



# United States Department of the Interior



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## Memorandum

To: File AA-86373 (1864)

From: Ralph Basner, Navigable Waters Specialist (AK9410) *Ralph Basner*

Subject: Summary Report on the Federal Interest in Lands Underlying the George River in the Kuskokwim Subregion, Alaska

On March 10, 2006, the State of Alaska (State) filed an application for a recordable disclaimer of interest (RDI) with the Bureau of Land Management (BLM) for the lands underlying the George River, a major tributary of the Kuskokwim River.<sup>1</sup> The State submitted an application for "the submerged lands within the bed of the George River between the ordinary high water lines of the left and right banks, beginning at its source in Township (T.) 29 North (N.), Range (R.) 42 West (W.), Section (Sec.) 27, Seward Meridian (S.M.), Alaska, USGS 1:63,360 series topographic map Iditarod C-3 (1954); thence southerly to its confluence with the Kuskokwim River in T. 21 N., R. 46 W., Sec. 21, S. M., Alaska USGS 1:63,360 series topographic map, Sleetmute D-5 (1954, minor revisions 1975).<sup>2</sup> The George River flows through the following Townships and Ranges:

### Seward Meridian, Alaska

T. 29 N., R. 42 W.

T. 28 N., Rs. 42 and 43 W.

T. 27 N., R. 43 W.

T. 26 N., Rs. 42 and 43 W.

T. 25 N., Rs. 43 and 44 W.

T. 23 N., Rs. 45 and 46 W.

T. 22 N., Rs. 45 and 46 W.

T. 21 N., R. 46 W.

<sup>1</sup> Letter, State of Alaska, Dep't of Natural Resources to Henri Bisson, Director, Alaska State Office, BLM, Re: Disclaimer of Interest Application for George River, March 10, 2006, (BLM File AA-86373).

<sup>2</sup> USGS 1:63,360 series topographic map Iditarod C-3 (1954); USGS 1:63,360 series topographic map, Sleetmute D-5 (1954, minor revisions 1975).

The precise location may (also) be within other townships due to the ambulatory nature of water bodies.

On September 16, 2015, the state modified its application by withdrawing the segment of the George River from the Julian Creek confluence upstream to its headwaters. In doing so, the State reiterated its policy that the withdrawal does not constitute an admission that the upper portion of the George River is non-navigable and that its action was for the “sole purpose of simplifying the RDI process.”<sup>3</sup>

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 (Alaska) Submerged Lands Act of 1988, or any other legally cognizable reason. The BLM may disclaim federal interest in the submerged lands on any of the grounds that apply. The State’s application for lands underlying the subject water body must also meet the regulatory requirements in 43 CFR Subpart 1864, including whether or not another land managing agency with jurisdiction over the affected lands submits a valid objection.

In support of its application, the State submitted three navigability reports prepared by the BLM on May 6, 1980, November 8, 1984, and July 8, 1985. Also included was an extract of the “Regional Report” for the Kuskokwim River Region prepared by the BLM in 1985. The State attached to the application three maps based upon the 1:63,360 topographic maps with water body data extracted from the USGS National Hydrography Dataset – 2004, detailing the river from its mouth to its source.

This paper summarizes the history of land status and conveyance actions, BLM navigability determinations, and evidence related to commerce, subsistence, mining and recreational use.

## Location

The mouth of the George River is located in the Kuskokwim Subregion about 23 miles northwest of Sleetmute, Alaska.<sup>4</sup> The river flows approximately 80 miles from its source in the northern Kuskokwim Mountains to its confluence with the Kuskokwim River. The George River is a non-glacial river draining an estimated 1,400 square miles.<sup>5</sup> The upper river consists of multiple channels across a relatively broad, flat and marshy valley. Below the river’s confluence with the East Fork (George River) at river mile 13, the river transforms into a swift river with numerous small rapids through a series of canyons on its final leg to the Kuskokwim River. Major tributaries include the East, South, and North Forks, and Michigan and Beaver Creeks.

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<sup>3</sup> Letter, State of Alaska, Dep’t of Natural Resources to Angela Nichols, RDI Program Manager, Alaska State Office, BLM, Recordable Disclaimer of Interest Application approval for George River – AA-86373, September 16, 2015, (BLM File AA-86373).

<sup>4</sup> Orth, Dictionary of Alaska Place Names, Geological Survey Professional Paper 567.

<sup>5</sup> Stewart, Robert and Molyneaux, Alaska Department of Fish and Game (ADF&G), & Orabutt, David, Kuskokwim Native Association (Aniak), *George River Salmon Studies, 2004*, ADF&G, Division of Sport Fish Research and Technical Services, Anchorage, Alaska, December, 2005.

## Land Status and BLM Navigability Determinations

No pre-statehood withdrawals were in effect at the date of statehood. The riparian lands between river miles 0-22 (mouth at the Kuskokwim River up to the north section line of section 21, township 23 north, range 45 west, Seward Meridian, Alaska) have been conveyed to the Kuskokwim Corporation (successor in interest to Georgetown Incorporated).<sup>6</sup> Continuing upstream, the next 13 miles of river are surrounded by BLM – managed uplands (up to the western township boundary of township 24 north, range 44 west, Seward Meridian, Alaska). The remainder of the river, up to its source in township 29 north, range 42 west, Seward Meridian, Alaska is bordered by a combination of state selected, tentatively approved or patented uplands. Only two Native allotments are situated on the George River, one at the mouth (river mile “0”)<sup>7</sup> and the other at approximate river mile 37.<sup>8</sup>

The BLM first considered the navigability of the George River after the Georgetown Native Corporation (now the Kuskokwim Corporation) selected adjacent uplands along the lower 22 miles pursuant to the provisions of ANCSA.<sup>9</sup> After meetings with local villagers, the BLM easement task force recommended that the river be determined navigable through the lands being considered for conveyance. On August 25, 1982, the BLM determined the George River navigable through Georgetown Native Corporation’s selected lands.<sup>10</sup> BLM’s earlier finding was affirmed on November 8, 1984, when the agency determined the lower 41 miles of the George River navigable to Julian Creek (section. 4, township 24 north, range 44 west, Seward Meridian, Alaska).<sup>11</sup> The BLM noted in that report that the “mining properties were supplied by river and trail.”

Upon issuance of Interim Conveyance (IC) 728 on September 30, 1983, the BLM’s initial navigability determination became final for the Department for the lower 22 miles where the George River flows through ICd (now patented) lands.<sup>12</sup> This means that the BLM now has no authority to change that navigability determination. Subsequent navigability determinations

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<sup>6</sup> Patent Nos. 50-94-0005, 50-2012-0048. An approximate one-mile stretch of the George River (RM 7-8) within Sec. 7, T. 22 N., R. 46 W., SM flows through state selected lands. A short stretch (one-half mile stretch, approximate river mile 13) within Sec. 18, T. 22 N., R. 45 W., SM flows through BLM managed lands.

<sup>7</sup> Certificated Native allotment, 50-2005-0078.

<sup>8</sup> Certificated Native allotment, 50-2014-0047.

<sup>9</sup> Alaska Native Claims Settlement Act, P.L. 92-203 (85 Stat. 688), December 18, 1971.

<sup>10</sup> SD Memo, Chief, Division of ANCSA and State Conveyances (960) from Assistant to the State Director for Conveyance Management (913), Final Easements for the Kuskokwim Corporation in the Vicinity of the Village of Georgetown, Aug. 25, 1982 (BLM file F-14860-EE).

<sup>11</sup> Memorandum, Deputy State Director for Conveyance Management (960) to Chief, Branch of Conveyance Services (962), Navigable Waters of the Kuskokwim Region, Alaska, Nov. 8, 1984 (BLM Case file FF-14860-EE).

<sup>12</sup> Submerged Lands Act of 1988, 43 U.S.C. § 1631.

were issued on July 8, 1985, August 18, 1988, and April 16, 2004, affirming the earlier determination that the George River is navigable to river mile 41 at Julian Creek).<sup>13</sup>

### Background Information

Historically, the earliest inhabitants used the Kuskokwim River region in pursuit of salmon and other subsistence resources. However, specific use by Natives on the lower George River is not well documented. The first non-native explorer was probably Lt. Lavrenty Zagoskin of the Russian Imperial Navy who explored the region in 1842 at the behest of the Russian-American Company.<sup>14</sup> A summer subsistence fish camp or village near the mouth of the George River was known by its native name of Keledzhichagat, which preceded modern day Georgetown.<sup>15</sup>

The discovery of placer gold in 1909, on the Julian Creek tributary sparked a minor gold rush. Miners spread into the country staking claims throughout the George River watershed including many along Julian Creek and other George River tributaries.<sup>16</sup> Within a couple of years, more than 30 men were said to be working the gravels of the George and its tributaries.<sup>17</sup> By the 1930s, two miners named Miscovich and Rodman annually employed seven men on an open cut hydraulic operation on Julian Creek. Subsequent mining operations at the site continued off and on, particularly during the period of 1950 to 1953 and 1966 to 1971.<sup>18</sup>

At the mouth of the George River, the mining settlement of Georgetown quickly developed. The settlement was named for three traders named George: George Hoffman, George Fredericks and George Morgan. George Fredericks opened a trading Post in 1910 and a post Office was established in 1912 (it would close a year later).<sup>19</sup> By 1910, Georgetown was said to have had 300 inhabitants and 200 structures in support of the mining activity occurring up the George River. In 1911 a fire destroyed most of the buildings and by 1953, only one large structure remained, a two-story log house belonging to George Fredericks.<sup>20</sup> A second settlement, also

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<sup>13</sup> BLM Memorandum, "Navigable Waters of the Kuskokwim Region, Alaska," Nov. 8, 1984; BLM Memorandum, To Chief, Navigability Section, from Historian, "Water Bodies Determined Navigable in Regional Report Process as of July 10, 1985," July 8, 1985; BLM Memorandum, Deputy State Director for Cadastral Survey (923) from Deputy State Director for conveyance Management (960), "Navigable Waters in Group Survey 196 (Window 808)," Aug. 18, 1988, and BLM Memorandum, Chief, Branch of Survey Planning and Preparation (927) from Chief, Navigability Section (927), "Navigable Waters in the Georgetown (2672) and Lime Village (2667) Survey Windows, (Calista Region, CAA-1)," April 16, 2004.

<sup>14</sup> Memorandum, Frost, Jack, To File AA-086371, Federal Interest in Lands Underlying Kuskokwim River in the Kuskokwim Subregion, Alaska.

<sup>15</sup> <http://www.calistacorp.com/shareholders/village/georgetown>

<sup>16</sup> C. Michael Brown, *Alaska's Kuskokwim River Region, A History*, BLM, Alaska State Office, Anchorage, Alaska, 1985.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Alaska State Library Historical Collections, "Trip to Alaska: Georgetown, King Island, Little Diomed and Other Alaskan Communities, ca. 1910-1920," PCA 227, Alaska Department of Education & Early Development, Division of Libraries, Archives & museums, PO Box 110571, Juneau, Alaska.

<sup>20</sup> [https://en.wikipedia.org/wiki/Georgetown,\\_Alaska](https://en.wikipedia.org/wiki/Georgetown,_Alaska).

called Georgetown, developed easterly of the George River. By 1965, the State established a school, but with the continued decline of mining, the school closed by 1970.<sup>21</sup>

### Boat Use

The George River became one of the customary routes for travel to mining operations along the river. In 1910, D.H. Sleem reported that men in boats ascended the river for a considerable distance. Commenting on recent gold discoveries on Julian Creek and the North Fork, a local newspaper reporter observed that boats could be taken up the George River to the site of the new strikes. Upon his visit to Georgetown in 1914, Philip S. Smith of the USGS learned that under ordinary river conditions poling boats could easily ascend the George River for a distance of twenty-five to thirty miles (“airline distance”). In 1935, Stephan R. Capps, also from the USGS, reported that miners shipped supplies up the George River to Julian Creek in poling boats equipped with outboard motors.<sup>22</sup>

In more modern times Richard A. Dotsen and David P. Mindell, while conducting raptor surveys, floated down the East Fork of the George River and the main stem of the George River to the Kuskokwim River using an Avon Redshank inflatable raft from July 31 to August 2, 1979. Few details about their 60-mile trip are available. They described the river as “relatively slow” and they noted that the “George River and East Fork River are seasonally navigable by small motorized craft.”<sup>23</sup>

In 1975, while considering easements across native-selected lands the BLM noted that the river was historically used as a “water supply route to mining areas north of the village selected area. On March 3, 1977, the BLM State Director wrote that small barges (20’ x 60’), loaded with fuel, have been taken up the river as far as Julian Creek where the river was forty feet wide and four to six feet deep.<sup>24</sup> A BLM field crew traversed the stretch within the selection area in a 20-foot inboard jet boat in 1979. The boat had a load capacity of 1,765 pounds and was capable of hauling 1000 pounds of freight.<sup>25</sup>

### Conclusions

The Federal test of navigability is found in *The Daniel Ball*, 77 U.S. (10 Wall.) 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.”

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<sup>21</sup> [https://en.wikipedia.org/wiki/Georgetown,\\_Alaska](https://en.wikipedia.org/wiki/Georgetown,_Alaska).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> McVee, Curtis, BLM, *State Director, Notice of Proposed Easement Recommendations for the Village of Georgetown*, March 3, 1977.

<sup>25</sup> Ibid. Chapter 6, Water Transport.

When assessing the navigability of inland water bodies, the BLM relies upon this test as well as Federal statutes, Federal case law, and the advice of the Department of the Interior's Office of the Solicitor. 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. In cases concerning pre-statehood reservations, BLM uses the established criteria set out and applied by the Supreme Court in two Alaska cases, *Alaska v. United States*, 545 U.S. 75 (2005) ("*Glacier Bay*") and *United States v. Alaska*, 521 U.S. 1 (1997) ("*Arctic Coast/Dinkum Sands*").

After reviewing the available evidence and applying the aforementioned standards we conclude that the George River was navigable in fact at the time of statehood from river mile 22, upstream approximately 19 miles, to its confluence with Julian Creek in Sec. 4, T. 24 N., R. 44 W., S.M.<sup>26</sup> The uplands surrounding the lower 22 miles of the George River were conveyed to Georgetown, Inc., on September 30, 1983, making the BLM's prior-issued navigability determination for the lower river final for the Department of the Interior. Therefore, we recommend that the BLM grant the State's application for a recordable disclaimer of interest for the riverbed of the George River from its mouth up to the confluence with Julian Creek for a distance of approximately 41 river miles.

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<sup>26</sup> The uplands surrounding the George River within T. 24 N., R. 44 W., SM (approximate river mile 35-41, at Julian Creek) were Tentatively Approved to the State on Mar. 6, 1998, Aug. 22, 2003, and Oct. 3, 2007. The bed of the river within these lands will be disclaimed based on riparian ownership. An approximate one-mile stretch of the George River (river mile 7-8) within Sec. 7, T. 22 N., R. 46 W., SM flows through state selected lands which were not conveyed to Georgetown, Inc. In addition, a short stretch (one-half mile stretch, approximate river mile 13) within Sec. 18, T. 22 N., R. 45 W., SM flows through BLM managed lands. These stretches of the George River are included with this paper's findings of navigability for the George River from river mile 22 through river mile 41.