

# Court rules Gulkana River is navigable

The United States District Court for Alaska ruled earlier this month that the Gulkana River in the Copper River Basin is a navigable river — a decision that settles the question of ownership of the river and will be important in determining the ownership of other submerged lands in the state, according to the Department of Natural Resources.

Tom Hawkins, director of the DNR Division of Land and Water Management, said this decision is significant and benefits the state.

"First, it confirms that the submerged land beneath the Gulkana is owned by the state," he said. "It also culminates the state's efforts to get a decision from the court that can be used as criteria to determine state ownership and control of rivers and lakes throughout Alaska."

By federal law, states are entitled to the resources and land that lie within and under waterways that are capable of navigation. Hawkins said the federal and state governments have been working together for several years to narrow the difference in their respective interpretations of what makes a water body navigable.

"Because of the criteria for navigability established in this recent



decision, a lot more water bodies are navigable than the federal government originally thought," Hawkins said. "What this means to the state is that the land and the resources under water bodies will now belong to the state."

The 100-mile-long Gulkana River is popular with recreationists and is known for good grayling, rainbow and salmon fishing. It generally parallels the Richardson Highway between Paxson Lake and the Copper River near Glennallen.

The river has long been used for a variety of boating activities and is a popular float-trip for sightseers, tourists and fishermen. The river was designated a wild and scenic river by Congress in the Alaska National Interest Lands Conservation Act.

In 1980, the state filed a lawsuit to stop the Bureau of Land Management from conveying the lower 30 miles of the river — from Sourdough to its mouth — to Ahtna Inc. In its suit, the state claimed that the river was navigable, and that it was therefore owned by the state and could not be conveyed to the corporation.

In this recent decision, the court agreed with the state. It accepted the state's contention that a water body's physical capacity to be used as a transportation route is the crux of the navigability test.

The court rejected the federal government's claim that the state also must prove that the water body can be navigated by larger vessels which are customarily used for certain commercial activities.

The court stated that it was necessary only to show that the water body is capable of "the most basic form of commercial use: the transportation of people or goods."

The court concluded that a water body such as the Gulkana River that is "capable of transporting people or goods will in the ordinary case also be susceptible to use as a 'highway of commerce.'"

The decision also stated that the

river's capability to be used for transportation need not be measured by the types of watercraft customarily used more than 25 years ago at the time of Statehood, as contended by the federal government.

The court found that there is nothing in the historical development of the navigability test that indicates that navigability should depend on the circumstances existing on a certain date.

It determined that the types of watercraft customarily used on water bodies today must be considered along with past use. The court observed that on the Gulkana River, modern power boats, including jet-unit craft and aluminum riverboats, "are the craft most commonly used, followed by inflatable rafts and canoes."

Hawkins said the decision should help to resolve several of the disputes the state has with the federal government on the proper definition of what constitutes a navigable water body for title purposes.

"As a result," he said, "the confusion and conflicts that have existed for many years over submerged land ownership in connection with federal land conveyances to the state and the Native corporations should be greatly reduced."