



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

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FF-094615 (1864)

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### Memorandum

To: Chief, Branch of Lands and Realty (932)

From: Navigable Waters Specialist

Subject: Summary Report for the Chisana River and a portion of Mark Creek (Unnamed Channel) in the Tanana River Region

The State of Alaska (State) filed an application, dated October 3, 2005, for a recordable disclaimer of interest (RDI) for lands underlying the Chisana River "between the ordinary high water lines of the left and right banks from its origin at the Chisana Glacier within Township 3 North, Range 17 East, Copper River Meridian (CRM), Alaska, downstream to its confluence with the Tanana River in T. 15 N., R. 19 E., CRM."<sup>1</sup> This application also specifically includes an unnamed channel that interconnects the Chisana River and Mark Creek, located in T. 14 N., Rs. 19 and 20 E., CRM (herein referred to as "unnamed channel"). The State identified its application on four maps entitled "Chisana River Recordable Disclaimer of Interest Application," dated October 3, 2005. The maps were submitted with the State's application.

The State's application for a disclaimer of interest is based on the Equal Footing Doctrine, the Submerged Lands Act of May 22, 1953, the Alaska Statehood Act, 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. Consideration is also given to whether or not the State's application for lands underlying the subject water bodies meets the regulatory requirements (43 CFR Subpart 1864).

In support of its application, the State submitted the following documents: four BLM memos addressing the Chisana's navigability dated October 16, 1975, March 22, 1979, March 28, 1980, and April 15, 1983; an April 1975 Grumman Ecosystems Corporation report; two Alaska Department of Natural Resources (DNR) historical reports dated May 1979 and March 2, 1979; extracts from United States Geological Survey (USGS) Bulletin no. 630; and five DNR "Waterbody Use and Observation Questionnaire" detailing recreational use on the Chisana

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<sup>1</sup> Tom Irwin to Henri Bisson, BLM, October 3, 2005, file FF-094615 (1864), Alaska State Office, BLM records, Anchorage (hereafter BLM records). The reference documents are also available in this file.

River.<sup>2</sup> In support of its application, the State also provided an article from the *Fairbanks Daily Times* dated May 19, 1914, which stated that the steamer "Mabel" left Johnson City (or Chisana City). This article suggests that steamers ascended the Chisana River as far as Johnson City, located approximately 112 miles upriver. However, the article also stated that "the Mabel wintered on the Chisana River, about sixty miles from its mouth."

The National Park Service, Alaska Region, provided additional evidence regarding this event.<sup>3</sup> In an article from the *Fairbanks Daily News-Miner*, also dated May 19, 1914, stated that "the Mabel came down the 400 miles of water that lies between here [Fairbanks] and head of navigation at Gasoline City [near Scottie Creek] without any accidents leaving May 5th."

The Chisana River heads at the Chisana Glacier terminus, in T. 3 N., R. 18 E., CRM, and flows northerly 116 miles, joining the Nabesna River to form the Tanana River, in T. 15 N., R. 19 E., CRM, northwest of Northway Junction.<sup>4</sup> None of the riparian lands was reserved at the time of statehood.

The riparian lands along the Chisana River from its mouth upstream to the south boundary of T. 12 N., R. 21 E., CRM, have been conveyed out of federal ownership. The remaining riparian lands are located in either the Tetlin National Wildlife Refuge or the Wrangell-St. Elias National Park and Preserve, both established under the Alaska National Interest Conservation Act (ANILCA) (P.L. 96-487) on December 2, 1980.

Most riparian lands in private ownership were conveyed by Interim Conveyance (IC) Nos. 364, 365, 664, 665, 964, and 965 to Northway Natives, Inc., a village corporation, and Doyon, Limited, a regional corporation, under the Alaska Native Claims Settlement Act (ANCSA). There are four certificated Native allotments, conveyed under the Native Allotment Act. The BLM conveyed to the State, through tentative approval, the remaining riparian lands, from approximately river mile 18 through 36.

On January 5, 1976, the BLM issued a memorandum entitled, "Navigability determinations on Northway selection areas and Doyon selection areas." The memorandum states that the Chisana River is navigable to its confluence with Scottie Creek. The report also states that a section of Mark Creek is navigable. This includes the "unnamed channel" the State refers to in its application.

This determination was incorporated into a decision, dated June 26, 1978, to convey lands under ANCSA to Northway Natives, Inc., and Doyon, Ltd. Although this decision was appealed to the Alaska Native Claims Appeal Board (ANCAB), the navigability determination for the Chisana River was not in question.<sup>5</sup> The Submerged Lands Act of 1988, 102 Stat. 979, which amended section 901 of the Alaska National Interest Lands Act (ANILCA), provides that "[t]he execution

<sup>2</sup> *Ibid.*

<sup>3</sup> See Email Correspondence from Logan Hovis and Geoff Bleakly, Historians, National Park Service, Alaska Region, to Jack Frost, Navigable Waters Specialist, BLM, casefile FF-94695.

<sup>4</sup> River miles were obtained from STORET USGS quadrangle maps located in the BLM State Office, Cadastral Survey, Navigability Section, Anchorage, Alaska.

<sup>5</sup> The memorandum also stated that Mark Creek is navigable where it runs "silty water." This segment of Mark Creek includes the "unnamed channel" which connects to the Chisana River.

of an interim conveyance or patent, as appropriate, by the Bureau of Land Management which conveys an area of land, selected by a Native or Native Corporation which includes, surrounds, or abuts a lake, river, or stream, *or any portion thereof, shall be the final agency action* with respect to a decision of the Secretary of the Interior *that such lake, river, or stream, is or is not navigable.*" 43 U.S.C. § 1631 (c) (1) [emphasis added].

On March 22, 1979, the BLM issued a memorandum entitled, "Navigable and Non-Navigable Water Bodies in the Northway Area, Eastern Alaska." The navigability report was prepared in support on ANCSA conveyances, in response to the State of Alaska Water Body Delineation Maps submitted to the BLM (April 13, 1973). The memorandum confirmed the previous determination that the Chisana River was navigable from its mouth up to Scottie Creek and non-navigable from Scottie Creek upstream to its head.<sup>6</sup>

In response to the Northway Natives, Inc., appeal of the June 26, 1978 decision, ANCAB ordered BLM to prepare a Review and Basis for Navigability Determinations, which was completed and filed on March 28, 1980. The memorandum, entitled "Navigable and Non-navigable Waters in the Northway Area, Eastern Alaska," merely stated that the "Chisana River was determined navigable on March 22, 1979" as BLM's determination of navigability was not under appeal.

On August 5, 1981, the ANCAB issued its decision, 6 ANCAB 1, in the appeal filed by Northway Natives, Inc. of a BLM decision of June 26, 1978 (F-14912). Appellants also included the State of Alaska and Doyon, Limited. In its decision, the ANCAB adopted the BLM Review and Basis for Navigability Determinations, filed March 28, 1980, regarding the Chisana River, finding that, *inter alia*, the Chisana River and Mark Creek (including the "unnamed channel") was navigable. The parties had stipulated to the accuracy of the determination.<sup>7</sup>

The determination that the Chisana River was navigable to Scottie Creek was used to support these conveyances on May 19, 1983 for T. 12 N., R., 20 E., CRM,<sup>8</sup> May 17, 1984 for sections 31-36 in T. 13 N., R., 20 E., CRM,<sup>9</sup> and on October 8, 1985 for T. 12 N., R., 21 E., CRM.<sup>10</sup>

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<sup>6</sup> Chief, Division of Resources to State Director, March 22, 1979, file F-14912A and B, Village selection files, BLM records.

<sup>7</sup> ANCAB, Northway Natives, Inc., Appeal from the Decision of the Alaska State Director, Bureau of Land Management F-14912-A and F-14912-B, ANCAB VLS 78-57 (6 ANCAB 1-16), August 5, 1981: Copy is located in file FF-94662, BLM records.

<sup>8</sup> Chief, Branch of State Adjudication to State of Alaska DNR, May 19, 1983, file F-28671, State selection file, BLM records.

<sup>9</sup> Chief, Branch of State Adjudication to State of Alaska DNR, May 17, 1984, file F-28020, State selection file, BLM records.

<sup>10</sup> Chief, Branch of State Adjudication to State of Alaska DNR, October 8, 1985, file F-28675, State selection file, BLM records.

## Conclusions and Recommendations

BLM has consistently held that the Chisana River is navigable to Scottie Creek, and nonnavigable above that point. This determination was used as the basis for conveyance actions under ANCSA and the Alaska Statehood Act, and was not appealed. Therefore, the following is recommended:

1. The Chisana River from its mouth to the confluence with Scottie Creek (river mile 53.50) is navigable; therefore, the State's application for recordable disclaimer of interest for the submerged lands should be granted. The navigability was decided previously with finality for the Department. 43 U.S.C. § 1631(c) (1).
2. The "unnamed channel" that interconnects the Chisana River and Mark Creek, located in T. 14 N., Rs. 19 and 20 E., CRM, is navigable; therefore the State's application for the unnamed channel should be approved.
3. The Chisana River, upstream of the confluence with Scottie Creek, to its headwaters is nonnavigable and the riparian lands are under federal ownership; therefore, the State's application for recordable disclaimer of interest for the submerged lands in this section of the Chisana River should be denied. This reach of the Chisana River was previously determined to be nonnavigable and that determination is final for the Department. 43 U.S.C. § 1631(c) (1).
4. The State of Alaska's application for the beds of interconnecting sloughs should not be approved. If water from the Chisana River flowed through the slough at statehood and the area was not reserved, then the slough is considered to be an integral part of the river and the State would hold title to the land underlying the slough if the reach where the slough is located is navigable.

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