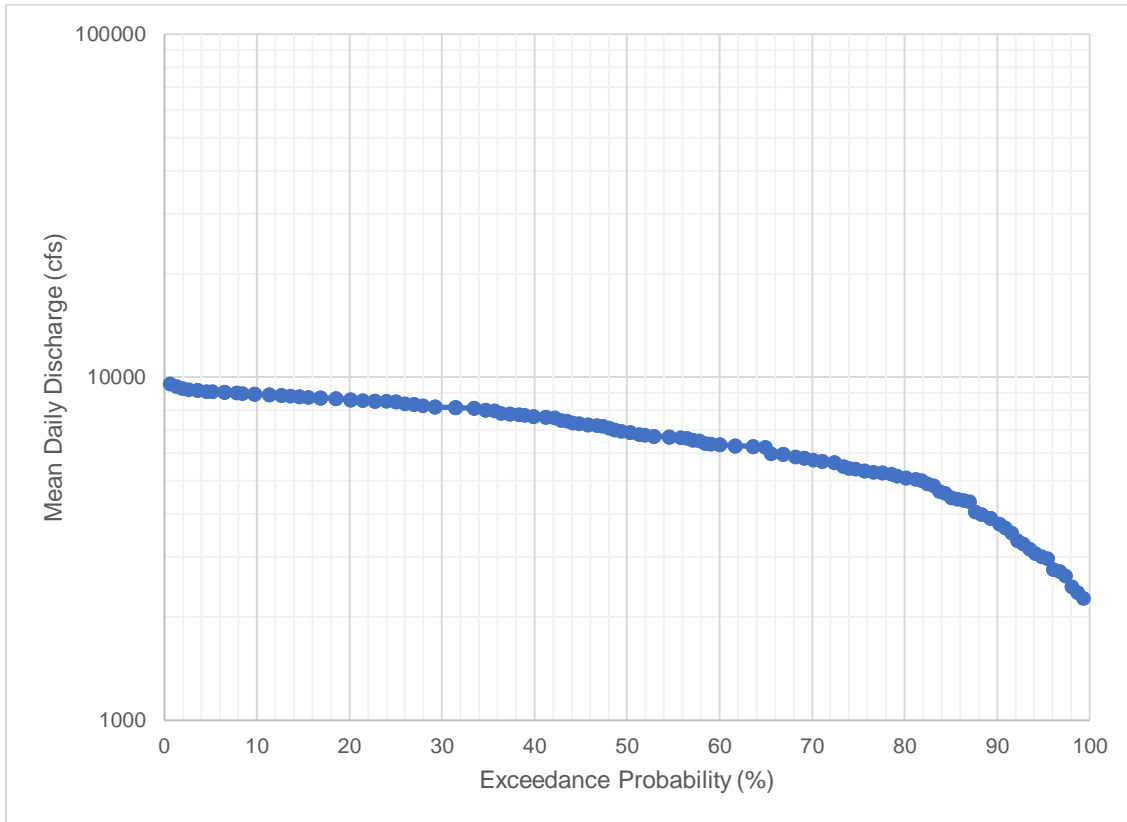
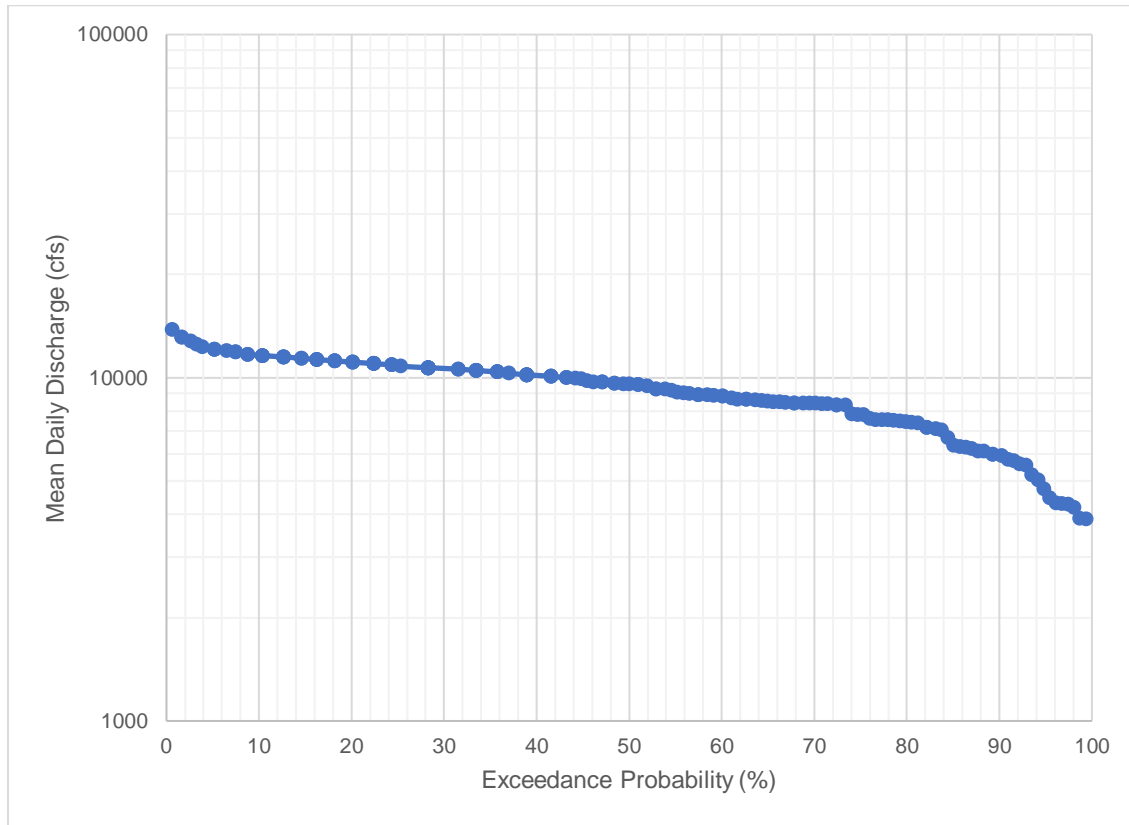


Figure 5: Open-water (May to September) flow duration curve for USGS gage 15015595 from 2003 to 2007 and 2018 to 2020. Please note that mean daily discharge on y-axis is in logarithmic scale.



B. Comparison of Physical Characteristics.

BLM issued amended navigability determinations on two rivers that bear on this RDI application: the Knik River and the Delta River. See *Supplement to Navigability Report for the Knik River* (June 6, 2017); *Reassessment of Navigability Reports for the Delta River* (February 14, 2018). We believe that the affirmative findings of navigability on those rivers underscore the merits of this RDI application for the submerged lands under the Unuk River that is substantially more boatable by even larger vessels than required by law.

For the material segment of the Knik River that was in dispute between BLM and SOA, BLM relied upon the following data in determining the river navigable for title purposes:

- Measured river flows of 3570 CFS, 3167 CFS and 2440 CFS;

- River widths ranging from 225-300 feet
- Approximate depths of three feet; and
- Approximate river gradient of 21.5 feet per mile.

For two of the material segments of the Delta River that were in dispute between BLM and SOA, BLM made affirmative navigability findings on segments of the river where the following were present:

Northern Outlet of Lower Tangle Lake Upstream through Round Tangle Lake and Upper Tangle Lake

- River widths ranging from 15-130 feet;
- Depths ranging from less than one foot to two-and-one-half feet;
- Obstacles such as beaver dams;
- Varied substrate from weedy/marshy to cobbled/sandy.

Black Rapids

- River widths ranging from 135-300 feet;
- Depths ranging from 2-5 feet;
- Class 2-3 water and even a stretch of Class 4 water; and
- Woody debris collected in areas.

With the foregoing two rivers in mind, it is abundantly clear that the Unuk River is completely navigable for title purposes from the Canadian Border to Burroughs Bay. Affirmative navigability determinations that the Knik and Delta Rivers are susceptible to trade, travel and commerce at the date of statehood demand a fortiori a similar finding for the Unuk River sought in this RDI application. Among other things, the following comparisons with the physical characteristics of the Knik and Delta Rivers underscore Unuk River navigability:

- The monthly and annual stream flow statistics recorded for the gage on the Unuk River two miles upstream of the Canadian Border and for the gage near Blue River within the State of Alaska demonstrate ample water flow during the open water season as compared with data on the Knik and Delta Rivers. The mean flows recorded on both gages on the Unuk River reflect far greater flows during the open season than comparable statistics for the Knik and Delta Rivers.
- The average gradient for all three rivers is similar. For instance, the average river gradient of the Knik River is 21.5 feet per mile while the Unuk River (within the State of Alaska) is 17 feet per mile.
- The average width for the Unuk River at the gage on the Canadian side of the border is 174.3 feet; the average width for the Unuk River at the gage on the Alaskan side of the border is 252.0 feet. This compares favorably with the average recorded width of the Knik River (up to 300 feet) and the average width of the Delta River (up to 300 feet).

- The average depth of the Unuk River during the open-water season (May to September) at the gage site in Canada (two miles upstream from the border) is 7.5 feet; the average depth of the Unuk River at the gage site in Alaska during the open-water season is 5.7 feet. These depths compare favorably with the Knik River (average depth of three feet) and the Delta River in the vicinity of Round Lake (average depth of 1.5 – 2 feet) and in the vicinity of Black Rapids (average depth between 2-5 feet).
- The length of the Unuk River within the State of Alaska is approximately 29.5 miles. The hydrological data on the Unuk River presented in the referenced tables was collected at one gage near River Mile 18 and at a second gage across the Canadian Border at River Mile 31.5. Based upon the hydrological data collected in the vicinity of the Canadian Border, it is obvious that the Unuk River is navigable. The Unuk River becomes even more navigable at the gage site that is approximately halfway downstream to Burroughs Bay. Since additional waters feed into the Unuk River below the Blue River gage site (Lake Creek, etc.), the navigability of the river increases yet even more all the way downstream to its mouth. Comparisons of this drainage area to similar drainages found in affected river sections in drainages areas of the Knik and Delta Rivers further underscore the navigability of the Unuk River. With both of those rivers, BLM found upstream sections navigable where conditions of boatability were far less favorable than the conditions presented by the Unuk River drainage.

These physical characteristics plainly show that the Unuk River is navigable for title purposes and far more navigable, or susceptible to navigation than even the Knik and Delta Rivers. Considering stream flow during the open-water season, along with average depths, average widths, and average gradients, the Unuk River is presently, and was at the time of statehood, susceptible for use as a highway for trade, travel and commerce.

VI. Present Use and Historic Use.

The Unuk River was used by and was home to native populations for hunting, fishing and other purposes since ancient times. See: Pritzker, B. M., *A Native American Encyclopedia: History, Culture, and Peoples*. Oxford: Oxford University Press, 2000: 286-7; Suttles, Wayne, ed. *Handbook of North American Indians*, Vol. 7: *Northwest Coast*. Washington, D.C.: *Smithsonian Institution*, 1990: 203-28. Coastal Tlingit sailed and paddled log canoes upriver to trade with interior tribes. Evidence suggests early Russian and European explorers traded furs with local inhabitants, but it was the discovery of gold that spurred increased trade, travel, and commerce on the Unuk River.

One of the first references to the right of free navigation of the Unuk River is found in the St. Petersburg Treaty between Great Britain and Russia in 1825. Article VI of that treaty states that: “the subjects of His Britannic Majesty ... shall forever enjoy the right of navigating freely ... all the rivers and streams which, in their course

towards the Pacific Ocean, may cross the line of demarcation.” The demarcation line referred to is the inland boundary of Southeastern Alaska determined by the treaty. The Unuk River crosses this line of demarcation and was cited as one of the rivers where navigation was allowed.

In the years following that treaty, there are numerous accounts of placer miners using the Unuk River to access gold deposits throughout Alaskan territory and within Canada. See Skidmore & Ruhamah, *Appleton’s Guidebook to Alaska and the Northwest Coast* 60 (1898) (“[T]here is placer gold in the bars of the Unuk River ... which heads 100 miles inland. It is navigable for 70 miles by canoe[.]”); Brown, J., *An Abridged History of Alaska* 21 (1909) (“The Unuk River, on which gold was discovered in 1870, empties into the head of Behm Canal. It is of considerable size, short and very rapid, and for the most part lying in Canadian Territory. A wagon road has been built on its banks for the purpose of developing mines. In the times of gold excitement[,] prospectors found their way in along this stream to the headwaters of the Iskut River over a low divide[.]”). In the *Proceedings of the Alaskan Boundary Tribunal [Convened pursuant to the 1903 Treaty between the United States and Great Britain]*, Volume 1, Part II, Page 91 (1903) [hereinafter *Boundary Tribunal Materials*], it was observed that in 1880 “when disturbances broke out along the Unuk River and the chief of the native tribe refused to allow white miners to ascend that river to work the newly discovered placers, the presence of a naval vessel was invoked to preserve order and protect the miners.” (emphasis added).

During this time period in the early 1880s, placer miners were particularly active on the Unuk River in proximity to Sulphurets Creek (approximately twenty miles upstream from the Canadian Border). See Koppel, P., “KSM Mine Treads Path Traveled by Prospectors,” *Capital City Weekly* (May 28, 2014) [hereinafter *Capital City One*]; Koppel, P., “Unuk River Mining is No New Dig,” *Capital City Weekly* (June 4, 2014) [hereinafter *Capital City Two*]; see generally *Boundary Tribunal Materials*, Vol. III, Page 360; Vol. IV, Pages 88, 287; Vol. VI, Page 269; and Vol. VII, Page 920. It is reported that some fifty placer miners extracted 3000 ounces of gold that was transported down the river in the first five years following the discovery of gold. Prospecting continued throughout the late nineteenth century, and larger-scale operations began in the early twentieth century.

As larger operators (Unuk River Mining and Dredging Company--headquartered in Dansville, Illinois-- the Hammond Dredging Company, Premier Syndicate (British Columbia), Unuk River Placer Gold Syndicate, Seabridge Gold, and others) began operations in the Unuk River area, it was confirmed that most of the significant deposits of gold -- and later copper and other metals -- were located on the Canadian side of the border. See *Capital City One* at page 2. This necessitated the use of the Unuk River on the Alaskan side of the border to transport larger and larger boats and barges to haul machinery and equipment to support expanded mining operations. See *Capital City Two* at page 2. Due to difficulties that were encountered with barge traffic primarily on the Canadian side of the border in proximity to the third canyon

of the Unuk River, large sections of primitive road were constructed along the riverbank to facilitate transportation of heavy mining equipment upstream; however, it is significant to note that the river itself was used to transport the men and materials that made the roadbuilding possible.

Even though traces of gold were found around the head of the Unuk River in Canada during the Cassiar gold rush in the 1870s, there was little activity until the turn of the century. In the wake of the Klondike gold rush, lode deposits were discovered on tributaries of the Unuk River, and several operations began work on the Canadian side. However, access to them remained difficult and the Canadian Geological Survey Department reported in 1905 that the river was too swift and shallow for anything more than canoes and small boats. Still, mining activity continued, and in 1919, J.B. Mertie of the USGS found that the Unuk River was a means of entry into the Salmon-Unuk region. He also noted that the trail built up the Unuk earlier in the century was mainly washed out, meaning that entrance up the river was mostly by water.

The Boundary Commission conducted surveys up the Unuk River and its tributaries in 1905, 1908, and 1909. The surveyors initially expected to use the newly constructed trail along the river to transport their supplies, but washouts and the limited number of horses and wagons at the base camp meant that they had to find other means of travel. Depending on the weather and river conditions, they either used horses, backpacks, or boats to get up the rivers. The 1908 party used two 20-foot skiffs that had been built for ascending the Unuk River. One sub-party ascended with a boat to the Leduc River, which they ascended with difficulty until it became unnavigable eight miles below the boundary. Another sub-party took canoes up Lake Creek, which was easily navigable for about four miles. The second skiff was taken up to the mouth of Blue River. This sub-party also used collapsible canvas boats on the Blue River. The team on the Blue River in 1909 also used a canoe to cross Blue Lake and ascend the upper river.

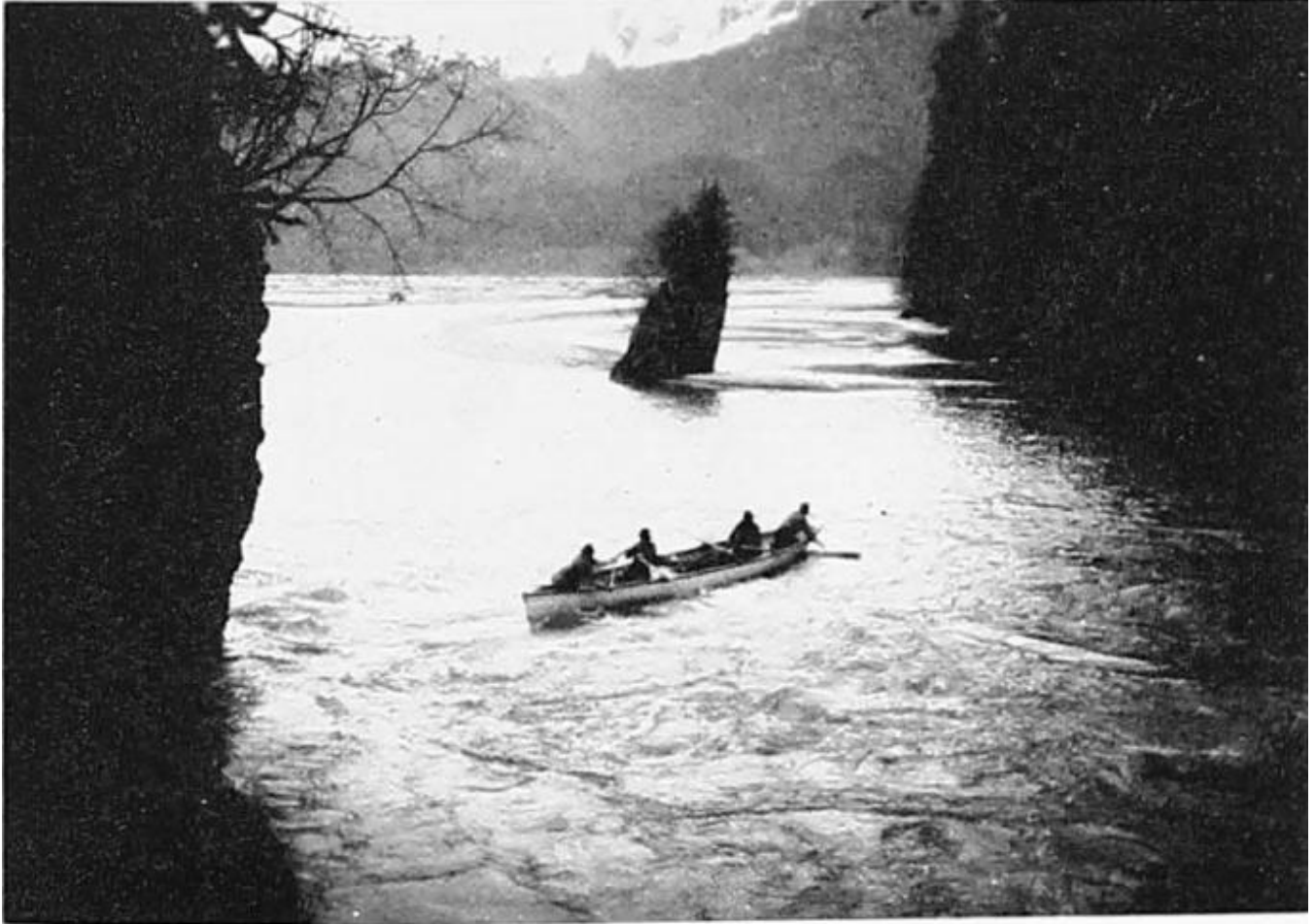
Another survey conducted in 1920 used poling boats to ascend the river. As Mertie had noted, the trail up Unuk River was no longer suitable to carry the 5,500 pounds of supplies needed for the survey, and so the packers had a Yukon poling boat built to their specifications in Ketchikan. By poling and lining the boat (with the aid of a dog) they transported the supplies to the base camp thirty miles upriver in seventeen days. In May 1920, *The Alaska Daily Empire* in Juneau reported on the packers, under H.A. Warner, travelling up the Unuk River with supplies and an outfit. Warner and his team transported their load in a poling boat, then returned to the mouth of the river for the engineers later in the month.

The survey party also took an 18-foot Oldtown canoe and a 13-foot King canvas folding boat (see Figure 6). Again, the road proved unsuitable for travel, and the surveyors ascended the river by poling boat. At one point, members of the party had to return to Ketchikan quickly, with one suffering from appendicitis, and their return trip on the poling boat took less than a day. While in Ketchikan, the poling boat was adapted for an outboard motor, which they used along with oars to return to camp, lining where necessary. On their final departure in September, the boat swamped while travelling downriver, but they were able to save most of the equipment and records.

Figure 6: Photographs of boats used on Unuk River during International Boundary Commission Survey in 1920. Note the canoe carried on the poling boat in the first photo.



Lining poling boat up Unuk River.



Poling boat at upper end of first canyon of Unuk River.

In the January 1937 edition of the *Alaska Sportsman* magazine, F.W. Gabler recounted the trip of several men up the Unuk River the previous summer. The men were transporting supplies to the Unuk River Placer Gold Company, Inc., along with two horses that the company had sold to the Premier Gold Mining Company. Both companies' claims were on the Canadian side of the border, at least forty-eight miles from the mouth of the river. There was a government-built trail on the Canadian side, but the trails on the American side were old and partially overgrown, except for about eight miles of Territorial trail at the border. The men, led by Tommy McQuillan of the Unuk River Company, chose to transport the horses by boat, interspersed with sections on the trail where possible.

The boat was a shallow-draft riverboat, twenty-eight feet in length. It drafted three to five inches of water and could carry up to four thousand pounds. It was equipped with a twenty-horsepower Johnson outboard motor. Despite the horses' unfamiliarity with riding in boats and the difficult nature of the river following some rain, the men were able to transport the horses, shuttling them one at a time, for the first sixteen to twenty-four miles from their base at a ranch at the mouth of the river to the International Boundary. It is unclear how much of the journey was by boat

versus by trail, but at least several miles were made by boat. One of the trips, of more than two miles, included McQuillan as pilot, the horse, and three other men, along with a load of supplies.

The Unuk River – while not seeing the same level of traffic as the Yukon or Kuskokwim River – has clearly been used historically as a highway for trade, travel and commerce. Such use has continued throughout the Twentieth Century to the present day. Commercial guides operate on the Unuk River; numerous accounts exist of boaters traveling from its source in Canada to the mouth at Burroughs Bay; it is frequently navigated both upstream and downstream past the Canadian Border in motorized vessels of the type in use as of the date of Alaskan Statehood.

See generally, *Alaska Daily Empire* (Juneau) (May 13, 1920), p. 6; *Gabler*, F.W., “Horse Power for Unuk Gold,” *Alaska Sportsman* (January 1937); Halliday, G. B., *Stan Bishop – A True Sourdough: The Unuk River* (2008); Harrington, L. B., *Pioneers of Southeast Alaska* (2006); Alaska Department of Fish and Game, *Unuk River Chinook Salmon Initiative* (2005); Mertie, J.B. “Notes on the Salmon-Unuk Region,” United States Geological Survey, Bulletin 714-B (1921); “Report of the International Boundary Commission on the Establishment of the Boundary Between Canada and the United States, Tongass Passage to Mount St. Elias (1952); Rummel, T., “Exploring B.C.’s Threatened Unuk River,” *Adventure Journal* (May 8, 2015); Smikrud, K. & Prakash, A., *Monitoring Large Woody Debris Dynamics in the Unuk River, Alaska Using Digital Aerial Photography*, *GIScience & Remote Sensing Journal*, vol. 43, no. 2, pp. 142-54 (2006); Wright, Fred Eugene, 'Unuk River Mining Region,' Geological Survey Department of Canada (1905).

VII. Other Known Interested Parties.

The State knows of no other claims on the subject submerged lands. There are no known adverse claimants or occupants on the subject submerged lands. The United States does not dispute the State’s title to the subject submerged lands.

VIII. \$100.00 Application Fee.

The State submits the \$100.00 application fee on July 28, 2022, with this document.

IX. Conclusion.

The Unuk River is a navigable waterway. The underlying submerged lands, therefore, are owned by the State of Alaska and should be disclaimed by the BLM on behalf of the federal government.

The State agency responsible for this application is the Alaska Department of Natural Resources, Division of Mining, Land and Water, 550 W. 7th Avenue, Suite 1070, Anchorage, Alaska 99501, Attention: James H. Walker (907) 269-4755. Please

start the application process for this river and forward the estimate of cost of administration.

Sincerely yours,



James Walker, Chief
Public Access Assertion and Defense
Section
Division of Mining, Land and Water
Alaska Department of Natural Resources
907-269-4755

CC: Doug Vincent-Lang, Commissioner, Alaska Department of Fish and Game
Sara Boario, Regional Director, Alaska, US Fish and Wildlife Service
Anthony Mallott, Sealaska Chief Executive Officer

Legal Description

Unuk River:

Unuk River from the 60-foot boundary reserve, reserved by Presidential Proclamation No's. 810 and 1196 downstream to the location the river is influenced by the tide within the State of Alaska, more particularly described as follows:

Unuk River

All Submerged Lands between the Ordinary High Water Lines of the left and right banks of the Taku River from the 60-foot boundary reserve within Sections 3 and 10, Township 64 South, Range 94 East, Copper River Meridian to the extent of tidal influence regardless of location. The Unuk River may be located upon Alaska USGS 1:63 360 series topographic maps Bradfield Canal B-3, (1955, minor revisions 1973); Bradfield Canal A-3, (1955, minor revisions 1972); Bradfield Canal A-4, (1955):

MTRS

C064S094E10	C065S094E02	C065S094E31	C066S093E23	C067S093E06
C064S094E03	C065S094E11	C065S094E32	C066S093E24	C067S093E07
C064S094E09	C065S094E10	C066S094E05	C066S093E26	C067S093E08
C064S094E16	C065S094E09	C066S094E06	C066S093E27	C067S093E18
C064S094E17	C065S094E15	C066S094E07	C066S093E28	C067S092E12
C064S094E20	C065S094E16	C066S094E18	C066S093E32	C067S092E13
C064S094E29	C065S094E20	C066S093E12	C066S093E33	
C064S094E31	C065S094E21	C066S093E13	C066S093E34	
C064S094E32	C065S094E29	C066S093E14	C067S093E04	
C065S094E01	C065S094E28	C066S093E22	C067S093E05	

The precise location may be within other sections and townships due to the ambulatory nature of water bodies.