

PEAL OF DOYON, LIMITED

om Decision of Bureau of  
nd Management

No. F-19155-26

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ANCAB RLS 76-2

Navigability of Kandik  
and Nation Rivers

APPEARANCES:

JUDGE L. K. LUOMA, presiding

JOHN M. ALLEN, representing the Department of Interior

FRANCIS NEVILLE, representing the Department of Interior

ELIZABETH S. TAYLOR, representing Doyon, Limited

SHELLY HIGGINS, representing the State of Alaska

\* \* \*

VOLUME I

TRANSCRIPT OF PROCEEDINGS

Pages 1 through 174

September 26, 1978  
9:00 a.m.  
Federal Building  
U.S. District Court  
Room 336  
101 Twelfth Avenue  
Fairbanks, Alaska

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1 of the motion for reconsideration that Doyon filed. I sort of  
2 assumed after the passage of time it's been denied, but I was  
3 wondering--

4 JUDGE LUOMA: Why would you want to assume that?

5 MS. TAYLOR: I wouldn't want to, but since I've heard  
6 nothing from the Court, I thought it would best--be best to get  
7 it on the record as to whether there had been a ruling on that.

8 JUDGE LUOMA: Well then, you--you are wishing to  
9 pursue that motion?

10 MS. TAYLOR: Yes, I believe--well, I--the motion was  
11 directed primarily to the question of the burden of proof in the  
12 hearing, but it also raised some--some questions as to the  
13 procedure that was followed in originally arriving at the  
14 decision to--to convey, and Doyon certainly hasn't abandoned that  
15 motion.

16 JUDGE LUOMA: Well, as to the procedure that was taken,  
17 it really wouldn't go to the issue of navigability, would it?

18 MS. TAYLOR: That's correct, it doesn't go to the  
19 factual--it's not affected by and doesn't affect this hearing.

20 JUDGE LUOMA: Well, is it your position, then, that  
21 at the moment you're interested mainly in determining who has  
22 the burden of proof?

23 MS. TAYLOR: Yes, although in--in some sense, this is--  
24 well, we have taken some liberties with the traditional order of  
25 going forward in this hearing for the convenience of witnesses and

1 the convenience of parties, but I--I would like a ruling on who  
2 has the burden of proving navigability.

3 JUDGE LUOMA: Well, apparently this motion you  
4 presented was passed on to me from the Board. It does seem to  
5 me the Board should have made a ruling on it. It initially  
6 ruled that the appellant has the burden of proof, and--but I--  
7 I have to assume from what they said that I could change that  
8 ruling now.

9 MS. TAYLOR: I--I think that's correct.

10 JUDGE LUOMA: Mr. Allen, what's your position on that?

11 MR. ALLEN: Our position, Your Honor, is that the  
12 appellant does have the burden of proof. We have agreed to take  
13 the burden of going forward, but not to assume the burden of  
14 proof. However, of course, the burden of proof issue only  
15 becomes an issue if the evidence is in equipoise, and--

16 JUDGE LUOMA: Well, I never could understand really  
17 what equipoise means, but it does--do all three parties intend  
18 to introduce evidence?

19 MS. TAYLOR: Yes.

20 MR. ALLEN: We do, Your Honor.

21 JUDGE LUOMA: So, will it not finally come down to  
22 the point (ph) --to the preponderance of the evidence, so the  
23 question of the burden of proof really isn't a question at all.  
24 If you've agreed, Mr. Allen, you lead off. Do you think that there  
25 remains a question on--on the pure burden of proof?

1 MR. ALLEN: I have always felt that burden of proof  
2 arguments were somewhat academic, since there's a rare case  
3 where the evidence, if there is evidence at all, is absolutely  
4 evenly balanced on both sides.

5 JUDGE LUOMA: Well, that's right, if--

6 MR. ALLEN: It's theoretically possible, but rather  
7 unusual.

8 JUDGE LUOMA: If the moving party fails to make a  
9 prima facie case, then it would be subject to dismissal, but  
10 other than that, I don't really see why it would really affect  
11 the outcome of the hearing, would it? Do you agree that the--  
12 that the--in the final outcome, that the decision should be  
13 based upon the preponderance of the evidence?

14 MS. TAYLOR: Yes.

15 JUDGE LUOMA: And the person preponderating should--  
16 should win.

17 MS. TAYLOR: Yes.

18 MS. HIGGINGS: Your Honor, I think I agree with that.  
19 I--I would like to go on record, though, as objecting to the  
20 Board's placing the burden on the appellant in this case. I--  
21 I think that the authority relied for--for placing the burden  
22 of proof on the appellant was a case involving title litigation.  
23 Now this--this is not a proceeding in which the State or a  
24 private party claiming from the State, a grantee, is suing to  
25 quiet title to lands which, on the basis of the State's title

1 under the Submerged Lands Act. In those situations, I think the  
2 burden is appropriately placed on the--the challenger to  
3 Federal title. That that--that this is not a proceeding to  
4 determine title. We're concerned with the navigability  
5 determination for the administrative purpose of making acreage  
6 determinations under the Alaska Native Claims Settlement Act.  
7 And I think in this context, the burden is more appropriately  
8 placed on BLM. Doyon, as Your Honor pointed out, is appealing  
9 BLM's determination that there are no navigable waters within  
10 the areas selected. And therefore, the beds of all of these  
11 rivers are charged to Doyon against its total acreage entitlement  
12 under the Native Claims Settlement Act. That's all I have to  
13 say.

14 JUDGE LUOMA: Mr. Allen, why do you take the position,  
15 since it's the BLM that issued a decision, and in that decision  
16 it stated that it had determined the streams to be non-navigable,  
17 why should they not bear the burden of proving that in this  
18 case?

19 MR. ALLEN: As I recall, Your Honor, I think it is a  
20 provision of the regulation that--I could be wrong, but my  
21 recollection was that it was the Department's regulations which  
22 placed the burden on--on the appellant in appeals before  
23 ANCAP (ph).

24 JUDGE LUOMA: Could you refer to that regulation?

25 MR. ALLEN: I don't my regulations, do you have a set



1 of Title Five?

2 MS. TAYLOR: I didn't bring my--my regulations with  
3 me, but it's certainly my understanding that that's not contained  
4 in the regulations. It's a--a--

5 JUDGE LUOMA: Well, I assume you've researched this  
6 since you've filed a motion.

7 MS. TAYLOR: That's correct, what Doyon's motion is  
8 based on and as with everything in this case, we're--we're in  
9 a lot of unique areas. But Doyon's motion really goes back to  
10 the--the regulations implimenting ANCSA, the forty-three CFR  
11 regulations that require the Secretary of Interior to make a  
12 determination as to navigability. Now, there was a determination  
13 of non-navigability made by BLM and contained in the decision  
14 to convey as you just (ph) quoted. And it was Doyon's position  
15 from the beginning that given the regulations and given the  
16 particular positions of ANCSA that the burden should be on  
17 Interior to support its determination of navigability or  
18 non-navigability, as the case may be. That--that we feel that  
19 the burden is on BLM to present evidence to support its  
20 determination that these rivers are, in fact, non-navigable.  
21 And that--and that it's strengthened by the whole framework of  
22 the act and the regulations that we're all operating under. So  
23 as a practical matter, since BLM is going first, and it hasn't--  
24 you know, it's taken the--the burden of going forward, you  
25 know, this may be mooded for the questions of the proceedings

1 that we're going to have the next few days, but--but the issue  
2 still remains

3 JUDGE LUOMA: If you feel that it remains an issue,  
4 that you would--that you would want a ruling on the record, I  
5 perhaps can give you a ruling later on, then, if you feel that  
6 it's still important.

7 MS. TAYLOR: Alright.

8 JUDGE LUOMA: But since there's been agreement on  
9 how the--apparently been agreement on how the evidence is going  
10 to be produced, it probably-- it really doesn't make any  
11 difference at this time, does it.

12 MS. TAYLOR: Right. My--my major question was really  
13 in asking whether you had ruled on that motion.

14 JUDGE LUOMA: Alright, well no, I have not.

15 MR. ALLEN: I--I think it's more appropriate to  
16 reserve the ruling and argument if necessary until after the  
17 evidence has been taken.

18 JUDGE LUOMA: Do you--do you intend to produce your  
19 entire case? You don't propose to simply put on a bare  
20 prima facie case, do you?

21 MR. ALLEN: No, we'll produce the entire case.

22 JUDGE LUOMA: Alright, let's let that go for the  
23 moment, then. Is there anything else? (Pause).

24 MS. HIGGINS: Yes, I'm not sure if this is the  
25 appropriate time to raise this point, but counsel have discussed

1 stipulating to keep the record open in this case for the receipt  
2 of certain written materials, specifically transcription or--or  
3 written statements of certain interviews that were taken of  
4 residents in the Eagle area during the last month.

5 JUDGE LUOMA: Let's take that up at the end of the  
6 hearing, okay? There's no need to worry about that now, is there?

7 MS. HIGGINS: I suppose--

8 MR. ALLEN: The on--only possible reason I can think  
9 of, Your Honor, for raising it now, the BLM historian and the  
10 State historian went together to Eagle to interview six or eight  
11 residents, and they had hoped that they would be able to have  
12 their reports of those interviews prepared and available for this  
13 hearing. It was our intention that the two sides would mutually  
14 agree and then enter the reports by stipulation. The reports  
15 are not ready. I would like to have the BLM historian testify  
16 as to those interviews, which, of course, are hearsay, but in  
17 view of the fact that they would be subject to corroboration  
18 later on by the stipulated reports. And in view of the fact  
19 that the other party is here in the courtroom, and I suppose  
20 also in view of the fact that I don't think the other side would  
21 object, that's the way I plan to proceed with the BLM historian.

22 JUDGE LUOMA: Well, I'll certainly keep the record  
23 open for any evidence that you feel is relevant, certainly any-  
24 thing that you stipulate to. Do I gather from this that there--  
25 this hearsay may be received at this time?

1 MS. TAYLOR: We have no objection.

2 MS. HIGGINS: No, in fact, the State plans to do  
3 testimony relating to--to those interviews.

4 JUDGE LUOMA: Um-hm, alright, anything else?

5 MS. HIGGINS: Are opening statements appropriate?

6 JUDGE LUOMA: Yes, you may, but let me ask one thing.  
7 Do you propose to present your evidence river by river and  
8 complete one river and then go to the next river?

9 MR. ALLEN: For the most part, when we begin to  
10 testify about the specific rivers, I have some general testimony  
11 about the area, which of course, applies to both rivers.

12 JUDGE LUOMA: I thinking--

13 MR. ALLEN: I'm sorry, no, maybe I didn't understand  
14 your question, I suppose the answer is to some extent, but we--  
15 we won't go on one river and then stop and--and then--then  
16 begin on the other river, no, that's--that's not our intent.

17 JUDGE LUOMA: Well, is there--is the issue correctly  
18 stated in the Board's order that there is the sole issue of  
19 the navigability or non-navigability of these two streams?

20 MR. ALLEN: I believe so.

21 JUDGE LUOMA: Alright, it seems to me, to make a  
22 clean record, that--that we should completely cover one river  
23 and then completely cover the other one, shouldn't we? Tell  
24 me why we shouldn't do it that way?

25 MS. TAYLOR: Well, I know that Doyon and the State

1 would have some difficulties in their evidence with that. Part  
2 of the problem is that we're going back to historical sources,  
3 we're talking about native--we're talking to native residents  
4 of the area, and our evidence is not going to be that cleanly  
5 delineated. I can almost promise the court that, you know,  
6 witnesses and even the interviews that the court may read later,  
7 you know, don't make those nice distinctions. It would be  
8 preferable, but I just can't say that we can talk about one  
9 river and then move on and talk about the other.

10 JUDGE LUOMA: I'm gonna have to unravel these rivers  
11 then from the record.

12 MS. TAYLOR: It's--it's going to be difficult for  
13 all of us to unravel. I'll certainly try to--to make it as  
14 clean as possible, but I just can't do it--

15 MR. ALLEN: Well, I don't believe it'll be as difficult  
16 as that, Your Honor, because as far as the physical data, we  
17 will present our physical data through several witnesses. Each  
18 witness will first talk about one river, and then talk about  
19 the other.

20 JUDGE LUOMA: Alright, well, that's--let's make that  
21 clean in the record that we know which river we're talking  
22 about--

23 MR. ALLEN: I agree.

24 JUDGE LUOMA: --if we're going to mix the two up.

25 MR. ALLEN: Right, I agree.

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1 JUDGE LUOMA: If everyone would always keep that in  
2 mind. I assume that each river has to stand on its own feet.

3 MR. ALLEN: Surely.

4 JUDGE LUOMA: Alright, anything else, then? Do you  
5 want to call your first witness?

6 MR. ALLEN: I--I'd like to make a brief opening  
7 statement.

8 JUDGE LUOMA: Oh, alright, if you want to make an  
9 opening statement, go ahead.

10 MR. ALLEN: And if it--if it's alright with the--  
11 with the court, I would prefer to remain sitting, is that--

12 JUDGE LUOMA: That's alright.

13 MR. ALLEN: The--the issue that's involved with here  
14 comes up, as you have indicated, because one of the native  
15 regions, Doyon, has selected three townships of land in the  
16 are of the upper Yukon River. And through these--this--these  
17 three adjacent sections--townships of land, two rivers flow.  
18 And, as you say, the issue is the navigability of these rivers.  
19 In fact, the portion of the rivers that flow through the selection  
20 is very small, a matter of less than ten miles of each river.  
21 In one case, I think, probably as little as three miles. The  
22 submerged land beneath these small portions of river does not  
23 amount to a significant amount of acreage. Probably my estimate  
24 would be that no more than two hundred acres are involved.  
25 Doyon Limit's selection entitlement is six or seven million

1        acres.        So you might wonder why are we making a big issue  
2        over two hundred acres. And I wanted to indicate at the outset  
3        of this hearing the reason why we feel that this hearing is  
4        important, that there is an importance beyond the two hundred  
5        acres of land that really is going to turn on your decision.  
6        And that is that this is the first hearing in which the issue  
7        of navigability in connection with the Native Claims Act as  
8        has arisen. There are, as you are obviously aware, thousands  
9        of other rivers in the State of Alaska, which flow through other  
10       native selections. And it is the intent of the Bureau of Land  
11       Management to attempt through this hearing to establish a  
12       fairly definitive set of both legal guidelines and physical  
13       yardstick, if you will, for measuring the other rivers that--  
14       in the course of conveying the forty-four million acres of land  
15       to the natives under the Claims Act.       The BLM will have to  
16       make a determination as to whether the rivers are navigable or  
17       not. And for that reason, we have determined--and we have  
18       agreed to--to go first in presenting the evidence, because I  
19       think the BLM probably has made a very thorough effort to  
20       physically describe these rivers. And it's our hope that the  
21       decision that the court renders will be useful to the BLM for  
22       comparing other rivers to these rivers for purposes of  
23       determining whether they are navigable. We have, as I indicated,  
24       six witnesses. Two of them are historians, one from the park  
25       service and one from the Bureau of Land Management. Their

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1 testimony will survey both the--the evidence that's in written  
2 documents and the results of oral interviews with people in  
3 the area to--to give the court an idea of how these rivers--  
4 what part these rivers play in the history and development of  
5 this area of Alaska from really the earliest times of white  
6 settlement in Alaska to the present time. We will then present  
7 three witnesses who have had extensive actual use of the river,  
8 who have been on the river several times, and they will basically  
9 describe their experience going up and down the river in  
10 boats. And our final witness is a hydrologist with the Geological  
11 Survey, who will testify as to the hydrologic nature of not  
12 only these two rivers, but rivers of a similar kind in this  
13 area. I believe that's all I have as an opening statement,  
14 and I'm prepared to put on my first witness unless you want to  
15 have the--

16 JUDGE LUOMA: Alright, I take it then that you intend  
17 to put on historical evidence, evidence of present use, and  
18 perhaps susceptibility to--

19 MR. ALLEN: That's correct.

20 JUDGE LUOMA: --navigabil--navigable use?

21 MR. ALLEN: Right. I might amplify my statement a  
22 little bit. One of the--as you--as you mentioned, the case  
23 law seems to indicate that navigability is--is--can be determined  
24 based on historical use or on susceptibility of use. We feel  
25 that in this case the--as the evidence will show, there has not



1 been extensive actual use, and so probably the issue is going  
2 to turn on the issue of susceptibility. But in determining  
3 susceptibility, it's the government's view that first of all,  
4 the test is whether the rivers were navigable at the time of  
5 statehood, and therefore, it's relevant to--for the court to  
6 know what kinds of boats were used commercially on these kinds  
7 of rivers, roughly in the--several decades around the time of  
8 statehood. And that will be part of our historical evidence.

9 MR. LUOMA: Is that a real--real critical date, in  
10 fact, the--the date of statehood?

11 MR. ALLEN: Yes, I believe it is.

12 JUDGE LUOMA: Alright, Miss Taylor?

13 MS. TAYLOR: I'd like to reserve an opening statement  
14 before my evidence, but I'm prepared to make one, if you wished.

15 JUDGE LUOMA: Alright, Miss Higgins?

16 MS. HIGGINS: Yes, I have a brief opening statement.  
17 I'd also prefer to remain seated if it's alright.

18 JUDGE LUOMA: That's alright.

19 MS. HIGGINS: The State was joined as a necessary party  
20 to this appeal by order of the Native Claims Appeal Board on  
21 the ground that a determination of non-navigability would be  
22 adverse to the State's claim of title to the land underlying  
23 the Kandik and Nation Rivers. From the inception of this  
24 proceeding, the State has maintained that the Board is without  
25 legal authority to adjudicate the State's title to submerged--

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1 to the submerged lands at issue here passed to the State in  
2 1959, when the State joined the Union pursuant to section M  
3 of the Alaska Statehood Act, which confirmed the applicability  
4 of the Submerged Lands Act to Alaska. I'd like the record of  
5 this hearing to clearly reflect that the State's participation  
6 here is in no way a waiver of the State's objection to the order  
7 joining it as a necessary party here, and more importantly to--  
8 to the State's contention that the Board lacks jurisdiction to  
9 adjudicate the State's title to these submerged lands. Of course,  
10 the State preserves its perceive right to litigate it's claim  
11 of title to land underlying the Kandik and Nation Rivers in a  
12 denovo court proceeding. That aside, the State has decided to  
13 participate in this proceeding to a limited extent for the  
14 purpose of trying to get an administrative determination on  
15 navigability which would be consistant with the State's title  
16 interest. Obviously the State does have an interest in  
17 avoiding, if possible, protracted title litigation. And I  
18 think Doyon Limited and the United States also share this  
19 interest. I'd like to re-emphasize that this is an administra-  
20 tive proceeding for the purpose of arriving at a determination of  
21 navigability to be used by the Bureau of Land Management in  
22 performing its function of passing on Native selection appli-  
23 cations and determinating acreage entitlements under the Alaska  
24 Native Claims Settlement Act. This is not a quiet title action  
25 and the State has not approached it as such. I think the

1 evidence to be adduced in this hearing will confirm that the  
2 area at issue here is remote and sparsely populated even today.  
3 It certainly was so in 1959, at the time of statehood. Also  
4 there is--is relatively little in the way of documentation of  
5 past use, which perhaps would be the best evidence of navigability  
6 or susceptibility for navigability at the time of statehood.  
7 Consequently, research regarding historical use necessitates  
8 time consuming and costly on-site field inspections for evidence  
9 of past use and field interviews. Much of the evidence to be  
10 presented in this hearing was gathered by BLM and Park Service  
11 employees over the last three or four years in connection with  
12 their responsibility of studying this area for inclusion in  
13 the National Park System. I guess we're fortunate that efforts  
14 were made during these last years apart from--from efforts to  
15 prove a case in this particular hearing, because we do have  
16 more evidence than we might otherwise have had given the  
17 relatively limited time presented for--for research since this  
18 hearing was ordered by the Board. The State feels that the  
19 evidence that we do have now, and that will be adduced at this  
20 hearing regarding past use and susceptibility for useful  
21 commerce on the Nation and Kandik Rivers is sufficient to  
22 support a determination of navigability for these two rivers.  
23 Frankly, I don't expect that there will be much dispute regarding  
24 the facts to be adduced. I think that there will be a dispute,  
25 there will be a difference with respect to the legal conclusions

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1 which should be drawn from these facts. The Board has--has  
2 ruled that the factual tests for navigability to be applied  
3 in this proceeding is that stated by the Supreme Court in a  
4 case involving title litigation, United States versus Hotz (ph)  
5 State Bank, 1970, U.S. forty-nine, 1925. This test is very  
6 general. How this test is applied to the facts and circum-  
7 stances pertaining to the Kandik and Nation Rivers is really  
8 the crux of this case. Unfortunately, we do not have any  
9 prior judicial determinations, cases here in Alaska concerning  
10 navigability of Alaskan waterways. It might be easier if we  
11 could look to--to such a case for guidance.

12 JUDGE LUOMA: How about some fairly wild rivers in  
13 say Oregon or Washington?

14 MS. HIGGINS: Well, we can certainly look to--to  
15 cases which have concerned navigability of rivers in the lower  
16 forty-eight, but I think that there probably are significant  
17 differences in terms of remoteness and the sparse population  
18 which pertain to--to the areas at issue here in this appeal.  
19 And I think it's important to keep this in mind. Now, I think  
20 it's generally known and probably conceded by all parties here  
21 that federal agency interpretations and applications of the  
22 navigability concept for their own administrative regulatory  
23 purposes differ from the navigability concept or test applied  
24 by courts in title litigation. Generally, the agency definitions  
25 and determinations of navigability are somewhat looser, more

1 liberal. In fact, an appeals court referred somewhat tongue  
2 in cheek to one agency definition, I think it was the definition  
3 of navigability used by the ARmy Core of Engineers, as anything  
4 sufficient to float a Supreme Court opinion. Now the State would  
5 urge that the navigability test to be applied for purposes of  
6 administering the Alaska Native Claims Settlement Act should  
7 be a liberal test. And I think there are at least three or  
8 four good reasons for--for this. First, as I mentioned before,  
9 the courts really haven't considered the question of navigability  
10 as it applies to--to Alaskan waters or as it applies to a late  
11 date of statehood, like 1959. Most of the cases we look to are,  
12 you know, rose in late 1800's early 1900's. Second, title  
13 litigation is likely both with respect to this proceeding and  
14 in other cases, other appeals under ANCSA if the administrative  
15 determination of--if BLM takes a restrictive interpretation of  
16 navigability, and we have lots of administrative determinations  
17 of non-navigability which conflicts with State claims of title  
18 under the Submerged Lands Act. Probably most importantly,  
19 assuming that Congress intended BLM to determine navigability  
20 for the purpose of conveying submerged lands to native corporation.  
21 I think it's highly unlikely that Congress intended BLM to take  
22 a--a restrictive interpretation of the concept of navigability  
23 and to narrowly apply it so that the result is title litigation  
24 challenges by the State to either the Native Corporations after  
25 conveyance of title or direct suits against the Federal

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1 Government. I can't believe that Congress intended a restrictive  
2 inter--definition of navigability to be applied so that a native  
3 corporation is charged with acreage which a court might very  
4 well in a close case decide belonged to the State of Alaska  
5 since statehood.

6 JUDGE LUOMA: What if the riverbed is where all the  
7 values are?

8 MS. HIGGINS: Pardon me?

9 JUDGE LUOMA: What if the riverbed is where all the  
10 values are, then it would be a different interpretation, wouldn't  
11 it?

12 MS. HIGGINS: Do you mean--

13 JUDGE LUOMA: What if you wanted the riverbed?

14 MS. HIGGINS: --if in another administrative appeal,  
15 the native corporation unlike this one, wanted that land--

16 JUDGE LUOMA: I take it that Doyon does not a river-  
17 bed.

18 MS. HIGGINS: Pardon me?

19 JUDGE LUOMA: I take it that Doyon does not want a  
20 riverbed?

21 MS. HIGGINS: That's right, that's true in this  
22 appeal and in three others that I know are --are pending. There  
23 probably will be cases where the selecting native corporation  
24 is in really an adverse position vis-a-vis the State's title  
25 claim wants that land. Still, I--I don't think that Congress

1 intended BLM's determination of navigability to give rise to--  
2 to numerous title lawsuits by the State protractive litigation  
3 over whether the State actually owned the land or--or --or the  
4 native--BLM can convey it to the native corporation. That's all  
5 I have at this point.

6 JUDGE LUOMA: Alright.

7 MS. HIGGINS: My short statement got a little long.

8 JUDGE LUOMA: Since you didn't comment on it, I--  
9 I assume then that you don't feel the State's position's been  
10 prejudice because of the denial of the latest request for  
11 continuance?

12 MS. HIGGINS: Well, that's a little hard to evaluate.  
13 I--I think we--we could--I would say this, that given the  
14 difficulty and the time consuming nature of--of research into  
15 historical use, the State hasn't had time to complete that  
16 process. We haven't exhausted research. I'm not sure what  
17 we might come up with if we were given more time. I think to  
18 that extent, perhaps--perhaps there is some prejudice in holding  
19 a hearing now, but the State maintains that it's not bound by  
20 the factual determinations here with respect to its own title,  
21 and can, at a future date, go into court and litigate denovo  
22 navigability for the purpose of conclusively determining the  
23 State's title. So in an ultimate sense, I guess the State is  
24 suffering no prejudice even if it's totally unprepared for this  
25 hearing.

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1 JUDGE LUOMA: Okay, I assume the State would be glad  
2 to be bound if the rivers are found to be navigable though?

3 MS. HIGGINS: Well, I don't think it's a question of  
4 being bound. If they're found to be navigable, we will avoid  
5 the necessity or the possibility of having to go into court to  
6 prove navigability.

7 JUDGE LUOMA: Okay. Mr. Allen, do you want to call  
8 your first witness?

9 MR. ALLEN: My first witness is Melody Grauman.

10 MELODY GRAUMAN,

11 Being first duly sworn under Oath, testified as follows:

12 BY MR. ALLEN:

13 Q Would you state your name and address?

14 A Melody Webb Grauman, Star Route Box 10017, 1½ Mile Chena  
15 Ridge Road, Fairbanks, Alaska.

16 JUDGE LUOMA: How do you spell your last name?

17 A G as in George, r-a-u-m-a-n.

18 JUDGE LUOMA: Thank you.

19 Q Have you prepared a list of your educational and professional  
20 background and publications that you have written over the  
21 last--during your professional career?

22 A Yes, I submitted a vita to you.

23 Q I'd like to mark this as appellant's--government's exhibit.

24 JUDGE LUOMA: Alright, let's have the BLM exhibits  
25 marked B dash with a number, Doyon will be D dash number, and



1 Alaska will be A dash a number. So mark that B-1 please.

2 Q Is this the vita that you prepared?

3 A (Pause). Yes, it is.

4 Q Your Honor, I believe since her publications are rather  
5 extensive, it'll save time if I do introduce this as an  
6 exhibit.

7 JUDGE LUOMA: Alright, is there any objection?

8 MS. TAYLOR: No.

9 MS. HIGGINS: No.

10 JUDGE LUOMA: Have you both seen this exhibit?

11 Q I will ask you to summarize briefly, the main features of  
12 it, where did you go to school?

13 JUDGE LUOMA: Just--just one moment, let's get this  
14 covered first.

15 Q Excuse me.

16 MS. HIGGINS: WE--we haven't seen it, Your Honor, if  
17 we could take just a moment. (Pause).

18 JUDGE LUOMA: Any objection?

19 MS. HIGGINS: No.

20 MS. TAYLOR: No.

21 JUDGE LUOMA: Exhibit B-1 is received in evidence.

22 Q Could you give us a summary of your educational background?

23 A I graduated from the University of Arizona in 1968, I  
24 completed all work except my master's thesis in 1972; I  
25 completed my master's orals instead of a thesis in 1974

1 from San Francisco State College at that time. I have  
2 done doctoral work at the University of New Mexico.

3 Q What is your present occupation?

4 A I'm a historian with the National Park Service.

5 Q And what does that job involve?

6 A It's dividied roughly in half, half administrative and half  
7 research.

8 Q What is the areas of responsibility?

9 A Well, the administrative half is responsible for the  
10 Park Service involvement in ANCSA 14H-1, which allows the  
11 Native Corporations to select historic sites under the  
12 Land Claims Act, and the Park Service is the professional  
13 consultant to BIA. I have a staff of, oh, between seven  
14 and twelve archeologists, ethno-historians, and anthro-  
15 pologists on contract with the University of Alaska.  
16 The research part of it is primarily responsible for  
17 doing research into the propossed areas for--proposed  
18 parks and emoluments under D-2, seventeen D-2 of  
19 ANCSA.

20 Q How long have you had this job with the National Parks  
21 Service?

22 A Nearly four years.

23 Q And what did you do before that?

24 A I was a free-lance historian, and I wrote articles for  
25 publication.

1 Q Has all of your professional career been involved in  
2 Alaska?

3 A Yes, I would say so.

4 Q Did you at one time, in connection with your job, prepare  
5 a historic resource study dealing with the Charley River  
6 area?

7 A The Yukon-Charley area , which is proposed for national  
8 rivers, yes, I did.

9 Q And can you describe what this area encompassed?

10 A Do you mean my--my study?

11 Q No, the geographical area that you were studying?

12 A It involved essentially from Eagle, which is about eight  
13 miles from the Canadian border, to Circle, which is  
14 approximately two hundred miles from the Canadian border,  
15 an area of about two million square miles at the junction  
16 of the Yukon and Charley Rivers.

17 Q Do you--do you term this area the upper Yukon area?

18 A It's--that's kind of a strange labeling, there are--it's  
19 the upper Yukon in Alaska, but the upper Yukon generally  
20 is considered to be the Dawson-Whitehorse area, and the  
21 area between Eagle and say Tanana is regarded at the middle  
22 Yukon.

23 Q Okay, so--

24 A It depends on what percept--from what point of view you're  
25 looking at. You could refer to it as the upper Yukon or

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1 the middle Yukon.

2 Q Well, I'll--I'll try to refer to it as the middle Yukon  
3 to use your terminology, I take it that's your preferred  
4 term.

5 A Um-hm.

6 Q What was the purpose of this study on the Charley River  
7 area?

8 A The Park Service has as part of their management policies  
9 a requirement for all areas, not just historical areas, but  
10 natural areas as well, to study the history of the area  
11 and what historic sites are representative of that history,  
12 not only for interpretation but for compliance with historical  
13 preservation law. This historic resource study that I  
14 did on the Yukon-Charley areas I broke into two distinct  
15 parts. One-half is a narrative, which is the history of  
16 the area. The second half is description of the actual  
17 historic sites that are on the rivers.

18 Q Before we get into the specifics of this study, what other  
19 studies of this nature have you done in Alaska?

20 A I did a history of Kennicott Corporation or Kennicott,  
21 Alaska, which--from which Kennicott Corporation grew.  
22 I did a history of Eagle in 1975. I've done an overview  
23 history of the Seward Peninsula and Kotzebue Sound area.

24 Q What major articles have you written?

25 A I've written an article on women and culture in Russian

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1 American, on the Russian-American period, period in the  
2 American west. I've written "Kennicott Origins of a Copper  
3 Empire," it appeared in the "Western Historical Quarterly".  
4 And I've written "Oil Rights and the Alaskan Homesteader"  
5 which appeared in the "Alaskan Journal". Plus several  
6 of my reports have been printed up as occasional papers  
7 by the cooperative park studies unit at the University.

8 Q And did you say how large a staff you supervised here  
9 in Alaska?

10 A It has averaged everywhere from fourteen to sixteen to  
11 as low as four. They are University of Alaska employ--  
12 contract employees, however, they are not National  
13 Park Service.

14 Q In connection with your job, do you do field research,  
15 travel in the areas you're studying?

16 A That's correct, it is the idea of the Park Service to  
17 combine library research with field on-site work so that  
18 you have a mixture of both worlds.

19 Q What tributary streams are included in this Yukon-Charley  
20 area that you wrote the report on?

21 A Okay, well, there are a good number of them, do you want  
22 me to hit all of them?

23 Q The major ones.

24 A There's the Tatonduk River, the Nation, the Kandik, the  
25 Charley River, Washington Creek, Coal Creek, Woodchopper

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1 Creek, Fourth of July Creek, Michigan Creek, Thanksgiving  
2 Creek, that's the number I can remember.

3 Q I'd like to mark this as an exhibit, Your Honor.

4 JUDGE LUOMA: Mark it exhibit B-2. Why don't you put  
5 it in the lower righthand corner of the map.

6 Q Alright. And another map I'd like to have marked B-3.  
7 Now, these are both geological survey maps of portions of  
8 Alaska, I'd like to have them introduced as exhibits.

9 JUDGE LUOMA: Any objection to B-2 or B-3?

10 MS. HIGGINS: No objection.

11 JUDGE LUOMA: Exhibits B-2 and B-3 are received in  
12 evidence.

13 Q Referring your attention to exhibit B-2, which is the  
14 series E Map of Alaska showing the D-2 areas, do you--  
15 can you see from where you're sitting which area would be  
16 the Yukon-Charley area?

17 A Yes, I can.

18 Q What number is it?

19 A I can't read the number.

20 Q Is it this area here?

21 A That's correct.

22 Q Number twenty-seven. Is the--do parts of the Kandik and  
23 Nation River fall within this area?

24 A That's correct.

25 Q And are these two rivers that you studied and did research

1 on in connection with your study?

2 A That's correct.

3 Q Your Honor, I would like to mark this as appellant's  
4 exhibit B-4. Is this the study you did on the Yukon-  
5 Charley?

6 A (Pause). Yes, it is.

7 Q I'd like to offer that as appellant's exhibit number four--  
8 government's exhibit number four.

9 JUDGE LUOMA: Show it to them.

10 MS. TAYLOR: No objection.

11 JUDGE LUOMA: No objection?

12 MS. HIGGINS: No objection.

13 JUDGE LUOMA: Exhibit B-4 is received in evidence.

14 Q Would you briefly describe the basic format of your study  
15 which is exhibit B-4?

16 A As I said earlier, it is broken down into a narrative and  
17 a description of historic sites. The narrative I applied--  
18 tried to apply Frederick Jackson Turner's progressive  
19 frontier thesis, that is that if you were able to figura-  
20 tively stand at Cumberland Gap, you would see waves of  
21 different type people from the mountain men through the  
22 miners through the townspeople roll on by. If you stood at  
23 South Pass you would see the same progression of people,  
24 migration of people go on through. I applied that--extended  
25 that theory up to the Yukon and felt that you could see the

1 same waves of people move down the river as--as time went  
2 on. So, therefore, I started with the Indians, and ended  
3 with the twentieth century.

4 Q Your Honor, I have introduced this exhibit partly because  
5 it's fascinating reading, but it is a fairly long book, and  
6 I, of course, don't expect the court to read the whole thing.  
7 I would like to refer to some of the chapters that are  
8 particularly relevant with the issue here. Is there a  
9 chapter, Melody, on water travel?

10 A That's correct, it's called "Transportation Frontier,  
11 Water Travel" I believe.

12 Q Now, in doing the research for this study, what sources did  
13 you examine?

14 A I examined as many of the sources as available at the  
15 University of Alaska in Fairbanks, Juneau, historical  
16 library, what few sources were available in Anchorage.  
17 I went to the Library of Congress, the University of  
18 Oregon, the University of Washington, Seattle, the Museum  
19 of Technology, Seattle; the University of Arizona, I believe.

20 Q How many months do you estimate you spent doing library  
21 research for this study?

22 A Well, library research was going on continuously, even  
23 when I was in the process of doing field work, I would come  
24 back and research for two weeks before I would go back  
25 into the field. I was working probaby --averaging at least



1 two days a week working on it from October of '75 through  
2 April of '77.

3 Q Do you have a bibliography?

4 A Yes, I do.

5 Q How many pages is that?

6 A I'd say it's approximately twenty pages.

7 Q How many individual manuscripts do you estimate you read  
8 in connection with this study?

9 A Are you meaning manuscripts that are unpublished or--

10 Q Yeah.

11 A --altogether?

12 Q Published and unpublished?

13 A Oh, gee, I--I can't say. Two or three thousand I would  
14 imagine if you'd count the ones I looked in that had no  
15 reference.

16 Q And did you also do oral interviews in connection with this?

17 A Yes, a good number of them.

18 Q How many people do you estimate you interviewed?

19 A Around fifteen, I would imagine.

20 Q How many individual historic sites have you identified  
21 in this geographical area covered by your study?

22 A I have listed a hundred and fifty. Some of those are  
23 sections of the mail trail that were listed individually,  
24 so there would probably only be about a hundred and forty.

25 Q Did you also do field studies in this area?

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1 A Yes, I spent forty-five days on the Yukon in the summer  
2 of '76.

3 Q Do you believe that there is any major resour--research  
4 source which mentions the Nation or the Kandik River that  
5 you--that you may have overlooked?

6 A The only source that I know that I was unable to reach was  
7 a man in Eagle by the name of Willy Juneaby (ph). I had  
8 numerous appointments with him, and even mutual friends  
9 tried to get us together, and we were never able to meet  
10 up. But as far as I know, he's the only major source  
11 that I did not contact.

12 Q In researching this project, did you include in your  
13 source material, government reports such as U.S. Geological  
14 Survey Reports?

15 A A good number of them.

16 Q Was much of the material that you covered concerned with  
17 river transportation in this middle Yukon area?

18 A I beg your pardon?

19 Q Was--was a considerable amount of the material that you  
20 researched that you looked through, the source material,  
21 concerned with river transportation or did it discuss  
22 river transportation in the middle Yukon area?

23 A I would say that it--the transportation chapter itself,  
24 it was starting out to be just one chapter, and it got  
25 so big and bulky I had to break it into two chapters,

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1 divided by water and land. So I would say that it, of all  
2 of the chapters, was the bulkiest and--because there'd  
3 been less done on those--the transportation frontier than  
4 on any other chapter that I did aside from the trapping  
5 frontier and the modern mining frontier.

6 Q What--what--I don't remember whether you indicated what  
7 field trips you took in this area?

8 A I had three separate field trips, averaging about three  
9 weeks long. The first one went from Eagle to Nation  
10 River, and then I went back and did additional research on  
11 what I didn't know and what I was going to see on the next  
12 trip. And then I went out again for three weeks, and this  
13 trip last--took from the Nation to the Charley River, and  
14 then returned to Fairbanks for additional research and  
15 then went back for the third and last trip, which went  
16 from the Charley River to Circle.

17 Q And what--what year was this?

18 A The summer of '76.

19 Q And did you, during these trips, take side trips up the  
20 tributary streams, particularly the Nation and the Kandik?

21 A That's correct.

22 Q From your research on these two rivers, can you generally  
23 tell us what kind of use historically was made of these  
24 two streams, that is the Nation and the Kankik River,  
25 and identify which of the rivers you're talking about, if

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1       you can?

2       A     Well, most of the documents, as has been mentioned in the  
3             opening statement by the State attorney, there's very  
4             little documentation of use of either one of these rivers.  
5             Most of my information that I do have comes from oral  
6             informants or from records in the possession of Eagle,  
7             Alaska, the city hall. Those records refer to--let's  
8             start with the Nation River, primarily the only use that  
9             I know that the Nation was used for was trapping. There  
10            were at least three men that I know that trapped the Nation  
11            River. I do not have any specific reference how they got  
12            their supplies up there other than dog team, I have never  
13            found a reference that the Nation River had a poling boat  
14            on it, but poling boats were the main measure--main way  
15            of transporting supplies. So you may or may not be able  
16            to extrapolate and say that there was poling boats on the  
17            Nation. The second use that the Nation River had was  
18            during the Boundary Commission--International--International  
19            Boundary Commission Survey, 1910 to 1912, the Canadian  
20            geologist, D. D. Kearns (ph) used the Nation primarily in  
21            horses. He mentions in his published book that there were--  
22            that the Kandik and Nation were supplied by poling boats,  
23            but in his field notes, he only refers to horses, he never  
24            makes reference to poling boats being on the Nation River,  
25            only on the Kandik. So those are the only two uses that I

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1 found in the written text or in personal interviews of  
2 use of the Nation. Aside from one other thing, I just  
3 remembered, there was the--a coal mine that was discovered  
4 in 1897, Alaska Commercial Company found some pockets of  
5 coal one mile up on the Nation River. That coal was  
6 sledded to the Yukon in the winter time. And it was mined  
7 probably for only that one year. The stock pile of coal  
8 still remains there at the bluff cabin, or Christopher O.  
9 Nelson's cabin.

10 Q What use of the river was made in connection with that  
11 coal mine, did they--did they move coal down the river or  
12 solely by sled?

13 A The U.S.G.S book written by Arthur Collier says--uses the  
14 word sledded to the Yukon, so I must infer that it was  
15 pulled by dog team. But since it was only a mile up the  
16 river, and since the Nation is fairly adequately deep at  
17 that point, they could have easily have used small poling  
18 boats or lined craft up, but I can't--that's all supposition,  
19 I can't--

20 Q Before you turn to the Kandik, I really kind of got ahead  
21 of myself. Can you tell us generally how the history of  
22 this area evolved, the historical use of this area?

23 A You're referring just to the Yukon-Charley area or just  
24 to Kandik-Nation area?

25 Q No, the Yukon-Charley area.

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1 A Well, initially the Han Indians were there, they were the  
2 first native group, they utilized the fish in the summer  
3 and the caribou and moose in the later fall and winter.  
4 Fur traders came in in about--well, let's see, Robert  
5 Campbell was on the Yukon in 18--I'll have to check my  
6 notes on that. 1848, Ft. Selkirk, Robert Campbell was  
7 there. Alexander Murray was in the Ft. Yukon in 1847,  
8 but it wasn't until 1851 that Campbell passed from his  
9 fort, Ft. Selkirk, down the river to Ft. Yukon, and  
10 therefore, was the first known recorded white man to pass  
11 the Kandik and Nation, Yukon-Charley area.

12 Q Where is Ft. Selkirk?

13 A It's at the junction of the Pelly and Lewes Rivers--

14 Q Is that in Canada?

15 A --and it's in Canada, very far north, that's the upper  
16 upper Yukon.

17 Q It's above Dawson?

18 A Yes. You won't find Ft. Selkirk on the map.

19 Q Oh, yeah, here it says Ft. Selkirk.

20 A Oh you do, okay.

21 Q And Ft. Yukon, of course, is where?

22 A It's up at the peak of the Yukon River, the northern  
23 peak.

24 JUDGE LUOMA: You're looking at exhibit B-2.

25 Q Right. Now, were the--what was the history of the fur

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trade in this middle Yukon area?

A There were Russians at Ft.--at St. Michael at the mouth of the Yukon River in 1833, and there were British Hudson Bay Company traders at Mackenzie, at the mouth of the Mackenzie. There was interchange between these two, even though they never knew exactly where one and the other was up until 1847, when Alexander Murray established Ft. Yukon in Russian territory. 1863, the Russians sent up more or less a spy to find out where the English were. His name Ivan Lukeen, and he was the first person to know that the Russian River Kvich--Kvichpak--I can't pronounce it, and the Yukon were one and the same. And he went from Nulato up to Ft. Yukon. The fur trade was primarily a trading of goods, beads, tea, coffee, for furs with-- from the Indians. And Ft. Yukon was the major fort in the area now known as--then known as Russian-America, now known as Alaska. Ft. Selkirk was burned in 1852, I believe, and was never re-established. In 1866, the western union telegraph sent two men up the Yukon from Nulato all the way up to the ruins of Ft. Selkirk. They were the first Americans to travel through the Yukon-Charley area and the Nation and Kandik. Right after 1867, the purchase of Alaska by the United States, the United States sent Captain Charles Raymond in the first steamboat, the Yukon, which was owned by a commercial company, the first steamboat went

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up the Yukon in 1869 as far as Ft. Yukon, found that the British fort at Ft. Yukon was in America soil and told them to leave, and they moved to Rampart's house and eventually finally got onto the border of new Rampart's house. There are a series of trading companies that came in, the major one was the Alaska Commercial Company. And a number of fur traders eventually thirty two of them were in the interior rivers, the three major rivers, the Kuskokwim, Tanana and Yukon Rivers. The people who stayed almost through the--through the longest were a group of three men, McQuesten, Jack McQuesten, Arthur Harper, and Al Mayo, arrived in 1873 and it was McQuesten who established the first fort in the Han territory, just downriver from what is now Dawson. And that was in 1874, that was known as Ft. Reliance. All trading posts were judged from the distance from Ft. Reliance, such as Forty Miles, forty miles down river from Ft. Reliance; Sixty Miles, sixty miles up river from Ft. Reliance. 1880, two more steamboats entered the river, the St. Michael and a new Yukon. These were still being used as fur trading steamboats. From 1867--from the purchase until probably about the turn of the century, the United States Treasury Department had a regulation that only natives could trap, the white man, unless they were married to natives, could not trap. So therefore, there were just --white men were fur traders, and

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1 the natives were the fur trappers. In 1882--or 1880, the  
2 first trading post at Eagle was built by a competitive firm  
3 of Alaska Commercial Company, called Western Fur and  
4 Trading Company. Two years later Alaska Commercial  
5 Company came in and put in a post there, and there was  
6 severe competition between the two of them. At the same  
7 time as this fur trading was going on, McQuesten and Harer  
8 especially were doing some exploration of the rivers. And  
9 I think it's at this time that they determined that the  
10 rivers or the streams north of the Yukon, from the Canadian  
11 border downstream had very little gold prospects, whereas  
12 south of the Yukon were very rich prospects. I have to  
13 judge--I have to say that no where in the literature does  
14 it say at some time they determined that that is so, but  
15 the geologist Spurr came in 1896 and had already determined  
16 that that was so the mining was all done south of the  
17 Yukon in the Yukon-Charley area.

18 Q Are there any notable gold strikes in the area north of  
19 the Yukon in the American--in Alaska?

20 A Not in my--not in the area that I am familiar with, which is  
21 the Yukon-Charley area.

22 Q When was the first substantial gold strike in the middle  
23 Yukon, Yukon-Charley area?

24 A Well, the first gold strike was in Canada and that was in  
25 1885 on the Stewart River. Fortymile, which was fairly

1 close to the Yukon-Charley area, happened in 1886. Then  
2 Circle about 1892, 1893, and so you've got Circle on one  
3 end and Fortymile on the other end, so they were definitely  
4 exploring and developing, trying to find something in  
5 between. American Creek also on Eagle was there in 1996  
6 when Spurr visited, but the first reference that I have to  
7 gold was in 1898 at Fourth of July Creek and Coal Creek  
8 and Woodchopper Creek, there were developments on both of  
9 them in 1898 as the spinoff from the Klondike occurred.

10 Q Before we get into the gold era, what was the native  
11 population in this middle Yukon area, and where were the  
12 main villages in the--say the 1880's or 1870's when the  
13 fur trade was the principal activity?

14 A Well, Petrov, who was largely responsible for writing  
15 Bancroft's (ph) History of Alaska did the census of 1880  
16 and he--he has down for David's camp, I believe a hundred  
17 and six. David's Camp is at Eagle village, approximately  
18 Charley's village, which is at the mouth of the Kandik  
19 River, he has forty-eight. And Ft. Reliance, which is  
20 down river from Dawson, eighty-two. And this is in the  
21 census of 1880.

22 Q Are those the only native villages along the Yukon from  
23 Ft. Reliance to Circle?

24 A That's--

25 Q Strike Ft. Reliance, I meant Ft. Selkirk?

1 A Probably not, they would probably--I'll--I'd have to say  
2 I don't know on that issue, I'd say from--from the Canadian--  
3 well, from Dawson, Ft. Reliance to Circle those are the  
4 only villages. Circle was nonexistent at that point.

5 Q What was the effect of the discovery of gold in this  
6 area on the fur trade?

7 A The first gold strike was in 1885 on the Stewart River, and  
8 McQuesten at that point had began to feel that the market  
9 was stronger for miners, because there was a steady  
10 influx of miners than it was for fur trading, so he went  
11 out at that point to San Francisco to talk to the Alaska  
12 Commercial Company businessmen and convince them to start  
13 stocking shovels, gold pans, rubber boots, and the whole  
14 bit, instead of beads and tea and flour for the Indians.  
15 So it had once--this happened in 1885, before the gold  
16 strike, he came back with the materials just in time  
17 as the Stewart gold strike, and as a result of that--  
18 and which petered out pretty fast, the Fortymile strike  
19 in 1886 created an initial rush, even though it was a  
20 small strike, it was an initial rush of several hundred  
21 miners to the Fortymile area. The Indian who was the--  
22 still trading and trapping furs, was left almost behind.  
23 By 1885, Ft.--Ft. Reliance and the fort at Eagle called  
24 Belle Isle were closed in 1885, so that the Indian now  
25 had to travel all the way to the Fortymile, the mouth of

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Fortymile to trade his furs. He was still trading furs, but he was now a secondary source.

Q Where does the Fortymile enter the Yukon?

A In Canada.

Q Just--how many miles from the Alaska border? Roughly?

A I don't know, I'd say about twenty.

Q Fairly close to the Alaska border?

A Yes.

Q Twenty miles upstream from Eagle, then, twenty or thirty miles.

A It'd probably be more like thirty miles upstream, but I'm not sure on this.

JUDGE LUOMA: Are these points shown on Exhibit B-2 that' you've been testifying about?

A Yes.

Q So the native was somewhat left behind when gold was discovered, what happened to these native villages, did they become depopulated?

A No, I wouldn't say that they became depopulated. In fact, many of the natives moved to the mouth of the Fortymile and set up a village at Fortymile. Some of 'em--the Indians moved to Circle. In fact, Circle was founded by two--one was an Indian, both of 'em, I guess, would be what you'd call halfbreds, sorry Richard, they're half Indian and half Russian, Pitka and Cherosky. They--there was villages

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1 at Circle, there were villages at Eagle, there were villages  
2 at Dawson, there were villages at Fortymile. So I would  
3 say that they mixed in with the milieu. They were miners  
4 themselves, sometimes they were cut out of their claims.  
5 Klondike itself were discovered by two of the--two natives.  
6 So I would say that there were caught up in the main stream  
7 of mining, the same as non-natives.

8 Q During the peak of gold activity--when was the peak of  
9 gold activity in this area?

10 A Between 1896--well, Klondike was discovered in 1896, the  
11 fall of 1896, but the real impact happened in 1897 when  
12 the novices from outside were coming in with insufficient  
13 supplies. There was a starvation scare, and so the real  
14 impact happened in 1897 and '98. As a result of that  
15 starvation scare, there was not enough food in Dawson,  
16 more self-reliant, spread out, fanned out, and made their  
17 own living off the land, and to some of the smaller  
18 tributaries, a lot of them returning to Alaska and the  
19 Circle, Fortymile area that they knew and mined earlier.  
20 The impact lasted, I would say, up until about 1904. That  
21 was the strongest, greatest influx of people.

22 Q So it was really--the major gold activity in this area  
23 occurred in a eight or ten year period?

24 A That's correct.

25 Q And at the end of that period, did the area empty of people

1 almost as fast as it had filled up?

2 A Well, it was a different type. The bonanza mining, the  
3 goldrush bonanza happened from 1896 to approximately 1902.  
4 Then the--the gold--the easy gold that was gotten by  
5 placer--the gold pan and the rocker was gone, and it took  
6 capital to develop the--the mines. Big companies came in,  
7 the Goginheins (ph) for instance, some of the others came  
8 in with dredges, hydraulic mining, to develop the Klondike  
9 into--consolidate the claims, the small claims, the fraction  
10 of claims into bigger claims so that they could be  
11 developed more expediently and more efficiently. And that  
12 happened, oh, probably about 1908 'til 1950's when they  
13 first--when they closed down.

14 Q Do you know the population of the various towns on the  
15 middle and upper Yukon in say 1900?

16 A Well, I would say that Dawson probably had close to thirty  
17 thousand. 1900 is the NOme goldrush so that many of the  
18 people who were living in Eagle, Circle, Independence,  
19 Nation, Ivy City, Seventymile, Star City, which are all  
20 small towns along the Eagle--along the Yukon between  
21 Eagle and Circle. Many of these miners are bonanza miners,  
22 they're looking for their goldrush, their big motherload,  
23 and so they follow every new strike. And so the area was  
24 probably drained by 1900. In 1898 you had seven towns  
25 in a two hundred mile strip. By 1900 I would say that all

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1 but three of those had been evacuated or abandoned?

2 Q Which were those towns, can you name them?

3 A Eagle, Circle, and Nation.

4 Q Those were the three that were still--still live towns in  
5 1900?

6 A If you can call--you know, Nation may have had twelve  
7 people there at that time, that was a live town, yes. There  
8 were a couple of people in Star City, too, but that's also  
9 kind of--maybe, you know, two houses.

10 Q And what were the ghost towns?

11 A Seventymile, Ivy City, Independence.

12 Q So do I gather from your testimony that during --around the  
13 turn of the century, this area was the scene of tremendous  
14 movement of peoples, but it was a very quick come quick  
15 go type of thing?

16 A That's correct.

17 Q Very rapid migrations to the next strike. What was the  
18 transportation system that supported the--the gold activity?

19 A Primarily steamboat. There were two methods of arriving  
20 at the Klondike, Dawson area. One is through the Chilkoot  
21 Pass, but you had--you had to--say you left Seattle in a  
22 steamer, an ocean going steamer, and you'd get off at  
23 Skagway, go up over the Chilkoot Trail, and build a raft  
24 or a boat, and float down to Dawson. That was the harder  
25 way. Another way was leaving Seattle on an ocean going

1 steamer, and steaming all the way to the mouth of the  
2 Yukon at St. Michael and transferring to a riverboat steam-  
3 boat and steaming up the river to Dawson. That took longer,  
4 but it was easier and safer. Other methods of travel, once  
5 you got to the major area, if you were a miner, the best  
6 way of traveling was with a poling boat, which you needed  
7 a partner. These are long boats, about twenty or thirty  
8 feet long, two and a half, three feet wide at the widest  
9 place. And they carried, according to the literature, a  
10 ton of materials and supplies. And the other alternative  
11 was packing material in on horses, which were--often died  
12 very quickly. Some of the miners, especially in the Fourth  
13 of July area did use horses. In the winter time, they  
14 moved by freighting with dog teams. This was especially  
15 popular around Dawson and around Circle.

16 Q Do you know from your research of any of the tributary  
17 rivers above Ft. Yukon in the Alaska--before you get to  
18 Canada, which a steamer that traveled the Yukon from St.  
19 Michael would continue up?

20 A Yes, the Porcupine, which is right at Ft. Yukon, but that's  
21 the only one.

22 Q No other ones below the--

23 A They had to--they developed some very low drawing steamboats,  
24 the Tanana and the Koyukuk, which drew only six inches of  
25 water, and these were able to steam up the Tanana and the



1 Koyukuk Rivers. A guy by the name of--a captain by the  
2 name of James T. Grey developed these in Columbia, Columbia  
3 River--well, he was a Columbia River pilot, but he was  
4 responsible for over-seeing these. And the Tanana, I believe  
5 maybe it's the Koyukuk did make it up the Porcupine for  
6 this international boundary survey in 1911, I think.

7 Q What was the generally the dimensions of the Yukon River  
8 stern wheelers that would make the trip up from St. Michaels?

9 A I'd have to check my notes on that.

10 Q I believe you described them on page 135 of your report.  
11 I really want a--the range.

12 JUDGE LUOMA: Let's take a ten-minute recess.

13 OFF THE RECORD

14 ON THE RECORD

15 A The size of the steamboats ranged from the first one,  
16 which was the Yukon, 1869, seventy feet long, to the last  
17 one, which was the Nenana, 1953, which was two hundred  
18 and thirty-five feet long, is that sufficient?

19 A Yes, that's fine.

20 Q What--how many trips up river would these boats typically  
21 make from St. Michael to say Dawson, a season?

22 A If they had a good--I think the Arctic made four round  
23 trips, and I think that was remarkable. So I would say  
24 that three was an average.

25 Q Three a summer?

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1 Q And when would the summer start?

2 A I would say probably the last part of May.

3 Q And when was the--when would the last trip go before the  
4 river--

5 A About now, the last part of September, the first part of  
6 October as freeze-up is occurring, the steamboats had  
7 to be pulled up out of the river.

8 Q I was interested in some figures you have on page one hundred  
9 and forty-seven of your report, which is government exhibit  
10 B--

11 JDUGE LUOMA: B-4.

12 Q --B-r as to the economics of steamboat travel where you  
13 seem to indicate that the capital cost can be paid off  
14 in one--in one trip, is that correct?

15 A That's correct, but you could lose it in one trip, too.

16 Q What was the freight costs per pound to ship goods up  
17 by steamer?

18 A I believe it was eight cents a pound, eight to twelve cents  
19 a pound, but I can't remember.

20 Q Well, the figure that you have on page one forty-seven  
21 is five cents a pound.

22 A Okay.

23 Q Maybe that--

24 A Alright, alright.

25 Q Well, can you generally summarize--returning then now to the

1 Kandik River, what use was historically made of that river  
2 during this period of time, and I'm talking now about  
3 1867 through say--well, let's take it through 1959, use  
4 of the Kandik River.

5 A Well, historically we'd have to go back to the Han Village  
6 there at the mouth of the Kandik River, which is the  
7 Charley--known as Charley's village after Chief Charley.  
8 He--the Indians from that village certainly used the  
9 Kandik in the--about 1910 or so, a Hudson Bay Company  
10 trader stopped at the village and identified a musk oxen  
11 that Chief Charley had killed at the headwaters of the  
12 Kandik. So his--he and his natives certainly used that  
13 area, the upper Kankik.

14 Q What was the date you gave, I'm sorry?

15 A It was around 1910, it had to be before 1914 when the village  
16 was washed away. I do not have a date on it. It was--the  
17 Hudson Bay Company name was Henry Apel (ph). They probably  
18 used the river for moose and there may have even been  
19 some caribou in there at that time. I know there was  
20 caribou on the Nation during that time, so there may have  
21 well been on the Kandik. They--there have been reports  
22 in other--other documents than mine that they would hunt  
23 up there and then make a moose hide boat and float down  
24 the river with the meat. So the Indians at the mouth  
25 did use the river. I have no record of any of the fur

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1 traders, that era, using any, using the river. Or any  
2 use up until--there probably undoubtedly was goldminer,  
3 prospectors, Harper may have--may have explored the Kandik,  
4 it's a major river. But I don't have any definite reference  
5 until the boundary, International Boundary Commission in  
6 1910 through '12, they were surveying the boundary there  
7 of the upper Kandik, and they were supplied by poling  
8 boats, one poling boat pulling another scow. They also  
9 used horses for travel and for moving the camp. But the  
10 main supplies, about a ton or a ton and a half of supplies  
11 were brought in.

12 JUDGE LUOMA: While you're on the subject, would you  
13 define for me a poling boat, you've mentioned it several times?

14 A Certainly, it's a long boat, about twenty or thirty feet  
15 long, and has tapering sides, and stump--stub nosed,  
16 squared off ends, stern and bow, and about two and a half  
17 to three feet at the widest area. It's a long narrow--  
18 the men stand--one man stands in front and one stands in  
19 back and they pole.

20 JUDGE LUOMA: What is poling, that's what I want to  
21 know?

22 A They have a long pole, and they dip it into the sides of  
23 the river and pull it up.

24 Q Pushing along the bottom?

25 A Pushing along the bottom.

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1 JUDGE LUOMA: They're pushing with the pole, then,  
2 they're not pulling, you said pulling there a moment--

3 A Poling.

4 JUDGE LUOMA: Oh, poling, oh. Alright, they're just  
5 pushing up stream?

6 A Right. And the Yukon moves at about eight knots, so--some  
7 of the smaller tributaries move a little faster, and it's  
8 a little-- much--much more difficult. In fact, the inner--  
9 Kearns' (ph) notes refer to the poling boat that took  
10 their supply up the Kandik had an accident and nearly lost  
11 most of their supplies. He calls the stream somewhat  
12 trecherous. So that was the--the International Boundary  
13 Commission.

14 Q Before you leave that, you mentioned they moved a ton and  
15 a half of supplies up, was that in one trip?

16 A Yes, that was one trip with one poling boat pulling a  
17 scow, and I think they had three, possibly four, polers.

18 Q How long did it take them to make that trip?

19 A I don't know.

20 Q You say there was prospecting to the north of the Yukon  
21 but no recorded evidence of any actual successful discovery  
22 in the tributaries to the north?

23 A No, there was one--one man in 1898 thought he had found  
24 a strike of telluride, which is a combination of an ore  
25 that combines with gold. And he went back to try to find

1 it twenty years later and he swore that--that the outcropping  
2 from which he had got the ore had been covered with a  
3 slide and so he proceeded to tunnel and dig and spend  
4 forty years plus thousands and thousands of dollars on the  
5 north side of the river, whereas everybody was laughing at  
6 him, and never found a single bit of ore, of telluride  
7 ore. It's referred to as the lost mine story on the Yukon,  
8 but that's the only real mining that ever took place aside  
9 from coal mining on the Nation. The other historic use,  
10 of course, has been trapping, probably from the turn of the  
11 century or even before. I'm sure Charley's--the natives  
12 from Charley's village trapped the Kandik during the--  
13 for the Russians the English, the American fur traders,  
14 and then when the American trappers came in, the--the dates  
15 that I would have on that would be from about 1920 through  
16 1950, between '50 and '68, everything--the people sort of  
17 cleared out of the Yukon. There were very few trappers,  
18 prices were not very good, so most of the numbers of  
19 people that I know that were on the Yukon or on the Kandik  
20 at that time occurred between 1920 and 1946 really.

21 Judge Luoma: You did in--you did not include the  
22 Nation in that TEstimony?

23 A No, I'm just talking--talking of the Kandik at this point.

24 JUDGE LUOMA: Alright.

25 A There were two brothers by the name of Fish, Frank Fish

1 and I never learned his brother's name, they trapped the  
2 Kandik, probably in the 1930's, late '20's, early '30's.  
3 Larry Dennis and Chris Peterson, one was an American and one  
4 was a Canadian, and they trapped the upper Kandik. One  
5 on one--the American on the American side and the Canadian  
6 on the Canadian side. Ed Olson and a man by the name of  
7 Knutson (ph) trapped it. They lived in wikiups (ph) and  
8 little half subterranean houses, and used deadfalls  
9 instead of traps, and did it the hard way. They were  
10 probably very poor trappers. Sandy Johnson, from whom  
11 Johnson's gorge is named, is reported to have trapped that  
12 area, in fact, had a contract to deliver hay and grain to  
13 geologists ninety miles from the border. George Beck,  
14 who had a house there at the mouth of the Kandik near  
15 Biederman's camp trapped the Kandik. Peter Summerville  
16 trapped Rock Creek, which is an adjacent stream that flows  
17 up into the Kankik and could easily make a loop, so  
18 Peter Summerville may have trapped the Kandik, but he  
19 definitely trapped Rock Creek. Inga Solomon also trapped  
20 the Kandik, Gordon Burtson (ph) and Woodchopper Joe,  
21 which is--who is a Circle native, a native from Circle.  
22 James Taylor who lived near the Nation, the mouth of the  
23 Nation River, about a mile downstream from it, trapped  
24 Rock Creek, and he--therefore he may have looped over into  
25 the Nation or he may have looped over into Kandik, it's a--

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1 Rock Creek is a Creek that's about equidistant between  
2 the Kandik and the Nation and when you trap, it's best  
3 to try to make loops instead of go up the same way you've  
4 come down. So the number of people that trapped the Kandik  
5 between 19--oh, 1920 and 1950 would be around fifteen at  
6 different times, I would imagine. They would recognize  
7 each others territory and they would not be there at the  
8 same time, but--

9 Q And did you interview a number of trappers in connection  
10 with this research?

11 A Yes, I did.

12 Q And did you inquire as to the--shall we say the mores of  
13 the trapping community, but what I'm leading to is how  
14 many trappers would trap an area the size of the Kandik,  
15 for example, at one time?

16 A Well, you'd have the upper reaches of the Kankik being  
17 handled by say Chris Peterson and--and Larry Dennis, then  
18 you would have some near the mouth, say George Beck, then  
19 maybe one--another set of partners in the middle, but  
20 they would be loop trails rather than run all the way  
21 up one side and come down the other or whatever. They  
22 would generally connect in with an adjacent creek or  
23 an adjacent drainage area.

24 Q If one trapper had established a trap line in a certain  
25 drainage, would another trapper come in and establish a



1 line in that same drainage?

2 A Highly unlikely, not unless they were looking for a fight.

3 Q So at any given time, there probably would be no more than  
4 three trappers or possibly a team of --three teams of  
5 trappers operating on the Kandik at any given time, is that  
6 correct?

7 A That's what I would--that I would guess. I may be wrong,  
8 but that's about what I would assume.

9 Q What was the--how did these trappers operate their  
10 logistics, getting their supplies and moving out their  
11 furs?

12 A This--during the days of the steamboat, they would have--  
13 order up their year's supply of goods on the steamboat  
14 and the steamboat would drop it off at the mouth of the  
15 river, whether it be the Kandik or the Nation River, and  
16 they would usually build a cashe there at the river, and  
17 put it up out of the way of wild animals. And then by  
18 poling boat or scow or canoe or whatever vehicle they had,  
19 maybe even their backs, they would pack it, tow it, pull  
20 it, pole it, up to their home camp. And then from home  
21 base, they would go out to their line cabins and cash what  
22 food and supplies they needed at their line cabins.

23 Q What time of year would they be doing this?

24 A This would be summer. Now some of 'em may wait and  
25 cashe it and then come and pick it up in the winter when

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1 it's easier to sled with dog teams, and bring it up with  
2 dog teams. It all depended on what you were doing in the  
3 summer. For instance, many of the trappers mined in the  
4 summer or else chopped wood in the summer, so they didn't  
5 have that--the summer free to take their supplies in, and  
6 they found it easier to wait until freeze up and snow--  
7 ground covered to bring their supplies.

8 Q Well, talking again about the Kandik River, do you know  
9 whether the trappers that trapped that river generally  
10 found it easier to move their supplies up by boat or to  
11 wait until the ground--until snow fell so they could move  
12 it up by dog team?

13 A No, I don't.

14 Q Turning now to the Nation River, who were the--do you know  
15 who the trappers were during the period 1920 to 1946?

16 A I know two specifically. One is Dan VanDeber (ph)  
17 a Pele (ph) Indian, and Christopher Phonograph Nelson,  
18 who was known as Phonograph because he couldn't stop talking.  
19 He'd say "and a and a and a" when he couldn't think of  
20 anything else to say, so he sounded like a broken phonograph.  
21 And then James Taylor, who was--had a house just a half  
22 a mile from Christopher Nelson's cabin there on the Yukon,  
23 used the Rock Creek and as I said earlier, he may have come  
24 into the Nation drainage, I don't know for sure. I know  
25 that he did trap--

1 Q Did the Nation--

2 A --so it may have been three, definitely two. Dan VanDeber--  
3 excuse me. Dan VanDeber used the upper Nation, he went up  
4 there without fish in the fall with about a team of seven  
5 dogs and came back with the dogs fat and sassy having lived  
6 off caribou. There obviously were caribou in the upper  
7 Nation at that time. Whereas Christopher Nelson trapped  
8 the lower Nation between the Yukon and approximately  
9 Tinder (ph) or Jungle.

10 Q Now do--do you know whether these trappers preferred to bring  
11 their supplies in by water or overland?

12 A I have never heard reference to either one of them having  
13 a poling boat. What I have heard from Christopher Nelson  
14 was Christopher Nelson had this great big boat that he had  
15 to have these log capstans which I have in my--a photograph  
16 in my book, but he used these log capstans to pull the  
17 boat up, it was so big. It's unlikely that he was able  
18 to get that boat up the Nation, if it were that big.

19 Q How would he use the capstan to get the boat--move the  
20 boat? Anchor a line to a tree on the bank and winch  
21 himself up?

22 A Yeah, well, it was essentially a winch, this--these  
23 capstans were, there were two of 'em, and he had logs  
24 that he would--lined up that he would pull up with the  
25 different capstans or winches or whatever you want to call

1       them, and I was told that it was a big boat that he had  
2       made himself. Primarily probably to get fish in for his  
3       dogs. Dan VanDeber probably used his dogs to get his  
4       material up because he went up in the fall with his dogs.  
5       I don't believe he used poling boats. Those are the--as  
6       I say, the only two ones--trappers that I know that utilized  
7       the Nation River.

8       Q     We're having trouble locating Rock Creek.

9       A     That's because it's not labeled on that map. It's the  
10      small creek downstream from Nation that goes straight up  
11      and if you follow it continuous, one of the branches will  
12      almost go into the Kandik, right--just below Johnson's  
13      Gorge. Do you find it?

14      Q     Do you want to label it on our exhibit number--

15            JUDGE LUOMA: Exhibit B-3.

16      Q     --B-3?

17            JUDGE LUOMA: Do you have colored pencils with you  
18      that you can --so it will not look the same as the map  
19      itself?

20      A     Yes, it's this one right here.

21      Q     Here's a red pen.

22      A     As you can tell, the tributary goes up and hooks in almost  
23      with the tributary that comes down off of the Kankik.

24      Q     Let's state for the record what you did to Exhibit B-3?

25      A     I wrote the name Rock Creek on a stream that is known

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1 colloquially as--and locally as Rock Creek. (Pause).

2 Q How many miles of trap line does a trapper normally use?

3 A They start off small because it's a lot of work, they start  
4 off with about twenty to twenty-five miles trapline, and  
5 if they have partners, if they're single, you know, it  
6 depends. They'll go up as much as a hundred to a hundred  
7 and fifty miles. Very seldom will it be more than that.

8 Q How far apart would his line--cabins normally be?

9 A Between fifteen and twenty miles. It depends on the  
10 terrain, snow cover, what kind of conditions they are.  
11 Sometimes they wouldn't even have a line cabin, he would  
12 just cywash (ph) it.

13 Q Cywash (ph) meaning what?

14 A Camp out overnight.

15 Q What villages are there now along the river that have--  
16 that are occupied from the Canadian border say up to  
17 Circle?

18 A There is--

19 Q Or down to Circle I should say.

20 A --Eagle, Eagle Village, and Circle.

21 Q When did Charley's Village cease to be a village?

22 A Hudson Stock (ph) says that it washed away in 1914, and  
23 he says that the villagers moved to Circle. Recent research  
24 seems to lead that they probably went to Eagle rather than  
25 to Circle, because they were Han Indians, whereas the

1 Kutchin. There's also been a small village excavated on  
2 the outskirts of Eagle Village that may or may not be  
3 people that came from Charley's village when it washed  
4 away in 1914 to the area there at Eagle.

5 Q How about the village of Nation, when did it become a  
6 ghost town?

7 A About 1933, the last person who lived there, a man by the  
8 name of John Star drowned and then it--I guess you might  
9 say it ceased to be.

10 Q In government's exhibit B-3, I notice it shows a lot of  
11 cabins along the Yukon River, and some up the tributary  
12 streams, are any of these cabins presently occupied to your  
13 knowledge?

14 A I would say that all of them that are--that have the roof  
15 and are habitable are used by present day trappers, and as  
16 shelters by travelers down the river, hunters in the fall,  
17 but as far--there are--I would say almost all of them are  
18 being used that have a roof--

19 Q How many would you estimate of the cabins do have a roof?

20 A Well, there are--for instance, Biederman's camp has nine  
21 or--nine or twelve structures, and all of them have a  
22 roof. Then you've got Nation where only--they took all  
23 of the logs from all of the different cabins and built  
24 two cabins, so you've only got two cabins instead of  
25 fifteen. I would say maybe thirty-five or forty. That's

1 if you count each cabin individually rather than each  
2 place, each site individually.

3 Q You mentioned that you took three separate trips up these  
4 two rivers in the summer of '76, can you tell us what kind  
5 of a boat you used and how--what the river looked like  
6 when you traveled up it? Let's start with the Kandik  
7 River.

8 A Okay, we traveled in a nineteen foot Grumman aluminum  
9 canoe with a nine horsepower engine. It had a lift on the  
10 back to lift the engine up out of --away from the rocks.  
11 We went up as far as Judge Creek, which is just below  
12 Easy Moose Creek, approximately twelve miles up the  
13 Kandik. We went no further because we ran out--low on fuel.  
14 And we had not found any structures, historic structures  
15 along the way. We stopped at each one of the mouths of  
16 all of the creeks and explored the area as we went up.

17 JUDGE LUOMA: You know, as you go along with this  
18 testimony now, I wish you'd mark on Exhibit B-3 these points  
19 so I'll know where they are.

20 Q Okay, would you mark Judge Creek on exhibit B-3?

21 A Sure.

22 Q Why don't you use the same red...

23 JUDGE LUOMA: Also, where is Charley's Village while  
24 you're doing that?

25 A Okay, Charley's Village is right at the mouth or near the

1 Kandik. It's on a--it's been washed away and it --

2 JUDGE LUOMA: But you marked the--the point?

3 A Right. I'm writing Charley's Village at the mouth of  
4 the Kandik and marking Judge Creek with a dot.

5 JUDGE LUOMA: Can you write Judge Creek there somewhere?

6 A It's written on there.

7 JUDGE LUOMA: Oh it is, alright.

8 A Yeah.

9 Q How did you--how easy was it to get up the river in this  
10 nineteen foot canoe? Or seventeen foot canoe?

11 A Seven--nineteen foot, I believe it was. It was larger than  
12 the usual seventeen foot. The first part of the --right--  
13 just below Threemile Creek, which is marked on the map, was  
14 very difficult because there was a log jam and the river  
15 divided into two channels. And it was very rapid, very  
16 rough and we nearly turned over at that point. Coming  
17 back we lined the canoe down through those rapids. Since  
18 then I have learned that that same--1976, three different  
19 people went up it and experienced the same difficulties  
20 we did. Bob Betts went up it--or came down it in 1976,  
21 Richard--Rich Caufield and Bob Howe tried to go up it and  
22 swamped their canoe and nearly drowned at that point, the  
23 same thing. Now I don't know if this is a condition of  
24 the river that is unique in 1976, but that was the trickiest  
25 place that we had on the whole trip, was that point right



1 there. That even included going up the upper Charley,  
2 coming down the Charley.

3 Q Was this--was this July when you were--you said--

4 A Yes, this was July. I don't know if the water was high  
5 or low, because I only went on the Kandik the once, so I  
6 could not judge how high it was or how low it was. I would  
7 imagine it was average.

8 Q Did you encounter any problem with sweepers?

9 A Yes, we--my guide lost his hat as a result of a sweeper  
10 and barely ducked his head into the floor of the canoe.  
11 I was on the bank at the time, walking it. And he almost  
12 got swept out because we came around a curve and the  
13 sweeper was there, and the main channel took you right  
14 through the sweeper.

15 Q What is a sweeper?

16 A A sweeper's in dirt banks, the river, as it meanders down,  
17 eats away on a bank and under--undermines the--the ground  
18 that trees are growing on, and the trees gradually slant  
19 more and more into the--into the water as--as the creek  
20 undermines it. And so sometimes they are horizontal to the  
21 river. And often times the main channel goes right  
22 under them. There were quite a few sweepers on the  
23 Kandik.

24 Q It's the tree, then, that's the sweeper, is that correct?

25 A Right.

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1 Q And what happens if a loaded boat gets carried into a  
2 sweeper in swift current?

3 A He can be pushed against the--the bank and turned over,  
4 in fact, that happened at--near--just below Threemile  
5 Creek to Bob Betts, whom I know personally, and to Rick  
6 Caulfield and Bob Howe, who also I know personally. We  
7 were going up the creek and so we were prepared for that  
8 coming down. But even then it was still a very trick  
9 maneuver to get around this log jam sweeper aspect with the  
10 rapid water. It was, as I said, one of the few scarey  
11 places on my trip.

12 Q Were there occasions when you had to get out of the boat  
13 and drag it across gravel bars?

14 A Oh, yes, that's customary. They're called riffles and you  
15 get out and you hook a--a rope to the bow and to the  
16 stern, and you pull it up over the riffles. Generally  
17 for some period of time, the riffles may be twenty-five  
18 to seventy-five yards long. Other places they just may  
19 be just a short way and then you can just pull 'em out  
20 without having to tie a rope on.

21 Q Now, switching to the Nation River, can you--

22 JUDGE LUOMA: Excuse me--

23 Q I'm sorry.

24 JUDGE LUOMA: Can I clarify this one point?

25 Q Sure.

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1 JUDGE LUOMA: Is this true up and down the Kandik  
2 River, this condition of--

3 A Do you mean getting-- of riffles?

4 JUDGE LUOMA: --riffles that you described?

5 A Well, as far as I went up, which was Judge Creek, I'm  
6 trying to remember how many times we may have gotten out.  
7 It may have been five or six times. And coming down you  
8 had to be really careful because you're going down with  
9 the current and if you didn't jump out fast enough, the  
10 current would turn you broadside and just whip you right  
11 over. And so--but since we had gone up it, we had--knew  
12 where to anticipate to get out, and we jumped out very  
13 quickly to lighten the boat and get it out over the riffles.

14 Q How many miles do you estimate it is up to Judge Creek?

15 A Maybe twelve, I don't really know.

16 Q So at the lower end of the river you say there was five  
17 or six times when you had to get out in a stretch of  
18 twelve miles?

19 A I--I guess so, yes.

20 Q Turning to the Nation River, how did you find the condition  
21 of that river?

22 A It's a smaller river, and it seems to twist a little  
23 meander more tightly than on the Kandik. It's a more  
24 narrow channel so that the sweepers are--you don't have  
25 as much warning with them, number one, because it's tighter

1 channels, tighter curves, and number two, the channel's  
2 tighter so you have more difficulty avoiding them. But  
3 I don't remember--my guide, as I said, knows the Nation  
4 River very well, and so he had no difficulty negotiating  
5 the Nation River, whereas he'd never been on the Kandik,  
6 and so it was a new experience for both of us. The Nation--  
7 I remember getting out many more times to pull it up over  
8 riffles. In fact, I remember being continuously wet the  
9 whole time and miserable, whereas I don't--the weather was  
10 much better on the Kandik, so things colored my--my  
11 judgement a bit.

12 Q How far up the Nation did you go?

13 A Just below Hardluck Creek and that is also marked on the  
14 map, Hardluck Creek.

15 Q Maybe you could underline it in red. Is there any trail  
16 along the side of the--the--either of these rivers?

17 A Yes, there are trails along both sid--both of them.

18 Q What--how were those trails caused?

19 A I would say on the west side of both. I beg your pardon?

20 Q What caused--what--who built those trails and what were  
21 they used for?

22 A The ones on the Nation I know were built by trappers, and  
23 I assume that those on the Kandik were also built by  
24 trappers. There are several reasons, number one, when  
25 you're running dog teams, you have to be aware of and

1 fearful of overflow, which can cause frostbite and other  
2 bad problems. Do I assume that everyone knows what  
3 overflow is?

4 Q No, maybe not, maybe you could describe--

5 A As a stream freezes down, it pushes the water--sometimes  
6 it'll push the water up over the ice, and under the  
7 insulating aspects of snow so that the water is still free  
8 on top of the ice and below the snow. So that when a dog  
9 or a person steps in it, steps in liquid water that  
10 instantly freezes. And there have been innumerable  
11 cases of frostbite that have caused experienced dog team  
12 drivers, Ed Biederman, for example, to lose his feet as  
13 a result of that, his toes. Overflow is the biggest  
14 problem. Winds are a second problem. It's better to put  
15 a dog team trail through the woods to avoid drifting of  
16 snows. The rivers curve and meander a lot where it's  
17 easier to take shortcuts along the trail, so if you're  
18 going to use a river for trapping purposes, the best bet  
19 is to make your own trail along the side of it and to  
20 built trap sets and whatnot..

21 Q To your knowledge, did any of the trappers that you know  
22 of that used either the Kandik or the Nation River ever  
23 pay other people to haul their supplies up to their  
24 camps and cabins on the river?

25 A I don't know of any instance of trappers doing that. As

1 I said, the geologists did.

2 Q In connection with the Boundary Commission?

3 A The Boundary Commission.

4 Q Was it customary in the trapping trade, as you understand  
5 it, for trappers to haul their own supplies or to pay others  
6 to haul them?

7 A Most of them hauled it themselves. The only thing that I  
8 can think of is either they did not have a poling boat and  
9 they wanted the material up there that summer or they  
10 did--did not have dog teams and preferred to walk it. And  
11 they decided to do--hire somebody to bring it--freight it  
12 up in the winter. But I know--of the trappers that I  
13 have enumerated on both the Kandik and the Nation, I do  
14 not know specifically of anyone hiring someone to bring  
15 their--their supplies to them. But it is a possibility.

16 Q The Park Service, is as you've said, considering--or has  
17 proposed that a portion of these rivers be placed in a  
18 protective status as wild and scenic river would it be  
19 or--

20 A The Charley River's the only one that's been nominated  
21 for wild and scenic river. The Kandik and Nation, which  
22 just includes about four miles--maybe it's more than four  
23 miles, about ten miles I guess, of the Kandik and Nation,  
24 are part of what's called the Yukon corridor.

25 Q And that would become a national park if the D-2 bill passes?

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1 A As it is in the two Houses now. It'll be a national  
2 preserve.

3 Q I'm sorry, does the Park Service, do you know, envision  
4 if this is put in a--made a part of the national park  
5 system it would receive intensive recreational use?

6 A The Yukon River will, because it is a very easy--easily  
7 accessible at both ends, Eagle and Circle, and you can  
8 float between the two. And that's--that is planned to be  
9 recreational area.

10 Q How about recreational use on the Kandik or the Nation,  
11 is that contemplated?

12 A Not very likely, the planners who have gotten out and  
13 walked the Nation and the Kandik recognize that those are  
14 no areas for hiking trails. And boating is not very much  
15 fun unless you have either a jet boat or an air boat  
16 that can go above the riffles. And so there's not really  
17 any plans except maybe some canoing probably on the Kandik.  
18 I think there is a development in--in one of the planning  
19 documents. But it's one thing to float down a river and  
20 another one to get down it to float down it. And the Kandik  
21 is almost inaccessible and so is the Nation to do that  
22 except by helicopter. So if you can't get up it, it's  
23 going to be difficult to get down it.

24 Q That's all the questions I have.

25 JUDGE LUOMA: Miss Taylor?

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1 BY MS. TAYLOR:

2 Q I wonder if we could take exhibit--I think it's B-3 that  
3 we've been marking these things on and put it up on the  
4 board.

5 JUDGE LUOMA: Yes.

6 Q (Pause).

7 JUDGE LUOMA: Can I see exhibit one please?

8 Q Miss Grauman, I wonder if you could step over the map,  
9 exhibit B-3, and maybe just point out for us some of the--  
10 the general area that we've been talking about.

11 JUDGE LUOMA: Now Miss Reporter, if you have any  
12 trouble picking up the conversation, let me know.

13 COURT REPORTER: Okay, if everybody would speak up...

14 A This is just a Charley River quadrangle, so Eagle is off  
15 the map in the southeast corner. The Yukon flows around  
16 and roughly in a northeast direction. Again, Circle is  
17 off the map approximately in a northeast area here.

18 Q Now, as part of your work in identifying historic sites  
19 under section 14H of the Settlement Act, are you familiar  
20 with the land status of the lands shown on this map,  
21 generally?

22 A Pretty much so.

23 Q Okay, could you point out to us where the--where the land  
24 is that we're--that we're talking about, the Doyon lands  
25 that are being appealed?

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1 A North of the Charley River area--I mean north of the  
2 Kandik River, the Kandik is also referred to as Charley  
3 Creek. Van Hatten Creek primarily's the one I'm familiar  
4 with because that's where the oil exploration has gone on.  
5 And that is almost directly due north of Charley's--what I  
6 have marked as Charley's village.

7 Q Alright, you have a marking here that shows three township  
8 areas, is that correct?

9 A I didn't mark them--

10 Q Okay, you don't know anything about this?

11 A No.

12 Q Alright, the--the lands that you traveled on as you  
13 were going up the Kandik and the Nation, are these Doyon  
14 selected lands?

15 A NO, they were within the D-2 proposal.

16 Q Okay.

17 A So they're D-2.

18 Q The ten miles of the rivers that you were talking about  
19 that were being considered for inclusion in D-2 lands, where  
20 are these on the map?

21 A They're right between the mouth of the Yukon--I mean the  
22 mouth of the Nation at the Yukon and just below Hard Luck  
23 Creek.

24 Q Okay.

25 A On the Kandik from the mouth to right at Judge Creek, we may

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1 have gone a little beyond Judge Creek, which is still  
2 within the boundaries of the D-2.

3 Q Okay, so it was--it was this area down here that's being  
4 considered by inclusion in--

5 A Right.

6 Q --in the D-2 lands.

7 A Right.

8 Q Alright, you can sit back down.

9 JUDGE LUOMA: Before we go any further, I would like  
10 to ask what is the marking on exhibit B-3 that is identified  
11 with certain letters there?

12 Q Well, perhaps Mr. Allen would like to explain the markings?

13 MR. ALLEN: Yeah, I think probably we can all stipulate  
14 that the--the area along both--the lines along both sides of the  
15 Yukon River delineated in blue ink is the D-2 propos--the lands  
16 that are withdrawn under the authority of seventeen D-2, which  
17 we refer to as the D-2 proposal. There is an area above that  
18 outlined in red which are lands that were withdrawn and  
19 in some cases, maybe in all cases, selected by Doyon. Within  
20 that area, which comprises, I would say, more than half of  
21 the map, there is another smaller area of three townships which  
22 is outlined in a lighter blue and crosshatched in pencil. Those  
23 are the three townships which were the subject of the decision  
24 which BLM issued, which has resulted in this appeal.

25 JUDGE LUOMA: What--what do those letters stand for

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1 there?

2 MR. ALLEN: Which letters?

3 JUDGE LUOMA: The identification of that three  
4 township area?

5 MR. ALLEN: DIC appeal, DIC stands for decision for  
6 interim conveyance, that's what BLM terms its decision that  
7 it issues to convey land and triggers the appeal process.

8 Q Okay, I'd just add to clarify, since Miss Grauman talked  
9 about D-2 lands that--that--the lands up here that are  
10 draw for--or selected by Doyon, Inc., Doyon is the regional  
11 corporation, we had first shot at these lands as part of  
12 their acreage entitlement. Now, they did select these three  
13 townships among others that we're not concerned with. But  
14 D-2 lands down here are withdrawn and not available for  
15 selection by Doyon. However, if for example, the township  
16 or part of this township down here is not included as  
17 D-2 because it's decided not to include it as a scenic  
18 river or whatever, then these lands might be available to  
19 a village corporation for further selection, but not--not  
20 the regional corporation. But the regional corporation  
21 would have first crack at these federal lands that are  
22 above the line, and these are the ones that we're concerned  
23 with right now.

24 JUDGE LUOMA: Well, I'm--am I correct in assuming  
25 that the portions of the Nation and Kandik Rivers involved in

1 this proceeding are only as shown--

2 Q Right up--

3 JUDGE LUOMA: --which cross through the three township  
4 area marked DIC?

5 Q That's correct, here's Kandik River--

6 JUDGE LUOMA: Now just--is that correct?

7 MR. ALLEN: That is correct.

8 Q Right. Right here and right down here.

9 MR. ALLEN: Yes.

10 JUDGE LUOMA: And that's where the two hundred acres  
11 comes in?

12 MR. ALLEN: Correct.

13 JUDGE LUOMA: And that's all we're talking about in  
14 this hearing?

15 MR. ALLEN: That's correct.

16 Q That's right, so really as far as this hearing is concerned,  
17 we did--we're not talking about this township down here,  
18 and you can eliminate that one, because the rivers don't  
19 cross--

20 JUDGE LUOMA: Yes.

21 Q --this one, but these two townships are the subject.

22 JUDGE LUOMA: Would it be possible some adjoining  
23 townships may still be selected which--

24 Q Yes.

25 JUDGE LUOMA: --include other portions of the Kandik

1 and Nation Rivers either upstream or downstream?

2 Q Yes, they have been selected, some other townships, but  
3 they're--they're not included in this particular selection  
4 application.

5 JUDGE LUOMA: Would it also be correct for me to  
6 assume that the Kandik and the Nation and probably most streams  
7 reaches a point where navigability may stop and non-navigability  
8 starts?

9 MR. ALLEN: Yes.

10 Q That would probably be correct.

11 JUDGE LUOMA: And would that be an issue in this  
12 particular hearing?

13 MR. ALLEN: I believe the issue--the specific issue  
14 in this hearing is whether the portions of the streams that go  
15 through those three townships are, in fact, navigable. We  
16 are in--we are introducing as has been obvious, a good deal  
17 of testimony on other portions of the river for two reasons. One  
18 we feel that the entire river is not navigable, but we will  
19 demonstrate, I believe, through our testimony that as you  
20 proceed up the river it becomes increasingly difficult to  
21 navigate it, and it may be necessary for you to determine that  
22 the rivers are navigable for a portion, but not navigable above  
23 that portion. I hope we can produce enough evidence and be  
24 specific enough in our evidence so that when the hearing record  
25 is completed, you will have a record on which you can make that

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1 decision. Namely, that either the river within the selection  
2 area is not navigable because it was not navigable further  
3 down and the evidence shows that it gets less navigable as you  
4 go up or that navigability stopped at some point within the  
5 selection area and therefore downstream of it is properly  
6 excluded from the conveyance and upstream of that point was  
7 property included.

8 JUDGE LUOMA: Now, the record made so far, will I  
9 be able to determine as to what--as to whether or not the  
10 testimony applies to those two townships of land shown on  
11 B-3?

12 MR. ALLEN: Well, when you say the record so far,  
13 I guess I'd have to say no, because we haven't yet gotten to  
14 the part of the river that is within the selection area.

15 JUDGE LUOMA: We haven't got up that far yet?

16 MR. ALLEN: No.

17 MS. TAYLOR: Right. Maybe--maybe we could all stipu-  
18 late that --for example, we've been talking about twelve miles  
19 up the Kandik. And the portions of the Kandik River and the  
20 Nation River that Doyon is appealing the navigability determina-  
21 tion on, are, as I recall, thirty to thirty-five miles up the  
22 river. Later, perhaps, we can --we can get an exact figure,  
23 but--

24 JUDGE LUOMA: Are those two particular townships  
25 identified with a number or--

1 MS. TAYLOR: Yes.

2 JUDGE LUOMA: What are these, we can refer to them  
3 in the future.

4 MS. TAYLOR: This is township eight north, range  
5 thirty east.

6 JUDGE LUOMA: That's eight and thirty is the one.

7 MS. TAYLOR: Right, and this would be township eight  
8 north, range thirty-one east.

9 JUDGE LUOMA: Eight and thirty-one, alright.

10 MS. HIGGINS: Your HOnor, I beg to differ with the  
11 characterization of the evidence we've heard so far as--as  
12 not applying to the portions of the rivers covered by the  
13 Doyon selection. We've heard testimony about supplying the  
14 International Boundary Commission, about trapping in the upper  
15 reaches of either or both of these rivers. Both of those  
16 activities took place beyond the Doyon selection area.

17 JUDGE LUOMA: In fact, some of it reached Canada, did  
18 it not?

19 MS. HIGGINS: That's right.

20 MR. ALLEN: I--I would accept that qualification.

21 JUDGE LUOMA: I think probably that what you meant  
22 was that the testimony of the witness's personal travels never--

23 MS. HIGGINS: Right.

24 JUDGE LUOMA: -got to thirty and thirty-one.

25 MR. ALLEN: That's correct.

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1 MS. HIGGINS: That was just a point of clarification.

2 JUDGE LUOMA: Would this be an appropriate time to  
3 adjourn for lunch.

4 MS. TAYLOR: Sure, fine.

5 JUDGE LUOMA: --and we can start over again.

6 OFF THE RECORD

7 ON THE RECORD

8 JUDGE LUOMA: Let's see, Miss Taylor.

9 BY MS. TAYLOR:

10 Q Yes, thank you. Miss Grauman, what are the gross limits  
11 of your study in terms of the time span, you know, from  
12 what year to what year are we talking about?

13 A I took the precontact Indian as described by Osgood,  
14 Cornelius Osgood, in his ethnographic study, what he  
15 projected the pre-contact Indian was like. Using material,  
16 historical material from Alex Murray and Robert Campbell,  
17 which was 1850's, basically let's say from 1850 up 'til  
18 the present day, 1976.

19 Q So is 1850 kind of the rough cutoff date from when white  
20 traders, etc. came into the area?

21 A Alexander Murray came onto Ft. Yukon in 1847.

22 Q Alright.

23 A And Robert Campbell was--first came through the Yukon-  
24 Charley area in 1851.

25 Q What about present years, in other words, how did you define

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1 historic, what--what--did you have a cutoff date?

2 A Do you mean as far as recognizing what were present cabins  
3 and what were cabins in trespass?

4 Q Right.

5 A Generally I picked probably 1960, 1965, if the cabins were  
6 being used, but were obviously historic, you know, dating  
7 to the 1930's. I tried to keep as much within the frame  
8 of the "National Register's" fifty year limitation as  
9 possible. Sometimes that wasn't feasible, but generally  
10 I'd use 1930 as historic. But I did not--I recorded  
11 things after 1930's, but not after 1965.

12 Q Okay, was--was your major emphasis then on things before  
13 1930, historic sites or whatever?

14 A The major emphasis would probably --in the trapping period  
15 I guess you're talking and the mining period, the twentieth  
16 century period--

17 Q Um-hm.

18 A --rather than the earlier period?

19 Q Um-hm.

20 A I would say up until 1950, maybe even--'53, that was the  
21 end of the steamboat era, was 1953 with the Nenana was--  
22 was drydocked. But then again, in my trapping chapter, I--  
23 a lot of my information comes from present day trapping  
24 so it's kind of hard to draw a line.

25 Q Okay.

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1 A But as far as structures go, I did emph--the big emphasis  
2 there is when the most--the most heavy use, which was in  
3 the '20's , '30's, and '40's. And there was very little  
4 use of the river in the '50's and '60's. So that's sort  
5 of how the structures go.

6 Q The Han Indians that you mentioned as having lived in the  
7 area, how are these related anthropolog--I can't even talk  
8 today, to the Athabascan Indians that we hear about.

9 A They are a tribe of Athabascan, there are approximately  
10 twenty- five tribes of Athabascan Indian of which the  
11 Han is one.

12 Q Okay, are there Athabascan Indians or let's call them  
13 Alaska natives, since that's what they're called under the  
14 Settlement Act, living in the area presently?

15 A In the Yukon -Charley area?

16 Q Yes.

17 A No. There are some native allotments, but there are no  
18 Indians living in the Yukon-Charley area.

19 Q Aren't there residents of Eagle, though, who are of Athabascan  
20 decent?

21 A That's correct.

22 Q Alright.

23 A And they do have fish camps lining up the Yukon, and they  
24 are--there are some native allotments. For instance, Harry  
25 David, who lives in Eagle Village has a native allotment

1 on the mouth of the Kandik, Al Aims (ph) on the mouth  
2 of the Kandik, which is right smack dab in the middle of  
3 the Nation--I mean of the Yukon-Charley area. Not the  
4 mouth of the Kandik, excuse me, the mouth of the Charley  
5 River.

6 Q There are no reservations in this area though are there?

7 A That's correct.

8 Q Okay, so the--the Han or Athabascan Indians have been  
9 assimilated into whatever society is presently in this  
10 area?

11 A Well, there is--Eagle is unique in--in the fact that there  
12 are separate villages, there is Eagle City, so to speak,  
13 which is a non-native community, and there is Eagle Village  
14 which is the native Indian Village. And they're separated  
15 by three miles.

16 Q Okay.

17 A And that goes back historically to the trading post  
18 era.

19 Q What's the present population of Eagle Village approxi-  
20 mately?

21 A Gee, I would say around a hundred and fifty to two hundred,  
22 but I--again, I'd just have to fudge on that, I don't  
23 know.

24 Q And what about Eagle City?

25 A Well, in the summer time, it probably swells to maybe as

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1 three hundred. And in the winter it may drop to seventy-  
2 five or a hundred.

3 Q Okay, in your--in your book you talk about subsistence  
4 and seasonal economic activities, and I wonder if you  
5 can define for us what subsistence is?

6 A Park Services have been trying to define subsistence for  
7 five years now. That's a very difficult thing to--to  
8 define. As I say, we've been having--we've funded five  
9 years worth of subsistence studies for the D-2 area so that  
10 we could come up with some kind of definition for subsistence.  
11 And I guess we're closer to coming up with a definition,  
12 but we haven't yet defined it. To me it's a very subjective  
13 definition how I use the word --for precise purposes of how  
14 I use the word subsist. And that is what you needed to  
15 live. One moose, two caribou, forty--forty fish, a hundred  
16 and twenty fish, depending on how many dogs you had.

17 Q Okay, can we use subsistence as a shorthand term to  
18 define a type of lifestyle in this area, would that be  
19 fair?

20 A I would--I would--I would say so.

21 Q Okay, could you explain for us generally what a subsistence  
22 lifestyle entails, what is the seasonal round?

23 A Well, it depends, in the Yukon-Charley area, for instance,  
24 there are at present twenty-eight people, non-natives, who  
25 are what they call living the lifest--living the bush life,

1 what we in the Park Service would call subsisting, what  
2 BLM would call trespassing. They are primarily trappers  
3 who make just enough off of their fur to buy ammunition,  
4 clothing, and food that they would use to supplement  
5 their--their meat and fish diet, average about twenty-  
6 five hundred dollars a year is about what they'd make.  
7 Historically, the Indians of Eagle Village had a more  
8 subsistence lifestyle than they do now, and that was more  
9 on a seasonal round similar to what I described in my book  
10 of fishing on the--in the summer and hunting moose and  
11 caribou in the fall and winter.

12 Q Alright, now, as part of this subsistence lifestyle among  
13 the natives historically, do they--do they have a cycle  
14 geographic activities, in other words, what do they--  
15 where do they go and what do they do in what season of  
16 the year in this area historically?

17 A This is all very vague because the only ethnographi work  
18 on the Han has been done by Cornelius Osgood, and he did  
19 that after a two week visit to the Haun Indians in the  
20 1930's. There have been other work by anthropologists,  
21 Graburn and Strong, who wrote a book called Circumpolar--  
22 the name passes me right now, but it was referring to the  
23 broad group of northern Athabascans, and their belief is  
24 a little different than Osgood's or VanStone whose a  
25 third person who's written on the Athabascans. Generally

1 Osgood believed that they were basically a subsis--a  
2 salmon--they lived on--subsisted on salmon for the most  
3 part. Other anthropologists say that they had more of a --  
4 of a leaning towards caribou and moose. So when I say--  
5 it's kind of hard to pin it down because we just don't have  
6 the documents, all we have is a lot of supposition.

7 Q Okay.

8 A But the way Osgood describes it is that they--during the  
9 summer, the salmon--the three runs of salmon, the king,  
10 the chum and the silver? Well, at least the two, the dog  
11 and the king salmon as they came down, they would spread  
12 out in individual fish camps and fish, dry their food, fish  
13 food, and then stack it and store it. And then during the  
14 fall, they would join in the caribou rounds, and try to  
15 herd the caribou into caribou corrals or else make human  
16 surrounds by using just the people themselves, and snaring  
17 or killing the caribou. And then later in the fall,  
18 individually, at that point they would cache the meat in  
19 the hills according to Osgood. And then when the fish were  
20 gone in the winter, they would go back and pick up the meat  
21 that they used--that they had killed in the fall and bring  
22 it in, the fish into the river villages. And then once  
23 that was gone, then they would start hunting for moose,  
24 individually trap, snare rabbits, kill ptarmigan, grouse.

25 Q Okay, isn't there a long history of subsistence use on

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1       these rivers?

2       A     Oh definitely.

3       Q     Okay, the--the natives who are involved in subsistence  
4             use, how do they get up and down the rivers, the Kandik  
5             and the Nation Rivers?

6       A     There were again, according to Osgood, several different  
7             means of transportation, the birchbark canoe, which was  
8             used for basic transportation; a flat bottomed canoe for  
9             what they called dip netting; a thirty foot long traveling  
10            canoe; and then a very long, narrow hunting canoe, which  
11            one person would sit in the canoe, and with sort of two  
12            poles on each side, almost like crutches, walk up the  
13            river. And so there was at least four different kinds of  
14            boats that they used. After the introduction of--of--  
15            after a contact period, they had bigger boats, they'd  
16            have log rafts, scows, and eventually they used the steam-  
17            boat just like the white man.

18      Q     Okay, now prior to what you call contact, this subsistence  
19             use would be primarily for ones own consumption or--or  
20             one's family or--

21      A     Family, kin, clans.

22      Q     Alright, what about after contact, when do we start seeing  
23             trading between the natives and the white people?

24      A     Well, even before actual traders were on the river, before  
25             the Hudson Bay Company came into either Ft. Yukon or Ft.

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1 Selkirk, the Indians had metal and coins and copper, which  
2 probably came from the Russians who had a post at St.  
3 Michael in 1833, but they're not sure. It also could  
4 have come from the coast, up from the Copper River area.  
5 But there was trading going on and they did travel a  
6 great deal.

7 Q When was the peak of the fur trapping?

8 A Fur trading or fur trapping?

9 Q Well, let's talk about fur trading, since we've been  
10 talking about that?

11 A Okay, I'd say that the peak of the fur trading was before  
12 the gold rush, around 1880 to 1884.

13 Q Okay, I think you mentioned in your book, though, that the  
14 prices fluctuated drastically?

15 A That's fur trapping, I don't know what the prices were  
16 for fur trading.

17 Q Okay, what about fur trapping, then?

18 A Fur trapping, the haydays were the twenties.

19 Q Alright, did--did natives engage in trapping?

20 A Yes.

21 Q What was this regulation that you mentioned that only  
22 before a certain date, and I didn't pick up on the date.

23 A Right after purchase, the United States Treasury Department  
24 was given jurisdiction over the--Alaska. And they passed  
25 a regulation, it was not a law, it was a regulation, that



1       only natives could trap. So therefore, you have a  
2       difference of--why I brought it up in my book was that I  
3       wanted to show the difference between trapping in Alaska  
4       and the-fur trading in Alaska in the 1880's versus fur  
5       trapping in the American west in the American west in the  
6       1830's with the mountain men. WE did not have mountain  
7       men, so to speak, in Alaska, and so that's the reason why  
8       I was trying to show, and the reason for that was that  
9       there was a Department of Treasury regulation that only  
10      natives could trap.

11     Q     Um-hm, and that was--when was that changed?

12     A     I'm not sure on that, I would imagine that either it was  
13       when the Oregon code was extended to Alaska in '84  
14       or when the criminal and civil codes were extended in  
15       1900. I'm almost certain it was--it had been removed by  
16       the time that Alaska became a territory, but I do not  
17       know exactly when it was repealed.

18     Q     Okay, but sometime after this when the regulation was  
19       changed both--both natives and non-natives trapped on these  
20       rivers?

21     A     That's correct.

22     Q     Alright, was trapping done in both the summer and the  
23       winter--

24     A     No.

25     Q     --up the river?

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1 A No.

2 Q Alright, what was the cycle for trapping?

3 A Trapping began -- you don't want to know the lifestyle,  
4 you just want to know the cycle don't you?

5 Q Um-hm.

6 A Trapping began in November and it was over in March. The  
7 last thing to trap was beaver in early spring.

8 Q Alright, would one go up the river and winter over and  
9 work the trap lines and then come down the river in the  
10 spring?

11 A Well, they didn't necessarily have to go up river or down  
12 river, they could run along the rivers. In fact, what  
13 they tried to do was get transition zones between say the  
14 muskeg and the black spruce or between the black spruce  
15 and the light spruce, along a stream bed, along an out-  
16 cropping of rock. So it didn't--it never--what they tried  
17 to do was go up drainage systems, not necessarily up one  
18 river or down another.

19 Q Okay, well, let's take a specific example, how about the  
20 Kandik River, and you mentioned that a certain Dennis and  
21 a Peterson trapped the upper reaches of the river toward  
22 the Canadian border, as a matter of fact, one trapped on  
23 one side and one trapped on the other side of the border.

24 A Okay.

25 Q Alright, now, how do they get up the river, where do they--

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1 where do they live permanently?

2 A Okay, they went up--they went up Rock Creek, that's the  
3 creek that's marked on the map there--

4 Q Okay.

5 A --that comes in just above Johnson's Gorge, if you take  
6 one tributary just below it, if you take the other  
7 tributary.

8 Q Did they go up Rock Creek from the Yukon?

9 A Yes.

10 Q Alright.

11 A That bypassed that long meandering part of the Kandik.

12 Q Alright.

13 A Supposedly, according to my source, who was George Beck,  
14 they did not trap on Rock Creek. That was somebody  
15 else's trap line. And from there, from Johnson's Gorge  
16 up to the Kandik, I don't know how they went. They may  
17 have cached themselves a poling or they may have taken along  
18 a whip saw and whipsawed up a poling boat. Or they  
19 may have poled the material up in a fold boat, they had  
20 folding boats. I don't know how they did it.

21 Q What time--what time of year would they be going up the  
22 Kandik?

23 A Again, they could even have waited until snow on the ground  
24 and gone up at that point.

25 Q Okay, you don't know--

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1 A I don't know.

2 Q --what time of year. Alright, where was their permanent  
3 residence?

4 A Again, you know, all I got was that they did trap that.

5 Q Okay, alright.

6 A They may--they probably were there during the winter and  
7 were--were down in Eagle or on the woodchop--chopping  
8 wood along in the summer.

9 Q Well, once they were up at the border trapping--

10 A Um-hm.

11 Q --is there any way to get back down to the Yukon other  
12 than on the Kandik or the Nation River?

13 A Well, they could come down through--they could come down  
14 through the boundary. The Boundary Commission had a  
15 clear--has cleared an area down through that area.

16 Q Are you familiar with the topography--

17 A Yes.

18 Q --in that area? I understand it's very difficult to go  
19 overland at the boundary?

20 A Well, if you've got snow on the ground, and if you've got  
21 a dog team.

22 Q What about in the spring, how could they get back to the  
23 Yukon River?

24 A It would probably be best to put it on rafts or a scow or  
25 a boat and go down the Kandik. It's much easier once the

1 spring comes to float down a river than to try to go  
2 overland anywhere.

3 Q Okay.

4 A They may have even made a moosehide boat, I don't know.

5 Q Alright. Are you familiar with how the International  
6 Boundary Commission got back from the boundary after they  
7 finished their survey?

8 A Got back from the boundary?

9 Q Um-hm.

10 A They took horses up to--I think it was at the mouth of the  
11 Kandik and then from there they ran a gasoline launch. I'd  
12 have to check my notes again if you'd want me to look.

13 Q But the International Boundary Commission had their--had  
14 their supplies poled up the Kandik River to the border, to  
15 the Canadian border?

16 A That's correct.

17 Q Do you know how many miles that is?

18 A I'd say more like ninety miles.

19 Q Okay, where are the headwaters of the Kandik?

20 A They're in Canada.

21 Q And how many miles from the border or do you know?

22 A I don't know.

23 Q Okay. Are you familiar with any instances of natives  
24 market hunting for miners?

25 A Market hunting?

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1 Q Hunting and selling or--

2 A Do you mean packing, that kind of stuff, hunting caribou  
3 and selling it to--

4 Q Right.

5 A Yes. Not natives, I take that back. I do know of white  
6 men.

7 Q When was this activity?

8 A Oh from 1898 until at least 1920, probably beyond that, too,  
9 because there were a lot of people getting game for the  
10 military, which was there at Eagle up until 1911.

11 Q Is this Ft. Egbert?

12 A Yes.

13 Q Okay, when does one go get moose or caribou, what time--  
14 what time of year?

15 A Usually in the fall.

16 Q And how do you get to where the moose and caribou are?

17 A The ones I knew went by mule.

18 Q To where, from where to where?

19 A From Eagle up into the hills around Seventymile, up the  
20 Seventymile River into that area up around--up into the  
21 Fortymile River, Ketchumstuck (ph) Summit, that area around  
22 there.

23 Q Okay, what about moose and caribou hunting on the Kandik  
24 River?

25 A I'm sure that it happened, but I have no recorded information

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1 from either my informants or from documentary.

2 Q Okay.

3 A On the Nation I do know that Dan VanDeber (ph) killed  
4 enough caribou to feed his dogs to keep them fat and  
5 sassy in the upper reaches of the Nation. But that's all  
6 I know for a fact.

7 Q And I think you testified on direct that it would be  
8 customary to hunt caribou and float down the river in  
9 skin boats?

10 A They have been reported instances, yes.

11 Q Okay.

12 A The natives, Indians, yeah.

13 Q Caribou skin boats or moose skin boats. Alright. Now,  
14 when you were on your field trips up the Kandik and the  
15 Nation, did you see any permanent trails other than the  
16 trappers trails that you've described?

17 A There was a trail running along on the Kandik, running  
18 along the west bank of the Kandik. Most of the trails on  
19 the Nation were also on the west side, but they were what  
20 I--what I would have called trapping trails.

21 Q Alright, are trapping trails winter trails?

22 A Yes.

23 Q Why is that?

24 A Because they go across muskeg, which is very difficult  
25 to walk on, whereas when it's snow covered and frozen, it

1 makes fairly nice, smooth dogsledding. The brush is usually  
2 clipped down only so far, whereas if it were a summer trail,  
3 it'd be cut down all of the way. It's just generally  
4 trapping trails are not much fun to walk in, whereas  
5 winter--summer trails would be up on a higher ridge where  
6 you don't get this muskeg or walking on tussocks kind of  
7 thing, you get higher, dryer and more comfortable and  
8 you can walk faster.

9 Q Okay, in the area of the Kandik and the Nation Rivers that  
10 we're talking about, are there any lakes that are suitable  
11 for float plane landing?

12 A No, I wouldn't think so.

13 Q If one wanted to settle up the Kandik or up the Nation,  
14 then your--your only means of access for supplies would  
15 really be by water, wouldn't it?

16 A Helicopter.

17 Q Where would you land a helicopter?

18 A You can land a helicopter on flat--flat land on--on a--  
19 in the muskeg with tundra--

20 Q What about on gravel bars?

21 A I don't think there are too many gravel bars up there, you  
22 know, the banks may slope off, but it'd have to be pretty  
23 low water.

24 Q What if you couldn't afford a helicopter, how would you  
25 get your supplies into this area if you wanted to settle



1 in it?

2 A In the upper Charley the trappers during the 1940's  
3 throughout put all of their goods in thirty-gallon drums  
4 and threw them out of a helicop--not a helicopter but an  
5 airplane as they were going over.

6 Q Um-hm.

7 A And then landed at a strip that was twenty miles away  
8 and then walked over and got their material. They did--  
9 you know, the upper Charley is even more inaccessible  
10 than the Kandik, and I imagine if you really were dedicated  
11 you could do it this way.

12 Q Alright, but as far as the Kandik and the Nation are  
13 concerned, historically the--the exploration in this whole  
14 area has followed the rivers, isn't that true?

15 A Yes.

16 Q As a matter of fact--

17 A Aside from the boundary--boundary cutting across it.

18 Q Okay. Except for the exception of the Boundary  
19 Commission--

20 A And U.S. geologists, United States geologists.

21 Q Of course, the Boundary Commission couldn't follow the  
22 rivers because the boundary doesn't follow the rivers.

23 A It's the same with the geologists, it's the same kind  
24 of thing--

25 Q Alright.

1 A --but I'd say the military and they're trying to find  
2 roads or the telegraph line, they went along rivers.

3 Q Okay, as a matter of fact, as you noted in your book,  
4 this area had a slower economic development than we might  
5 find in the lower forty-eight because of the absence of  
6 permanent overland trails.

7 A Um-hm.

8 Q In other words, the area's compl--historically was  
9 completely dependent upon the waterways--

10 A Yes.

11 Q --navigable waterways.

12 MR. ALLEN: I'm sorry, can I ask a clarification there,  
13 when you say the area, are you talking about the Nation or the  
14 Kandik or the entire Charley River-Seventymile--

15 A I'm talking about the entire Yukon.

16 Q You're talking about the entire area. Alright.

17 A Because the Nation and Kandik haven't really been developed.

18 Q To this day they haven't been developed?

19 A Yeah.

20 Q They're very sparsely populated. Does the--the fluctuation  
21 in the fur market in the 1950's help to explain the lack  
22 of trapping activities in the '50's around the Kandik and  
23 the Nation?

24 A Oh very definitely.

25 Q What about gold mining activity, are there fluctuations

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1 in--in that in the modern period?

2 A Well, as you know, gold was stablized at thirty-three dollars  
3 an ounce in the thirties, and it was just recently that  
4 it was allowed to find its own level. So that you had  
5 gold at a--frozen at a certain level, but you had labor  
6 costs and supply costs and half a dozen other things going--  
7 continuing to rise, so therefore, gold mining was less  
8 economically feasible than it had been earlier.

9 Q Okay, in your investigations of the use of the Kandik and  
10 the Nation Rivers, did you investigate records of mining  
11 claims on these rivers?

12 A Yes, and I didn't find any.

13 Q Where did--what records did you search to look for mining  
14 claims?

15 A I went to the district--not--the recorders office, which  
16 used to be over in the office there in Fairbanks, and I  
17 went through the records in Eagle, which had some of the  
18 mining claims from around Nation, Fourth of July Creek,  
19 and that's about it. BLM had nothing.

20 Q Is there any way access these mining records if you don't  
21 know who the claimant was?

22 A There are books that the mining recorders kept for each  
23 mining district. And once you have that book, you know,  
24 you can see who had what claim on what creek and where they  
25 were. Now some of these mining records are scattered all

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1 over. You know, the mining recorders didn't necessarily  
2 always turn them in to the United States Government. George  
3 Beck has some in his possession. I've seen them in the  
4 Eagle records and I've seen 'em one other place that I  
5 can't remember where.

6 Q Is it fair to state that you haven't searched every mining  
7 record that could exist on the Kandik or the Nation?

8 A That's very feasible, that's very feasible.

9 Q Is it fair to state that it might be an impossible task  
10 for anyone to do that?

11 A I welcome them to do it, but I wouldn't want to be the  
12 one to do it.

13 Q As a historian, do you think that the gold rush at Nome  
14 and the movement out of this area might tend to explain  
15 the lack of mining activity on the Kandik or the Nation  
16 or north of the Yukon?

17 A NO, I would say that it's more that there was--the geology  
18 was more a reason than the fact that Nome and the other  
19 areas, the geology of the northern part of the Yukon is  
20 a very so to speak simple geology as compared to south of  
21 the Yukon where you have faults, fractures, uplift, and  
22 the Tintina fault, which is a significant fault which  
23 crosses right across the lower reaches of the Charley  
24 Mountains from upper Woodchopper Creek to Charley River  
25 was the one that brought in supposedly opened the door to

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1 a lot of the placer gold in that area. Whereas we had--  
2 there's no comparable fault north of the Yukon in this  
3 area.

4 Q Okay. The--the trappers that you mentioned as working on  
5 the Nation River, and I think that you narrowed this to about  
6 1920 to 1946, is that right or did I--am I right?

7 You stated there were two trappers that you definitely  
8 knew of, VanDeber (ph) and Phonograph Nelson, and then  
9 possibly a third, James Taylor?

10 A That's correct.

11 Q Okay, did you consider native trapping use on the rivers  
12 that wasn't commercial use when you--when you said this was  
13 the only evidence of trapping?

14 A I considered native use, but at this--and it's conceivable  
15 that there were, but they were not reported to me by  
16 people who were married to natives, George Beck and  
17 Charlie Biederman, who's himself half native and he's  
18 considered a native. The natives from this area were  
19 primarily working at the Coal Creek dredge and the Wood-  
20 chopper dredge, and I have not heard that any of them  
21 trapped from around that area, but they may well have.  
22 But that's down--further downriver. As far as the Nation  
23 and Kandik, I would suppose that between the--from 1933  
24 to '46, that the Biederman's would have taken care of that--  
25 the lower mouth of the Kandik.

1 Q Which river is better documented as far as trapping, the  
2 Nation or the Kandik?

3 A Well, I know that Phonograph Nelson was on the Nation, and  
4 as far as the Kandik, I've had a number of people who have  
5 cabins who have been told that have trapped that, as  
6 many as fifteen. So it's two people versus fifteen on  
7 the Kandik, you know, I don't know what you mean by better  
8 documented. They're both--they're all the same, all  
9 comes from moral (ph) sources.

10 Q Okay, well from your investigations, do you think that they  
11 were equally used for trapping, or would you make a  
12 distinction from one or the other?

13 A Well, the Nation is the smaller river, and it can only  
14 support so much--so many martin, so many lynx, whereas the  
15 Kandik is a much longer river and has more resources to  
16 exploit. So I would imagine that there would be more  
17 people on the Kandik than on the Nation.

18 Q Alright, on the Kandik River, you mentioned that Sandy  
19 Johnson trapped the river and that he had a contract to  
20 deliver hay and grain, and--

21 A To the geolgists.

22 Q Okay, where were the geologists working?

23 A I don't know, that was what my notes said.

24 Q Okay.

25 A That the--ninety miles from the border. Let me just double

1 check that. Sandy had a contract for hay and grain for  
2 geologists, for the geologists' horses ninety miles to the  
3 border. So for ninety miles to the border all the way  
4 to the border he supplied the hay and the grain.

5 Q He was the one who supplied the hay and grain?

6 A Um-hm. And I don't know how he supplied it, by boat or  
7 by horses.

8 Q Well, is there any way he could have gotten it up there  
9 except on the river?

10 A Horses.

11 Q There were no trails?

12 A Yeah, there was trails all along the river.

13 Q Along the river?

14 A Yeah, that's-even the International--International  
15 Boundary Commission refers to trails.

16 Q But there were no permanent trails along the river?

17 A No, in fact the geologists in the International Boundary  
18 Commission keeps referring to trails as being very bad,  
19 very soft, hard on the horses, and this kind of thing.  
20 But there were trails along the river.

21 Q Well, wouldn't these trails upon the river generally be  
22 trapping trails?

23 A Yes.

24 Q And they wouldn't be suitable for summer use?

25 A But they could be used for summer use, they could walk along

1 the riverbed, too, if it's low water.

2 Q But it'd be easier to take the supplies up the river?

3 A Very probably.

4 Q Okay. What about timber in the area, was there any?

5 A Yes, there's timber.

6 Q Okay, what was the--what was the economic activity with  
7 regard to timber, if any?

8 A Woodchopping for steamboats, the steamboats--one steamboat  
9 used two hundred cords a trip, round trip.

10 Q Where did the woodchopping take place?

11 A All along the river and its tributaries, they would try  
12 to chop the wood on a hillside and have it tumble down  
13 below. But as--and then you can have horses pull it in  
14 from several miles away. Sometimes they'd just move  
15 their cabins. Heine Miller, at Miller's Camp, which is  
16 at the mouth of the Tatonduk just south of--just upriver  
17 from Nation, he got a tractor eventually that he pulled  
18 his logs into his Miller's camp there from his--

19 Q Is there any--

20 JUDGE LUOMA: Excuse me, you mean all along the  
21 Yukon River, don't you?

22 A Yes.

23 Q Okay, you don't--you don't have any specific references to  
24 timber activities on the Kandik or the Nation?

25 A No, only on the Tatonduk is the only one. I know that there



1 are two woodchopper's camp on the Tatonduk.

2 Q Is there timber on the Kandik or the Nation Rivers?

3 A There isn't now, but I would imagine there was then.  
4 Right now it's primarily birch and aspen, but that was  
5 probably cleared out in a forest fire burn.

6 Q Um-hm.

7 A And I imagine before that there was spruce.

8 Q So you wouldn't know if there were woodchopping activities  
9 on the Kandik or the Nation?

10 A No, I don't.

11 Q Okay. As part of your job, did you have any input into the  
12 identification of easements to the Kandik or the Nation  
13 River?

14 A None.

15 Q Alright. You mentioned the development of light draft  
16 steamboats.

17 A Um-hm.

18 Q And I think I've gotten confused as to the names and  
19 whether--what rivers they were operating on, was -- was the  
20 boat named the Koyukuk or was it on the Koyukuk River?

21 A Both.

22 Q Oh, alright.

23 A And the Tanana and the Tanana, on the Tanana River. There  
24 were three low--low drawing boats, the Tanana, the Koyukuk  
25 and the Delta. They were all developed about the same

1 period of time.

2 Q When was this?

3 A I'd have to check my notes again, but I think it's probably  
4 oh, around 1910 or '11, but I'd have to check my notes.

5 Q Okay.

6 A Probably between 1903 and 1910, but I'd have to...

7 Q Alright, what were these light draft steamboats designed  
8 to carry?

9 A The same things as the regular steamboats, just smaller  
10 quantities.

11 Q How much of a--how much of a load would they--were they  
12 designed to carry?

13 A I probably have that somewhere in my notes, but I don't  
14 have it in my book, and I don't have it with me now.

15 Q Okay, alright. In your--in your book you stated that you--  
16 you tried to apply Turner's progressive frontier thesis--

17 A Um-hm.

18 Q --to Alaska, the idea that you'd see one group, then  
19 another group, then another group going by if you stood  
20 on a bluff and looked down. Does--does Turner contemplate  
21 that--that one group rises up, then the next, then the  
22 next?

23 A No, his idea is--in fact, the whole reason why he created  
24 his frontier thesis idea was to find out what created the  
25 unique American character. And he evolved that it was the

1 presence of free land at the edge of the frontier that drew  
2 people west. And the every--that as they came west, they  
3 brought with them an established set of social practices,  
4 institutions, beliefs, value systems, and that when they  
5 came into--when they met this environment, this free land,  
6 they had to modify these practices and institutions and  
7 social beliefs. And that this mish of environment and past  
8 beliefs, what came out of it evolved the American  
9 character. And it was this progressive evolution as the  
10 explorer moved on west, the--the fur trader followed him  
11 and then the miner, and then the townsperson. And it was  
12 sort of this steady progression. It wasn't that one had  
13 to fall or leave before the other one.

14 Q Now, in the area of the Kandik and the Nation, don't we  
15 see several of these groups existing simultaneously even  
16 today?

17 A We probably do.

18 Q In other words, given the lack of development of the  
19 area, are there some historical remnants or peoples or  
20 occupations that might have been wiped out in a more  
21 economically developed area but persists in an ecomonical  
22 area.

23 A Subsistence lifestyle. As I say in my book that the last  
24 frontier, on the Yukon looks back--looks backward, not  
25 forward, looks backward to when somebody could be self

1       reliant and self sufficient and all of those wonderful  
2       words of Americanism.

3       Q     So, you know, if we take say the Indian as one of the  
4       groups, you know, that we would see in the progression  
5       in the area of the Kandik and the Nation, some of these  
6       Indians still exist in a similar way to what they did a  
7       hundred years ago?

8       A     Not so much, in some areas of Alaska that's true, but not  
9       so much on the Yukon. For the most part the Indians in  
10      Eagle village do not subsist and are really not very  
11      interested in a subsistence lifestyle.

12      Q     What about the new groups who have moved in, the trespassers,  
13      whatever?

14      A     The--the trappers who are now in the area are mimicking the  
15      earlier Indian lifestyle, and are craving to know how they  
16      did it, how they lived as simply as they did, how did they  
17      get along without having to buy their food in bulk,  
18      brown--brown rice, and peas, and lentils and this kind of  
19      stuff. And they keep--they go to the Indian village and  
20      spend hours talking to these older people, and they are  
21      the ones who are more or less picking up on some of the--  
22      to some extent, the Indian lifestyle of pre-contact or  
23      early history--historic.

24      Q     Okay, they're seeking what we call an alternate lifestyle?

25      A     Right.

1 Q Are they dependent on the river?

2 A Very much so.

3 Q How so?

4 A All of their material, their--their winter's food that  
5 they cannot--you know, to supplement their meat diet is  
6 brought in on the--brought in by boat either from Eagle  
7 or from Circle. Whether they have a motor or whether they  
8 use dogs to pull it or whether they track it--line it up  
9 the river themselves, they're still dependent on the boat  
10 to do it. Almost of all them, without exception, live on  
11 a tributary stream or river. They use the river for water,  
12 you know, it's the--the river's a very essential part of  
13 their lifestyle.

14 Q Okay.

15 A There are none that live in the interior.

16 Q None, they all live on the river?

17 A On one part--you know, one of the rivers or one of its  
18 tributaries.

19 Q Okay, I have no further questions.

20 JUDGE LUOMA: Miss Higgins?

21 BY MS. HIGGINS:

22 Q I think most of my questions have been asked and evilly  
23 answered.

24 JUDGE LUOMA: Oh, you don't have to--

25 Q Bear with me if I'm slightly repetitive, I'll try to

1 eliminate the overlap here. Am I correct in concluding  
2 from your statements today that the subject of native  
3 use, particularly the seasonal cycle of activity in the  
4 Kandik and Nation basin area has not in your opinion really  
5 been thoroughly studied?

6 A Yes.

7 Q Okay. You mentioned the coal, we have reports of coal being  
8 sledded from the Nation coal mine to the Yukon River, do  
9 we know where it was sledded. Is it possible it was  
10 sledded on the frozen river? Do you have any information  
11 about this?

12 A I could well have been sledded on the frozen river to a  
13 point--I have it listed in my appendic, coal transportation  
14 road, and I have a photograph of it, but I didn't include  
15 the photograph in the book, but the road is about seventy-  
16 five yards to a hundred yards wide--long and it crosses  
17 off a meander off the Kan--off the Nation River and goes  
18 directly from the Nation to the Yukon River. And that has  
19 been told--I've asked several people what is this road  
20 and they said that's the coal transportation road. So  
21 I'm--judging from that I would say it was sledded on the  
22 river 'til that point, and then it was taken over to the  
23 Yukon. But then again we also have to bring into  
24 consideration overflow on the winter--in the winter ice.

25 Q You've said that it was determined rather early that the

1 mineralization was on the south side of the Yukon and that's  
2 where gold--reported gold mining activity was--took place,  
3 on the tributaries, on the south side rather than north  
4 side that we're concerned with--

5 A Um-hm.

6 Q --here in this appeal. In your opinion, is that absence of  
7 documented use of the tributaries of the Yukon north of  
8 the Yukon such as the Kandik and Nation during the gold  
9 mining era, at least partly attributable to the lack of  
10 economic incentive to--to use those rivers?

11 A Yeah, I agree.

12 Q Okay.

13 A Christopher Nelson, who was the trapper on the Nation,  
14 was a miner in the Fortymile, so he may well have done  
15 some prospecting on the Nation at the same time he was  
16 trapping, I don't know. But he never found anything worth  
17 reporting.

18 Q Okay, do you think the history of trapping activity  
19 from 1920's through the '50's has been thoroughly studied?

20 A Not at all, I had a great deal of difficulty finding  
21 information on modern trapping, and my major source was  
22 the Alaska Weekly, which was a fantastic source because  
23 they gave the fur prices every--every week, and gave  
24 articles on what was happening in the state. And I--  
25 without that source, I would have been very hard pressed

1 to have written a trapping history. The National  
2 archives has little or no information on modern take,  
3 harvest figures.

4 Q From your research on trapping during--during that period,  
5 you mention that fur prices went down after World War  
6 II. In your opinion, was there a lack of economic  
7 incentive to use the Kandik and Nation River systems for  
8 trapping and fur trading in late 1959, around the time of  
9 statehood?

10 A As somebody said, they put a road to Eagle in the '50's  
11 and everybody left. And that's about what happened. There  
12 was no motivation to stay there. The steamboats were gone,  
13 there was no woodchopping to be done, mining was at a  
14 low ebb, fur trapping market was low, there was nothing  
15 keeping people on the river.

16 Q What about fur prices today, is there some economic  
17 incentive to again use those areas for--

18 A Fur prices have risen , but not comparable to wages.

19 Q Um-hm.

20 A And as I report, people are returning to trapping for  
21 other reasons than for profit.

22 Q Okay, how much time did you spend examining the International  
23 Boundary Commission report--report or reports, I'm not  
24 sure what there is?

25 A Probably five days.



1 Q Was that done in connection with--with your published  
2 study on Yukon frontiers?

3 A No, it was done--the first--the first time I came into  
4 exposure with the International Boundary Commission was  
5 for the study, but most of the information most of the  
6 time since then has been as a result of a request by the  
7 regional soliciter to look at some notes that Richard  
8 Stern had requested from Menlo Park--

9 Q In preparation for this hearing?

10 A --right.

11 Q Okay. Do you think you examined them thoroughly enough  
12 to determine whether Kearns (ph) may have been referring  
13 to transportation of supplies on the Nation or its  
14 tributary streams even though he didn't specifically  
15 refer to the Nation in parts of his notes, would you be  
16 that--that familiar with them?

17 A Initially, when I first read the published version, he  
18 said that supplies were furnished on the Kandik and Nation  
19 by poling boats.

20 Q That was his published report.

21 A I just made that assumption and then he talks at great  
22 length about the poling boats on the Charley Creek which--  
23 which was the Kandik. But then when he talks about the  
24 Nation, he never mentions poling boats, he does mention  
25 caches. So what could have happened is the poling boats

1        came while he was in between and cached the food. Or they  
2        could have brought the supplies and stuff up the Kandik  
3        in poling boats and then brought the supplies by horseback.  
4        He does not specifically state in any time in those notes  
5        how the Nation was supplied aside from horses and this  
6        cache that he talks about.

7        Q        Were some of the camps that were established and supplied  
8        located on the uppernation and it's--or its tributaries.

9        A        That's correct, yes.

10      Q        Okay.

11      A        In fact, one of the geological foundations--formations  
12      was called tindir, after Tindir Creek.

13      Q        Do you know how much water the poling boats used by the--  
14      used to supply the Boundary Commission drew?

15      A        No, I sure don't.

16      Q        Let's see, I'm not sure that well articulated. You don't  
17      know what the draft was? You described generally the  
18      length and width and shape of the boats.

19      A        I would say maybe two to three to six inches, I don't  
20      know.

21      Q        Okay. Referring now to your trip up the lower reaches  
22      of the Kandik and Nation during the summer of 1976, how  
23      many people did you have in one nineteen foot Grumman  
24      canoe?

25      A        Just myself and my guide.

1 Q And how was it loaded? Can you estimate the--

2 A I was in the front--

3 Q --approximately the weight in one canoe?

4 A Well, I weigh a hundred and ten, he probably weighs a  
5 hundred and fifty, and we probably had a hundred pounds  
6 worth of gear.

7 Q Okay. You mentioned almost in passing that you--you  
8 thought the river level during your trip--river trips  
9 in 1976 was neither high nor low--

10 A That was the Kandik.

11 Q Kandik, I'm sorry, thank you for pinpointing that.

12 A The Nation, my guide who's very familiar with it said it  
13 was high, it was running dirty, as he called it, so that  
14 meant that there had been some rain in the upper--upper--

15 Q Okay.

16 A --upper reaches. Now, I went on the Nation twice, and the  
17 first time was my first exposure to being on the tributary  
18 of the Yukon and I was a little jarred to find I had to  
19 keep getting out and getting up into cold water up to my  
20 waist, and I didn't enjoy that. But the second time I  
21 was accustomed to it, so it didn't bother me as much.

22 Q Did you say that your guide was not familiar with the Nation,  
23 he was familiar with one but not the other--

24 A He was familiar with the Nation and not with the Kandik.

25 Q Okay, what--what was the basis for your conclusion that the--

1 the water level on the Nation was normal or at least not  
2 higher, not particular high or not particularly low?

3 A The one on the Nation or the one on the Kandik?

4 Q On the Nation.

5 A The Nation, as I said, was high, because the --my guide  
6 said that it was running dirty from rains that had come  
7 up.

8 Q Okay, I'm sorry, I confused 'em again. Did you have any  
9 opinion as to the water level on the--the Kandik then?

10 A Not really. I didn't have anything to judge it by, so I  
11 couldn't say whether it was high or low. I was only on  
12 it the one time.

13 Q Referring now to the trapper's trails or the trails that  
14 are located along the west sides of the Kandik and Nation  
15 Rivers, are these trails useable in the summer, is use  
16 feasible?

17 A Let's say I walked them, but I did not enjoy walking them.  
18 I would say that they're not--they're not--they weren't  
19 meant to be used in the summertime.

20 Q Did you walk them with a pack?

21 A Yes.

22 Q Do you think a horse loaded with supplies or a person  
23 loaded with a heavy pack would have tough going?

24 A Yes, and the notes from the Boundary Commission refer to  
25 how the tough going is, complaining about the trail is

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1 soft, etc., etc.. That country is hard on horses. I don't  
2 know how many horses USGS must have gone through in the  
3 forty years they were mapping and planning Alaska.

4 Q Are trapping trails located for proximity to animals,  
5 proximity to good--to productive trapping lines?

6 A Yes.

7 Q So whatever trapper trails exist, even assuming they can  
8 be used in the summer, aren't necessarily located in  
9 places where you'd want to go--

10 A That's correct, it's not always the shortest distance  
11 from A to B.

12 Q Okay, I think that's all I have.

13 JUDGE LUOMA: Anything else Mr. Allen?

14 BY MR. ALLEN:

15 Q Yeah, I have a few on redirect. You testified as to the  
16 type of boats used by trappers, I'm not sure it was  
17 entirely clear in the original testimony or in cross  
18 the extent to which you have positive knowledge that these  
19 types of boats actually were used on teh Kandik or the  
20 Nation at the time of statehood. Could you summarize your  
21 positive knowledge of actual use of poling boats on either  
22 of these--

23 A Just poling boats?

24 Q Or any boats on either of these rivers at the time of  
25 statehood, at or before the time of statehood?

1 A The Boundary Commission definitely had poling boats on  
2 the Kandik. George Beck said that Frank Fish used a  
3 poling boat on the Kandik, he's a trapper. I can't  
4 remember ever finding any reference to any kind of boat  
5 before--before they had the outboard motors and the canoes  
6 that they have nowadays on the Nation.

7 Q Are you including in your answer use--actual documented  
8 use by native, is there any actual documented use that  
9 you've come across of these rivers by natives at the time  
10 of statehood?

11 A There is reference to--on the Kandik, I believe, of shooting  
12 and moose going--and bringing the moose in a skin boat  
13 down the Kandik.

14 Q How about these three low draft steamers that you  
15 mentioned, do you have any documented documentation that  
16 any of them ever went up the Kandik or the Nation?

17 A No, they never did. They--as I said the Tanana went up--  
18 or the Koyukuk, one of those two, went up the Porcupine  
19 right after breakup while the water was still very high,  
20 made it up to new Rampart house, which is on the boundary.

21 Q But the Porcupine is considerably bigger than the Kandik  
22 and Nation. I cannot conceive either--any of those boats  
23 going up those small rivers, it'd be crazy.

24 Q How about pos--positive knowledge that you might have of  
25 actual use of boats on the Kandik or the Nation by

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1 trappers or natives since the time of statehood?

2 A There's quite a bit of use of boats on the Kandik and  
3 Nation by trappers, canoes with engines powered from  
4 six to ten horses, hunters, sport hunters from Fairbanks  
5 and elsewhere coming up in jet boats, air boats, and  
6 they're able to go quite far up the--up the river.

7 Q Is there, to your knowledge, an understanding in the  
8 Yukon-Charley area by say the residents of Eagle as to  
9 how far up each of these rivers is normally considered  
10 to be able--able to be navigated by a boat?

11 A Well, the trapper I was with, it seemed to me he said that  
12 as far as he had ever gone was Tindir on the Nation, but  
13 it may have been Jungle, I thought it was Tindir. On  
14 the Kandik I don't know. And as far as people in Eagle  
15 or on the river, I've never heard 'em say.

16 Q Would that--

17 A There's more talk about the--about Charley River rather  
18 than those two rivers.

19 Q Is there any understanding that it would depend a good  
20 deal on--on water level at the particular time?

21 A Oh definitely. The water level, the type of boat you're  
22 trying, wind conditions, people that you have on board,  
23 you know, if you have six people that are willing to lift  
24 up a canoe and carrying it.

25 Q You mentioned the--that the Nation was high when you went

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1 up it in 1976, do I recall your testimony that you still  
2 had to get out quite frequently and pull it over bars?

3 A Yes. That's why I said I wouldn't like to see it when it's  
4 low.

5 Q Now you testified on cross examination, I believe the  
6 question was do you know any instances of native trapping  
7 as opposed to commercial use, I think that's the question  
8 you were asked. My question is, do you draw a distinction  
9 between subsistence type trapping and trapping that might  
10 be considered commercial trapping?

11 A That's another thing the Park Service has been trying to  
12 resolve, what is commercial trapping and what is  
13 subsistence trapping. And I guess that you sort of boil  
14 it down to what's recreational trapping and what is what  
15 you live by. And what--if a person is only--whose sole  
16 income is twenty-five hundred dollars and he receives  
17 that from trapping, I would not say that's a commercial  
18 venture, at least in the subsistence commercial definition  
19 of what we're talking about. However, if you have somebody  
20 from Fairbanks who is working for the Highway Department  
21 and has dropped into the upper Charley or the upper Kandik  
22 and traps for December and part of January, and comes out  
23 and sells his fur, I would say that's more of a commercial  
24 venture.

25 Q Do you recognize a subsistence between--a distinction



1 between a person who might go out on the weekends and pan  
2 for gold, for example, more as a recreational activity  
3 and someone who would make an investment of money into--  
4 into a mining operation, which we could call a commercial  
5 miner, is that the type of distinction you were trying to  
6 draw?

7 A Yeah, another definition we're trying to work around in  
8 the Park Service with subsistence is where do they live.  
9 If you live right there and you're using the land that  
10 you're living in and you know it, then that's closer to  
11 being subsistence than living in Fairbanks and quote  
12 using that land. So I'd say that the analogy there is  
13 very close.

14 Q Now the--the trapping that existed on the Kandik and the  
15 Nation both before statehood and after statehood, would  
16 you define this as more of a subsistence type trapping or  
17 more of a commercial type trapping?

18 A Well, Christopher Nelson's trapping I would say was probably  
19 subsistence, he was constantly coming into problems with the  
20 Alaska Game Commission over trapping out of season, he  
21 was getting unprime furs. However, George Beck, who's  
22 lived at the mouth of the Kandik at Biederman Camp, just  
23 downriver from Biederman Camp, in the '30's brought in  
24 eight thousand dollar worth from his furs, and that was  
25 quite a bit of money in those days. Now, he was trapping

1 not just the Kandik, he was trapping the Yukon and almost  
2 everywhere else. So you've got a range there that you--  
3 that's quite significant and I would say maybe George  
4 Beck and his trapping was commercial whereas Frank Fish  
5 or Christopher Nelson's were not.

6 Q In the period say from 19--well, I guess you testified  
7 that from about 1950 to 1968 there was very little trapping  
8 in--along the Yukon in this area, is that right?

9 A That's correct.

10 Q Since 1968, what would you say is the average annual  
11 income that is derived from trapping in this area?

12 A The people that I know on the Yukon today who are trapping  
13 make between fifteen hundred and three thousand a year.

14 Q And is this normally their sole source of income?

15 A It depends on the lifestyle they want to have, if they want  
16 to have a little fancier lifestyle, then one of them will  
17 go into Fairbanks to work. The ideal for almost all of  
18 them on the river at this point is to be totally self-  
19 sufficient, and there are only two trappers--wait, let  
20 me backtrack. At this point now there are five trappers,  
21 five families who are self-sufficient, but it is a very  
22 simple lifestyle.

23 Q Would you say they were engaged in that line of work more  
24 because they are attracted to the way of life or because  
25 it's the best way they can think of to make money?

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1 A Oh, definitely that's their preferred lifestyle. Many of  
2 'em have college degrees, could be teaching or--

3 Q And they could probably be--

4 A --geologist or whatever.

5 Q --making more money doing something else?

6 A Definitely.

7 Q What is the general type of terrain in this area, and  
8 by that I mean is it rugged with formidable obstacles?

9 I'm not talking--

10 A You're talking about the river valleys.

11 Q River valleys and the passes.

12 A Well, the river valleys there are muskeg, it's difficult  
13 walking, but it's not impossible walking. You've got the  
14 hills that come up between the--the drainage systems, but--

15 Q How high are the hills?

16 A Three thousand.

17 Q Was it common for trappers to trap up one drainage, cross  
18 a pass and trap down another drainage?

19 A Yes, it's still done today.

20 Q Therefore, the passes are not formidable to cross?

21 A No.

22 Q Is the--are the mountain--are the hills sharp and jagged  
23 or more rounded?

24 A They're rounded, almost flat, sloping.

25 Q Is the growth along the river banks dense and hard to get

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1 through or is it possible for a horse--a person on horse  
2 for example to--to travel along the banks of the river even  
3 though there was not a permanent trail?

4 A There's a lot of underbrush, a lot, there's alder and rose  
5 bushes and willow. I wouldn't want to take a horse around  
6 through it.

7 Q Did the Boundary Commission, in fact, use horses to take  
8 supplies up to the border?

9 A They used--they used the horses to move camps, move  
10 supplies, but how--how those actual supplies, they got a  
11 ton and a half poling boats up the Kandik in one instance.  
12 How they got 'em up the Nation is left in the air, I don't  
13 know.

14 Q How many of the five trappers that you mentioned in this  
15 area were on the Kan--on the Kandik and the Nation.

16 A What five trappers?

17 Q I thought you mentioned that there were five--

18 A On the Kandik?

19 Q The five families that are currently subsisting in the  
20 area?

21 A Oh, three of them are on the Kandik, two of 'em are on--  
22 well, one family's on the Nation. There are three single  
23 trappers on the Kandik, one family on the Nation and  
24 one man on the Tatonduk, Sheep Creek.

25 Q I have no further questions.

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1 JUDGE LUOMA: Miss Taylor, anything else?

2 BY MS. TAYLOR:

3 Q Just one more. But if a person, say in the '50's went  
4 up, was it Rock Creek, I can never remember that, is that  
5 the creek between the Kandik and the Nation? Went up  
6 Rock Creek, went up the Kandik to trap, and then possibly  
7 crossed over and then trapped on the Nation, and then came  
8 down, whatever. How would they get--how would they get  
9 overland, wouldn't they have a dogsled?

10 A Yes.

11 Q And that would be in the winter by definition?

12 A Yes.

13 Q Not in the summer?

14 A No.

15 Q Okay.

16 A You don't trap in the winter--in the summer anyway.

17 JUDGE LUOMA: Is that all?

18 MS. TAYLOR: That's it.

19 JUDGE LUOMA: Miss Higgins?

20 BY MS. HIGGINS:

21 Q One question to clarify the record. When you say  
22 that the International Boundary Commission used horses  
23 to move camps, are you talking about moving men and  
24 supplies relatively short distance--distances within the  
25 survey area?

1 A Yes.

2 Q You are not saying that they use horses to transport most  
3 of the supplies up from the Yukon to the area--

4 A No, no, no.

5 Q --where they were doing their work?

6 A No.

7 Q Can you expound on that?

8 A Just from one camp to another campe.

9 Q Thank you.

10 BY JUDGE LUOMA:

11 Q Your testimony generally about the poling boat activities  
12 how far up the Kandik did this--did this activity take  
13 place?

14 A The poling boat?

15 Q Yes.

16 A Well, the Boundary Commission was at the boundary, which  
17 is ninety miles approximately.

18 Q That then takes you all the way from the Yukon to the  
19 Canadian border?

20 A Right.

21 Q And how about the Nation?

22 A I have no reference documented, written or orally of poling  
23 boats on the Nation.

24 Q So you have not included in your testimony about poling  
25 boats on the Nation?

1 A I can not remember any--seeing any reference to that on  
2 the Nation.

3 Q Now, you mentioned one time that the Kandik is a major  
4 river, what did you mean by that?

5 A Well, compared to Washington Creek and Fourth of July  
6 Creek and Mission Creek, which are also in the area,  
7 they are--it's a major river. I am looking at it from  
8 the perspective of Yukon-Charley, Yukon is the major  
9 river, the Charley is a major tributary, the Kandik and  
10 Nation or smaller rivers versus these smaller creeks.

11 Q Well, do you--do you use the term major in some sense of  
12 using the river for certain activities or is it just for  
13 this--

14 A No, I was thinking more of a large drainage area that  
15 it--the valleys are long and broad.

16 Q I see. Oh yes, what did your testimony go to so far as  
17 the present day use of the rivers, how far up is the  
18 present day boating?

19 A I don't know on the Kandik. On the Nation, they boat as  
20 far up at least as Tindir.

21 Q Now does that get us up to townships identified as eight  
22 dash thirty or eight dash thirty-one on exhibit B-3?

23 A I don't know, I'd have to look.

24 Q Would you check please? (Pause).

25 A If they get to as far as Jungle, I know they get as far

1 as Jungle, I don't remember him using the word Jungle,  
2 I remember the word Tindir.

3 Q And where is Tindir, is that within the eight dash thirty-  
4 one?

5 MR. ALLEN: No, it's below.

6 Q Can you identify it on the map?

7 A I's right here.

8 Q Well, then it is not within that section square--that's  
9 marked off?

10 A No. That's correct.

11 Q Alright.

12 A Jungle is.

13 Q So if it were Jungle, it would then have gone through  
14 that section, that township--

15 A That's correct.

16 Q --is that correct?

17 A But I was under the impression that Tindir was as far as  
18 he had ever gone. He'd lived on the Yukon seven years.

19 MR. ALLEN: Who is this individual that you--

20 A He's my guide.

21 MR. ALLEN: What was his name?

22 A David Evans.

23 Q Now, would you describe a trap line?

24 A Oh, a trap line can be anywhere from twenty-five miles to  
25 a hundred and fifty miles. Generally they try to be



1 circular so that they can cover as much country as  
2 possible.

3 Q Wait a minute, what--I mean physically, does a trap line  
4 have some physical description you can give it or--

5 A It's a trail.

6 Q It's a trail?

7 A Yeah, it's a trail, generally a horse--

8 Q I'm picturing some kind of a line or something, it's not  
9 that at all, huh?

10 A No, it's just--imagine a trail--

11 Q Um-hm.

12 A --either through woods or along the stream with occasional--  
13 where--where animal tracks cross the trail, where a certain  
14 outcropping is correct, where the transition zones between  
15 the different kinds of vegetation, where they're coming  
16 out of the mountains to a creek, these are likely areas to  
17 set what are called trap sets, trapping sets, where you  
18 put the trap.

19 Q So the trap is an individual item then?

20 A On a trap line.

21 Q Um-hm.

22 A A trap line is generally just a trail that--

23 Q I see, but the trap is not attached to a trap line?

24 A No.

25 Q I see. Now, is it the left bank or the right bank of the

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1 Yukon that the Klondike enters?

2 A It enters the right bank.

3 Q And is the right bank the same as what you have been  
4 calling north of the Yukon?

5 A That's correct.

6 Q Is the geology different?

7 A Yes. You've got the Ogilvie Mountains separating the  
8 two.

9 Q I see. Alright, thank you Miss Grauman.

10 JUDGE LUOMA: Do you want to call your next witness?

11 MR. ALLEN: Yes, my next witness is Mike Brown.

12 JUDGE LUOMA: Is Miss Grauman leaving, are you gonna--

13 MR. ALLEN: She is going--I think she will return,  
14 but she is going to contact her office, I think she has some  
15 business to attend to.

16 MS. TAYLOR: Your Honor, may we have a short recess?

17 JUDGE LUOMA: Yes, just a minute.

18 MIKE BROWN,

19 Being first duly sworn under Oath, testified as follows:

20 JUDGE LUOMA: What do you want, a ten minute recess?

21 MS. TAYLOR: Please.

22 JUDGE LUOMA: Alright. We'll have a ten minute  
23 recess.

24 OFF THE RECORD

25 ON THE RECORD

1 JUDGE LUOMA: Are we missing someone?

2 MS. HIGGINS: Mr. Stern, but I think we can proceed.

3 JUDGE LUOMA: Okay, back on the record.

4 MR. ALLEN: I would like to introduce this map into  
5 evidence as government's exhibit B-5. It's a little more--easier  
6 to follow and might be more useful.

7 JUDGE LUOMA: Have you seen it? Any objection to B-5?

8 MS. HIGGINS: We've seen it.

9 MS. TAYLOR: Yes, we have no objection.

10 JUDGE LUOMA: No objection?

11 MS. TAYLOR: No objection.

12 MS. HIGGINS: No objection.

13 JUDGE LUOMA: Exhibit B-5 is received in evidence.

14 BY MR. ALLEN:

15 Q Mr. Brown, would you state your name and address for the  
16 record, please?

17 A My name is Mike Brown and my address is 3913 Lynn Drive,  
18 Anchorage, Alaska.

19 Q What is your educational background?

20 A I have a B.A. in history from Alaska Methodist University,  
21 an M.A. in history, Northern Arizona University, and I'm  
22 pursuing doctoral studies at the University of Washington.

23 Q And what's your present occupation?

24 A Presently I'm a historian with the Bureau of Land Manage-  
25 ment.

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1 Q What does that job involve?

2 A At the present time, the job involves serving as a liason  
3 between the government and a contractor and--which is  
4 researching historical and physical characteristics data  
5 about inland water bodies of Alaska. In other words, I--  
6 my--I and another individual serve as contact points for  
7 the contractor. We answer whatever questions they have in  
8 regards to research. We assess the contractor's progress,  
9 the quality of the information, things of that nature.

10 Q When was this contract awarded?

11 A September, 1977.

12 Q And did you state what its purpose was?

13 A The purpose of the contract is to collect historical and  
14 physical characteristics data about all inland water bodies  
15 of Alaska, in re--that's essentially what it is. And we  
16 have stipulated the types of data to be collected.

17 Q Is it the purpose of the contractor to make determinations  
18 and recommendations as to whether rivers are navigable?

19 A NO, the purpose is not to make recommendations. This is--  
20 the contract is simply a data collection effort. There is--  
21 the contractor makes no recommendations and has been  
22 expressly told not to make those recommendations.

23 Q What was your job before this contract was awarded with the  
24 BLM?

25 A Prior to the contract being awarded, I was performing mostly

1 partly administrative duties in connection with national--  
2 with historic preservation laws and conducting periodical  
3 research reports. And at one time I devoted a considerable  
4 amount of time on researching the activities of the Alaska  
5 Road Commission in Alaska, the development of land  
6 transportation in Alaska.

7 Q When did you begin work for the BLM?

8 A July, 1976.

9 Q And before that what did you do?

10 A Immediately prior to the appointment with BLM I was at the  
11 University of Washington. Prior to that I was working as  
12 a contract historian with the Alaska Division of Parks.  
13 And just prior to that I was a historian with the Alaska  
14 Division of Parks.

15 Q In connection with your work at BLM, did--did you conduct  
16 a study of the Alaska railroad?

17 A Yes, I did. This was an effort--a contract study which  
18 I undertood, the funds being--the funds came from--or this  
19 study was initiated at the request of the Alaska Railroad  
20 and funded by the Alaska Division of Parks. And the purpose  
21 of the study was to identify historic sites on the Alaska  
22 Railroad and evaluate their historical significance as  
23 required by law.

24 Q Is it then a correct conclusion that a substantial part of  
25 your professional career has been devoted to studying the

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1 history of transportation in Alaska?

2 A Since 1976, yes.

3 Q And is a significant part of that study involve river  
4 transportation?

5 A A considerable part, yes.

6 Q Have you reviewed the product of this contract study  
7 concerning navigable--or concerning rivers that has been  
8 produced by the contractor?

9 A Yes, we review these--the information is collected by the  
10 contractor and processed to computer storage and it's  
11 retrievable by water body as well as by other parameters.  
12 And we review these computer printouts, which often times  
13 run into hundreds of pages, the maximum is about two hundred  
14 pages, two hundred and fifty page, computer prinout. And  
15 these are delivered on an annual basis--or monthly basis.

16 Q Has a printout been obtained by you for the Kandik and  
17 Nation Rivers?

18 A Yes, it has.

19 Q And have you reviewed these?

20 A Yes, I have reviewed them.

21 Q As a expert if you will on transportation in Alaska,  
22 can you give us a general--general description of the  
23 evolution of river transportation in Alaska? And I think  
24 for this purpose we ought to exclude transportation in  
25 southeast Alaska. I'm talking about transportation in the

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1 interior part of Alaska?

2 A Okay, the period that I'm most familiar with is that dating  
3 since the purchase of Alaska, 1867, and American traffic  
4 on the Yukon River actually begins two years after the  
5 purchase of Alaska in 1869. Travel was very sporadic  
6 on the Yukon River by steamboats of the Mississippi and  
7 Missouri River type until really the Klondike goldrush,  
8 which is--which is a watershed in Alaska history. There-  
9 after, with the discovery of gold in the Klondike and at  
10 Fairbanks in 1902 and in Nome in 1900, river traffic--  
11 traffic on the Yukon increased tremendously. The high  
12 point is probably around 1904 when there are more than  
13 two hundred steamboats of various sizes on the Yukon River.  
14 After that point in time,--at that point in time, steamboats  
15 came in every size and shape. But they--with the passage  
16 of time, they became larger and large companies, transporta-  
17 tion companies were established on the Yukon River traffic,  
18 some of them on the Tanana River, some of them on the  
19 Koyukuk River. But the Yukon was the primary artery through  
20 Alaska very similar to the Mississippi River. In 1923  
21 the Alaska railroad was constructed--was completed from  
22 tide water at Seward to the navigable waters of the Yukon  
23 River, which had a terrific impact on river transportation  
24 on the Yukon River. Existing transportation companies  
25 such as the North American Trading and Transportation

1 Company, its successor really, the Alaska Pacific  
2 Navigation Company suffered as a result of these--of this--  
3 of the railroad, which in turn lead to the Federal  
4 Government getting involved in federal--in river transpor-  
5 tation. The Alaska Railroad from 1923 or thereabouts to the  
6 mid-'50's, 1950's essentially serviced most of the river  
7 points on the Yukon River all the way down to Marshall  
8 and as far north or east as Ft. Yukon.

9 Q Where is Marshal?

10 A Marshall is on the lower Yukon River.

11 Q Below Whitehorse?

12 A Lower Yukon River.

13 Q Oh, the lower, I'm sorry.

14 A Yeah. During this time there were small navigation  
15 companies, such as the Black Navigation Company, the Inland  
16 Rivers Navigation Company, the Yutana Barge Lines, which  
17 lasted longer than any of the others. But to the present  
18 day, most of them are non-existant.

19 Q Were these companies that transported goods on the Yukon?

20 A Some of them did. Most of them, the--like the Yutana  
21 Barge lines service upriver points, wherever the federal  
22 governemnt didn't. And also other water bodies such as  
23 the Kuskokwim River, the Kobuk River, places of that  
24 nature, other large water bodies.

25 Q WE've heard a considerable amount of testimony about the

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1 impact of the discovery of gold on river transportation,  
2 what were the main tributaries of the Yukon in Alaska on  
3 which there was an appreciable amount of gold activity?

4 A The major water bodies would include, of course, the  
5 Koyukuk River, the Kantishna River, which is a tributary  
6 to the Tanana.

7 Q I guess I'd like to restrict my question to tributaries of  
8 the Yukon upstream of Circle.

9 A Where there was a great deal of gold?

10 Q Yeah.

11 A The only water body would be the Fortymile River.

12 Q Was there some gold activity on the Charley-- on the Charley  
13 River?

14 A There was a--as far--I believe so, there was a copper  
15 prospect there at one time. There was an attempt at quartz  
16 mining in--in that area, but it was--it fell through, it  
17 was not successful.

18 Q Taking for example, a mining venture on the Fortymile, how  
19 would a person who was conducting a mining operation  
20 up there typically get supplies to his operation?

21 A Typically he would--it would depend on the supplies, if it  
22 was heavy machinery, he would usually transport it by river  
23 in the winter over the ice using double end sleds, double  
24 enders. If he had a small amount of provisions or if  
25 he had provisions that didn't weigh too much such as--by

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1 heavy machinery, I mean dredge, a dredge, dredge parts.  
2 Otherwise, he would use a poling boat. And poling boats  
3 are known--it is a historical fact that poling boats were  
4 used for a commercial purpose, that is for a charge,  
5 twenty-five cents a pound, to Chicken Creek in 1907 --

6 Q I guess I'd better ask you to identify the time period  
7 we're talking about here ?

8 A Okay, 1886 to about 1925.

9 Q Okay, now describe the poling boat operation? Who would run  
10 these poling boats, for example?

11 A It would be individual contractors.

12 Q And the miner would pay him a certain freight rate to take  
13 materials from--from the Yukon where they would be  
14 delivered by what?

15 A Freight would be delivered to Fortymile, which is located  
16 at the mouth of the Fortymile River on the Yukon River  
17 by steamboat, unloaded there, and individual contractors  
18 would deliver--transport supplies to points on the upper  
19 Fortymile River by poling boat, which was the usual method  
20 in the summer as far as Chicken Creek, being the upper  
21 limit of navigation.

22 Q What would they--what was the typical freight rate in the  
23 early 1900's for transporting goods by poling boat?

24 A In 1907 it was twenty-five cents a pound.

25 Q What would be the equivalent winter rate for transporting

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1 goods at that time, if you know?

2 A Almost half, if not less than that.

3 Q Why would it be twice as expensive to get somebody to bring  
4 goods up by poling boat?

5 A The Fortymile River is--well, it's hard work for one thing,  
6 poling a boat is extremely hard work, on the Fortymile  
7 River particularly. The Fortymile River has shallows,  
8 rapids in certain places, and conversely, it's much easier  
9 to--to use--well, I should add, too, that certain parts of  
10 the Fortymile--the terrain is difficult for horses. Sometimes  
11 horses were used to pull poling boats. There are accounts  
12 to the effect that the shores of the Fortymile River, the  
13 muskeg was difficult to walk on. But the Fortymile in the  
14 winter was very easy to travel on. They could use large  
15 sleds, horse-drawn sleds as far as Chicken Creek, Steel  
16 Creek, and Franklin.

17 Q When did motors come into use as a means of propelling  
18 boats in this area?

19 A In the Fortymile area?

20 Q In the middle Yukon area?

21 A Generally--they came into common use shortly after the  
22 war, World War I in 1916--17--18. But they were in use in  
23 other parts of Alaska at that time.

24 Q How did the motorized boats differ from the poling boats  
25 in dimension and design?

1 A Well, motor boats--there are various classes of motor  
2 boats, and in a way--in a manner--in many cases, a poling  
3 boat was simply converted to a gas boat, just a transom  
4 was added onto it and an outboard motor attached to it.  
5 Others were constructed, tunnel boats were introduced at  
6 this time, that is an inboard-outboard operation.

7 Q What is the general dimensions of poling boats that were  
8 typically used on the Fortymile?

9 A We examined--Richard Stern and I examined two tunnel  
10 boats in Eagle, and one--both of 'em were twenty-eight  
11 to thirty feet long, and five to seven inches beam--five  
12 to seven inches--or feet beam at the top. They had flared  
13 sides, the bottom of the beam was three feet to four  
14 feet, single screw powered, flat bottomed, snubbed nose.

15 Q What is the--what--what do you mean by tunnel boat?

16 A A tunnel boat is long, narrow, and unlike other boats, it  
17 has a cavity extending from the stern to a point about one-  
18 third the distance from the stern. And in this cavity is  
19 located a shaft, which extends to the limit of the stern,  
20 and sits in the cavity.

21 Q And what's the purpose of that shaft?

22 A The cavity or the shaft?

23 Q The shaft, is there a propeller on it?

24 A Yes, there's a propeller at the end of it.

25 Q (Pause). I'm going to show you three pictures marked

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1 governments exhibit B-6, 7 and 8 and ask if you know  
2 where these pictures came from?

3 A These three photographs were taken by Richard Stern, the  
4 Alaska Division of Land and Water Management in late  
5 August during--at Eagle, Alaska.

6 Q Were you present when he took them?

7 A Yes, I was.

8 Q And what so they--I'd like to offer those three exhibits  
9 into evidence.

10 JUDGE LUOMA: Any objection?

11 MS. TAYLOR: No objection.

12 MS. HIGGINS: No.

13 JUDGE LUOMA: Exhibits B-6, 7 and 8 are received into  
14 evidence.

15 Q Do the--does that--do those pictures describe a tunnel--  
16 or depict a tunnel boat?

17 A Yes, they do.

18 Q And what is the purpose of the tunnel or cavity?

19 A To--to--essentially to protect the shaft in low water  
20 from obstructions and--and bars in the river.

21 Q What is the--what would you estimate would be the cargo  
22 capacity in pounds of that boat?

23 A I would hesitate to estimate, I'm almost certain that  
24 it could carry a minimum of a ton.

25 Q Could you estimate how much water it would draw when

1 loaded to full capacity?

2 A I would think about fourteen inches, a foot and a half.

3 Q Is there--on government's exhibit B-8, which is a picture,  
4 I assume of the stern of the boat, does that show where  
5 the water line might be on that boat, do you think?

6 A Yes, it does.

7 Q And how far up from the bottom of the boat would you  
8 estimate--did you say it was?

9 A We measured it at ten to eleven inches.

10 Q Would the propeller project below the bottom of the boat  
11 at all?

12 A As I recall, just a portion of the prop does, extend  
13 beyond the bottom.

14 Q If the--scratch that. I'll show you some photographs  
15 marked exhibits B-9, 10, and 11, and ask you what--whether  
16 you know where those photographs came from?

17 A Yes, all three boats shown in the photographs are located  
18 in Eagle. The photographs were taken by Richard Stern.

19 Q Do they show three different boats or three pictures of  
20 the same boat?

21 A All three photographs show the same boat.

22 Q And I'll show you three--four more pictures marked twelve,  
23 thirteen, fourteen, and fifteen, and ask you if they were  
24 also taken by Richard Stern in Eagle?

25 A Yes, they were.

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1 Q And were you present at the time?

2 A I was present.

3 Q I'd like to offer all seven of those into evidence.

4 JUDGE LUOMA: Any objection?

5 MS. TAYLOR : No objection.

6 MS.HIGGINS: No, Your Honor, but I'd see which series  
7 is connected with which boat, because I didn't note the numbers--

8 JUDGE LUOMA: Don't pass up your objections unless--  
9 until you've seen them.

10 MR. TAYLOR: We looked at them before.

11 JUDGE LUOMA: Okay.

12 Q Does--what is the boat shown in pictures 11--9, 10, and  
13 11.

14 A What is the boat?

15 Q Can you identify that boat?

16 A Yes, this is a boat located near Eagle Public Library.  
17 There are several boats of similar dimensions in that  
18 same area, all of which Richard and I measured and photo-  
19 graphed. This is probably a typical river boat; or  
20 poling boat. This particular boat--would you like the  
21 dimensions on that boat --

22 Q Yes.

23 A --or just a general description?

24 Q No, the dimensions would be good if you have 'em.

25 A Okay. (Pause). Okay, I believe this boat was the one--

1 Yes, it's thirty-three feet long, has a beam of four  
2 feet, ten inches at the bottom. At the top, that is from  
3 gunwale to gunwale, it's five feet one inch, the depth at  
4 the beam is one foot, ten inches, it has a flat bottom,  
5 moveable motor mount, and has water marks measured at ten  
6 inches, snub stern and bow, has flared sides, a canopy,  
7 a prop and what is called a kicker or a device shown in  
8 the governments exhibit B-10 situated near the steering  
9 wheel. This device, iron--steel device was used to raise  
10 the motor mount or transom when going over shallows. It's  
11 a system of pulleys to raise the motor mount.

12 Q For purposes of reference can we describe this boat as a  
13 boat with the liftable outboard as opposed to the tunnel  
14 boat?

15 A Yes, um-hm.

16 Q And you say it had water marks shown as--up to ten inches  
17 on the sides, and a depth of--I think you said one foot  
18 one inch, does that mean there were only three inches of  
19 free board when it was fully loaded?

20 A No, I don't think so. I think when we took depth measure-  
21 ments, we took it at a point perpendicular at the beam,  
22 so we're not taking measurements on the side.

23 Q Well, as evidenced by the water marks, how much free board  
24 would--would that boat have had when it was fully loaded?  
25 Or is it possible to say?



1 A Well, probably about two feet, about a foot and a half to  
2 two feet.

3 Q In other words, the sides of the boats would project a  
4 foot and a half to two feet above the water line?

5 A Right, um-hm.

6 Q Now, referring you to governments exhibit B-12, 13, 14, and  
7 15, what does that show?

8 A This is a--all four photographs are--show a--what is called  
9 a tunnel boat, is located at Eagle, and according to  
10 George Beck, a local resident at Eagle, this particular  
11 boat was used on the Kandik River.

12 Q Who owns that boat, do you know?

13 A This boat is owned by a Mr. Biederman at Eagle.

14 Q Is it roughly the same dimensions as the other two  
15 boats?

16 A It is slightly smaller. It's thirty feet long, roughly,  
17 the beam is--it has flared sides so that the beam at the  
18 top, at the gunwale is five feet two inches, at the bottom  
19 it is two eleven inches, the depth at that point, at the  
20 beam is one foot seven inches, single screw powered, flat  
21 bottomed, has a ten gallon tank, snub stern and bow,  
22 and at the present--at the time we were in Eagle, it had  
23 a four cylinder gasoline engine.

24 Q And did you say that that is the only one of the three  
25 that you know was used on the Kandik?

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1 A Only one of the three?

2 Q Of the three boats?

3 A That is correct.

4 Q And that's the Biederman boat, was the only boat that you  
5 know--or that you had heard was used on the Kandik?

6 A Right, according to George Beck.

7 Q In--were these boats designed to draw as little water as  
8 possible?

9 A Yes, they were.

10 Q Why is that?

11 A In order to ascend shallow rivers and streams.

12 Q Was the tunnel design a guarantee that in moving across  
13 a shallow gravel bar, the propeller would be protected  
14 at all times?

15 A No it was never a guarantee. There was always the possibility  
16 that a submerged snag or a --being dragged across a  
17 bar, a gravel bar, or even the movement upon a water  
18 body, the possibility of hitting the bottom of the water  
19 body, but always--it could always bend the shaft or for  
20 that matter rip the prop off or break the prop.

21 Q So was it customary to--for boat owners to need a certain  
22 margin of safety in terms of water depth to make travel  
23 with these boats over--up rivers not too risky in terms  
24 of breaking propellers?

25 A I have never--I don't think that any boat has really been

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1 loaded to capacity. It's hard to tell what the draft is  
2 on these types of boats because boats that were used on  
3 regular--by regular transportation companies were registered  
4 and they had capacity ratings, and these were not.

5 Q What I'm driving at is if the water marks on the boat  
6 show that they --they typically floated ten inches below  
7 the water line, does that mean an owner would be willing  
8 to take them on--across any bar where there was ten inches  
9 of water flowing across the bar?

10 A No, no.

11 Q How much water would he probably want crossing the bar  
12 before he would be willing as a normal matter to go up and  
13 down across that bar?

14 A I would think that he would want a margin of at least  
15 a half a foot.

16 Q Now in the--from your knowledge of river transportation in  
17 this area, does it--what are the variables that govern the  
18 evolution of boat design?

19 A Well, it depends, of course, on the characteristics of  
20 the water body, of the stream. It depends, too, upon the  
21 type of provisions or--or the cargo. And it depends on the  
22 operator's motivation, how willing he wants to work.

23 Q Well, you've described these three boats, and as I recall  
24 their dimensions were roughly between twenty-five and  
25 thirty feet long. Why were larger boats not used in this

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1 area, say fifty feet long, poling boats?

2 A What do you mean in this area, on the Yukon River or what?

3 Q On--in the middle Yukon area.

4 A There was simply--well, larger boats were operated on the  
5 Yukon River, but as far as the tributary rivers on the  
6 Yukon in this area, there was simply no freight generated  
7 for this type--for larger boats.

8 Q Well, would it be correct to say that the--from your  
9 testimony, that the two variables that governed the  
10 evolution of boat designs in this area was one, cargo  
11 capacity and two, depth of draft?

12 A Right, yes.

13 Q And do I understand then that a smaller boat would not  
14 carry sufficient cargo to be economical, a larger boat  
15 would probably draw too much water?

16 A Right.

17 MS. TAYLOR: I think the--I don't mind leading questions  
18 when we're setting the stage and to move things along, but--

19 JUDGE LUOMA: I would sustain--

20 MS. TAYLOR: --it's getting to the point where Mr.  
21 Allen's testifying and not Mr. Brown.

22 JUDGE LUOMA: That's very true, could you rephrase  
23 your question on this please?

24 Q What are the two variables that govern the design of  
25 boats in this area as far as you know?

1 A The two variables are the stream characteristics, possibility  
2 of freight--

3 Q Is it likely to expect that a smaller boat drawing less  
4 water might be used commercially in this area?

5 A No, it highly unlikely.

6 Q Why is that?

7 A There are other means to--to--well, you simply cannot  
8 carry enough cargo for long distance--for long distances  
9 in one of these boats at--economically or profitably.

10 Q So would you say then that these three boats that you see  
11 that you have pictures of are examples of the smallest  
12 commercially feasible boat that would be used on a tribu-  
13 tary stream of the Yukon in the middle Yukon area?

14 A I would be unwilling to say that they were the smallest  
15 commercial type boats in the middle Yukon area.

16 Q From your knowledge of the historical development of boat  
17 transportation, do you know of any smaller boats that  
18 were used commercially in this area?

19 A No, I do not.

20 Q Did you recently make a trip to Eagle for the purposes of  
21 preparing for this hearing?

22 A Yes, we did--I did.

23 Q Who did you make that trip with?

24 A I made the trip with Richard Stern of the State of Alaska  
25 during the last week of August, 1978.

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1 Q And did you interview a number of residents of Eagle?

2 A Yes, we did.

3 Q Who did you interview?

4 A At Eagle Village, we talked with Willy Junaby (ph), Harry  
5 David, and Bob Stacy. At Eagle, we talked to Al Stout,  
6 George Beck, Mike Sager (ph), Brad Snow, Mr. and Mrs.  
7 KNight, Jessie KNight, and I believe that is all.

8 Q Now, who is George Beck?

9 A George Beck is a --living in retirement at Eagle, he went  
10 to Eagle in 1934, he's about seventy-two years old. He  
11 married, as I recall, the daughter of Biederman, who had  
12 a camp, fish camp--or a camp near Charley Creek or  
13 Kandik River and lived for some time several--below the  
14 Biederman Camp, and did considerable trapping in the Nation  
15 and the Kandik areas.

16 Q You mentioned earlier the boat owned by--by Biederman that  
17 went up the Kandik, did--did George Beck have anything to  
18 do with that trip?

19 A It's really unclear as to whether George Beck was actually  
20 on that trip. The--he seemed to indicate that he was,  
21 but I'm not satisfied that he was on it.

22 Q Was he the person that told you of that trip?

23 A Yes, he is.

24 Q How far up the Kandik did that boat go?

25 A He said that this particular boat went as far as the

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1 gorge.

2 Q Which gorge was that?

3 A Johnson Gorge.

4 Q And is that below the selection area?

5 A I do not know. (Pause).

6 Q Referring you to government exhibit B-3, which shows the  
7 Kandik River and the selection area and Johnson Gorge--

8 A Okay, Johnson Gorge is located--is without the bounds of  
9 the area selected.

10 Q Is it downstream of the area?

11 A It is downstream.

12 Q And was--was--was there more than one occasion that he  
13 testified that boat went to Johnson Gorge?

14 A No, he made the statement in reference, as I recall, to  
15 a question did you know of any boats that went up--up this  
16 river, and he said, "Yes, I knew a boat that went up,  
17 a tunnel boat that went up to the canyon," as he called  
18 it or the gorge. He did not say that--could not go further,  
19 he just said that it went to that point.

20 Q Did he tell you of any other instances of boats going up  
21 the Kandik?

22 A Yes, he did, he did indicate that Ed Olson, a trapper had  
23 poled up--excuse me, that's in regards to the Nation.

24 Q Did he--did he testify about any trips in connection with  
25 the Boundary Commission?

1 A Yes, he did, he did tell us a story told to him by a man  
2 named Sandy Johnson who in the early 1910's had been hired  
3 by the International Boundary Commission to pole one ton  
4 of horse feed to the boundary. According to George, the  
5 trip was done on a poling boat, it was hard work, most of  
6 the trip was lining, and in many cases--or not many cases,  
7 but whenever there were shallows--there were shallows that  
8 they had to shovel a channel through. Sometimes they made  
9 five to six miles a day on the trip, and it took nearly  
10 a month to get to their destination. He continued his  
11 story by saying that after a rain burst or a rain storm,  
12 the river rose, and they descended the river in six hours  
13 to Tom King's road house opposite Charley Biederman's camp  
14 on the Yukon River. Perhaps there is--perhaps George's  
15 memory failed him at this point or maybe--because the  
16 river is much longer and it would probably take more than  
17 six--six hours to descend that river from the boundary or  
18 it could very well be that the boat was only six hours  
19 distance from the mouth according to that rate, the stream  
20 rate.

21 Q Now, did any of the people you interviewed tell you about  
22 any other instances of boats being taken up the Kandik  
23 River?

24 A Yes, both Harry David and Willy Junaby indicated that boats  
25 had been taken up the river, the Kandik River. I might



1 too that Mike Sager mentioned the fact that boats were  
2 taken up the Kandik River.

3 Q Did they say how far up?

4 A Willy Junaby indicated that a boat was taken by Jim Taylor,  
5 a trapper in the 1930's, as far as the boundary. When  
6 questioned further, he said that--or excuse me, let me  
7 backtrack, almost to the boundary, and he later said that  
8 Jim Taylor's cabin, line cabin, was located at Mile 35,  
9 which I understand is near Jungle Creek, it is located near  
10 Jungle Creek.

11 Q Would--were those the only other instances that you learned  
12 of of boats being taken up the Kandik?

13 A Yes, that's all that comes to mind right at the moment,  
14 I don't see any other--

15 Q Turning to the Nation River, what instances did you learn  
16 of boats being taken up the Nation?

17 A Excuse me, the Jim Taylor incident was in reference to  
18 the Nation.

19 Q Okay, were there any other instances--

20 A On the Kandik, no, there was no other instance.

21 Q Were there any--

22 JUDGE LUOMA: So I can have this straight, Jungle  
23 Creek flows into the Nation, doesn't it?

24 A The Nation, right.

25 Q And so that testimony had to do with the Nation?

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1 A The Nation River, right.

2 Q Were there any other instances of boats going up the Nation  
3 that you learned about other than the Jim Taylor incident?

4 A No, not up the Nation, no.

5 Q (Pause). Shifting back to the Kandik, you mentioned that  
6 two people told you they knew of boats going up, were they  
7 referring to the Boundary Commission operation do you  
8 know or were they referring to something else, and if so  
9 what?

10 A Both Willy JUnaby and Harry David mentioned that boats had  
11 descended the Kandik River.

12 Q Descended or ascended or both?

13 A Descended. Willy Junaby mentioned one time--excuse me, it  
14 was Harry David mentioned on--or no, it was Willy Junaby,  
15 that rafts had been used descending the Kandik River.

16 Q These would be rafts that were constructed up in the  
17 headwaters out of logs--

18 A Right.

19 Q --or out of moosehides?

20 A Right, not the headwaters, he didn't say where on the  
21 Kandik River.

22 Q Yeah, but other than the Boundary Commission, did anybody  
23 tell you of any ascents of the river, boats going up the  
24 river?

25 A Mike Sager did mention that boats had ascended the Kandik

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1 River as far as--at least to the gorge. in canoes. He  
2 mentioned, too, that the river had been ascended by hunters  
3 in the fall. All of these individuals should be mentioned,  
4 too--well, George Beck emphasized the point that you had  
5 to pick the stage of water to ascend these rivers.

6 Q What does that mean?

7 A You had to--you couldn't go up these rivers at any time  
8 of the year, and the best time--a convenient time, at least,  
9 would be during the spring runoff when there was high  
10 water.

11 Q What sorts of boats would hunters use?

12 A Hunters would use jet boats or air boats, flat bottom  
13 aluminum boats.

14 Q That's all.

15 JUDGE LUOMA: Miss Taylor?

16 BY MS. TAYLOR:

17 JUDGE LUOMA: Before you start, I'm going to receive  
18 exhibits nine through fifteen into evidence. Go ahead.

19 Q Alright, as I understand it, the photographs, exhibits  
20 six through eight are one tunnel boat that you and Richard  
21 Stern saw at Eagle and took photographs of or Richard  
22 Stern took photographs of, is that correct?

23 A I don't have six through eight in front of me.

24 Q Alright, let's get the...

25 A Okay. This was one tunnel boat located in Eagle.

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1 Q Okay, do you--do you know who owned that tunnel boat?

2 A According to Richard Stern's transcriptions of the taped  
3 interviews, it was owned by Barney Hanson.

4 Q Okay, do you know when it was used on the river?

5 A No, I don't, no.

6 Q Okay, do you know what rivers it was used on?

7 A No, I don't.

8 Q Alright. And then exhibits B-9 through B-11 are photo-  
9 graphs of a motorboat with a kicker, which could raise  
10 the motor up and down?

11 A Right.

12 Q And do you know who that boat belonged to?

13 A No, I don't.

14 Q Alright. Was--was that a boat that's currently in use  
15 or was it an abandoned boat?

16 A It appeared to be abandoned, but it was not in a dilapidated  
17 state.

18 Q Okay.

19 A It appeared it could be used.

20 Q Now, exhibits B-12 through B-15, you testified depicted  
21 a tunnel boat at Eagle which was owned by a certain  
22 Biederman, is that correct?

23 A That is correct.

24 Q And that this boat was used on the Kandik River?

25 A Yes.

1 Q Alright, do you know how far up the river this boat was  
2 used?

3 A It--according to George Beck, the boat went to the canyon  
4 or the gorge, or Johnson Gorge as it appears on the map.

5 Q So the boat that you took the photographs B-12 through  
6 B-15 of is according to your information the same boat  
7 that George Becked talked about when he talked about the  
8 trip to Johnson Gorge?

9 A That's correct.

10 Q Alright, but George Beck didn't say that the boat couldn't  
11 go further up the Kandik--

12 A No, he did not.

13 Q --he just said that they only went to the gorge.  
14 What does it mean when a boat has a shallow draft?

15 A When a boat has a shallow draft--

16 Q Um-hm.

17 A --it means that it can navigate certain classes or certain  
18 streams where larger boats can't get up to.

19 Q Okay, are all of these boats shallow draft boats?

20 A Yes, um-hm.

21 Q Do you have any expertise that would enable you to give  
22 an opinion as to how much water depth is necessary to float  
23 any of these boats fully loaded?

24 A Fully loaded?

25 Q Um-hm.

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1 A Most of these boats are homemade boats, and traditionally  
2 there was really--from a practical standpoint, there was  
3 really no need to determine capacity, cargo capacity.

4 Q Well, leaving aside that conclusion, you testified that--  
5 that I think boat number three, B-12 through B-15, might  
6 need a certain additional amount of inches in the water  
7 in order to get over sandbars, for example.

8 A Yes, um-hm.

9 Q Well, do you have any expertise that would enable you to  
10 make that conclusion?

11 A On the basis of the information that's been collected by  
12 the University of Alaska in connection with our contract,  
13 there--yes, there is a margin of water that is needed.  
14 No boat was ever loaded to capacity.

15 Q Alright, but given the draft of the boat, if you knew what  
16 the draft was, you could then say what margin, extra  
17 margin might be necessary, is that correct?

18 A Yes.

19 Q Alright, but you stated that you don't know what the  
20 draft is on these boats--

21 A Right.

22 Q --as a matter of fact, it's very hard to tell.

23 A Right.

24 Q Alright, now you also stated on direct examination that--  
25 that tunnel boat number three, we'll call it, the Biederman

1 boat, was the only boat that went up the Kandik.

2 A Um-hm.

3 Q Now, is that what you meant to say or did you mean to  
4 say it was the only boat of these three boats that we have  
5 photographs of that went up the Kandik?

6 A Well, it was certainly not the only--I must have meant  
7 of these three boats. There have been other boats going  
8 up the Kandik.

9 Q Obviously, canoes have gone up the Kandik--

10 A Right.

11 Q --and skin boats have gone up the Kandik and poling boats  
12 have gone up the Kandik--

13 A Right.

14 MR. ALLEN: Was it your testimony that skin boats  
15 had gone up the Kandik?

16 A Skin boats? No, I have no--I did not say that or mean  
17 that.

18 Q Now, how do you define commercial use as you used it in  
19 your direct testimony?

20 A Well, of course, commercial use is a troublesome term  
21 and has been for some time. Commerce, commercial use,  
22 in my mind in regards to transportation, river boat  
23 transportation, was anything delivered for a charge.

24 Q Right. Your testimony, I think, was that you felt that  
25 these were probably the--the smallest boats that could be

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1 used for what you described as commercial use, now is that  
2 a fair statement of what you said?

3 A (Pause). As far as--now, I did not say that a tunnel boat  
4 was used for commercial use, I said that a poling boat  
5 or a river boat could be used. I meant that a poling  
6 boat could be used for commercial use, and that is a  
7 historical fact, there is evidence to show that.

8 Q Alright.

9 A But not a tunnel boat. A tunnel boat can carry a commercial  
10 load, it has been known to carry a ton or more.

11 Q Well, I'd like to have you clarify what you mean by a  
12 commercial load as opposed to commercial use.

13 A I would think about a ton would be--or more would be a  
14 commercial cargo.

15 Q Alright. Are you using the word commercial use to mean  
16 freight delivered for a charge?

17 A Yes.

18 Q A boat used for hire?

19 A For hire, yes.

20 Q Alright, if I had my own boat and I took it up the Kandik  
21 and brought it down again loaded with furs to sell, is that  
22 commercial use in your terminology?

23 A It would be stretching it a bit, but depending on the  
24 amount of furs and the charge.

25 Q Okay, I just want to --

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1 A I--I don't quite understand your question.

2 Q Well, I just want to clarify what you meant when you  
3 testified as to the fact that--that these boats were what  
4 you thought were the smallest boats that could be used  
5 for commercial use, you didn't define commercial use.

6 A Well, that's true.

7 Q But--but to clarify it, what you meant was these were the  
8 smallest boats that you thought would be feasible to use  
9 for delivering freight for hire?

10 A Right.

11 Q Okay. Alright, you mentioned several of the people that  
12 you interviewed who talked about boats going up the  
13 Kandik, Willy Junaby, Harry David, Mike Sager, did you  
14 interview anyone concerning recreational use of the  
15 Kandik or the Nation?

16 A No.

17 Q Okay, did you interview anyone--let's pin this down, this  
18 is on your trip--

19 A To Eagle.

20 Q --to Eagle in August, concerning sport hunting on the  
21 Kandik or the Nation?

22 A Yes.

23 Q Okay, who--who were the people that you talked to about  
24 that?

25 A As I recall it was Mike Sager.

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1 Q Okay, what about subsistence use of the Kandik or the  
2 Nation, did you talk to anyone about that?

3 A Yes.

4 Q Alright, who were those people?

5 A Both Willy Junaby and Harry David stated that the  
6 watersheds were--had been used as means of access for  
7 subsistence, for hunting and fishing, for hunting excuse  
8 me, and trapping.

9 Q Okay, was this the Kandik and the Nation?

10 A And the--correct.

11 Q Alright, do you have any knowledge about winter use on  
12 the Kandik?

13 A The--there is considerable evidence of use of the Nation  
14 and Kandik, at least two instances that I can recall is  
15 one, the Nation River may have been used for the transpor-  
16 tation of coal at one time in the early--late 1890's.  
17 George Beck indicated that he ascended the Kandik River  
18 to the boundary during winter on a trapping expedition.

19 Q Okay, the coal mine on the Nation reference, is this  
20 the coal mine that we've heard Melody Grauman testify  
21 about that was--

22 A Yes.

23 Q --located on the Nation River?

24 A Yes, it is.

25 Q Is it your understanding that the coal from this mine was

1           sledded on the ice then down to the Yukon?

2       A    No, it was--I read the document several--some time ago--

3       Q    Um-hm.

4       A    --and as I recall it never said that the sledding occurred  
5           actually on the river itself.

6       Q    Okay, how did they get the coal down the river in the  
7           winter?

8       A    They sledded it down, but whether it was actually on the  
9           Kandik River ice or on the banks was never--it's unclear.

10      Q    No one--- as far as you know no one knows whether they  
11           used the river or they used the river bank--

12      A    Right.

13      Q    --the trapping trails or whatever?

14      A    Right.

15      Q    Alright. Is there any reason in your mind why the Nation  
16           River couldn't have been used in the winter the way the  
17           Fortymile was?

18      A    I have never seen the--the Nation or the Kandik at close--

19      Q    Okay.

20      A    I've never been on it or close to it.

21      Q    Is it--is it fair to say that winter use of either of  
22           these rivers isn't very well documented if at all?

23      A    That's true.

24      Q    Alright, getting back to the tunnel boats that you've been  
25           talking about, do you know when they were developed?

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1 A Tunnel boats were used rather extensively or heavily--  
2 relied upon heavily by the Alaska Railroad in the  
3 initial construction period. Four were constructed in  
4 1915 for use on the Susitna River. There is evidence,  
5 however, that tunnel boats were used on the McKinley  
6 are, Mt. McKinley area as early as 1903, 1905.

7 Q Okay, are they still being used?

8 A I personally do not know of any tunnel boats being used  
9 today.

10 Q Okay, what would you say their peak period of use was?

11 A I really don't know.

12 Q Alright, do you know what they were replaced by?

13 A They, --of course, the modern day canoe and outboard  
14 motor, and jet boats and air boats replaced the older  
15 tunnel boats.

16 Q Okay, what about the boat exhibits nine through eleven,  
17 the motor boat with the kicker, is--is this a later  
18 boat than the tunnel boat, or where does it fit in?

19 A The river boats are still being used today.

20 Q Is the boat that's shown in exhibit nine through eleven  
21 similar to these river boats that are being used today?

22 A Yes, it is.

23 Q Alright.

24 A They are not being used extensively, though.

25

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1 Q In this area?

2 A In this area, right.

3 Q How do you know that?

4 A When we were at Eagle, when I was at Eagle, I saw canoes  
5 on the waterbank more than I--more canoes than I did  
6 riverboats.

7 Q Alright, how does the kicker on this motorboat or river  
8 boat affect the draft of the boat?

9 A Well, it--use of the kicker, of course, would permit  
10 the boat to have a heavier draft in that the motor itself  
11 would not prove to be an obstacle in itself going across--  
12 that is the propeller would not be an obstacle itself  
13 in going across gravel bars or riffles, shallow water.

14 Q Okay, in other words, if you can lift the motor up a  
15 certain distance when you approach an obstacle, you might  
16 be able to float deeper in the water than if you couldn't  
17 lift the motor up?

18 A Right, your depth doesn't change, you maintain a constant  
19 depth, but with the engine raised, you can get over these  
20 shallow places.

21 Q And if you couldn't raise up the engine, you might have  
22 to, for example, not load the boat so heavily?

23 A That's correct.

24 Q Alright. Are you aware that--that the fall of the year  
25 is also sometimes the time of high water runoff?

1 A High water--yes, um-hm. It depend--it varies, though,  
2 year to year because--

3 Q Okay, if one were waiting for fluctuations in the water  
4 level to go up the river for trapping or whatever other  
5 purpose, can it generally be said that one could go in  
6 either the spring or the fall?

7 A That's correct.

8 Q Alright. Do you have any information about how the users  
9 of moosehide or skin boats got up the river to where they  
10 were hunting?

11 A No, it was never--in our interviews, it was never stated  
12 as to how they got up the river. There was statements  
13 to the effect that moosehide boats were used to descend  
14 at least one of the rivers.

15 Q Okay.

16 A This came--this was stated by Bob Stacy.

17 Q Have you done any investigation into whether there are  
18 caribou fences in this area?

19 A One person did say--two people did say that caribou  
20 fences were located in the Mosquito Fork country.

21 Q Where is that?

22 A That is near--that is a tributary of the Fortymile River.  
23 There was no indication, as I recall, of caribou fences  
24 at the headwaters of the Nation or the Kandik.

25 Q Okay. Now, I understand that--that you and Richard Stern

1 are preparing transcripts of the interviews you had with  
2 the eight people or the nine people that you named, is that  
3 right?

4 A That is correct.

5 Q And you also tape recorded these interviews?

6 A That is correct.

7 Q I understand there were some problems with the tapes and  
8 some of them are not audible, but it's your intention that  
9 you and Richard Stern will agree on some sort of transcript  
10 or summary for each of these interviews?

11 A Right, Richard Stern will transcribe the notes or the  
12 taped interviews and submit them to BLM, myself, and I  
13 will examine them and say yes, these--Richard's notes--  
14 transcription reflects what was said according to my  
15 own memory and according to my own notes, and then we'll  
16 both sign our--our signatures to the document and submit  
17 'em to the appropriate individuals.

18 Q Okay, just one more question. When--when Sandy Johnson  
19 poled the supplies up to the International Boundary  
20 Commission, was he paid by the International Boundary  
21 Commission for doing that?

22 A It--it appeared so. George Beck did not say that, the  
23 context that he said was, "Yeah, I know of this guy who  
24 went up the Kandik River." It was just something that  
25 popped into his mind, he didn't go into details.

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1 Q Okay, that's all I have.

2 JUDGE LUOMA: Miss Higgins?

3 BY MS. HIGGINS:

4 Q How long did you and Richard Stern remain in Eagle for  
5 these interviews that you've been discussing?

6 A We arrived in--almost five days.

7 Q You were in Eagle for five days?

8 A Almost five days, right. About a day was used in travel  
9 time.

10 Q Can you estimate the total hours or partial hours of  
11 interview that you have on tapes from these almost  
12 five days?

13 A Probably--I would think less than eight hours.

14 Q In your opinion, did most of the interviewees speak  
15 freely, without hesitation in response to questions?

16 A Yes, they did for the most part, yes.

17 Q Were you able to locate an interview all of the persons  
18 that you wanted to interview, people that you thought from  
19 background research would be good interviewees?

20 A No, there were other people that we could have--or should  
21 have interviewed, but never had enough time to do so.

22 Q How many people would you estimate you didn't get to?

23 A There were probably three to five primary contacts. This  
24 is also a process of discovery, too. One person tells you  
25 the name of another person.



1 Q Did you encounter any difficulties in getting information  
2 from the people you did interview?

3 A We had some problems initially at Eagle Village due to  
4 a misunderstanding?

5 Q What was that?

6 A They were uncertain as to our purpose at Eagle, and--but  
7 things were clarified consequently after several telephone  
8 calls.

9 Q Telephone calls?

10 A Well they--they understood that a court case was coming  
11 up, and did not want to make statements that would be  
12 adverse to their own cause.

13 Q Did any of the interviewees express hesitation to talk to  
14 a BLM employee?

15 A Yes, there was several instances of that type of response.

16 Q Did they explain why?

17 A Well, they didn't come out and say the reasons other than  
18 that you work for BLM and BLM is trying to quotes rip  
19 me off or rip us off.

20 Q Do you know what they meant by that?

21 A Yes.

22 Q What?

23 A They were referring to an adverse discordant relationship  
24 between native corporations or native villages, or at  
25 least this particular native village and BLM. There was

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also cases, too, however, with discordance between certain individuals who live--at least one individual who lived on one of these rivers.

Q By that do you mean the--the local resident is fearful of being subjected to trespass charges?

A That's correct.

Q And given this fear would probably be unlikely to discuss at any great length his own use of these rivers?

A This particular individual did discuss his use of the rivers after some--after talking to us for a little and gettin' to know us.

Q Okay, who is that individual?

A Mike Sager.

Q When you testified that given a boat with a ten inch draft or a ten inch water line, the owner would not take that boat in water with a depth of ten inches, but would want at least another half foot or more. Were--were you expressing your personal opinion as to what--what you as a boat owner would want or--

A No, going through the computer printout, the information collected from more than two thousand documents, in excess of tow thousand documents, there is a general tendency for boats used for regular transportation to have a controlling depth of at least two feet.

Q Okay, regarding your testimony with respect to the smallest

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1 boat which could profitably carry freight or carry enough  
2 freight for profitable commercial operation, don't you  
3 really need to know, to start with, the type of good  
4 that's being transported. Secondly, the market conditions  
5 at any point in time respecting that good, the price of  
6 goods to really come to any sort of conclusion about the  
7 profitability of a freight operation in relation to the  
8 size of the vessel? Is that a fair summary of how you  
9 would go about coming to conclusions regarding that the  
10 size of vessel that's needed for a profitable freight  
11 information--operation, excuse me.

12 A Well, there are a lot of variables involved, but you can  
13 extend the question beyond to absurdity, too, though.

14 Q Well, let--let's take a specific, do you recall George  
15 Beck stating that in the late thirties or forties a good  
16 seasons catch would be one hundred martin, and that he  
17 might get twenty-five dollars to thirty dollars a piece  
18 for these martin?

19 A That is correct, that is true.

20 Q Do you think it would take a very large vessel to--to  
21 transport just that amount of furs?

22 A It would not take very many, a large vessel to transport  
23 that many furs.

24 Q What kind of a profit would George Beck stand to make  
25 based on those figures?

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1 A Well, he would make a tremendous profit, but then again  
2 you can't transport a boat in winter to carry down furs,  
3 you know. You're--

4 Q But he transported the furs after spring breakup--

5 A --you're talking about a hypothet--pardon me?

6 Q After spring breakup.

7 A AFter spring breakup?

8 Q I'm using this as a--as a hypothetical, I'm not saying he  
9 did.

10 A I know.

11 Q But the point I'm making is that the cargo you're carrying  
12 and the market price for that cargo is gonna determine  
13 what--what the profitable--what the profitability of the  
14 freight you're carrying, and that is a very variable  
15 figure from year to year, depending on the goods you're  
16 carrying. And I--would you agree with that?

17 A I would agree that there are many variables involved, and  
18 that the size of craft is not the only variable involved.  
19 And the market conditions are not the only thing.

20 Q Then do you want to reconsider your--your general  
21 statement that--that--that a smaller tunnel boat than  
22 George--than Biederman's boat, I think that's what you were  
23 referring to, could not profitably carry enough freight  
24 on it to--to support a commercial operation?

25 A Again, when I--I should just drop the word freight or

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1 commerce, commercial, and say that this type of boat  
2 has been used on a regular basis for --in supplying  
3 communities or in supplying construction activities.  
4 This is the minimum size of boat, a tunnel boat, particular--  
5 tunnel boats, this size of tunnel boats has been used  
6 to supply construction activities. Poling boats have  
7 been used on a regular basis, a poling boat is the smallest  
8 vessel that I have found in my own research and examining  
9 other person's research where it has been used for--on  
10 a regular basis serving communities, transporting freight.

11 Q Okay, one more question, what is an air boat, can you  
12 describe that?

13 A An air boat is a boat with an aviation engine mounted on  
14 the stern with a huge prop on it, flat bottomed--

15 Q Is it a shallow draft vessel?

16 A Shallow draft, flat bottomed.

17 Q Can you estimate the draft?

18 A Only a couple of inches.

19 Q Do you have any information about the use of airboats  
20 today on either the Kandik or Nation Rivers?

21 A We were told by Mike Sager that airboats had been used  
22 on the Kandik River by hunters out of Fairbanks.

23 Q What--generally what is the size of an airboat?

24 A Well, I think they're less than twenty feet long, and  
25 about three to four feet wide.

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1 Q Could it carry a party of five hunters?

2 A Five hunters?

3 Q Typical airboat?

4 A For a long distance trip, I don't think so. I don't  
5 know for sure.

6 Q Thank you.

7 JUDGE LUOMA: Anything else, Mr. Allen?

8 BY MR. ALLEN:

9 Q Yes, a couple of questions. Were airboats used, to your  
10 knowledge, at the time of statehood? Were they in general  
11 use?

12 A I don't know.

13 Q Were there creeks, tributaries to the Yukon where gold  
14 activity was--where there was gold activity which were  
15 too small to be serviced by tunnel boats of the types  
16 the pictures show?

17 A Yes.

18 Q What creeks would they have been?

19 A Most likely Fortymile--or Fourth of July Creek, Mission  
20 Creek.

21 Q And why were they too small, it was too shallow or too  
22 narrow?

23 A I--the reason I'm basing that statement--I'm basing that  
24 statement on the fact that both of those roads are  
25 parallel--or both of those creeks are paralleled by

1 roads. And there's no record of transportation, water  
2 transportation on those creeks.

3 Q Are there creeks that are not paralleled by roads which  
4 were also too small to be serviced by tunnel boats of  
5 this size--of this sort?

6 A Washington Creek.

7 Q How would miners working up Washington Creek get their  
8 supplies up?

9 A I don't know how they would get up Washington Creek. The  
10 Charley River and Seventymile, the Seventymile in particular,  
11 there's no record of these type of boats going up. There  
12 is records of canoes going up the Seventymile River.

13 MS. TAYLOR: Of what?

14 A The Seventymile River.

15 Q And is that the way miners working up the Seventymile  
16 River would get their supplies in, by canoes?

17 A Yes, there were not really miners, there were prospectors.  
18 Heavy mining in Seventymile began, I think, in the 1930's  
19 and according to one individual, freight was actually  
20 airdropped to the center of mining activity, and then they  
21 would walk into--to the site.

22 Q That's all I have.

23 JUDGE LUOMA: Anything else?

24 MS. TAYLOR: I have nothing further, thank you.

25 JUDGE LUOMA: Miss Higgins?

1 MS. HIGGINS: No.

2 BY JUDGE LUOMA:

3 Q I have just one question, when you say that the engine  
4 was raised across a bar, what forced--moved the boat  
5 upstream at that point?

6 A Its own momentum, it was moving on its momentum.

7 Q Oh, it continued moving with the engine raised?

8 A Right, it would only be raised for brief periods of time.  
9 It would also be raised in those cases when lining or  
10 when the boat was being pulled by hand or horse or dog.

11 Q Alright, thank you. How do you spell your last name?

12 A Brown, B-r-o-w-n.

13 Q -o-w-n.

14 MR. ALLEN: Our next witness would be Mr. Tileston,  
15 and he is going to testify extensively from aerial photos and  
16 also make a slide presentation. It'll probably take him  
17 twenty minutes or so to set up those photos, so I think maybe  
18 it would be just as well to adjourn for the day.

19 JUDGE LUOMA: You could be prepared then in the  
20 morning?

21 MR. ALLEN: Be prepared to start at nine o'clock if  
22 you want? Or would you rather start earlier?

23 JUDGE LUOMA: Well, I think we'd better start at  
24 nine-thirty to give you more--

25 MR. ALLEN: Okay.

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JUDGE LUOMA: --chance, more time to get prepared.

MR. ALLEN: Alright.

JUDGE LUOMA: Let's recess until nine-thirty tomorrow morning.

OFF THE RECORD

(END OF DAY'S PROCEEDINGS)

\* \* \*

C E R T I F I C A T E

UNITED STATES OF AMERICA )  
 ) ss.  
STATE OF ALASKA )

I, Margaret Johnson, Notary Public in and for the  
State of Alaska, residing at Fairbanks, Alaska, and electronic  
reporter for R & R Court Reporters, do hereby certify:

That the annexed and foregoing <sup>hearing</sup> ~~deposition~~ of \_\_\_\_\_  
\_\_\_\_\_ was taken before me on the 26th day of  
September, 1978 beginning at the hour of 9:30 a.m.,  
at the offices of Federal Building  
Fairbanks, Alaska, pursuant to Notice to take the deposition  
of said witness on behalf of \_\_\_\_\_;

That the above-named witness, before examination, was duly  
sworn to testify to the truth, the whole truth, and nothing  
but the truth;

<sup>hearing</sup>  
That this ~~deposition~~ as heretofore annexed, is a true  
and correct transcription of the testimony of said witness,  
taken by me electronically and thereafter transcribed by me:

That the deposition has been retained by me for the pur-  
pose of filing the same with the Clerk of the \_\_\_\_\_  
Court, Fairbanks, Alaska, as required by law.

I am not a relative or employee or attorney or counsel of  
any of the parties, nor am I financially interested in this  
action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
my seal this 5th day of October, 1978.

Margaret Johnson  
Notary Public in and for Alaska

My commission expires: 10/4/80