



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

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FF-094614 (1864)

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### Memorandum

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

From: Navigable Waters Specialist

Subject: Summary Report for the Navigability of the Nabesna River within 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 Nabesna River “between the ordinary high water lines of the left and right banks from its origins at the Nabesna Glacier within Township 5 North, Ranges 13 and 14 East, Copper River Meridian (CRM), Alaska, downstream to its confluence with the Tanana River in Township 15 North, Range 19 East, CRM.”<sup>1</sup> The State identified the location of its application on two maps entitled “Nabesna 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, and 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: three BLM memos addressing the Nabesna Rivers navigability dated October 16, 1975, March 16, 1979, and March 28, 1980; an April 1975 Grumman Ecosystems Corporation report; two Alaska Department of Natural Resources (DNR) historical reports dated May 1979 and March 2, 1979; a 2004 National Park Service commercial transporters activity report; a 1979 Arctic Environmental Information and Data Center report; and five DNR “Waterbody Use and Observation Questionnaire” documents detailing recreational use on the Nabesna River.<sup>2</sup> The State summarized two other

<sup>1</sup> Tom Irwin to Henri Bisson, BLM, October 3, 2005, file FF-094614 (1864), Alaska State Office, BLM records, Anchorage (hereafter BLM records). The reference documents are also available in this file.

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

sources of information in support of its application: an article in the *Fairbanks Daily Times* dated September 9, 1913, which reported miners poling a boat up the Nabesna River, and a reference to Sepp Weber's book, The Wild Rivers of Alaska, of a 1969 float trip down the Nabesna River from the Nabesna Road to its mouth.

The Nabesna River heads at the Nabesna Glacier terminus, in T. 5 N., R. 14 E., CRM, and flows northerly 85.4 miles, joining the Chisana River to form the Tanana River, in T. 15 N., R. 19 E., CRM, northwest of Northway Junction.<sup>3</sup> None of the riparian lands was reserved at the time of statehood.

Except for those lands within T. 13 N., R. 18 E., CRM, which are still in federal ownership, the riparian lands along the Nabesna River from its mouth upstream to the south boundary of T. 13 N., R. 17 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. The State does not have any riparian land along the Nabesna River.

Most riparian lands in private ownership were conveyed by Interim Conveyance (IC) Nos. 364, 365, 714, 964, 965, 1227, 1228, 1377, and 1378 to Northway Natives, Inc. a village corporation, and Doyon, Ltd., a regional corporation, created under the Alaska Native Claims Settlement Act (ANCSA). There are also four certificated Native allotments, conveyed under the Native Allotment Act. Two Native allotment applications are located along the lower reaches of the Nabesna River. Ahtna, Inc., a regional corporation, also has four pending applications, located near the headwaters of the Nabesna River.

On August 5, 1981, the Alaska Native Claims Appeal Board (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). The State of Alaska and Doyon, Ltd. were also appellants. The ANCAB decision was final for the Department (43 CFR 4.1 (b) (5) (1980)). The ANCAB adopted the BLM Review and Basis for Navigability Determinations, filed March 28, 1980, regarding the Nabesna River, finding that, *inter alia*, the Nabesna River was navigable throughout the contested conveyance area (the Northway selection area) and that the Nabesna River bed be excluded from the interim conveyance to the Native corporations. The parties had stipulated to the accuracy of the determination.

In addition, the State and Doyon, Ltd. appealed the BLM decisions of June 23, 1978 and June 26, 1978 (F-19155-20) which held, *inter alia*, that the Nabesna River was nonnavigable above Nabesna Village. BLM filed with ANCAB the same Review and Basis for Navigability Determinations of March 28, 1980 referred to above. ANCAB held that the Nabesna River is navigable through the selection area. 6 ANCAB 138 (1981).

The Review and Basis for Navigability Determinations found that the Nabesna River was navigable as far as the Black Hills and nonnavigable above that point. This determination was

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<sup>3</sup> River miles were obtained from STORET USGS quadrangle maps located in the BLM State Office, Cadastral Survey, Navigability Section, Anchorage, Alaska.

the basis for IC no. 714 issued pursuant to the decision of August 4, 1983 to Doyon, Ltd. This decision was not appealed. 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 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].

The BLM Review and Basis for Navigability Determinations of March 28, 1980 on page 3 found that the “Nabesna River as far as the Black Hills affords a route of water travel.” The Nabesna River flows through the Black Hills from approximately river mile 25 to 30. The confluence of the Cheslina River with the Nabesna River is at river mile 25.1. Therefore, we have determined that the confluence with the Cheslina River is the appropriate location of the head of navigation on the Nabesna River.

### **Conclusions and Recommendations**

Since the adoption of the Review and Basis for Navigability Determinations by the ANCAB in 1981, as described above, BLM determinations have been consistent with that report. Therefore, the following is recommended:

1. The Nabesna River from its mouth to the confluence with the Cheslina River (river mile 25.1) 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. 6 ANCAB 1 and 43 U.S.C. § 1631(c) (1).
2. The Nabesna River, upstream of the confluence with the Cheslina River (river mile 25.1), 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 Nabesna River should be denied. This reach of the Nabesna River was previously determined to be nonnavigable and that determination is final for the Department. 43 U.S.C. § 1631(c) (1).
3. The State of Alaska’s application for the beds of interconnecting sloughs should not be approved. If water from the Nabesna 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.

## Bibliography

Bleakley, Geoffrey T. *A History of the Chisana Mining District, Alaska, 1890-1990*. Published Report, NPS/AFARCR/CRR-96/29. Division of Cultural Resources, National Park Service, Anchorage, Alaska, 1996.

Capps, Stephen R. *The Chisana-White River District, Alaska*. U.S. Geological Survey Bulletin 630. Washington: Government Printing Office (GPO), 1916.

Cole, Terrence M. "Historic Use of the Chisana and Nabesna Rivers, Alaska." Unpublished Manuscript, Alaska Department of Natural Resources, 1979.

Grumman Ecosystems Corporation. *Report on Navigability of Streams Tributary to the Tanana River, Alaska*. Vol. 4. Prepared for U.S. Army Engineer District, Alaska. Bethpage, New York: Grumman Ecosystems Corporation, 1975.

Keogh, Warren J. "Chisana River and Selected Tributaries, Navigability Research Report." Unpublished Report, U.S. Fish and Wildlife Service, Region 7, Water Resources Branch, September 1997.

McKenna, Robert A. "Diary of Robert McKenna, September 1929-June 1930," Steffanson Collection, Dartmouth College. (photocopy)

Orth, Donald J. *Dictionary of Alaska Place Names*. U.S. Geological Survey Professional Paper 567. Washington: GPO, 1967.

University of Alaska, Arctic Environmental Information and Data Center. *Alaska Water Body Historical Data*. Anchorage, Alaska: BLM Alaska State Office, June 10, 1979 [microform].

U.S., Bureau of Land Management, Alaska State Office. *Navigability Section Report Files*.

U.S. Coast Guard *Navigable Waters of the U.S. Within the Seventeenth Coast Guard District (State of Alaska)*, revised April 2003.