



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Public Access Assertion & Defense Unit

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February 20, 2019

Mr. Ted Murphy
Acting State Director
Bureau of Land Management
222 West 7th Avenue, #13
Anchorage, Alaska 99513-7504

Subject: Recordable disclaimer of interest application for the Kwethluk River.

Dear Mr. Murphy:

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 herein-described portions of the Kwethluk River.

I. Description of Waterway

This application is submitted for the submerged lands as follows:

All submerged lands between the outer-most ordinary high water lines of the left and right banks of the Kwethluk River beginning within Sec. 6, T. 5 N., R. 67 W., S.M., Alaska to the portage between an unnamed lake and the Kwethluk River within the NW $\frac{1}{4}$, NW $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 29, T. 1 S., R. 62 W., S.M. Alaska.

This 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 and all lands within the river permanently or periodically covered by tidal waters up to the line of mean high tide. Those submerged lands adjacent to uplands not owned by the United States are excluded from this application. Maps highlighting the pertinent part of the Kwethluk River along with a legal description of the townships and ranges underlying the river are enclosed as Exhibit 1.

II. Waiver Requests

A. Survey Requirements

The State requests that the Bureau of Land Management (BLM) approve the State's request for a waiver of any 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 Kwethluk River including any interconnected channels and other portions of the Kwethluk River. Navigable waterways, such as these rivers, are typically ambulatory, thus making a public survey of them problematic and unnecessary. Such a meander line survey would have to cover a large, long stretch of river system including interconnected channels and sloughs, would be very expensive and time-consuming, and then would only be a representation of a moving boundary. The U.S. Department of the Interior has issued RDIs to the State for the beds of navigable rivers in the past without requiring a public land survey of the river system or any part of it, and judgments, decisions, and decrees of the U.S. District Court, 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 previously described portions of the Kwethluk 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 of those grounds.

Because this river was navigable on January 3, 1959, when Alaska became a state, the State of Alaska owns the river beds 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

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).

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."

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 particular conveying document. The lack of any title document or judgment creates a cloud on the State's title. An 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.

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 Ass'n*, 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 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*, 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 the Navigability of the Kwethluk River.

Incorporated by reference into this application is the [Kwethluk River Final Interim Summary Report](#), by Rolfe Buzzell, Ph.D.² This report is available online through the Alaska Department of Natural Resources Division of Mining, Land, and Water. The report is available for download by opening the following hyperlink:

http://dnr.alaska.gov/mlw/nav/naar/kwethlukriver/kwethluk_river_ii_b_interim_summary_rpt_6_29_2010_final.pdf. The attachments for the report are available for download by opening the following hyperlink:
http://dnr.alaska.gov/mlw/nav/naar/kwethlukriver/kwethluk_rv_ii_b_rpt_att

² Buzzell, Rolfe. 2010. Kwethluk River Final Interim Summary Report. Alaska Department of Natural Resources Office of History and Archaeology Navigable Waters Research Report No. 2.

[achments 6 29 2010 final.pdf](#). The Buzzell (2010) report identifies relevant uses of the Kwethluk River occurring both before and after statehood. These uses provide evidence that the Kwethluk River was navigable-in-fact at the time of statehood.

Rivers and streams in the Kuskokwim drainage have been important historically as routes for travel and trading and remain so to this day. The local Alaska Natives (*Kusquqvagmiut*) traveled by watercraft to access, harvest and transport subsistence resources. They used canoes to travel up tributaries of the Kuskokwim River to fish and pick berries and have floated these rivers in skin boats for hundreds of years when returning to their villages from hunting camps in the mountains each spring (Buzzell 2010; pg. 27). Rivers such as the Kwethluk, Aniak, and Holitna were, and still are, important routes to hunting, fishing, and trapping areas. The core caribou hunting areas of Kwethluk hunters have been and continue to be at the headwaters of the Kisaralik, Kwethluk, Kasigluk, Akulikutak and Aniak Rivers. Spring hunting camp in the mountains was an important part of the seasonal round for generations of Kwethluk and Akiak Natives.

Native families would travel by dogsled to the headwaters of the Kwethluk River in early spring where they would spend a few weeks hunting bear, moose, ground squirrels, and caribou. After breakup, they would build skin boats and float downstream transporting meat, skins, dogs, tools, and their families to their summer villages (Buzzell 2010; pg. 28) near the Kuskokwim. These shallow-draft boats were large and capable of carrying significant loads of goods, gear and people (Buzzell 2010; pg. 29). Skin boats have been used along the entire length of the Kwethluk River included in this application. In later years, as power boats became available to them, Natives used motor boats up the Kwethluk River to at least Sec. 4, T. 3 N., R. 68 W., S. M.

In 1913, a Norwegian prospector discovered a small placer deposit at Canyon Creek on the upper Kwethluk River, resulting in a modest rush up the Kwethluk River. Mining activity on Canyon Creek, now known as Crooked Creek, continued until about 1940 (Buzzell 2010; pg. 33). The mouth of Crooked Creek is located at approximately river mile (RM) 110 of the Kwethluk (Buzzell 2010; pg. 22). During the early prospecting and mining period on Canyon Creek, the Kwethluk River was reported to be suitable for navigation. In 1915, residents of the Bethel area told H.A. Cotton of the U.S. Coast and Geodetic Survey that one could take a fifty-ton steamboat 25 miles up the "Kuethluk" River and small boats with a draft of about one foot could travel an additional 75 miles up the river. Cotton noted that poling boats furnished the only means of getting supplies up the small tributaries of the Kuskokwim where the small stern-wheelers were unable to ascend. Several people had brought in stern post motors for use on poling boats and were getting good service from them (Buzzell 2010; pg. 35).

In addition to their traditional lifestyle of subsistence hunting, fishing and gathering, the Kwethluk people participated in a government-sponsored reindeer-herding program to supplement income and provide an alternative food source. In July 1930, USDA inspectors for the reindeer program took motor boats up the Kwethluk River approximately 110 miles to the confluence with Crooked Creek to observe a reindeer roundup (Buzzell 2010; pg. 37; Figure 1).



Figure 1. Outboard motor boats at the confluence of Crooked Creek and the Kwethluk River, July 1930. This party of federal range inspectors and the owners of a reindeer herd in the upper Kwethluk River valley traveled in these boats from Bethel up the Kwethluk River to Crooked Creek. Photo by W.B. Miller, from "Reindeer Service: Miller-Kuskokwim, 1930," from Territorial Governor's Records, Alaska State Archives, Juneau. (Buzzell pg 38)

Native fishermen, hunters and trappers have used wooden skiffs with outboard motors on the Kwethluk River from at least the early 1950s. Most travel on the river during the open season prior to Statehood (1959) was by small boats powered by outboard motors (Buzzell 2010; pg. 39). After statehood, Alaska Natives used both wooden and aluminum-hulled power boats to travel between their homes and hunting and fishing camps along the Kwethluk River and continued to use traditional skin boats as described above (Buzzell pgs. 39, 53).

For Native families, boats functioned as multipurpose vehicles that were vital to their everyday lives and survival. Boats were used throughout the open water season for subsistence activities such as hunting, fishing, wood gathering, or transportation between villages, camps, and Native allotments. Natives used a variety of boat designs constructed from both wood and

aluminum. Boats generally ranged from 16 to 24 feet with most them being 20 feet long or longer (Buzzell 2010; pg. 53). These boats were typically powered by outboard motors ranging in size from 10 to 115 horsepower. The most popular sizes of outboards were 25, 40, and 70 horsepower. Specific examples of travel by boat on the Kuskokwim River are cited by Buzzell (2010) on pages 57, 58, and 59 and can be found in BLM documents cited by Buzzell and attached to this application. Buzzell (2010) provides photographs of the construction and use of skin boats after statehood including a photograph of a heavily-loaded skin boat on the Kwethluk River in 1988 (Figure 2. Buzzell 2010; pgs. 49, 50, 52).



Figure 2. A woman and child in a loaded bear skin boat on the Kwethluk River, 1988. The shallow draft boat is loaded with dried meat, squirrel skins and camping equipment for the 90-mile float to Kwethluk. Photo by John W. Andrew, reprinted from *Alaska Fish and Game*, November-December 1989, Vol. 21, No. 6, p. 13. (Buzzell pg 52)

Other relevant information regarding boating activities on the Kwethluk River include navigability field reports by BLM staff, scientific studies by state agencies, and commercial recreational rafting trips. In a Navigability Field Report, dated November 4, 1975, Wayne R. Dawson of the BLM observed that the Kwethluk River had heavy use through the months of May through October from its mouth at the Kuskokwim River (river mile 0) upstream to the Kilbuck Mountains (river mile 125). Dawson wrote that outboard motor boats were used on the river for subsistence and recreational activities, and that in the future the river could provide access to public lands (Buzzell 2010; pg. 59). In 1976,

Alaska Department of Fish and Game (ADF&G) used power boats to perform fish surveys along the lower 72 miles of river in early June and August (Buzzell 2010; pg 59). ADF&G biologists concluded that “the [Kwethluk] [R]iver is considerably easier to travel than the Kisaralik as the channels and water are deeper and the current slower with fewer log jams.” In 1977, ADF&G biologists wrote that the Kwethluk River received the heaviest fishing pressure of the lower Kuskokwim streams. The biologists observed 18 fishermen in seven boats during one weekend in the area between river miles 50 and 86 (Buzzell 2010; pg 59).

Recreational rafting on the Kwethluk began in the 1980s and has grown in popularity since the 1990s. At least one commercial sport fishing guide began contacting the US Fish and Wildlife Service (USFWS) in the mid-1980s seeking permission to conduct commercial guided rafting trips on the Kwethluk River (Buzzell 2010; pg 63). In response to repeated requests from commercial guides, in 1994 the USFWS issued a draft decision proposing two permits for commercial, guided rafting on the Kwethluk. The proposed permits would have allowed commercial rafting trips beginning at Boundary Lake (also known as Portage Lake) in Section 19 and 20, T. 1, S., R., 62, W., S.M., Alaska. Two different guide operations applied for permits to conduct commercial trips on the river (Buzzell 2010; pg 64).

In response to the draft decision, “The Kwethluk Joint Group” voiced opposition to the permits because they feared the proposed use would degrade river resources and negatively affect their subsistence activities. In a subsequent newspaper interview, the refuge manager, David Stearns pointed out the river “was already being used by unguided outsiders—primarily sport and subsistence fishermen in motorboats and float planes from Bethel and elsewhere”. Stearns went on to say, “It’s a navigable corridor, and [the Kwethluk Joint Group] can’t call it their river and exclude other use” (Buzzell 2010; pg 64). The manager stated that he expected 10 to 20 guides to apply for the raffle for the limit of two permits. The local response and the manager’s reply indicates that they considered the proposal viable and would result in significant increased boat use.

The USFWS did not follow through with permitting commercial river guides at that time; however, the absence of guided rafting trips did not reduce demand for access to the river. In response to this demand, enterprising individuals created a new form of commercial rafting referred to by USFWS as “pick-up service”. Outfitters provide the rafts, equipment, transportation to the put-in, and pick-up at the take-out facilitating recreational rafting on the Kwethluk by large numbers of boaters. Kuskokwim Wilderness Adventures (KWA) based in Bethel began outfitting boaters on the Kwethluk River in the mid-1990s providing boats, equipment, and charter flights from Bethel to Boundary Lake on the upper Kwethluk River. KWA would pick-up rafters at the

end of their trip and shuttle them back to Bethel by riverboat (Buzzell 2010; pg 65).

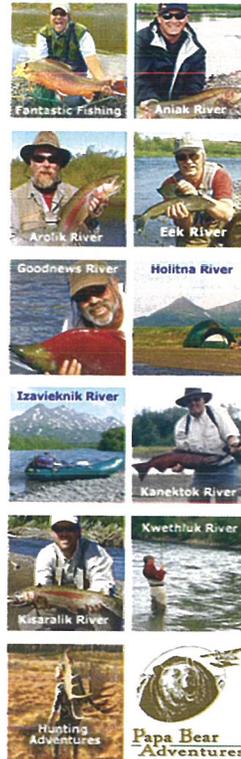
Steve Powers, operating as Papa Bear Adventures (Figure 3) in Bethel, also began outfitting clients with rafts and gear in the 1990s, flying them to Boundary Lake and picking them up on the lower river. In 1998 KWA and Papa Bear Adventures began working together. Papa Bear supplied rafts and equipment to clients and flew them to Boundary Lake. KWA, which was already doing guided sport fishing charters in boats on the lower Kwethluk River, picked-up the rafters and took them back to Bethel by boat. For the last 10 years, Papa Bear has been the main operator for this non-guided raft outfitting business and has flown in and dropped off about 99% of the rafters on the Kisaralik and Kwethluk rivers. KWA has picked up about 95% of the raft groups at the end of their float on the lower Kisaralik and Kwethluk rivers at the end of their trip Both outfitters and private individuals have arranged for drop-offs for float trips at Boundary Lake (Buzzell 2010; pg 65).

In supplement to information provided by Buzzell (2010), Alaska Department of Natural Resources identified three other commercial outfitters that are currently providing fishing trips on the Kwethluk River by raft beginning at Boundary Lake: Float Alaska, Alaska Rainbow Adventures, and Frontier River Guides. Figure 4 shows an example of the type of service offered by Float Alaska. These excursions begin in June and end in September and are scheduled to coincide with the various salmon migrations that happen each year. None of the advertisements indicate that there are times during those salmon runs when the river could not be descended.

Kwethluk River



The float begins with a short portage (approximately 150 yards) from Boundary Lake over to the Kwethluk river. From there the River flows west and splits the Great Ridge and Green Stone Ridge. The upper portion of the river provides spectacular scenery and is the habitat for Dolly Varden and Grayling. The best fishing starts about 25 miles into the float at the confluence of the Kwethluk River and Crooked Creek. Fish remains good all the way to the pickup point. The river is small and very fly-fishing friendly, offering extensive camping and fishing opportunities.



The fishing begins each year in late June with the King Salmon run and culminates each year in mid-September with the Rainbow fishing reaching its peak and the end of the Silver Salmon run. In addition to Rainbow and Salmon fishing, the Kwethluk Adventure also offers great Dolly Varden and Grayling fishing.

- Drop Off:** **By Float Plane from Bethel to Boundary Lake:**
- Length:** **Approximately 100 river miles.**
- Float Duration:** **Minimum 7 days. Most float for 7-10 days.**
- Topo Maps:** **We do not provide Maps. Maps may be purchased through the nearest U.S. Geological Survey office or by calling Toll Free (888)275-8247(From Alaska Only) or (907)786-7011. The following Map sheets are required for the Kwethluk River Float: Bethel A-3, A-4, B-4, B-5, B-6, C-6, C-7**
- Pickup:** **Pickup by boat. Boat transports floaters back to Bethel**
- Cost:** **Air Charter - \$950 per person + \$71 fuel surcharge per flight
Boat Pickup - \$325 per person
Full Trip includes drop-off flight from Bethel to Boundary Lake and boat pickup back to Bethel and ground transportation to our lodge from the river.**
- Notes:**
 1. Rates are based on 2 Person Minimum.
 2. Maximum allowable weight:
 - 2-3 People = 1200lbs
 - 4-6 People = 2400lbs
 - 7-9 People = 3600lbs

(Group weight= Weight of all people, gear, supplies and food)
 3. Special Rates Available for Children under 16 depending on Group Size
 4. Lodging in Bethel Available.

Kwethluk River Salmon Timing

Salmon Species	Lower River	Mid Upper River	Comments
King (Chinook)	Late June	July	
Dog (Chum)	Early July	Mid to Late July	
Red (Sockeye)	Early July	Mid to Late July	
Pink (Humpy)	Late July	August	Even Year Return
Coho (Silver)	Early	Mid	



Figure 3. A page from the website for Papa Bear Adventures. This is a sample of an outfitted float trip. The website is at pdadventures.com.



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KWETHLUK RIVER

Your adventure begins with a float plane trip to Boundary Lake. From there you float approximately 100 miles where you will be picked up by boat and brought back to Bethel. This trip takes a minimum of 7 days, but most prefer taking 7-10 days.

The float begins with a short portage (approximately 150 yards) from Boundary Lake over to the Kwethluk River. From there the River flows west and splits the Great Ridge and Green Stone Ridge. The upper portion of the river provides spectacular scenery and is the habitat for Dolly Varden and Grayling. The best fishing starts about 25 miles into the float at the confluence of the Kwethluk River and Crooked Creek. Fish remains good all the way to the pickup point. The river is small and very fly-fishing friendly, offering extensive camping and fishing opportunities.

The fishing begins each year in late June with the King Salmon run and culminates each year in mid-September with the Rainbow fishing reaching its peak and the end of the Silver Salmon run. In addition to Rainbow and Salmon fishing, the Kwethluk Adventure also offers great Dolly Varden and Grayling fishing.



Kwethluk River Rainbows Kings and Silvers on Fly Fishing Friendly Water

Transportation Costs For the Kwethluk Include:

- Bush flight and boat pick-up to Bethel
- All shuttles to and from Bethel Airport

PRICE: \$1,275.00 p/p

PLEASE NOTE: total price of the trip is transportation plus equipment rental pricing. [Equipment Rental pricing](#) varies based on gear selection, number of days and group size.

Optional items

First night's lodging in Bethel: \$75.00
Showers on return to Bethel: \$10.00

KWETHLUK RIVER SALMON TIMING

Salmon Species	Lower River	Mid-Upper River	Comments
King (Chinook)	Late June	July	
Dog (Chum)	Early July	Mid to Late July	
Red (Sockeye)	Early July	Mid to Late July	
Pink (Humpy)	Late July	August	Even Year Return
Coho (Silver)	Early August	Mid August- September	

TRIP PLANNING

How to Build Your Own Alaska River Trip

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Equipment Rental



Travel Tools



EXPLORE OUR RIVERS

Aniak River

Arolik River



Eek River



Goodnews River



Holitna River



Izavieknik River



Kanektok River



Kisaralik River



Kwethluk River



Figure 4. This is a page from the Float Alaska website. This is another example of an outfitted float trip. The website address is floatalaska.com.

The BLM has determined that the Kwethluk River is navigable-in-fact to T. 3 N., R. 66 W., S. M. Alaska. Between that point and Crooked Creek (mile 110), the BLM has not made a determination. Evidence provided by Buzzell (2010), shows that motorized and non-motorized watercraft have been used on the Kwethluk River for travel and other purposes before and after statehood by local natives, miners, government officials, and commercial outfitters operating self-guided fishing trips. This evidence is sufficient for the BLM to disclaim any federal ownership interest up to the confluence of Crooked Creek and the Kwethluk River.

The BLM has not made a navigability determination for the portion of the Kwethluk River upstream from the mouth of Crooked Creek to the portage at Boundary Lake, except for the segments adjacent to the Native Allotments that are located in T. 1 N., R. 63 W., S.M.; T. 1 N., R. 62 W., S.M. and T. 1 S., R 62 W., S.M. The BLM found the river non-navigable adjacent to the native allotments in June 1998. Finality does not apply; the state requests a re-determination of this portion of the river. This segment of the river has substantial current use by recreational boaters descending Kwethluk River. Before and after statehood Natives descended this river segment in skin boats, which are very similar in nature to the inflatable rafts used by private parties and commercial outfitters providing self-guided fishing trips.

The State of Alaska believes the Kwethluk River from Boundary Lake downstream to its confluence with the Kuskokwim River is navigable-in-fact as illustrated by the evidence presented by Buzzell (2010). There is an abundance of documented recreational boating that occurs beginning at the portage between Boundary Lake and the Kwethluk River. This boat use aligns very well with the type of boat use identified by the courts as sufficient to show that the Gulkana River was navigable-in-fact.

VII. Other Known Interested Parties

Parts of this river system are within the exterior boundaries of the Togiak NWR and the Yukon Delta NWR which are managed by the USFWS. Kwethluk, Incorporated and the Calista Regional Corporation also own uplands down river from the area of this application. No portion of this application is intended to be a request for a disclaimer on any submerged land adjacent to uplands owned by a Native corporation.

VIII. \$100.00 Application Fee

The State will submit the \$100.00 application fee with its final application.

IX. Conclusion

The BLM has most recently determined that the Kwethluk River was navigable-in-fact up to T. 3 N., R. 66 W., S.M. based on use. From that point on the river upstream to Crooked Creek there has been pre-statehood use by miners and by motorized boats. From Boundary Lake portage to Crooked Creek and through the remainder of the application area, there is pre-statehood and post-statehood use by Natives in skin boats. Most recently there has been heavy use during most all the open water season by rafters from Boundary Lake portage through the application area.

The described use meets the criteria under federal case law to determine Kwethluk River navigable-in-fact from the Boundary Lake portage through the application area.

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,



James H. Walker
Natural Resource Manager II

Enclosures: Exhibit 1: Maps and Legal Description

cc: Greg Siekaniec, Regional Director, U. S. Fish and Wildlife Service
 Doug Vincent-Lang, Acting Commissioner, Alaska Department of Fish
 and Game
 Chariton Epchock, Kwethluk Incorporated, Director and President
 Andrew Guy, President, Calista Corporation