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BUREAU OF LAND MANAGEMENT

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Memorandum

To: File FF-094671

From: Jack Frost
Navigable Waters Specialist (AK 927) *Jack Frost*

Subject: Federal Interest in Lands Underlying Little Scottie Creek, the right hand tributary, and two unnamed lakes in the Tanana River Subregion, Alaska

The State of Alaska (State) filed an application, dated January 27, 2006, for a recordable disclaimer of interest (RDI) for all submerged lands, up to the ordinary high water lines, lying within the bed of Little Scottie Creek, the right hand tributary of Little Scottie Creek, and two unnamed lakes.¹ With its application, the State submitted a map entitled "Little Scottie Creek & Unnamed Lakes Recordable Disclaimer of Interest Application, Map: 1 of 1," showing the applied for waterbodies and a legal description for each.² The State's application did not include the sixty-foot-wide neutral strip at the United States-Canada International Boundary.

The State's application for an RDI is based on the Equal Footing Doctrine, the Submerged Lands Act of 1953, the Alaska Statehood Act of 1958, the Submerged Lands Act of 1988, or any other legally cognizable reason. The Bureau of Land Management (BLM) may disclaim interest in the submerged lands on any of the grounds that apply. The State's application for lands underlying the subject water bodies must also meet the regulatory requirements (43 CFR Subpart 1864).

In support of its application, the State submitted four BLM memos dated June 29, 1994,³ August 25, 1994,⁴ September 20, 1994, and September 22, 1994.⁵ These were prepared in support of conveyance of lands selected under the Alaska Native Claims Settlement Act, the Statehood Act, or the Native Allotment Act, not reserved at the time of statehood.

¹ Michael Menge, Commissioner, State of Alaska, Department of Natural Resources, to Henri Bisson, BLM, Alaska State Director, January 27, 2006, file FF-094671 (1864), Alaska State Office, BLM records, Anchorage (hereafter BLM records). The reference documents are also available in this file.

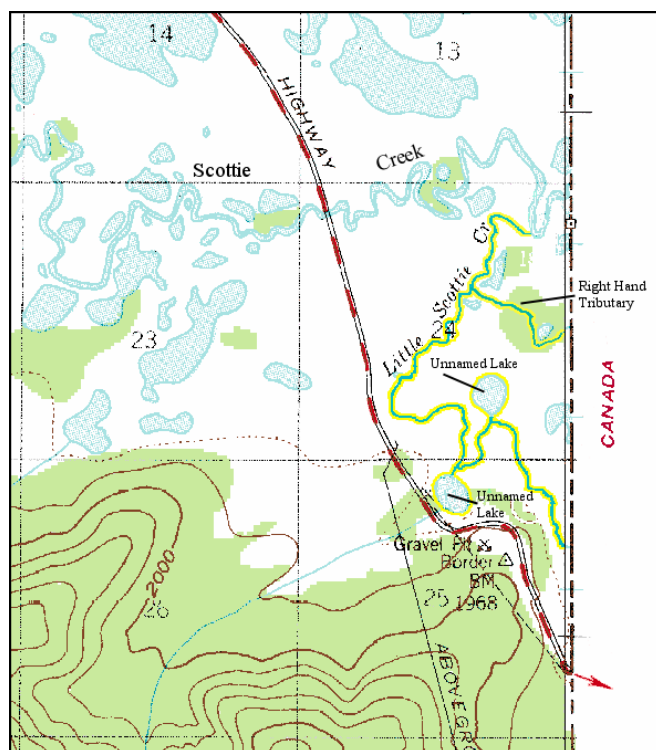
² The legal land description noted in the State of Alaska's application is the controlling document for the location of the water body.

³ Dot Tideman, subject: "Navigability Report: Little Scottie Creek, Window 1212; Group Surveys 117 and 242," June 29, 1994, attachment to Chief, Navigability Section (924) to Chief, Branch of Survey Preparation and Contracts (923), subject: "Navigable Waters in Survey Window 1212 (Group Surveys 117 and 242)," June 24, 1994, File FF-088517, BLM records.

Location

The subject water bodies are located in eastern interior Alaska about 250 miles southeast of Fairbanks. Little Scottie Creek heads in the Yukon Territory, Canada and flows in a northwesterly direction about 12 miles to its confluence with Scottie Creek, a tributary of the Chisana River, which empties into the Tanana River. The lower 3 miles of Little Scottie Creek is within Alaska and flows through two unnamed lakes (see Map 1).⁶ Little Scottie Creek is located in sections 24 and 25, Township 10 North, Range 23 East, Copper River Meridian (CRM), Alaska. Downriver from the United States-Canada border, the first unnamed lake is located in the SE¼ of section 24, and the second lake is located in the NE¼ of section 25, both in T. 10 N., R. 23 E., CRM. (See U.S. Geological Survey, Nabesna C-1 Quadrangle, 1955, minor revisions 1963. Scale 1:63,360.)

Map 1 (T. 10 N., R. 23 E., CRM):



The unnamed right hand tributary also heads in the Yukon Territory, flows westerly into Alaska, and feeds into Little Scottie Creek less than one river mile upstream from its confluence with Scottie Creek. It is located in section 24, T. 10 N., R. 23 E., CRM.

Land Status

Most of the riparian lands in section 24, including most of Little Scottie Creek, all of the right hand tributary, and the unnamed lake, have been conveyed to the State of Alaska,⁷ excepting those lands lying within the sixty-foot-wide strip between the United States and the Dominion of Canada.⁸ Although Little Scottie Creek and the right hand tributary flow through these reserved

⁴ Dot Tideman and Jack Frost, Navigable Water Specialists (924) to File FF-088517 (2620), subject: "Additional Navigable Waters in Survey Window 1212 (Group Surveys 117 and 242) (Report dated June 24, 1994)," August 25, 1994, BLM records.

⁵ C. Michael Brown, Chief, Navigability Section (924) to Chief, Branch of Survey Preparation and Contracts (923), subject: "Additional Navigable Waters in Survey Window 1212 (Group Surveys 117 and 242)," September 22, 1994, FF-088517, BLM records. The State makes reference to a September 20, 1994 BLM memorandum in their application as a separate document. This memorandum is actually part of the September 22, 1994 memorandum.

⁶ All river mile calculations were obtained using the "measure" function in Google Earth.

⁷ Sharon E. Fleek, Chief, Branch of Northern Adjudication, Decision, December 19, 1994, F-088517, State selection files, BLM Records.

⁸ The 60-foot-wide neutral strip was withdrawn and reserved under Proclamation 810 (June 15, 1908) and Proclamation 1196 (May 3, 1912).

lands, the State did not include that portion in its application.

The remaining riparian lands in section 24 and all of section 25 include Little Scottie Creek and the unnamed lake. These lands are located within the boundaries of Public Land Order (PLO) 5180 and 386. The PLO 5180, dated March 9, 1972 (created after the date of statehood), was a withdrawal of lands for classification and protection for public interest. The PLO 386, dated July 31, 1947, segregated lands for classification and survey purposes. In a letter dated April 26, 2006, the State amended its application to acknowledge that Little Scottie Creek flowed through lands within PLO 386; however, the BLM and the State did not believe that PLO 386 defeated its title to the submerged lands.⁹

Previous Navigability Determinations¹⁰

The BLM navigability memorandum dated June 24, 1994, listed the navigability status for numerous water bodies in the Northway, Alaska area; for some, including Little Scottie Creek, the memo describes a lack of sufficient information to make a determination, and deferred it until a field investigation could be conducted at a later date.¹¹

The BLM navigability report, signed June 29, 1994, contains public opinions on water body use and physical character of Little Scottie Creek. The report states that Little Scottie Creek may be “susceptible to navigation,” yet it would require a field investigation for further information to make a final determination.¹²

On August 4, 1994, BLM personnel conducted a field investigation to assess the potential for the navigability of the subject waterbodies. The BLM personnel also conducted telephone interviews to gather information on the use and physical characteristics of the waterbodies. The field report was completed on August 25, 1994. The BLM navigability memo, dated September 22, 1994, addressed the navigability of those deferred waterbodies. Using the results from the field report, the BLM recommended Little Scottie Creek, the right hand tributary, and the two unnamed lakes to be navigable in sections 24 and 25, T. 10 N., R. 23 E., CRM.¹³ This determination was incorporated in a decision to convey lands only in section 24 to the State of Alaska.

⁹ Wyn Menefee, Chief of Operations, State of Alaska, Department of Natural Resources to Carolyn Spoon, Chief, Branch of Lands, BLM, April 26, 2006, file FF-094671 (1864), Alaska State Office, BLM records.

¹⁰ The State of Alaska applied for a “Right Hand” tributary to Little Scottie Creek. BLM refers to this same water body in their navigability determinations listed in this section as “Right Bank” tributary to Little Scottie Creek.

¹¹ C. Michael Brown, Chief, Navigability Section (924) to Chief, Branch of Survey Preparation and Contracts (923), subject: “Navigable Waters in Survey Window 1212 (Group Surveys 117 and 242),” June 24, 1994, File FF-088517, BLM records. This memorandum was found during normal investigation by the writer and was not provided by the State of Alaska in support of its application.

¹² Dot Tideman, Navigable Waters Specialist, “Navigability Report: Little Scottie Creek, Window 1212; Group Surveys 117 and 242,” June 29, 1994, File FF-088517, BLM records.

¹³ See footnotes 3-5.

Physical Character

The BLM conducted phone interviews and a field trip to gather physical character and use information about the water bodies. The results of these interviews were compiled into a report dated May 24, 1994.¹⁴

The BLM invited Dan Grangaard, a representative from the Alaska Department of Fish and Game and a local resident of the area, to participate in the field trip. The purpose of the trip was to explore several water bodies near Northway, Alaska. With the aid of a 15-foot Grumman sport canoe and small outboard motor, the trip commenced on August 4, 1994, and ended on August 5, 1994. The investigation of Little Scottie Creek and the right hand tributary of Little Scottie Creek concluded at the boundary of the United States and Canada.

The BLM examiner reported that Little Scottie Creek was approximately 15 feet wide and about 2 to 7 feet deep. Impediments included small birch overhanging the banks, grass in the creek (which were easily motored over), some small beaver dams, and driftwood. The right hand tributary to Little Scottie Creek was reported to be about 15 feet wide and 7 feet deep. The field examiner did not detail any obstructions to navigation in the right hand tributary. No physical character information was reported for either of the two unnamed lakes.¹⁵ These two unnamed lakes are approximately 8 acres each in size.¹⁶

The State provided an August 1980 final report of a study on waterbirds and wetlands with an emphasis on the Scottie Creek to Desper Creek area. The report stated that Little Scottie Creek was a “low-volume creek that supported submergent vegetation in the channels and wet meadow vegetation along its’ gently-sloping banks” and added that “Little Scottie Creek probably freezes solid in the winter.”¹⁷

Additional physical character information regarding Little Scottie Creek was found in the field notes for U.S. Survey No. 5291, Lot 2 and U.S. Survey 6963. The field notes described Little Scottie Creek as 10 feet wide and 4 feet deep at the east boundary of U.S. Survey No. 5291 (Canada border). Depth of the creek was reported further downstream on Little Scottie Creek at the north boundary of U.S. Survey 5291 to be 25 feet wide and 6 feet deep. The creek was not meandered in the surveys.¹⁸

In 1981, a BLM survey was conducted for a Native allotment (F-43686, Parcel A). The lands were included within U.S. Survey No. 6963. Little Scottie Creek was not meandered in this

¹⁴ Dot Tideman, Navigable Waters Specialist, “Interviews on Water Bodies on Lands in Window 1212 (Group Surveys 117 and 242),” May 24, 1994, File FF-088517, BLM records.

¹⁵ Dot Tideman and Jack Frost, Navigable Water Specialists (924), to File FF-088517 (2620), subject: “Additional Navigable Waters in Survey Window 1212 (Group Surveys 117 and 242) (Report dated June 24, 1994),” August 25, 1994, BLM records.

¹⁶ Acreage for the two unnamed lakes was calculated using Nabesna C-1, USGS quadrangle map (1:63,360).

¹⁷ Kessel, et al., *Waterbirds and Wetlands Chisana-Upper Tanana Rivers, Alaska 1979 (with emphasis on the Scottie-Desper Creek wetlands)*, 14.

¹⁸ U.S. Survey No. 5291, Lot 2, field notes, 305-306, BLM records.

survey, and the allotment was not certified because the application was rejected.¹⁹ The field notes for U.S. Survey No. 6963 described Little Scottie Creek as being 8 feet wide and 4 feet deep in three locations and 7 feet wide and 4 feet deep on the east boundary of the survey.²⁰

Native Settlements

Historically, Natives occupied camps in the area, including along Little Scottie Creek on a seasonal basis. Ethnohistorians refer to the Scottie Creek band, which was known to occupy the area from mid-Chisana River, approximately the base of the Nutzotin Mountains, downriver past Scottie Creek to Gardiner Creek, as well as some area to the east into the Yukon Territory. This area extends approximately 30 to 40 miles north-south and 20 miles east-west. During the 1920's and 1930's, the Scottie Creek band within Alaska was known to maintain camps near the mouth of Scottie Creek, at High Cache (a trading post on Desper Creek), and near the U.S.-Canada border at both Scottie Creek and Little Scottie Creek.²¹

Native Trails

Native camps along Little Scottie Creek and Scottie Creek were accessed by trails. There were four historical bands of Athabaskan Indians in the Northway area prior to 1960: Scottie Creek, Chisana, Old Nabesna, and Upper Nabesna. Each of these bands had a “chief,” or a “respected man selected by elders for hunting ability and generosity.” Trails within a band’s territory were the property of the chief and permission had to be granted by the band for use by other bands.²² Trails were important to the Natives for many reasons which included contact with other villages and camps, finding and transporting of game animals and fish, and locations that commemorate many important occurrences in their history.²³ The trail system is like a spider web throughout the Chisana River basin, following such physical features as waterbodies, hills, and mountains. One trail in this system follows Scottie Creek, beginning at its mouth and continuing upstream; it appears to head southeasterly near Little Scottie Creek to cross the border and continue into Canada.²⁴ This trail was used to access the camps located on Scottie and Little Scottie Creeks and other camps in Canada.

Native Water Transport

Water travel by the Upper Tanana people for subsistence activities included three types of watercraft: birch bark canoes, skin boats, and log rafts. The birch bark canoes built were typically 12-16 feet long, 2 feet wide, made exceptionally light weight (about 40 pounds), covered with birch bark, and could accommodate one to two people. This size and weight of these canoes made it possible for them to be carried from one water body (especially lakes) to another easily. Navigation up small moderate current streams in these canoes required the use of

¹⁹ Linda K. Butts, Acting Chief, Branch of Doyon Adjudication, Decision, January 15, 1987, file F-43686, BLM records.

²⁰ U.S. Survey No. 6963, field notes, 1-8, BLM records.

²¹ Easton, *An Ethnohistory of the Chisana River Basin*, 80-81.

²² Case, 20.

²³ Easton, 72.

²⁴ A map of these trails is located in Easton, 75.

two poling sticks and a single paddle was employed on downstream and lake travel. These canoes were not made for use in fast currents.

Skin boats were used for crossing rivers and carrying heavy loads. These well constructed boats are reported to be 17 feet long, 4 feet wide and 2 feet deep. The frame was covered by either moose or caribou skins that were not tanned but with the hair removed. Pitch from spruce was used to patch any holes. These boats were capable of carrying up to a dozen people or heavy loads and fewer passengers. They propelled these boats by several people paddling and steered by a single helmsman.

Log rafts were occasionally built for downstream travel on the rivers. Each consisted of six to ten logs held together by willow and were probably steered using a long pole.²⁵

Alaska Highway

The Alaska Highway crosses Scottie Creek at milepost 1223.4; the crossing is located downstream of Little Scottie Creek about 1 mile, and includes a bridge and large culvert. The Alaska Highway was built from Dawson Creek, British Columbia, to Fairbanks in just over eight months to provide transportation of war supplies. Construction crews started at each end of the route and proceeded to build the road and meet in the middle. The construction of the last remaining gap of the northern and southern portions of the Alaska Highway occurred 10 miles south of Beaver Creek, Yukon Territory on October 25, 1942.

The presence of the highway dramatically changed the lifestyles of the people living along the Upper Tanana River and its tributaries. Development within the region increased and the transportation of goods and services to regional centers became cheaper than the traditional methods of water transport. The highway provided residents with the ability to travel to nearby urban centers for health care, to purchase less expensive goods and supplies, other personal necessities, and seek jobs.

In general, the benefits of the highway created a transition where people started relying less on the traditional nomadic/subsistence lifestyle to a more modern sedentary lifestyle. The road also opened access for people who are not residents of the region to hunt and fish in direct competition with locals.

Evidence of Boat Use

We have found no evidence of boat traffic on Little Scottie Creek prior to the date of statehood. Since statehood, the creek has been used for recreational fishing and hunting, and possibly trapping. Boaters launch their canoes and small boats (less than 18 feet long) at the Scottie Creek bridge, an unimproved access point, and run upstream to Little Scottie Creek, and up that creek and its right hand tributary, and to the two unnamed lakes. They may carry extra fuel, camping gear, food, and passengers to their hunting areas, and on the return trip back to the bridge they may haul moose, caribou, furbearers, waterfowl, or fish. In 1994, as described in the Physical Character section of this report, BLM field examiners launched a sport canoe at the

²⁵ Keogh, *Chisana River and Selected Tributaries*, 40-41.

bridge and proceeded up Scottie Creek, Little Scottie Creek, and its right hand tributary to the Canada border. Also in 1994, the BLM interviewed six people about their use of Little Scottie Creek. Most stated they used 10-foot canoes on the subject water bodies. For example, Pat Johnny stated that he made 10-foot canoes out of birch and canvas, and then painted them to tighten and waterproof the boats. Johnny said that such a canoe carried two people and a moose down Scottie Creek from near the border of Canada. Dan Grangaard stated that he used a 14-foot airboat on Little Scottie Creek to carry 400 pounds of gear into Canada.²⁶

Conclusions

We conclude from the available evidence that Little Scottie Creek, the right hand tributary, and the two unnamed lakes have been used sparingly for travel. The only information that we have documenting use of the water bodies are the 1994 interview report and field investigation. The fact that there used to be a village camp located at the border on Little Scottie Creek and the intricate web of trails within the Chisana River and Scottie Creek watershed demonstrate that this area could have been used for its subsistence opportunities. In a decision to convey lands to the State of Alaska, the BLM determined these waterbodies to be navigable. No information has since been presented that would warrant a change in that determination. Therefore, we accept that Little Scottie Creek and the unnamed lake located in section 25, T. 10 N., R. 23 E., CRM, are navigable based on the BLM navigability determination of September 22, 1994.

Pursuant to the Submerged Lands Act of 1988, the State of Alaska, as riparian land owner, owns all submerged lands of Little Scottie Creek, the right hand tributary, and the unnamed lake, in section 24, T. 10 N., R. 23 E., CRM. The United States no longer has an interest in these lands.²⁷

Therefore, I recommend that the State's application for a recordable disclaimer of interest in Little Scottie Creek, right hand tributary, and two unnamed lakes be approved.

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²⁶ Dot Tideman, Navigable Waters Specialist, "Navigability Report: Little Scottie Creek, Window 1212; Group Surveys 117 and 242," June 29, 1994, File FF-088517, BLM records.

²⁷ The exception being those lands reserved within the 60-foot-wide neutral boundary at the U.S.-Canada border.

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