



# United States Department of the Interior



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In Reply Refer To:  
AKAK106592146  
AKFF-97491 (1864)  
(9414)

June 4, 2026

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RETURN RECEIPT REQUESTED

## DECISION

State of Alaska : AKAK106592146  
Department of Natural Resources : Application for a Recordable Disclaimer of  
Division of Mining, Land & Water : Interest  
Public Access Assertion and Defense Unit : West Fork of the Dennison Fork and  
550 West Seventh Avenue, Suite 1070 : Dennison Fork of the Fortymile River  
Anchorage, Alaska 99501-3579 :

## APPLICATION APPROVED

### I. Summary

On May 28, 2019, the State of Alaska (State) finalized application AKAK106592146 with the Bureau of Land Management (BLM) for a Recordable Disclaimer of Interest (RDI) pursuant to section 315 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and the regulations contained in 43 CFR Subpart 1864 for certain lands underlying the West Fork of the Dennison Fork (West Fork) and the Dennison Fork of the Fortymile River (Dennison Fork).<sup>1, 2</sup> See Map 1 and Map 2 below. These rivers are located in the Fortymile Region approximately 180 miles east of Fairbanks, Alaska, and about 325 miles northeast of Anchorage, Alaska. This region is bordered by the Yukon River to the north and by the Tanana River to the south.

<sup>1</sup> FLPMA of 1976, Disclaimer of interest in lands, 43 U.S. Code § 1745.

<sup>2</sup> Email from Wendy Steinberger, Natural Resource Specialist III, DNR, Public Access and Defense Unit, to Angela Nichols, BLM, RDI Program Manager, May 28, 2019, BLM records, Anchorage, AK.

The RDI application was submitted for the submerged lands as follows:

- 1) The West Fork: All submerged lands between the ordinary high-water lines of the left and right banks of the West Fork of the Dennison Fork of the Fortymile River beginning in the E. ½ of sec. 16, T. 24 N., R. 16 E., Copper River Meridian (C.R.M.), downstream to the confluence with the Dennison Fork of the Fortymile River within sec. 34, T. 25 N., R. 17 E., C.R.M.
- 2) The Dennison Fork: All submerged lands between the ordinary high-water lines of the left and right banks of the Dennison Fork of the Fortymile River beginning at the confluence with the West Fork of the Dennison Fork within sec. 34, T. 25 N., R. 17 E., C.R.M., downstream to the confluence of the Mosquito and Dennison Forks of the Fortymile River within sec. 8, T. 26 N., R. 18 E., C.R.M.

The application asserts that the waterbodies were navigable in fact on the date of Alaska's Statehood, January 3, 1959.<sup>3</sup> As such, the application contends that ownership of the submerged lands underlying the West Fork and the Dennison Fork automatically passed from the United States to the State upon the date of statehood under the Equal Footing Doctrine,<sup>4</sup> the Submerged Lands Act (SLA) of 1953,<sup>5</sup> the SLA of 1988,<sup>6</sup> the Alaska Statehood Act,<sup>7</sup> and other title navigability laws.

The BLM has determined that the preponderance of evidence provided in the State's application demonstrates that the subject waters of the West Fork and the Dennison Fork were navigable at the time of Alaska's statehood. The State's application is therefore **APPROVED** as described below.

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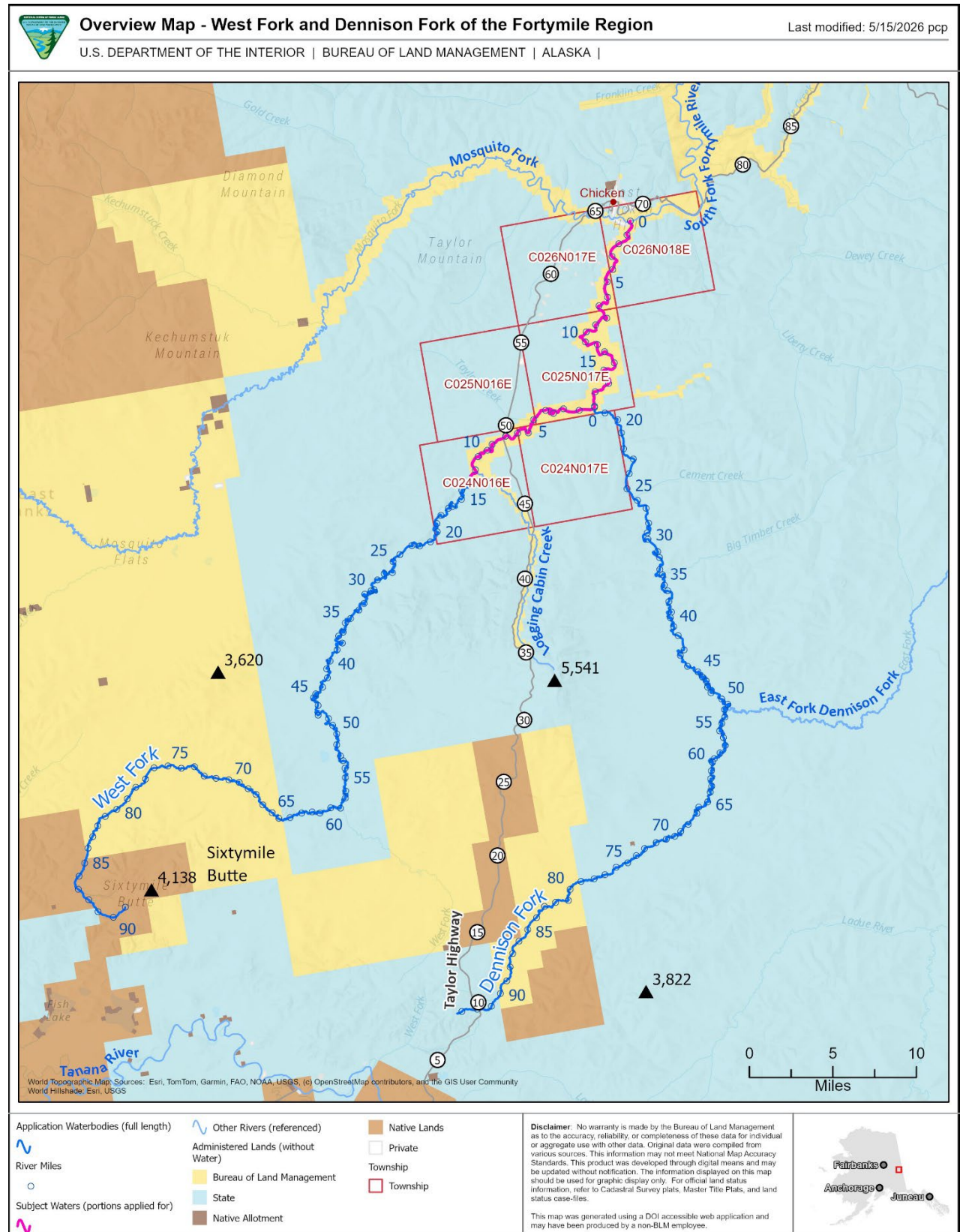
<sup>3</sup> Letter from James H. Walker, DNR, Public Access and Defense Unit, to Ted Murphy Acting State Director, Feb. 20, 2019, "(AK FF-97491) Draft/Final recordable disclaimer of interest application for portions of the West Fork of the Dennison Fork and the Dennison Fork of the Forty Mile River," file AKAK106592146 (FF-97491) (1864), Alaska State Office, BLM records, (State's application). The State's Application and supporting documents are also available in this file.

<sup>4</sup> U.S. CONST. Art. IV. § 3.C1.3.

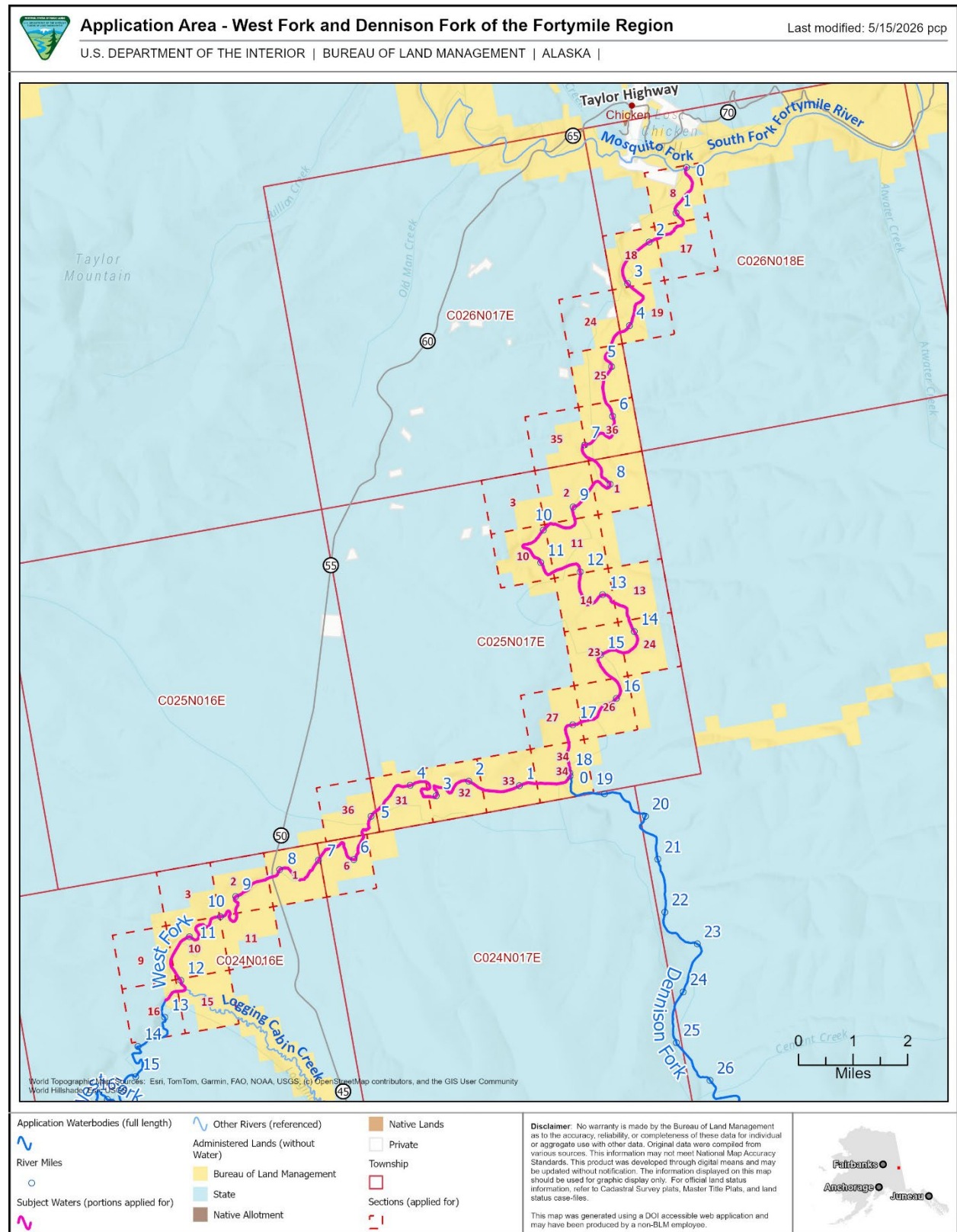
<sup>5</sup> Submerged Lands Act (SLA) of 1953, 43 U.S.C. § 1301 et seq.

<sup>6</sup> SLA of 1988, 43 U.S.C§ 1631.

<sup>7</sup> Alaska Statehood 72 stat. 339.



Map 1. Overview of the State's RDI application area for the Dennison Fork and the West Fork.



Map 2. State's RDI application area for the Dennison Fork and the West Fork.

## II. Lands Review

The application primarily affects lands managed by the BLM. There is one private parcel, U.S. Survey (USS) No. 3613, Alaska, located adjacent to the West Fork within T. 24 N., R. 16 E., secs. 1 and 2. C.R.M., owned by Fortymile Rivers Conservation, LLC. The private landowner was informed of the application, by mail, as part of the *Federal Register* Notice process. No response was received from the private landowner.

To adjudicate this application, the submerged lands under the subject waters were researched to identify any valid withdrawals occurring prior to Alaska's statehood, January 3, 1959, which would defeat the State's claim on title. No valid withdrawals were identified that would impact a decision on this application.

## III. Notice of the Application and Public Comments

Notice of the State's application was published in the *Federal Register* on January 7, 2026, and published in the *Fairbanks Daily News-Miner* and the *Anchorage Daily News* once a week for 3 consecutive weeks beginning on January 13, 2026, and January 14, 2026, respectively.

The notice invited reviews and additional information to support processing of the application. Examples of additional information requested included photographs or videos capturing boats being used on the waterbodies, historical or present-day use diaries, or specific verbal knowledge, whether passed down through the region, or present-day use, information on the type of boat or watercraft used, and information on the time of year boats are, or were, used. In addition to boat use, the BLM asked for hydrological data and/or photographs that captured the waterbody's characteristics such as depth, width, obstructions or obstacles, or shallow stream sections.

The 30-day comment period ended on February 5, 2026. The BLM received comments during the published notice period. However, all comments received were regarding the process and navigability in general but were not specific to the RDI application or this decision. Information about this application and supporting evidence was also posted on the BLM Alaska website.<sup>8</sup>

## IV. Administrative Waiver Granted

A legal description of the lands for which a waiver is sought must be based on either an official United States public land survey or a metes and bounds survey tied to the nearest corner of an official public land survey, unless a waiver is granted.<sup>9</sup> In the State's RDI application, the State requested a waiver of this requirement.<sup>10</sup> The locations of the West Fork and the Dennison Fork are clearly depicted on the U.S. Geological Survey quadrangle maps and are not in dispute. The ordinary high-water marks (OHWMs) of these waterbodies are the legal boundary of the submerged lands. Since the boundaries of these waterbodies are ambulatory, the location may change over time. The BLM, therefore, determines that a survey description of the subject waterbodies is not needed to adjudicate the State's application. The waiver is hereby granted.

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<sup>8</sup> US department of the Interior, Bureau of Land Management, *Recordable Disclaimers of Interest: Forty Mile Region: West Fork of the Dennison Fork and the Dennison Fork of the Fortymile River* (Jan. 27, 2026, at 17:00 AKST), <https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/RDI/fortymile>.

<sup>9</sup> 43 CFR 1864.1-2(c)(1).

<sup>10</sup> 43 CFR 1864.1-2(d).

## V. Applicable Legal Authority

The Submerged Lands Act of 1953, 43 U.S.C. § 1301(a), granted and confirmed to the states title to the lands beneath the inland navigable waters within the boundaries of each respective state.<sup>11</sup> It also gave the states the right and power to manage and administer these lands in accordance with state law. Due to the Equal Footing Doctrine, the Submerged Lands Act of 1953 was incorporated into the State's legal framework because the Alaska Statehood Act of 1958 made the Submerged Lands Act of 1953 applicable to Alaska.<sup>12</sup>

Section 315(a) of FLPMA, 43 U.S.C. 1745(a), authorizes the Secretary of the Interior to issue a document of disclaimer of interest in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and to determine whether a record interest of the United States in lands has terminated by operation of law or is otherwise invalid. This authority has been delegated to the BLM Alaska State Director.<sup>13, 14</sup>

## VI. Standards of Navigability

The Federal test of navigability is found in *The Daniel Ball*, 77 U.S. 557 (1870). There, the U.S. Supreme Court stated: "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water."<sup>15</sup>

In assessing the navigability of inland waterbodies, the BLM relies upon this test as well as Federal statutes and case law. Relevant Federal statutes include the *Submerged Lands Act* of 1953 and the *Submerged Lands Act* of 1988. The Supreme Court's most recent decision on title navigability, *PPL Montana, LLC v. Montana*, 132 S. Ct. 1215 (2012), summarizes and explains the proper interpretation of *The Daniel Ball* criteria. Additional guidance is provided in *Alaska v. Ahtna, Inc.*, 891 F.2d 1401 (9<sup>th</sup> Cir. 1989); *Alaska v. United States*, 754 F.2d 851 (9<sup>th</sup> Cir. 1983); and *Appeal of Doyon, Ltd.*, Alaska Native Claims Appeal Board RLS 76-2, 86 I.D. 692 (1979).

## VII. Related BLM Navigability Findings

The BLM reviewed the Fortymile River Region for navigability in a report dated June 29, 1983, "Navigability Determination for the Fortymile River Basin." Though not specifically described in the report by name, the West Fork and the Dennison Fork were lumped in with a group of waterbodies that were considered non-navigable at the time due to "the sparseness or complete absence of use information coupled with the physical characteristics of the water bodies."<sup>16</sup>

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<sup>11</sup> SLA 43 U.S.C. § 1301(a),

<sup>12</sup> 72 Stat. 339.

<sup>13</sup> FLPMA of 1976, Disclaimer of interest in lands, 43 U.S. Code § 1745(a).

<sup>14</sup> 209 DM 7; 235 DM 1; BLM Manual MS-1203, App. I, p. 52.

<sup>15</sup> *The Daniel Ball*, 77 U.S. 557, 563 (1870).

<sup>16</sup> Deputy State Director for Conveyance Management (960) to Acting Assistant Deputy State Director for Conveyance Management (960), "Navigability Determination for the Fortvmile River Basin," Jun. 29, 1983, p. 1, BLM records.

## VIII. Key Facts, Supporting Evidence, and Analysis

### A. Physical Character Summary

#### West Fork

The West Fork is approximately 91 miles long and drains a watershed of about 700 square miles in eastern Interior Alaska. Originating at an elevation above 3,300 feet on the slopes of Sixtymile Butte (elevation of about 4,100 feet), it flows generally to the northeast before joining the Dennison Fork at an elevation of about 1,800 feet. The overall gradient is about 16 feet per mile. The subject waters of the West Fork begin at about river mile (RM) 12.5 and end downstream at RM 0.

From the confluence of Logging Cabin Creek (about RM 12), the West Fork flows through wide valleys with no major obstructions. From about RM 1.7 to RM 0, it flows through a somewhat narrower valley with no major obstructions. Channel width varies generally 80-120 feet, with a difference between ordinary high- and low-water of about 3-4 feet.<sup>17</sup> On July 14, 2018, the BLM measured water depths averaging about 2 feet deep and a discharge at the Taylor Highway Bridge of 265 cubic feet per second (cfs).<sup>18</sup>

#### Dennison Fork

The Dennison Fork is approximately 93 miles long and drains a watershed of about 1,600 square miles in eastern Interior Alaska. Originating at an elevation above 2,600 feet on the slopes of an unnamed butte (elevation of about 3,500 feet), it flows generally to the northeast, then north, ending at the confluence of the Mosquito Fork and the South Fork (of the Fortymile River) at an elevation of about 1,600 feet. The overall gradient is about 11 feet per mile. The subject waters of the Dennison Fork begin at about RM 18 and end downstream at RM 0.

From the confluence of the West Fork (about RM 18) much of the upper Dennison Fork flows northward through wide valleys with no major obstructions. Channel width varies generally 140-200 feet, with a difference between ordinary high- and low-water about 3-4 feet.<sup>19</sup> On July 14, 2018, the BLM measured water depths averaging over 3 feet deep and a discharge of 665 cfs.

Based on field observations and reference material, the subject waters of the West Fork and the Dennison Fork appear to be in their natural and ordinary condition that existed at the time of statehood.

### B. Pole Boats

The application is primarily based on the evidence provided in the BLM's 2018 Reconsideration Report for the subject waterbodies.<sup>20</sup> The report recommended the West Fork and the Dennison

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<sup>17</sup> Ben Kennedy, BLM Hydrologist, "West Fork Dennison and Dennison Fork of Fortymile River Navigability Float Trip," July 14-15, 2018, p.6, BLM records.

<sup>18</sup> Jack Frost, BLM Navigable Waters Specialist, "Fortymile Region Field Trip, Jul. 9-23, 2018, Part 2, West Fork of the Dennison Fork and Dennison fork of the Fortymile River," p.5, BLM records.

<sup>19</sup> Ibid p.6.

<sup>20</sup> Jack Frost, Navigable Water Specialist, Lands and Realty Branch BLM "Reconsideration of the Navigability Report Dated June 29, 1983, Regarding the West Fork of the Dennison Fork and the Dennison Fork of the Fortymile River in the Upper Yukon Region, Alaska" Alaska State Office, BLM records, (State's application). (Oct. 4, 2018).

Fork to be navigable based on physical evidence collected by the BLM during the summer of 2018, and the pre-statehood commercial use of pole boats in the Fortymile Region.

Pole boats were customarily used on the Fortymile and South Fork Fortymile River, and at the confluence of the Mosquito Fork and the Dennison Fork prior to statehood for commerce (i.e., transporting goods) to Chicken, Alaska. Evidence of pole boat use on the subject waters was not provided or located.<sup>21</sup>

Based on observations and measurements collected during the BLM's July 2018 float trip, the subject waters appeared capable of supporting water-based travel using low-draft vessels (such as pole boats) similar to those customarily used in the Fortymile Region at or before statehood, in terms of draft, load, and capacity.<sup>22</sup> The estimated draft of pole boats (the depth of the hull beneath the surface of the water) is less than the observed ordinary water depths in the subject waters. Depending on water levels at the time of travel, some dragging through or portaging around shallow water may be required.

While there was no evidence found of pole boat use on the Dennison Fork or the West Fork, there were no physical barriers found that would impede their use during ordinary water levels.<sup>23</sup>

### ***C. Other Uses***

The BLM has promoted the use of the subject waters accessed via a boat ramp adjacent to its campground near the Taylor Highway bridge over the West Fork (about RM 8). Annually, recreationalists launch rafts, canoes, and motorboats from the boat ramp to camp, hunt, fish, or recreate by traveling either upstream or downstream.<sup>24</sup>

## **IX. Summary**

The State's application and available information were evaluated to determine if the subject waters of the West Fork and the Dennison Fork were navigable at the time of Alaska's statehood.

The evidence demonstrates:

- The physical character of the subject waters of the West Fork and Dennison Fork remain in their natural and ordinary condition that existed at the time of Alaska's statehood.
- Prior to Alaska statehood, pole-boats were customarily used for trade and travel in the Fortymile Region.
- The physical characteristics of the subject waters, compared with the estimated draft of customary pole boats, indicate that the West Fork and Dennison Fork were capable

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<sup>21</sup> Ibid p.6.

<sup>22</sup> Ben Kennedy, BLM Hydrologist, "West Fork Dennison and Dennison Fork of Fortymile River Navigability Float Trip," Jul. 14-15, 2018, p.7-37, BLM records.

<sup>23</sup> Jack Frost, Navigable Water Specialist, Lands and Realty Branch BLM "Reconsideration of the Navigability Report Dated Jun. 29, 1983, Regarding the West Fork of the Dennison Fork and the Dennison Fork of the Fortymile River in the Upper Yukon Region, Alaska", p.6, BLM records, (State's application). (Oct. 4, 2018).

<sup>24</sup> Ibid p.6.

of supporting customary modes of waterborne trade and travel at the time of statehood.

## X. Decision

Based upon the preponderance of the evidence, some of which is summarized above, the BLM has determined that title to the submerged lands and beds up to the OHWMs of the West Fork of the Dennison Fork and the Dennison Fork of the Fortymile River as described in this decision passed to the State of Alaska at statehood.

Accordingly, based on the foregoing and the documentation contained in the case record, I have determined that the State's RDI application is sufficient to demonstrate the navigability of the subject waters West Fork of the Dennison Fork and the Dennison Fork of the Fortymile River at the time of statehood and in compliance with the applicable requirements of the provisions of Section 315 of FLPMA and the regulations contained in 43 CFR Subpart 1864.

The State's application for an RDI is hereby approved as follows:

1) The portions of the West Fork of the Dennison Fork of the Fortymile River downstream to the confluence of the Dennison Fork of the Fortymile River, all submerged lands between the OHMWs of the left and right banks within the following:

Copper River Meridian, Alaska

T. 24 N., R. 16 E., partly unsurveyed,  
secs. 1, 2, 3, 9, 10, 11, and 15;  
sec. 16 E1/2.

T. 24 N., R. 17 E., partly unsurveyed,  
sec. 6.

T. 25 N., R. 16 E., partly unsurveyed,  
sec. 36.

T. 25 N., R. 17 E., partly unsurveyed,  
secs. 31 thru 34.

2) The portions of the Dennison Fork of the Fortymile River downstream to the confluence of the Mosquito Fork of the Fortymile River, all submerged lands between the OHMWs of the left and right banks within the following:

Copper River Meridian, Alaska

T. 25 N., R. 17 E., partly unsurveyed,  
secs. 1, 2, 3, 10, 11, 13, 14, 23, 24, 26, 27, and 34.

T. 26 N., R. 17 E., partly unsurveyed,  
secs. 24, 25, 35, and 36.

T. 26 N., R. 18 E., partly unsurveyed,  
secs. 8, 17, 18, and 19.


The United States affirms it has no interest in the lands described above because the federal interests passed to the State of Alaska at the time of statehood. Approving the State's application AKAK106592146 for an RDI provides certainty about ownership of the submerged lands and removes a cloud on the title from the submerged lands of the West Fork and Dennison Fork, as applied for.

### **XI. Appeal Procedure**

This decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of Hearings and Appeals, in accordance with the regulations contained in 43 CFR Part 4. The notice of appeal must be filed no later than 30 days after the date of receiving notice of this decision. Any notice of appeal must be filed with the IBLA and must include a copy of the decision being appealed, a statement of standing, and a statement of timeliness.

You may file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board. A petition for a stay must show sufficient justification based on the following criteria: (i) Immediate and irreparable harm. The likelihood of immediate and irreparable harm if a stay is not granted; (ii) Balance of harms. The irreparable harm to the appellant absent a stay exceeds the harm to the United States and other parties from a stay being granted; (iii) Public Interest: whether the public interest favors granting a stay; and (iv) Likelihood of success. The appellant is likely to succeed on the merits.

The appellant must serve a copy of the notice of appeal and any accompanying documents on the office of the officer who made the decision, each person or entity named in the decision, and the appropriate Office of the Solicitor at the time of filing with IBLA (see 43 CFR 4.403(b); 4.407(b)). Parties must serve the Office of the Solicitor at the address shown on Form 1842-1. Service on a party known to be represented by an attorney or other designated representative must be made on the representative. If a statement of reasons for the appeal is not included with the notice of appeal, it must be filed within 30 days after the record on appeal is filed with the IBLA. Failure to file a statement of reasons within the time required will subject the challenged decision to summary affirmance (see 43 CFR 4.412(a)).

  
Kevin J. Pendergast  
State Director

Enclosures:

Form 1842-1  
Appeal Regulations

Copy w/enclosures furnished to:

Access Defense Program Manager  
Alaska Department of Fish and Game  
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