

STATE OF ALASKA

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DEPARTMENT OF NATURAL RESOURCES

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October 3, 2005

Henri Bisson
Director, Alaska State Office
Bureau of Land Management
222 W. 7th Avenue, #13
Anchorage, Alaska 99513-7599

BLM AK SO 952
ANCHORAGE, AK
05 OCT -4 PM 1:07

Re: Recordable Disclaimer of Interest Application for the Nabesna River

Dear Mr. Bisson:

Pursuant to 43 CFR §1864, the State of Alaska files this application for a recordable disclaimer of interest for the lands underlying the Nabesna River.

This application is submitted for all submerged lands lying within the bed of 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, Alaska, downstream to its confluence with the Tanana River in Township 15 North, Range 19 East, Copper River Meridian, Alaska. As a general rule, any sloughs, braids or channels which carry water from a navigable river are an integral part of the river and thus, are navigable as well. Maps highlighting the river and a legal description of the townships and ranges underlying the river are enclosed.

As previously discussed with the Bureau of Land Management Alaska State Director, the State requests a waiver under §1864.1-2(d) of the requirement of 43 CFR §1864.1-2 (c)(1) for a description based on a public land survey or certified metes and bounds survey because the map and legal description included here clearly identify the land subject to this application.

A recordable disclaimer for this land will help lift the cloud on its title stemming from the lack of any permanent determination of ownership. Because the Nabesna River is navigable, Alaska owns the submerged lands by virtue of the Equal Footing Doctrine. Under the Equal Footing Doctrine, new states created from federal territories are admitted to the Union with all the powers of sovereignty and jurisdiction that pertain to the original states. Upon admission of a state to the Union, the title to lands underlying navigable waters within its

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boundaries automatically passes to the state as a matter of constitutional grace. The lack of any title document or judgment creates a cloud on the state's title.

Where the State is the owner of the uplands adjacent to Nabesna River, the State owns the bed of Nabesna River even in the absence of a navigability determination. In such circumstance, the State took title under the Equal Footing Doctrine if the water is navigable, or if it is non-navigable, the State gained title as a matter of state law governing riparian rights. In Alaska, where the land bordering a non-navigable body of water is ceded, title to the submerged lands passes to the upland owner unless the intent of the grantor is expressly stated to the contrary. Therefore, where the State is the upland owner, the Bureau may approve the State's application for a Recordable Disclaimer of Interest for the bed of the waterbody based on the State's ownership of the adjacent uplands. In such areas, a navigability determination is not required.

The State's application for a Recordable Disclaimer of Interest is based on the Equal Footing Doctrine; the Submerged Land Act of May 22, 1953; the Alaska Statehood Act; the Submerged Lands Act of 1988, or any other legally cognizable reason. The Bureau may disclaim interest in the submerged lands on any of the grounds that apply.

A Bureau Navigability Investigation Report completed in 1975 states that the Nabesna River has traditionally been used by natives for travel in subsistence hunting and fishing activities. The river was also used as a travel and supply route for gold miners in the early 1900's. Personal statements from local residents documenting use of the Nabesna River are included. An April 1975 Grumman Corporation report concludes that the Nabesna River is navigable to the mouth of Lick Creek.

Bureau of Land Management documents dated March 16, 1979 and March 28, 1980 support a navigable determination for the Nabesna River in selected townships. The 1979 memorandum reports a navigable determination for the Nabesna River only to the Village of Northway. Additional information in that report however, suggests that the river is navigable much farther upstream. In 1905, the steamboat Ella carried passengers and supplies up the Nabesna River approximately 10 to 15 miles. The 1979 memorandum also reports that in 1913, the steamboat Tetlin, with 18 passengers and supplies, ascended the Nabesna River a distance of 25 to 35 miles. In 1913, four passengers from the steamboat Reliance ascended the Nabesna River in poling boats as far as Camp Creek, a distance of about 60 miles. Several Northway residents also provided statements describing their boat use on the Nabesna River as far as 35 miles upstream.

The 1980 report expands on the findings of the 1979 determinations. Reviewing the factual information of the 1979 report, the author of the 1980 review states

that “[i]f there had been a need, small boats like those customarily used on the Tanana River for commercial purposes could have been successfully operated on the middle and lower reaches of the Nabesna River....” The report also states that “...an increasing number of recreation float trips are taking place on the river. People have floated down the river from Nabesna to Northway in canoes, rafts, and kayaks.” Indeed, a 1969 boat trip down the Nabesna River from the Nabesna Road to the mouth was reported in The Wild Rivers of Alaska, authored by S. Weber.

Additional historical information is available confirming the navigability of the Nabesna River. A May 1979 report authored by Terrance M. Cole for the Alaska Department of Natural Resources entitled Historic Use of the Chisana and Nabesna Rivers, Alaska references several newspaper articles describing boat travel on the Nabesna River. For example, the report cites a September 18, 1913 Fairbanks Daily Times story which states that during the stampede to Fairbanks in 1903, four prospectors built boats at the head of the Nabesna and floated to Fairbanks. This article does not say exactly where the boats were built, however an August 15, 1913 Fairbanks Daily Times article notes that the boats were built near the head of the Nabesna River, about 7 miles from the Chisana gold strike. This would indicate that the boats were built near the mouth of Cooper Creek, at the end of the Cooper Pass trail between Chisana and Nabesna rivers.

In his report, Terrence M. Cole summarizes that it was possible for Chisana stampeders to pole boats to Sargent’s Cabin, between 60-70 miles above the mouth of the Nabesna, and then go overland on the Cooper Pass trail to the diggings. While not the preferred route, it was the shorter route and was utilized by prospectors to reach the Chisana area.

A September 9, 1913 Fairbanks Daily Times article reports that a group of prospectors, the Lawson party, decided to travel by poling boat on the Nabesna. They intended to travel upstream as far as Sargent’s Cabin, about 60 miles from the mouth, and then overland to Chisana. The Lawson party did not complete their overland trip to the Chisana area. After meeting other travelers who reported on conditions at Chisana, they retreated to the Nabesna River and started back to Fairbanks. While poling down the river, the group met the steamer Tetlin about 35 miles above the mouth of the Nabesna River.

A March 2, 1979 personal interview with Mr. Ted Lowell by Department of Natural Resources historian Richard O. Stern provides information on personal and commercial boating use on the Nabesna River. Mr. Lowell states that poling boats could travel 30 to 35 miles up the Nabesna River without encountering great difficulty.

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The Nabesna River is used as a travel route for hunters accessing the Nutzotin Mountains to hunt sheep and moose. Department of Fish and Game staff conducted personal interviews with members of the public documenting their boat trips up the Nabesna. That information is included in this application. The common method of transportation is by outboard powered boat, ranging from 14 to 20 feet in length, with 2 to 4 persons and gear and food for a weeks trip. Most trips begin at the bridge over the Chisana River and include an average of 80 to 100 gallons of gasoline.

A commercial transporters' activity report supplied by National Park Service indicates that at least one group of recreational rafters floated the Nabesna River in 2004. The group was flown to the starting location at Orange Hill, near the Nabesna Glacier.

A summary of historic information describing navigability on the Nabesna River is included in the attached Bureau of Land Management's navigability bibliography.

As evidenced by navigability determinations and available historic information, the State of Alaska determines there is sufficient information to conclude that the Nabesna River is a navigable waterway and ownership of its submerged lands should be confirmed in the state.

Because the Bureau has found the Nabesna River to be navigable, it has meandered it in conveyances of the adjacent uplands and thus eliminated any possibility that others might claim an interest in the bed of the river. In any event, the state is not aware of any adverse claimant or occupant of these lands.

The state agency responsible for this application is the Alaska Department of Natural Resources, Division of Mining, Land, and Water, 550 W. 7th Avenue, Anchorage, Alaska 99501, Attention Robert Loeffler, (907) 269-8600. The State hereby authorizes the Bureau to bill the State's account \$100 for the application fee required by regulation.

Sincerely,



Thomas E. Irwin
Commissioner

Enclosures

cc: David Marquez, Attorney General, State of Alaska
Michael Menge, Special Staff Assistant, Office of the Governor
McKie Campbell, Commissioner, Alaska Dept. of Fish and Game
Cam Toohey, Special Assistant to the Secretary for Alaska
Robert Loeffler, DNR, Division of Mining, Land and Water
Senator Gene Therriault, Chair, Legislative Budget & Audit Joint
Comm.
Public Information Center, Department of Natural Resources
Jed Davis, Superintendent, Wrangell-St. Elias National Park and
Preserve
Warren Keogh, Water Rights Coordinator, NWRS, US Fish and
Wildlife Service
Edward Merritt, Refuge Manager, Tetlin National Wildlife Refuge
Chris Milles, Acting Regional Manager, Northern Region, DNR
Rick Thompson, Regional Manager, Southcentral Region, DNR
Northway Traditional Council
Northway Village Council
Northway Natives, Inc.
Community of Nabesna
John Craig, Chair, Ahtna, Inc.
Georgianna Lincoln, Doyon, Limited
Harold Brown, Tanana Chiefs Conference

Legal Description:

Nabesna River within the State of Alaska, more particularly described as follows:

All submerged lands within the bed of the Nabesna River, including all channels, braids and sloughs between the ordinary high water lines of the left and right banks of the Nabesna River, beginning at the Nabesna Glacier within Township 5 North, Ranges 13 and 14 East, Copper River Meridian, Alaska;

Thence northeasterly, generally within the following township of the Copper River Meridian as determined from USGS 1:63 360 series topographic maps Mc Carthy (D-5) 1960; Nabesna (A-4) 1959; Nabesna (B-4) 1960 (minor revisions 1970); Nabesna (C-4) 1960 (minor revisions 1973); Nabesna (C-3) 1955 (minor revisions 1973); Nabesna (D-3) 1955 (minor revisions 1962); Nabesna (D-2) 1955 (minor revisions 1978); Tananacross (A-2) 1955 (minor revisions 1972); the precise location may be within other townships due to the ambulatory nature of water bodies:

Township 5 North, Ranges 13, 14 East;
Township 6 North, Ranges 13, 14 East;
Township 7 North, Ranges 14, 15 East;
Township 8 North, Ranges 14, 15 East;
Township 9 North, Ranges 15, 16, 17 East
Township 10 North, Ranges 17, 18 East;
Township 11 North, Ranges 17, 18 East;
Township 12 North, Ranges 17, 18 East;
Township 13 North, Ranges 17, 18 East;
Township 14 North, Ranges 18, 19 East;
Township 15 North, Ranges 18, 19 East.

To the terminus, being all points of confluence with the Tanana River and Chisana River within Township 15 North, Range 19 East, Copper River Meridian, Alaska.