United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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TAKE PRIDE IN AMERICA

AA-085442 (1864)

DEC – 6 2005

Memorandum

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

From: Navigable Waters Specialist J. Frost

Subject: Navigability of the Chilkoot Lake and Chilkoot River

The State of Alaska filed an application, dated May 12, 2004 (amended on June 8, 2005), for a recordable disclaimer of interest for lands underlying the Chilkoot Lake and all submerged lands lying within the bed of the Chilkoot River between the ordinary high water lines of the left and right banks, and all interconnecting sloughs of the Chilkoot River, from its origin at Ferebee Glacier terminus within Section 8, Township 27 South, Range 57 East, Copper River Meridian (CRM), Alaska, through and including Chilkoot Lake, to all points of confluence with Lutak Inlet within T. 29 S., R. 59 E., CRM. The State identified its application on a map entitled "Chilkoot River and Lake Recordable Disclaimer of Interest Application," dated December 12, 2003. The map was submitted with the State's application.

In support of its application, the State submitted one Bureau of Land Management (BLM) navigability report dated March 25, 1980 and a memorandum of navigability review for State selections from the acting State Director dated June 3, 1980, which stated that the Chilkoot River and Chilkoot Lake are navigable.[1] The BLM issued the memoranda in support of land conveyances to the State of Alaska under the Alaska Statehood Act.

This paper considers whether any new information would require changes to BLM's prior navigability findings or, if the navigability findings are not embodied in an appealable decision, whether a current determination will be required, or, if due to land ownership, title to submerged land passed to the State pursuant to the Submerged Lands Act of 1988. Consideration is also given to whether or not the State's application for lands underlying the subject water bodies meets the regulatory requirements (43 CFR Subpart 1864).

[1] Tom Irwin to Henri Bisson, BLM, May 12, 2004, file AA-085442 (1864), Alaska State Office, BLM records, Anchorage (hereafter BLM records).

The BLM received two comments on the draft of this memo that clarify factual information in this report.[2] In addition, by letter dated October 7, 2005, the State of Alaska DNR submitted comments on the draft of this memo.[3] The State concurred with our finding that the Lower Chilkoot River and Chilkoot Lake are navigable. They do disagree with our finding that the Upper Chilkoot River above Chilkoot Lake is non-navigable. The State provided their accounts from recent phone interviews with four State employees. The employees contended that if the river was cleared of log jams and debris, the Upper Chilkoot River would be susceptible to travel. They reported the existence of log jams and debris piles located a short distance upstream of Chilkoot Lake.

Briefly stated, based on a previous determination and tidal influence, the Chilkoot River downstream from Chilkoot Lake and Chilkoot Lake are navigable. Chilkoot River above Chilkoot Lake, which was previously considered non-navigable by BLM, is affirmed. However, where Alaska is an upland owner, under the Submerged Land Act of 1988 title to submerged bed of the Chilkoot River above Chilkoot Lake has been transferred to the State of Alaska.

Since the State did not provide information about use, or susceptibility of use, of "interconnecting sloughs" for travel, trade, and commerce at statehood, this report will only address the main stem of the Chilkoot River, not its "interconnecting sloughs." The term "interconnecting sloughs" is ambiguous and imprecise and, without a land survey and a historic reconstruction of the river, it is impossible to identify the specific "interconnecting sloughs" included in the State's application. The location of the ordinary high water mark (the legal boundary) of water bodies changes over time. If water from any navigable portion of the Chilkoot River flows through a slough, then that slough is considered part of the river and title to lands underlying the slough would have passed to the State at the time of statehood. However, title to the riverbed may subsequently be affected by changes resulting from erosion, accretion or reliction.

Land Status

The Lower Chilkoot River begins at the outlet of Chilkoot Lake and continues downstream approximately one (1) mile to its mouth at Lutak Inlet. The riparian land status along the Lower Chilkoot River primarily consists of lands selected by Sealaska Corporation, a regional Native corporation, and the State of Alaska under the Alaska Native Claims Settlement Act (ANCSA) and the Alaska Statehood Act, respectively. In addition, there are three certificated Native allotments, conveyed under the Native Allotment Act of 1906.

The majority of the riparian lands along the Chilkoot Lake (approximately 1700 acres) are selected by the State of Alaska except for a small parcel selected by Sealaska Corporation

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[2] Electronic mail from Joel Telford, District Ranger DNR Alaska State Parks, Haines, Alaska, to the author on August 4, 2005, and Cynthia L. Jones, Sheldon Museum and Cultural Center, to the author on September 7, 2005 file AA-085442, BLM records.

[3] See Scott Ogan, Natural Resource Manager, to Jack Frost, October 7, 2005, and attachments, State of Alaska, Department of Natural Resources, "DNR comments on Chilkoot River and Chilkoot Lake RDI Draft Report", file AA-085442, BLM records, Anchorage.

near the lake outlet. Those riparian lands selected by the State of Alaska, along the Lower Chilkoot River, Chilkoot Lake and a portion of the Upper Chilkoot River, were previously withdrawn under Powersite Classification (PSC) No. 439. On October 29, 1998, Public Land Order (PLO) 7367 revoked that PSC, allowing for selection of those lands to the State.

The Upper Chilkoot River is described from its confluence at Chilkoot Lake upstream approximately sixteen (16) miles to its origin at a glacier terminus. The riparian lands along the Upper Chilkoot River is primarily either selected by the State of Alaska or conveyed to the State of Alaska. A portion of the State-selected lands were part of the original PSC No. 439 withdrawal. The other lands consist of one homestead property, which is actually bisected by the Chilkoot River, and not meandered from survey, and two other properties (patented homestead and certificated Native allotment) located close to the river, but does not have river frontage.

BLM and Other Federal Navigability Determinations

In a memorandum dated June 3, 1980, the State Director concurred in an Anchorage District Office (ADO) finding that Chilkoot Lake, Lower Chilkoot River and the Upper Chilkoot River from the lake to the north boundary line of Sec. 22, T. 28 S., R. 58 E., CRM, are navigable.[4] The conclusion of navigability was used in a tentative approval decision to the State.[5] The ADO's findings were made following a review of waters on lands selected by the State in T. 29 S., R. 58 W., CRM and Tps. 28 S., Rs. 57 and 58 E., CRM under file A-063034. State conveyed lands included riparian lands on the right limit of the Lower Chilkoot River in Sec. 25, T. 29 S., R. 58 E., CRM and Sec. 30, T. 29 S., R. 59 E., CRM, as well as much of the lands around Chilkoot Lake and Upper Chilkoot River.

The ADO also held that the Lower Chilkoot River is navigable. In the final recommendation section of its report, the ADO reported that Chilkoot Lake in T. 29 S., R. 59 E., CRM is navigable. However, the lake is not in this township; the Lower Chilkoot River is. The ADO focused its investigation on the Upper Chilkoot River to establish the upper limit of navigability. Little substantive information was collected about the lower river. It was reported that a lower river section must be portaged due to the presence of large boulders, and reference was made to numerous Native allotment claims along the river.[6]

In 1981 Thomas P. Blanton, an attorney representing a local homesteader, Bobby L. Cox, took issue with the BLM's findings that the upper Chilkoot River is navigable.[7] He maintained that the river is not navigable and provided local residents' affidavits as

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[4] Chief, Division of Resources to State Director, June 3, 1980, file A-063034, State selection files, BLM records.
[5] Robert E. Sorenson to State of Alaska, DNR, February 4, 1981, ibid.
[6] Mary Jane Sutliff, "Navigability Report: Skagway Quadrangle FY-80, Report #2 (Long Format), March 25, 1980, ibid.
[7] Thomas P. Blanton to Bureau of Land Management, March 10, 1981, file A-063019, Homestead Settlement file, BLM records.

evidence. Following a review of this information, the ADO recommended that "the entire Chilkoot River upstream of Chilkoot Lake be determined non-navigable." The State Director concurred, and Cox's 160-acre homestead site was surveyed and conveyed (50-84-0480). Due to this factual error, the previous tentative approval decision to the State was modified by an appealable decision dated October 13, 1981, addressed to the State as party, following the clarification that the Chilkoot River upstream of Chilkoot Lake was not navigable.[8] The BLM's position of the Chilkoot Lake and the Lower Chilkoot River being navigable remained the same.[9]

In 1986 the BLM navigability section issued a report on navigable waters in the Chilkoot River area. The report discussed the Upper Chilkoot River and Chilkoot Lake. It confirmed that the Upper Chilkoot River is non-navigable and that the lake is meanderable by reason of size. It made no specific mention of the Lower Chilkoot River, in all probability because the river is also meanderable by reason of size and thus did not require a navigability determination.[10]

A BLM memorandum titled "Report on Physical Characteristics and Historical and Contemporary Uses of the Chilkoot River," dated January 24, 1996, contains detailed information for most of the report area.[11] This report was created to assist the Solicitor's Office in obtaining necessary background information regarding a trespass issue on the Chilkoot River downstream from Chilkoot Lake.

The U.S. Army Corps of Engineers and the U.S. Coast Guard did not list either the Chilkoot River or the Chilkoot Lake as being navigable in their most recent publications.[12]

Physical Character

The Upper Chilkoot River heads at a glacier terminus and flows southeasterly approximately sixteen (16) miles to Chilkoot Lake. The gradient is about 50 feet per mile (fpm) in the first five (5) miles from the lake. The gradient for the remaining section of the river is over 100 fpm. The entire river is braided. According to Alan Cain, an Alaska

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[8] Chief, Branch of State Adjudication to State of Alaska, DNR, October 13, 1981, file A-063034, State selection files, BLM records.

[9] Richard J. Vernimen to State Director (932), June 15, 1981, file 2620, Alaska State Office, BLM; Jules Tileston to State Director, June 24, 1981, file A-063034, BLM records.

[10] Robert W. Arndorfer to Deputy State Director for Cadastral Survey, December 31, 1986, (report for survey window 1600), ibid.

[11] Ducker, James H. and Brown, C. Michael, "Report on Physical Characteristics and Historical and Contemporary Uses of the Chilkoot River", January 24, 1996, BLM Navigability Skagway Quadrangle file, Alaska State Office, Anchorage, Alaska, 1985, p. 3.

[12] For a listing of the U.S. Army Corps of Engineers' navigability determinations, go to website (http://www.poa.usace.army.mil/reg/NavWat.htm). See also the U.S. Coast Guard, "Navigable Waters of the U.S. Within the Seventeenth Coast Guard District (State of Alaska)," revision date of April, 2003, in writer's files.

Fish and Game Protection Officer, the river is filled with debris, log jams, riffles, and boulders.[13]

Chilkoot Lake is approximately 3.6 miles long by one (1) mile in width. It is reportedly up to 300 feet deep and lies at an estimated elevation of less than 100 feet.[14] Chilkoot Lake is situated at the foot of Takshanuk Mountains to the west and the Ferebee Glacier and unnamed mountains to the east.

The Lower Chilkoot River, flowing from Chilkoot Lake to Lutak Inlet, is approximately one (1) mile long. The river has been characterized as a swift and rocky stream. In 1903, the Bureau of Fisheries described the lower river as being about two miles in length with a "fierce current" and "an exceedingly turbulent stream, averaging probably 100 yards in width, filled with rocks and rapids almost the entire distance."[15] In 1929 and 1933 a stream watchman J.J. Kennedy, employed by the Bureau, reported that the river was about a mile long, about 75 yards wide, and two feet deep.[16] Kennedy in 1930 estimated the river's depth at 2 feet deep on June 26 and 2.5 feet deep on June 29th. In the spring Kennedy noted that the river runs deeper due to spring rains and snowmelt from surrounding mountains but by the time salmon arrive the water levels have gone back down.[17] Dave Olerud, a longtime resident of Haines who runs the Alaska Sport Shop, estimated that the river below the lake is a half mile to the bridge near the river's mouth. Olerud stated that the upper one-eighth mile consisted of a pool, the next one-eighth of the river was a rapid, and the remainder of the river was flatter but rocky.[18]

In 1974 the National Marine Fisheries Service reported waterflow statistics for the Chilkoot River taken at the bridge near the river's mouth. The following discharge statistics were listed in cubic feet per second (cfs.):

June 17, 1959	3,250 cfs.
September 21, 1959	735 cfs.
January 18, 1961	194 cfs.
March 17, 1961	120 cfs.
May 4, 1961	446 cfs.
June 29, 1961	2,160 cfs.

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[13] Robert W. Arndorfer to Deputy State Director for Cadastral Survey, December 31, 1986, (report for survey window 1600) file A-063034, BLM records.
[14] Prang, 2.
[15] U.S. Bureau of Fisheries, 1903, 25.
[16] J.J. Kennedy, report on Chilkoot River, August 13, 1929, and J.J. Kennedy, report on Chilkoot River, October 1, 1933, Examination of Salmon Streams, Chilkat and Chilkoot Rivers, 1920-30s, Box 162, Entry 112, Records of the U.S. Fish and Wildlife Service, Record Group 22, National Archives, Washington, D.C. (hereafter RG 22, NA, Washington).
[17] Report of J.J. Kennedy—1931, Central Classified files, Examination of Salmon Streams, Chilkat and Chilkoot Rivers, 1920-30s, Box 162, Entry 112, RG 22, NA, Washington.
[18] Ducker, p. 3.

The report also included a table of estimated mean monthly discharges.[19] The estimates were:

January	128 cfs.
February	59 cfs.
March	67 cfs.
April	61 cfs.
May	77 cfs.
June	490 cfs.
July	1,490 cfs.
August	2,490 cfs.
September	1,090 cfs.
October	525 cfs.
November	285 cfs.
December	110 cfs.

The Lower Chilkoot River is tidally influenced upstream from Lutak Inlet approximately 1/2 mile to the current site of the fish and game weir. Scott Guyer, BLM Photo Interpreter, gave his opinion that the river was tidally influenced up to the fish weir based on aerial photography of the area taken in 1979.[20]

Regional Character and Native Influence

The Chilkoot River has long been an important fishing area for Southeast Alaska Tlingit. Chilkoot Village was located on the Chilkoot River not far below the outlet of Chilkoot Lake. The name Chilkoot comes from the Tlingit word "Lk̲oot" and refers to the legend of Chilkoot Village buried by a landslide under the red bluff on Chilkoot Lake.[21]

Chilkoot Village was settled by prehistoric Indians who adapted their subsistence economy to salmon and hooligan fishing. Hooligan was utilized for their oil that was rendered by cooking the fish in an old canoe lined with hot rocks.[22] Once cooked, the oil would rise to the surface where it could be skimmed off. Villagers' lives centered on the river and its salmon. Large boulders strewn the entire length of the river were used as fishing platforms for spearing salmon as they made their way upstream to Chilkoot Lake. Individual families claimed certain rocks as theirs for fishing.[23] Natives took salmon by gaffing or spearing from the boulders or from wooden walkways which were built to bridge the boulders. During the low water of winter, villagers moved rocks in the riverbed to form weirs which, during the summer, helped funnel migrating salmon to areas in which they would more easily be taken.[24]

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[19] U.S. National Marine Fisheries Service, 130 and 133.
[20] Ducker, p. 4.
[21] Mishler and Holmes, 15.
[22] *Ibid.*, 9.
[23] Sackett, 52.
[24] Dave Mills, et al., 22.

Chilkoot Village was at one time split by the river, with the Raven clan living on the west side of the Chilkoot River and the Eagle Clan on the east side.[25] During the 1880 census, 127 people were counted at Chilkoot, and in 1882 about 120 people were counted by a German ethnologist, Aurel Krause.[26] However, by mid-June, 1900, the population of Chilkoot Village was down to just two households and seven people.[27]

Some reasons why people abandoned the village are that they left in search of wage labor, disease wiped out some of the population and others moved after the landslide buried part of the east-bank village. Another probable factor during the late 19th century and early 20th century was the rise of commercial fishing in Lutak Inlet and the corresponding decline of the sockeye runs in the Chilkoot River. The canning process that was developed in the mid-19th century created a new industry along America's West Coast including Alaska. Canneries began showing up in Alaska in 1878, spurred northward by the tremendous profits from canneries operating on the west coast of the lower 48. Canned salmon provided a new alternative to dried or salted salmon, long utilized as a subsistence food by locals and Tlingit Indians in the Chilkoot area. The canneries were located near productive salmon producing areas and the first one in Alaska was started by the North Pacific Trading and Packing Company in Klawock. In 1883 two canneries, one operated by the Northwest Trading Company and the other by the Chilkat Packing Company, opened near Haines, and through the years at least one cannery has continued to operate in the area until 1970. These early companies employed Natives and whites, but Chinese did most of the cutting and packing of salmon.[28]

The Columbia Canning Company established a cannery in 1900 near the head of Lutak Inlet near the Chilkoot River. This cannery got its fresh water from a large pipe placed in the Chilkoot River that would sometimes be used to place salmon in the pipe to transport to the canneries holding tanks. This cannery ceased operation in 1909 after it was sold.[29]

In 1922 local residents petitioned the Territorial Fish Commission for help in restoring the salmon runs.[30] The last family did not leave the area until the 1920's.[31] Cynthia Jones, formerly with the Sheldon Museum and Cultural Center in Haines, Alaska, electronically mailed the author that Paddy Goenett was the last inhabitant of Chilkoot Lake and lived there until the 1940's. Former Chilkoot families have since lived primarily in Haines, though they have continued to return to the Chilkoot River to fish.[32] However, since the mid-1960's subsistence fishing with nets and gaff hooks has been outlawed on the Chilkoot River.[33] Sport fishing with rods and reels is now the customary method for catching salmon in the river.

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[25] Mishler and Holmes, 15.
[26] *Ibid.*
[27] *Ibid.*, 16.
[28] Shelton, Rick and Linda, *The Canneries: An Historical Abstract Prepared for the Sheldon Museum*, p. 1.
[29] *Ibid.*, 3.
[30] *Ibid.*
[31] Sackett, 51-52.
[32] Goldschmidt and Haas, Dave Mills et al., Betts, 50-51.
[33] Mishler and Holmes, 17.

The Alaska Department of Fish and Game (ADF&G) built a fish counting weir in the spring of 1976 on the Lower Chilkoot River.[34] The weir is designed to give ADF&G biologists an accurate count of the sockeye escapement to Chilkoot Lake.

Lutak Road

Today, the Chilkoot River and Lake is easily accessed by car or truck from Haines by the Lutak Road, an Omnibus Act road where the State was given a deed to roads withdrawn for the U.S. Bureau of Public Roads.[35] The road meanders for about 9 miles along the shore of the Lutak Inlet. At mile 8.3, just before the bridge over the Chilkoot River, a spur veers off to the left proceeding northerly for about one mile to Chilkoot Lake, where State campground facilities and a boat ramp is located on the south end of the lake.. Joel Telford, District Ranger for the DNR Alaska State Parks, provided information to the author that a State development plan from 1967 mentions the boat ramp and campground with 12 sites. Further improvements to the campground and relocation of the boat ramp to provide easier access happened in 1991-1992. Telford surmised that both were built when the spur was extended to Chilkoot Lake.[36]

At the time of statehood, the Lutak Road extended to Chilkoot Lake. The Corps of Engineers reportedly built the first segment from Haines to the fuel tank farm and dock (about 4 miles).[37] In 1953, the Haines Business Council explored the possibilities of having the Lutak Road extended to Chilkoot Lake. The rationale for the road, according to the Business Council, was access to a good recreation spot, good fishing, and merchantable timber in the area. The council also considered extending the road to Skagway in the future.[38] In 1954, the Alaska Road Commission (ARC), a federal agency responsible for most road and trail building in Alaska prior to statehood, proposed to extend the Lutak Road toward the Chilkoot Lake area with $4,000 of the Farm and Industrial Roads construction funds.[39] The rationale for the road extension, according to the ARC, was to provide access to safer areas for the use of small boats in the protected inlet and access to homesites along the shore and timber for saw logs and wood. The ARC noted that Haines residents were circulating petitions for the construction of the road extension to Chilkoot Lake.[40] In 1955, the ARC proposed that the Lutak Road be

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[34] *Chilkat Valley News,* February 12, 1976, p. 1.
[35] Alaska Omnibus Act (73 Stat 152), June 25, 1959.
[36] Electronic mail from Joel Telford, District Ranger DNR Alaska State Parks, Haines, Alaska, to the author on
June 1, 2005, file AA-085442, BLM records.
[37] Phone interview with Cindy Jones, Sheldon Museum & Cultural Center, Inc., Haines, Alaska, February 3, 2005.
[38] John J. Schnabel, Executive Secretary, Haines Business Council to A. F. Ghiglione, Alaska Road Commission, December 19, 1953, Alaska National Archives Office, FAS No. 991, Box No. 77, 10/06/10, Record Group 30.
[39] Program Recommendations for 1954, Haines Sub-District, Alaska Road Commission Bureau of Public Roads, Project Correspondence, Juneau, Alaska, 1916-1959, Alaska National Archives Office, Box 66, 10/06/09, Record Group 30.
[40] *Ibid.*

extended another 1.5 miles to Chilkoot Lake.[41] The estimated cost was $8,000 for the project and included installing culverts in the section roughed out in 1954 and the roadway shaped up and graveled.[42] An office memorandum sent out by the ARC in December 1955 verified that the road had been pushed through to the south end of Chilkoot Lake.[43] In 1956 the ARC built a 216-foot bridge across the Chilkoot River and extended the road approximately one mile along the north shoreline of Lutak Inlet. Additionally, the section of road along the Chilkoot River to Chilkoot Lake was improved. [44]

Trail (Cox Road)

The "Cox Road" is named after Bobby L. Cox, a homestead owner on the Upper Chilkoot River. The road is located on the west side of Chilkoot Lake running from the Lutak Road northerly to homesteads located on and near the Upper Chilkoot River. Before the road, there was a trail or several trails, all reportedly constructed by the Army in or about 1930. However, we were unable to find specific documented proof of their existence. There is documented proof that the Army was constructing trails in the area. The cabin (Company F, 32nd Infantry Cabin- "Officers Cabin") at the north end of Chilkoot Lake was one terminus for a trail and was apparently constructed in 1932.[45] Henry Reeves (a local homesteader) gave testimony in 1981, during a contest of his entry that access existed around the lake when he and the other homesteaders entered the lands and that no road existed prior to the one Bobby L. Cox began in 1965, but a trail was present. In addition, two individuals, who were formerly in the Army and stationed in the area, said that they worked on the trail (under orders) to the cabin at the north end of the lake.[46]

On July 22, 1965, local homesteaders (Henry Reeves, Bobby Cox, and Gene Brown[47]) began construction of a road from the north end of Chilkoot Lake to their homestead entries in the Upper Chilkoot River area. During a field examination interview, Henry Reeves stated that he had purchased a 977 cat with front loader for $50,000. Then with the help of Bobby Cox and Gene Brown, they constructed a road from the head of the lake to the Reeves homestead. The road was then constructed on to other claims without the help of Reeves but his cat was used however.[48] By the end of August, the road was passable only by "Cat". The portion of the "Cox Road" that traverses along the west side

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[41] Program Recommendations for 1955, Haines Sub-District, Alaska Road Commission Bureau of Public Roads, Project Correspondence, Juneau, Alaska, 1916-1959, Alaska National Archives Office, Box 66, 10/06/09, Record Group 30.

[42] *Ibid.*

[43] Construction Engineer, Haines to B. D. Stewart, Jr., Chief Operations Division, Alaska Road Commission, Office Memorandum, Work Order No. 536, December 22, 1955.

[44] Annual Report Alaska Road Commission, Haines Sub-District, Work Order No. 536, December 1, 1955 to November 30, 1956.

[45] *Ibid*, 3.

[46] McAllister, 3.

[47] Gene L. Brown filed a homestead application on May 20, 1965 in Sec. 22, T. 28 S., R. 57 E., CRM, that was closed without action on August 15, 1972, file A062537, BLM records.

[48] Field Examination- Reeves Homestead Claim, March 11, 1976, file A062807, BLM records.

of Chilkoot Lake was not begun until June 1968, and was constructed by Moore & Roeser Lumber Company. [49]

Currently, the trail is not maintained. A part of the trail crosses a Native allotment. A gate was installed by the landowner at the intersection of the trail and Lutak Road to restrict access across private property. The gate has been vandalized, and it has not been replaced.

Evidence of Use

There is very little evidence of boat use on the Chilkoot River and Chilkoot Lake system prior to statehood. In fact, no information has been found that documents successful use of the Chilkoot River above the lake by any craft prior to statehood or any contemporary use. This is probably because of the high gradients and a large and possibly permanent log jam just upstream of Chilkoot Lake.

Several local residents claim that the Upper Chilkoot River is not navigable. Alan Cain, a State Fish and Wildlife Protection Officer, stated that he attempted to ascend the upper river during spring flooding and after repeated tries on various channels could not go any further than about three-eighths of a mile upstream.[50] Local homestead owner Bobby Cox attempted to create a boat passage to his land on the same stretch of river in order to transport building materials by boat. Not only was he unsuccessful in clearing the passage but he found the upstream obstacles made boating completely impracticable.[51] Don Hess, owner of a river excursion business in Haines, investigated the Upper Chilkoot River for possible charter operations and found that it was not usable by a canoe, jetboat, or airboat.[52]

We have found no documentary evidence of boat use on Chilkoot Lake prior to statehood. However, a local resident claims that Natives used canoes to access salmon at the "Glory Hole" (the upper end of the lake) when the village was in existence. In 2005 Ray Dennis, Raven Clan leader, informed the writer that salmon harvested at the "Glory Hole" was transported across the lake to the village in canoes. Dennis also asserted that Natives hunted goats in the nearby mountains and would have crossed the lake in canoes to access the mountains.[53]

There are two instances where the lake was used as a route of boat travel to the upper end of Chilkoot Lake. In the mid to late 1960's local homesteader Bobby L. Cox, whose homestead is on the Upper Chilkoot River, transported his building materials and

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[49] McAllister, 3, 4.
[50] *Ibid.* See Scott Ogan to Jack Frost, October 7, 2005, file AA-085442, BLM records, for additional evidence of use. Al Cain, Randy Bachman, and Roy Josephson stated that jet boats could be taken up the upper river approximately ½ mile where a log jam exists. Patrick McMullin stated that the upper river was boatable for an undetermined distance. Randy Bachman states that the upper river near the log jam is about 15-30 feet wide and 3-10 feet deep.
[51] *Ibid.*
[52] Affidavit of Don E. Hess, February 20, 1981, file A-063019, BLM records.
[53] Phone interview with Ray Dennis, Raven Clan Leader, Haines, Alaska, February 17, 2005.

supplies by boat across Chilkoot Lake. He also took his Jeep across the lake by boat in order to transport supplies 4 miles by trail. The supplies were then carried the remaining 1.5 miles overland to his homestead. The supplies were used to construct a cabin and other out buildings.[54] The second instance of lake usage involved the Henry Reeves homestead (50-86-0177) located in Sec. 4, T. 29 S., R. 58 E., CRM. During a field examination interview, Reeves stated that he had built a large log raft and floated his 977 cat the entire length of Chilkoot Lake. In addition to road building, the cat was used by Reeves to clear timber and smooth out the land on his homestead.[55]

Catering to cruise ship passengers, current commercial recreation operators on Chilkoot Lake include Chilkoot Lake Tours and Deishu Expeditions. Joel Telford, District Ranger for the State Parks in Haines, stated that Chilkoot Lake Tours operators have been in business about 10 years. They use a pontoon boat that can accommodate up to 15 passengers while sightseeing on Chilkoot Lake.[56] Deishu Expeditions Inc. has been operating a kayak business on Chilkoot Lake and Chilkoot Inlet. Ned Rozbicki, owner of Deishu Expeditions, informed the writer, that he has been in business for 12 years and caters to cruise ship travelers. There have been about 4,000 people annually utilizing his kayak service with about half taking the ocean trip and half on Chilkoot Lake. He has not taken customers on the Lower Chilkoot River though.[57] Current recreational use on Chilkoot Lake primarily involves fishing, sightseeing, and accessing hunting areas across the lake.

Ocean-going Native canoes may have been used on the lower half of the Lower Chilkoot River, but there is no documentary evidence of how these canoes actually entered or exited the river or Lutak Inlet. Possibly they canoed the river at high tide or walked the canoe upstream a short distance to their landing site. Ray Dennis informed the writer that canoes may have been tied up and left just upstream of where the present bridge crosses the lower river, a short distance from the village site.[58]

A "Mad Raft Race" is held annually on the Lower Chilkoot River.[59] This race is typically held during Fourth of July festivities at Haines. Rafts are homemade and lightweight for quick portaging around the fish weir. Mr. Rozbicki informed the writer that he has occasionally kayaked the Lower Chilkoot River for fun and usually takes out at the fish weir.[60]

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[54] Affidavit of Bobby L. Cox, March 6, 1981, file A-063019, BLM records.
[55] Field Examination- Reeves Homestead Claim, March 11, 1976, file A062807, BLM records.
[56] The Pontoon Boat - known as a "Party Boat" by some - has a hull constructed of round tubes (called sponsons) that are attached to the outside, bottom edge of a large flat deck. The deck is surrounded on all sides by a safety railing. The helm station is placed either in the middle of the deck or off to one side.
[57] Phone interview conducted by the author on February 17, 2005 with Ned Rozbicki, owner of Deishu Expeditions, Haines, Alaska.
[58] Phone interview with Ray Dennis, February 17, 2005.
[59] *Chilkat Valley News*, July 7, 1988, p. 1.
[60] Phone interview with Ned Rozbicki, February 17, 2005.

Conclusions

In assessing the merits of the State of Alaska's application for a recordable disclaimer of interest application, the BLM relies upon federal administrative and case law and the advice of the Interior Department's Solicitor's Office. The classic definition of navigable waters is found in *The Daniel Ball*, 77 U.S. (10 Wall.) 557 (1870). Pertinent DOI Office of the Solicitor's opinions include Associate Solicitor Hugh Garner's memo of March 16, 1976 ("Title to submerged lands for purposes of administering ANCSA") and Regional Solicitor John Allen's memo of February 25, 1980 ("Kandik, Nation Decision on Navigability"). The agency is also subject to the Equal Footing Doctrine, the Submerged Lands Act of 1953, the Submerged Lands Act of 1988, and other federal laws.

1. Based on the information provided by a BLM Photo Interpreter, the Chilkoot River is tidally influenced for about 0.5 mile from Lutak Inlet upstream to the Department of Fish and Game weir site located in T. 29 S., R. 58 E., CRM. Therefore, the river is navigable in law to that point.

2. Based on the previous decision from February 4, 1981, as corrected and modified, the Chilkoot River from the weir at about 0.5 mile to Chilkoot Lake is navigable, and that decision is final for the Department under the doctrine of administrative finality.

3. Based on the previous decision from February 4, 1981, as corrected and modified, Chilkoot Lake is navigable and that decision is final for the Department under the doctrine of administrative finality.

4. Based on the previous decision from October 13, 1981, modifying the February 4, 1981 decision, the Chilkoot River above Chilkoot Lake is not navigable and that decision is final for the Department under the doctrine of administrative finality.

5. Under the Submerged Lands Act of 1988, when the State becomes the owner of adjacent uplands, it acquires ownership of submerged land, so title to those portions of Chilkoot River bed in T. 27 S., R. 56 E., CRM and T. 27 S., R. 57 E., CRM, where the adjacent uplands are owned by the State of Alaska, is in the State.

6. The State of Alaska's application for the beds of interconnecting sloughs should not be approved. If water from the Lower Chilkoot River flowed through the slough at statehood and the area was not reserved, then the slough is considered to be an integral part of the river and the State would hold title to the land underlying the slough.

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