



# United States Department of the Interior

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AA-085443 (1864)  
AA-085445 (1864)

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

From: Navigable Waters Specialist

Subject: RDI Summary Report for the Klehini River, Chilkat Lake, and Clear Creek, Southeast Alaska

The purpose of this paper is to review the merits of the State of Alaska's (State) applications for recordable disclaimers of interest (RDI) for lands underlying the subject rivers and lake. On May 12, 2004, the State filed applications with the Bureau of Land Management (BLM) for the beds of the Chilkat, Klehini, and Tsirku Rivers, and Chilkat Lake.<sup>1</sup> (Chilkat River and Tsirku River will be addressed in a separate report.) On June 23, 2005, the State amended its Chilkat Lake application to include Clear Creek, which flows from Chilkat Lake to the Tsirku River.<sup>2</sup>

The State's applications cite several legal authorities in support of its claim to these lands. Initially, the State asserted that the subject water bodies are navigable in fact and in law and, therefore, under the Equal Footing Doctrine, title to the lands underlying the water bodies passed to the State at the time of statehood (1959). On June 8, 2005, the State amended its applications by asserting ownership of the submerged lands under the Equal Footing Doctrine, the Submerged Lands Act of 1953, the Alaska Statehood Act, the Submerged Lands Act of 1988, and "any other legally cognizable reason."<sup>3</sup>

In support of its applications, the State also submitted numerous BLM memoranda containing administrative navigability determinations for the water bodies. The navigability determinations were made in support of land conveyances under the Alaska Statehood Act and the Alaska Native Claims Settlement Act (ANCSA). The memoranda also contain evidence relating to the navigability of the subject water bodies. In addition, the State provided evidence of boating traffic on Clear Creek. The information in all these memoranda has been incorporated into this memo where appropriate. For a complete list of the submitted documents for each application, see Attachment A.

<sup>1</sup> Tom Irwin to Henri Bisson, BLM, May 12, 2004, for Chilkat River, in file AA-085444 (1864), Alaska State Office, BLM records, Anchorage. Identical letters were sent for Klehini River (A-085445), Tsirku River (AA-085447), and Chilkat Lake (AA-085443).

<sup>2</sup> Thomas E. Irwin to Henri Bisson, June 23, 2005, file AA-085443, BLM records.

<sup>3</sup> Thomas E. Irwin to Henri Bisson, June 8, 2005, file AA-085444, BLM records.

## Klehini River

### Land Status<sup>4</sup>

Originating in Canada, the Klehini River flows easterly 15 miles to empty into the Chilkat River. The Klehini River crosses the United States-Canada International Boundary in T. 28 S., R. 53 E., Copper River Meridian (CRM). By Presidential Proclamations dated June 15, 1908 and May 3, 1912, the United States reserved a strip of land, sixty feet wide, along the International Boundary. This reservation included the bed of the Klehini River and continues to be in effect to this date.

In Alaska, the river is located in four townships: Tps. 28 S., Rs. 53-56 E., CRM. Nearly all of its riparian lands have been conveyed out of federal ownership to the State of Alaska. In the late 1950's, the Territory of Alaska acquired title to surveyed riparian lands along the lower reaches of the river under the Act of January 21, 1929 (45 Stat. 1091).<sup>5</sup> Shortly after the First World War, these lands were surveyed under the rectangular survey system.<sup>6</sup> By Clear List No. 7, approved January 24, 1956, the Territory of Alaska received title to lands in Sec. 26-28, T. 28 S., R. 55 W., CRM. By Clear List No. 8, approved May 14, 1957, the Territory received title to riparian lands in Secs. 29 and 30, T. 28 S., R. 55 E., CRM, and in Sec. 31, T. 28 S., R. 56 E., CRM. By Clear List No. 9, approved May 12, 1958, the Territory received title to riparian lands in Sec. 30, T. 28 S., R. 55 W., CRM. The State acquired title to much of the remaining riparian lands under the Mental Health Act of 1956 (patent nos. 50-65-0019 and 50-65-0235).

The remaining federal lands, managed by the BLM, are scattered along the left bank of the river. The lands, all selected by the State, are located in: Section 22, T. 28 S., R. 54 E., CRM (AA-060929); Sec. 25, T. 28 S., R. 55 E., CRM (A-060929); and Secs. 29-32, T. 28 S., R. 56 E., CRM (AA-060929 and/or AA-076059).

### BLM Navigability Determinations

The Klehini River was determined to be nonnavigable for the conveyances on Clear Lists 7, 8, 9 in the 1950's. These determinations were part of appealable decisions.<sup>7</sup> In 1960 the BLM again

<sup>4</sup> Land status analyses are based solely on BLM master title plats.

<sup>5</sup> U.S. Bureau of Land Management, Territory of Alaska Clear List Nos. 7, 8, and 9, Alaska State Office, BLM, Anchorage. Copies of these documents are available in the BLM's public room, Alaska State Office, Anchorage.

<sup>6</sup> In 1919, 1920, and 1924, government surveyors extended the rectangular survey net to the Klehini River. Most of these surveys encompassed lands along the north bank of the Klehini River and along the Haines road. The north bank of the river was meandered and segregated from uplands in Tps. 28 S., R. 53-56 E., CRM. The south bank of the river was meandered and segregated in where the river leaves the township in Section 24, T. 28 S., R. 53 E.; in Secs. 22, 23, and 24, T. 54 E.; in T. 28 S., R. 55 E.; and T. 28 S., R. 56 E., CRM.

<sup>7</sup> In 1955, a BLM official wrote: "The Klehini River is a swift river containing several channels, which makes navigation difficult except for the most experienced river men. None of the lands along its bank are desirable or suitable for dock or wharf purposes. People desiring to reach the Klehini River anywhere in the vicinity of the lands involved [Clear List No. 7 lands], naturally resort to traveling along the highway which borders the Klehini River on its left limit." George E. M. Gustafson, Agriculturist Economist (Land), to Acting Area Lands and Minerals Officer, Area 4, January 13, 1955, file A-22226, Mixed Land Cases, c. 1885-1969, RG 49, NA, Anchorage. See also Virgil O. Seiser, Decision, August 1, 1955 [for Clear List No. 7, file A-22226; Virgil O. Seiser, Decision, July 20, 1955

determined that the Klehini River was nonnavigable.<sup>8</sup> This decision was made for the State's land selection application A-60929 under the Mental Health Act of 1956. Under this authority, the State applied for Lot 2 of Tract B, U.S. Survey No. 3708, a metes and boundary survey encompassing much of the Klehini River valley. In the survey, the Klehini River was not meandered and the submerged lands were not segregated from uplands. On May 20 and July 27, 1964, the BLM issued two appealable decisions granting tentative approval of lands encompassed by Lot 2, Tract B of U.S. Survey 3708 and lands in Secs. 25 and 26, T. 28 S., R. 55 E., CRM (patent no. 50-65-0019). On July 27, 1964, tentative approval was given to additional riparian lands in Tps. 28 S., Rs. 53-56 E., CRM (patent no. 50-65-0235).<sup>9</sup> The decisions were not appealed.

### Summary

The United States has reserved a sixty-foot-wide section of the riverbed at the International Boundary.

The BLM has consistently determined that the Klehini River is nonnavigable from its mouth to the international boundary. These determinations were included in appealable decisions for the conveyance of land to the Territory and State of Alaska. The determinations were not appealed and, as a result, are binding between the Department and the State of Alaska under the doctrine of administrative finality. As upland owner of riparian land to a nonnavigable waterway, the State has title to the submerged lands adjoining its riparian ownership to the center of the river and where it owns both sides of the river, the State owns the entire bed. The United States retains ownership of the submerged land adjacent to its riparian ownership to the center of the river. At the time of conveyance of this land to the State, ownership of the submerged land would likewise transfer.<sup>10</sup>

### Recommendations

1. The State's application for the Klehini River where it crosses the International Boundary should be denied. The United States reserved a sixty-foot strip of the riverbed at the International Boundary.
2. The State's application for the Klehini River where it abuts federal riparian lands should be denied. The United States continues to have an interest in these submerged lands. The federal lands are scattered along the left bank of the river and all are selected by the State. The lands (and State selection file numbers) are located in: Section 22, T. 28 S., R. 54 E., CRM (AA-

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[for Clear List No. 8], file A-22286; and Virgil O. Seiser, Decision, May 12, 1958, file A-22256 [for Clear List No. 9], Mixed Land Cases, c. 1885-1969, RG 49, NA, Anchorage.

<sup>8</sup> Gerald G. Wright, Land Examiner, Land Examination Report, December 1, 1960, file A-060929, part 2, BLM records. Reviewing lands in Tract B, Wright wrote, "The shore space restriction does not effect [sic] this tract because the Chilkat and Klehini are classified as nonnavigable rivers."

<sup>9</sup> Alfred P. Steger, Chief, Lands Section, Decision, May 20, 1964 and Decision, July 27, 1964, file A-060929, part 3, BLM records.

<sup>10</sup> If there are any Native allotments, mining claims or other riparian landowners, they would also own title to the submerged lands abutting their riparian land.

060929); Sec. 25, T. 28 S., R. 55 E., CRM (A-060929); and Secs. 29-32, T. 28 S., R. 56 E., CRM (AA-060929 and/or AA-076059).

3. For the remainder of the Klehini River, the State's application should be approved. The United States does not have an interest in the submerged lands.

### **Chilkat Lake and Clear Creek**

#### **Land Status**

Located west of the Chilkat River and south of the Tsirku River, Chilkat Lake empties into the lower reaches of the Tsirku River through a mile-long creek locally known as Clear Creek. Chilkat Lake is located in Tps. 29 S., Rs. 56 and 57 E., CRM, and T. 30 S., R. 57 E., CRM. Clear Creek is located in Secs. 11 and 14, T. 29 S., R. 56 W., CRM.

The State of Alaska owns most lands along Chilkat Lake and all lands along Clear Creek. The State acquired title to the lands under the Mental Health Act of 1956.<sup>11</sup> Aside from State lands, there is a trade and manufacturing site (1208109) on the eastern bank of the lake in T. 29 S., R. 57 E., CRM, and two certificated Native allotments (A-034721 and 50-66-0493) in T. 29 S., R. 56 E., CRM. In all cases, Chilkat Lake was meandered and excluded from the conveyances. Clear Creek was not excluded from the survey (U.S. Survey 3708).

There are no federal lands along Chilkat Lake.<sup>12</sup> However, the United States reserved all mineral rights in numerous patents for small tract parcels on the islands in the lake. In all these instances, the lake was meandered and the submerged lands segregated from uplands in the survey (U.S. Survey 3625). The small tract patent numbers are: 1216570, 1216477, 1214764, 1216569, 1224599, 1216571, 1221629, 1205134, 1219353, 1216570, 1213673, and 1216477.

#### **BLM Navigability Determinations**

In 1962, while adjudicating the State's land selection application A-060929, the BLM determined that Chilkat Lake and Clear Creek were nonnavigable. By decision dated January 19, 1962, the BLM granted tentative approval to Tract C of U.S. Survey 3708. In this survey Chilkat Lake and Clear Creek were not meandered, and the submerged lands were not segregated from the conveyance.<sup>13</sup> The BLM's decision and tentative approval were not appealed.

#### **Summary**

As between the BLM and the State of Alaska, the BLM's determination that Chilkat Lake and Clear Creek are not navigable is final under the doctrine of administrative finality. Since the

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<sup>11</sup> Warner T. May, Decision, January 10, 1962, file A-060929, part 3; and J. A. Hagans, Decision, August 26, 1974, file A-063842, BLM records. See patent no. 1232179.

<sup>12</sup> The BLM's master title plat incorrectly shows that the SW $\frac{1}{4}$  Sec. 31, T. 29 S., R. 57 E., CRM, is selected under the Mental Health Act (A-063842).

<sup>13</sup> Warner T. May, Decision, January 10, 1962, file A-060929, part 3, BLM records. See patent no. 1232179.

State owns all land riparian to Clear Creek, it holds title to the submerged lands adjoining its riparian ownership. Since Chilkat Lake is not navigable, all landowners of land riparian to Chilkat River own a portion of the submerged lands. This includes the trade and manufacturing site and two Native allotments on land surrounding the lake as well as the numerous small tracts on the islands in the lake.

### Recommendations

The State's application for Chilkat Lake and Clear Creek should be approved, with exceptions. The United States no longer has an interest in the lands underlying these water bodies except for certain small tracts. The patent numbers for these small tracts are: 1216570, 1216477, 1214764, 1216569, 1224599, 1216571, 1221629, 1205134, 1219353, 1216570, 1213673, and 1216477.

### Interconnecting Sloughs

Since the Klehini River and Clear Creek are not navigable, neither are their sloughs. Further, the State of Alaska has submitted no information demonstrating the independent navigability of any slough. Therefore, the application for interconnecting sloughs should be denied.

### Attachments

1—State of Alaska's Documentary Submissions in Support of RDI Applications.

## ATTACHMENT A

STATE OF ALASKA'S DOCUMENTARY SUBMISSIONS IN SUPPORT OF RDI APPLICATIONS<sup>14</sup>Klehini River Application AA-085445

1. Mary Jane Sutliff, "Navigability Report: Skagway Quadrangle FY-80, Report #2 (Long Format)," May 11, 1980; Richard W. Tindall to SD (932), May 19, 1980; Realty Specialist (932) to Files, n.d. (c. June 3, 1980); and Chief, Division of Resources to State Director, n.d. (c. June 3, 1980), file AA-208, BLM records.
2. Robert W. Faithful, IV, Acting Assistant to the State Director for Conveyance Management, to Chief, Division of ANCSA and State Conveyances, May 24, 1983, file A-060929 and A-063842, state selection files, BLM records.
3. Wayne A. Boden, Deputy State Director for Conveyance Management, to District Manager (041), June 27, 1991, AA-74632 (2800), rights-of-way files, BLM records.

Chilkat Lake and Clear Creek Application AA-085443

1. Mary Jane Sutliff, "Navigability Report: Skagway Quadrangle FY-80, Report #2 (Long Format), May 11, 1980; Richard W. Tindall to SD (932), May 19, 1980; Realty Specialist (932) to Files, n.d. (c. June 3, 1980); and Chief, Division of Resources to State Director, n.d. (c. June 3, 1980), file AA-208, state selection records, BLM records.
2. C. M. Wheeler, "Navigability Report: Skagway Quadrangle-FY 82, Report No. 1," August 3, 1982; Richard J. Vernimen, Acting District Manager, to SD (960), August 4, 1982; and Chief, Division of ANCSA and State Conveyances to Assistant to the State Director for Conveyance Management, n. d. (c. August 11, 1982), file A-061132, state selection files, BLM records.
3. Robert W. Faithful, IV, Acting Assistant to the State Director for Conveyance Management, to Chief, Division of ANCSA and State Conveyances, May 24, 1983, file A-060929 and A-063842, state selection files, BLM records.
4. Robert W. Arndorfer, Deputy State Director for Conveyance Management, to Chief, Branch of State Adjudication, January 5, 1984, file A-060929, state selection files, BLM records. The BLM affirmed that Chilkat Lake is navigable in T. 29 S., Rs. 56 and 57 E., CRM.
5. Randy Bachman, Commercial Fisheries Biologist, Haines, "Waterbody Use and Observation Questionnaire," Clear Creek, April 19, 2005. Telephone interview.
6. Roy M. Josephson, "Waterbody Use and Observation Questionnaire," Clear Creek, April 26, 2005. Telephone interview.

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<sup>14</sup> Copies of these documents are available in BLM casefiles.

7. Ralph P. E(?), "Waterbody Use and Observation Questionnaire," Clear Creek, April 26, 2005. Telephone interview.

8. Robert (?), "Waterbody Use and Observation Questionnaire," Clear Creek, May 9, 2005. Telephone interview of Mark M. Sogge, Haines.

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