

## Bennett, John F (DOT)

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**From:** Bennett, John F (DOT)  
**Sent:** Tuesday, June 05, 2012 12:37 PM  
**To:** Potridge, Wesley A (DOT); Shurr, Martin D (DOT); Martellgreenblatt, Rose (DOT)  
**Subject:** FW: Mosquito Fork Navigability

Wes/Marty/Rose: Jessie is the State AAG (DNR) handling navigability quiet title litigation. Once I saw the news article this weekend it seemed that this would outline the current State position and guide us in how we would have to handle the Snake river through pre-statehood patented federal mining claims that straddle the river. I haven't read the complaint yet but her email pretty much confirms my suspicions. JohnB

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**From:** Alloway, Jessie M (LAW)  
**Sent:** Tuesday, June 05, 2012 9:31 AM  
**To:** Bennett, John F (DOT)  
**Subject:** FW: Mosquito Fork Navigability

Hey John. Sorry I didn't get back to you yesterday; it was my RDO.

Yes, we have a similar issue in the Mosquito Fork (I've attached the complaint we filed). In the Mosquito Fork, we have pre-statehood patented federal mining claims. Our litigating position will be that all navigable waters within the Territory of Alaska were put into trust for the future state through the Alaska Right of Way Act of 1898 (which essentially applied the "equal footing doctrine" to the Territory). We will then argue that any disposal of land through the general land laws was insufficient to defeat the future state's title. I believe the State has made arguments on the general land laws before, but the Courts have never directly answered it. We have some more help in this area as the Act which applied the mining laws to the Territory of Alaska had some specific language (it is codified at 30 USC 49a). We quote this in the Complaint, but what the section provides is that although the "laws of the United States relating to mining claims, mineral locations, and rights incident thereto" were extended to the Territory of Alaska, "[n]o person shall acquire by virtue of [that extension] any title to any land below the line of ordinary high tide or the line of ordinary high-water mark." 30 U.S.C. 49a

Please let me know if you need anything else from me.

Jessie  
269-5108

**\*CONTAINS ATTORNEY CLIENT PRIVILEGED COMMUNICATION\***

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**From:** Sullivan, Kent (LAW)  
**Sent:** Monday, June 04, 2012 9:30 AM  
**To:** Bennett, John F (DOT)  
**Cc:** Alloway, Jessie M (LAW)  
**Subject:** RE: Mosquito Fork Navigability

John: Jessie Alloway is the state's attorney concerning navigability issues and she is the one who is also responsible for the Mosquito Fork filing. I have copied her on this email and will ask her to follow-up with you on the issues you reference below. If you have any other questions or need anything else, please just let me know. Thanks, Kent

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**From:** Bennett, John F (DOT)  
**Sent:** Monday, June 04, 2012 9:27 AM  
**To:** Sullivan, Kent (LAW)  
**Subject:** Mosquito Fork Navigability

Kent, I just saw a news article where the state filed a suit against BLM regarding the Mosquito Fork in the Fortymile area. I wasn't sure if you were working on that or someone else but I would like to get some of the filings and some direction on a similar issue. I'm working on a project to expand our land holdings at Nome Airport. I'm pretty sure I know the answer to my question but I want to get the current official state position. Title to navigable waters is supposed to be based upon navigability at statehood. The Nome area has many old federal mining claims that were patented prior to statehood. The Snake river runs through the Nome Airport and is considered navigable by DNR. However, I suspect that the pre-statehood mining claim patents did not consider such a thing as navigability and the landowners will likely object to a state claim of title by navigability. My understanding is that even though the navigable waters were not reserved in the pre-statehood mining patents, the state will still claim title to these waters. Who should I contact to get confirmation on that concept? Thanks in advance. JohnB

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