



## MEMORANDUM FOR NWS-2006-82

**Subject:** Clarification of Closest Traditional Navigable Water (TNW) for Jurisdictional Determination (JD) NWS-2006-82

### Summary

The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) have determined that the North Fork Stillaguamish River (North Fork) is the closest TNW for JD # NWS-2006-82. This determination is consistent with the Clean Water Act (CWA), the agencies' regulations (including 33 C.F.R. Parts 328.3 and 329), relevant case law, and existing guidance, including the *JD Form Instructional Guidebook<sup>1</sup> and Appendix D Regarding Waters that Qualify as Waters of the US Under Section (a)(1) of the Agencies' Regulations ("Appendix D")*.

### Location

The North Fork is located in Snohomish County, Washington, originating in the northern Cascades. The North Fork flows for approximately 45 miles before joining with the South Fork to form the main stem Stillaguamish River. The Stillaguamish River flows for an additional 17.8 miles to the Puget Sound. The lower eight miles of the Stillaguamish River are designated as Section 10 waters. The subject JD site is located at approximately mile 19.5 on the North Fork near latitude 48.2722° North and longitude 121.8569° West.

### Basis for TNW Determination

As stated in *Appendix D*: "when determining whether a water body qualifies as a "traditional navigable water" (i.e., an (a)(1) water), relevant considerations include whether a Corps district has determined that the water body is a navigable water of the United States pursuant to 33 CFR 329.14, or the water body qualifies as a navigable water of the United States under any of the tests set forth in 33 CFR 329, or a federal court has determined that the water body is navigable-in-fact under federal law for any purpose, or the water body is "navigable-in-fact" under the standards that have been used by the federal courts."<sup>2</sup>

To determine whether the North Fork is a TNW, the agencies conducted a case-specific analysis to evaluate whether the North Fork is navigable-in-fact. The agencies have determined that the North Fork<sup>3</sup> is a TNW due to several factors:

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<sup>1</sup>U.S. Army Corps of Engineers *Jurisdictional Determination Form Instructional Guidebook* (June 5, 2007).

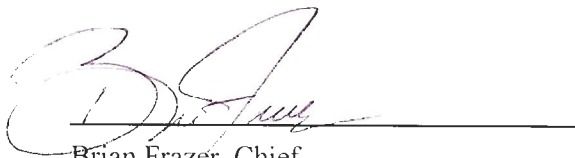
<sup>2</sup>Section 10 waters under the Rivers and Harbors Act of 1899 are only a subset of TNWs. Any water which meets the considerations identified in Appendix D is also a TNW.

<sup>3</sup>This determination applies to the North Fork beginning at 48 deg 19.67 min N & 121 deg 38.40 min W

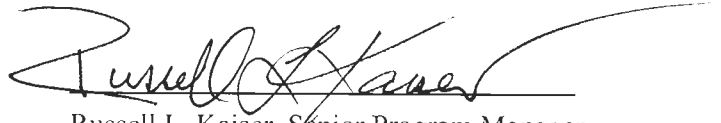
- The North Fork is accessible to the public via multiple locations, including a boat ramp located in Haller Bridge Park.<sup>4</sup>
- There is documented use of the river for navigation. The North Fork is widely publicized as a popular location for canoeists and other paddlers to experience both flat and whitewater paddling.<sup>5</sup> Additionally, physical characteristics, including flow data, support a determination that the North Fork is capable of navigation.<sup>6</sup>
- A combination of the factors above demonstrate the North Fork is susceptible to being used for water-based interstate commerce by interstate and foreign travelers. In addition, the nearby Mount Baker-Snoqualmie National Forest<sup>7</sup> is a popular destination for travelers seeking recreational boating and guided river trips, who are also likely to use the North Fork for water-based activities.<sup>8</sup>

## Conclusion

Collectively, the factors described above demonstrate that the North Fork is navigable-in-fact, resulting in its designation as a TNW for purposes of CWA jurisdictional determinations. The Seattle District should revise the JD form to reflect this determination.



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(approximately 20 miles upstream of the JD site at River Mile 38) to the downstream confluence with Stillaguamish River. This designation of the nearest TNW for purposes of this JD does not preclude the future determination for any portions upstream if additional information warrants such determination.

<sup>4</sup>American Whitewater identifies 7 access points along the North Fork at [www.americanwhitewater.org/content/River\\_detail\\_id\\_2237](http://www.americanwhitewater.org/content/River_detail_id_2237). Also see <http://www.eddyflower.com/RunDetail.aspx?RunId=796>, indicating additional put in location at Darrington (above JD site).

<sup>5</sup>See, for example: [www.riverfacts.com/rivers/13874.html](http://www.riverfacts.com/rivers/13874.html), [www.americanwhitewater.org/content/River\\_detail\\_id\\_2237](http://www.americanwhitewater.org/content/River_detail_id_2237), and [www.trails.com/teatalog\\_trail.asp?trailid=CGW027-010](http://www.trails.com/teatalog_trail.asp?trailid=CGW027-010).

<sup>6</sup>USGS field measurements indicate an average flow of 1894cfs, with an average depth of 8.5 feet, based upon gage station measurements with 1890cfs level at 130' width, and a cross sectional area of 737 sq ft. See <http://wa.water.usgs.gov/cgi/adr.cgi?12167000>.

<sup>7</sup>The Mount Baker-Snoqualmie National Forest extends 140 miles along the western slopes of the Cascade Mountains from the Canadian border to the northern boundary of Mt. Rainier National Park. The JD site lies along Washington Highway 530, one of the primary routes to the forest from the Interstate 5 corridor and the Seattle-Tacoma and Bellingham international airports. Highway 530 follows the North Fork through a narrow (i.e., 1.5- to 4-mile wide) corridor of private land between two units of the National Forest. The first seven miles of the North Fork are within the National Forest.

<sup>8</sup>See Mt. Baker-Snoqualmie Forest Visitor's Guide at: [http://www.fs.fed.us/r6/mbs/publications/MtBakerSnoqualmie\\_VisitorGuide2003.pdf](http://www.fs.fed.us/r6/mbs/publications/MtBakerSnoqualmie_VisitorGuide2003.pdf).