STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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SD: ✓
ASD: ✓

2005 JUN 29 PM 1:59

June 23, 2005

Henri Bisson
Director, Alaska State Office
Bureau of Land Management
222 W. 7th Avenue, #13
Anchorage, Alaska 99513

Re: Amended Recordable Disclaimer of Interest Application for Chilkat Lake
BLM Case No. AA-85443

Dear Mr. Bisson,

The State of Alaska filed a Recordable Disclaimer of Interest application with BLM for lands underlying Chilkat Lake on 13 May 2004. New public use information requires the State to amend that application to include the outlet stream of Chilkat Lake, locally known as Clear Creek. Clear Creek provides an important transportation link between two navigable water bodies, Chilkat Lake and Tsirku River.

This amended application is submitted for all submerged lands lying within the bed of Clear Creek between the ordinary high water lines of the left and right banks in Sections 11 and 14, Township 29 South, Range 56 East, and all submerged lands encompassed by the ordinary high water line of Chilkat Lake, in Township 30 South, Range 57 East, Copper River Meridian, Alaska and Township 29 South, Ranges 56 and 57 East, Copper River Meridian, Alaska. A map highlighting the lake and stream, and a legal description of the townships and ranges underlying the lake and stream are enclosed. As previously discussed with the BLM Alaska State Director, the State requests a waiver under §1864.1-2(d) of the requirement of 43 CFR §1864.1-2(c)(1) for a description based on a public land survey or certified metes and bounds survey because the map and legal description included here clearly identify the land subject to this application.

The State's application for a Recordable Disclaimer of Interest is based on the Equal Footing Doctrine; the Submerged Land Act of May 22, 1953; the Alaska Statehood Act; the Submerged Lands Act of 1988; or any other legally cognizable

reason. BLM may disclaim interest in the submerged lands on any of the grounds that may apply.

A recordable disclaimer of interest in this land will help lift the cloud on its title stemming from the lack of any permanent determination of ownership for most submerged lands in Alaska. Because Chilkat Lake and Clear Creek are navigable, Alaska owns the submerged lands by virtue of the Equal Footing Doctrine. Under the Equal Footing Doctrine, new states created from federal territories are admitted to the Union with all the powers of sovereignty and jurisdiction that pertain to the original states. Upon admission of a state to the Union, the title to lands underlying navigable waters within its boundaries automatically passes to the state as a matter of constitutional grace. The lack of any title document or judgment creates a cloud on the state's title.

Where the state is the owner of the uplands adjacent to Chilkat Lake and Clear Creek, the state owns the bed of Chilkat Lake and Clear Creek even in the absence of a navigability determination. In such circumstances, the state took title under the Equal Footing Doctrine if the water is navigable, or if it is non-navigable, the state gained title as a result of the intent of the grantor and state law governing riparian rights. In Alaska, where the land bordering a non-navigable body of water is ceded, title to the submerged lands passes to the upland owner unless the intent of the grantor is expressly stated to the contrary. Therefore, where the state is the upland owner, the BLM may approve the state's application for a Recordable Disclaimer of Interest for the bed of the waterbody based on the state's ownership of the adjacent uplands. In such areas, a navigability determination is not required.

The Bureau of Land Management's own formal determinations confirm evidence of the navigability of Chilkat Lake. On June 3, 1980, a BLM navigability determination stated that Chilkat Lake was navigable. An August 11, 1982 State Director memorandum determined that Chilkat Lake was navigable in T. 29 S., R. 57 E., Copper River Meridian, and a May 24, 1983 report reaffirmed that decision. A January 5, 1984 report affirmed that Chilkat Lake was navigable in T. 29 S., R. 56 E., and T. 29 S., R. 57 E., Copper River Meridian.

Information obtained from local residents and Alaska Department of Fish and Game biologists provides evidence of public boating on Clear Creek. Clear Creek, the outlet stream of Chilkat Lake, is about 1 mile long, averaging about 75 feet wide and up to 9 feet deep. The Alaska Department of Fish and Game operates a salmon enumeration weir on the stream, with a total return often exceeding 150,000 fish. The weir has a movable panel that allows boat passage, and seasonally as many as 50-80 drops/day are required for transient boat traffic. The state supplies material, equipment and personnel to the weir site by boat. Private homeowners and public recreation users access Chilkat Lake via Clear Creek from the Tsirku River.

The state is unaware of any adverse claimant or occupant of these lands.

The state agency responsible for this application is the Alaska Department of Natural Resources, Division of Mining, Land and Water, 550 W. 7th Avenue, Anchorage, Alaska 99501, Attention Robert Loeffler, (907) 269-8600.

Sincerely,

Thomas E. Irwin
Commissioner

Enclosures

Cc: David Marquez, Attorney General, State of Alaska
Michael Menge, Special Staff Assistant, Office of the Governor
McKie Campbell, Commissioner, Alaska Department of Fish and Game
Drue Pearce, Senior Advisor to the Secretary for Alaskan Affairs, 1840 C Street NW, Washington, DC 20240
Cam Toohey, Special Assistant to the Secretary for Alaska, 1689 C Street, Suite 100, Anchorage, AK 99501
Robert Loeffler, DNR, Division of Mining, Land and Water
Chris E. McNeil, Jr., President & CEO, Sealaska Corporation, One Sealaska Plaza, Suite 400, Juneau, AK 99801
Mayor, Haines Borough, P.O. Box 1209, Haines, AK 99827
Chilkat Indian Village of Klukwan, P.O. Box 210, Klukwan, AK 99827-0210
Central Council, Tlingit and Haida Indian Tribes of Alaska, 320 Willoughby Ave., Suite 300, Juneau, AK 99801
Chilkoot Indian Association, P.O. Box 490, Haines, AK 99827-0490

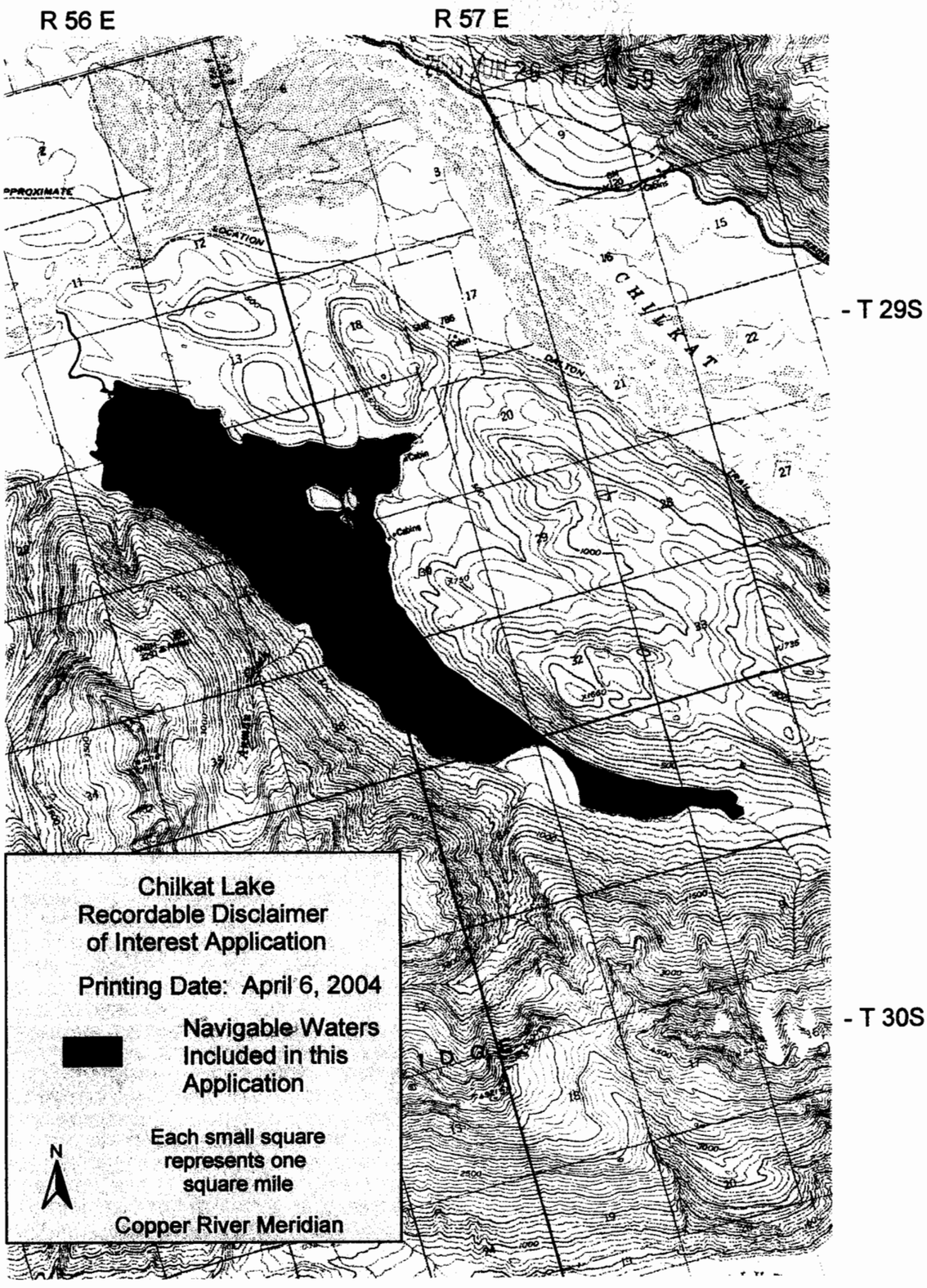
Legal Description

Chilkat Lake and Clear Creek within the State of Alaska, more particularly described as follows:

All submerged lands encompassed by the ordinary high water lines of Chilkat Lake and the left and right banks of Clear Creek in:

Township 29 South, Ranges 56, 57 East; and
Township 30 South, Range 57 East;

as determined from USGS 1:63,360 series topographic map Skagway (B-3) 1954, minor revisions 1963.


R 56 E
R 57 E
- T 29S
- T 30S
Chilkat Lake
Recordable Disclaimer
of Interest Application
Printing Date: April 6, 2004
Navigable Waters
Included in this
Application
Each small square
represents one
square mile
N
Copper River Meridian

Waterbody Use and Observation Questionnaire
Return mailing:
Attn: ANILCA PROGRAM
Access/Navigable Waters Section
Alaska Department of Fish and Game
333 Raspberry Road
Anchorage, AK 99518

Date: __April 19, 2005_____

Full Name of Interviewee:_Randy Bachman,
Commercial Fisheries Biologist III, Haines, Alaska_____

Signature of Interviewee: _telephone interview_____

Current Address: Mile 1 Haines Highway
PO Box 330
Haines, Alaska 99827-0330

Phone Number:_907 766-2830_____

Waterbody Name:_Clear Creek_____
U.S.G.S quadrangle map name known:__Skagway B-3

PLEASE ATTACH ADDITIONAL PAPER OR INFORMATION TO BEST DESCRIBE YOUR EXPERIENCES

A. Please describe the waterbody. Please be as specific as possible and include widths, depths, gradients, obstructions (artificial and natural), and seasonal water flows, i.e., lower dry periods, flood periods, and freeze up periods.

Clear Creek drains Chilkat Lake and is about 1 mile in length. It averages about 30-40 meters wide, with a maximum width of about 100 meters. The stream depth is 9 feet at the weir site.

The Alaska Department of Fish and Game has operated an adult salmon enumeration weir on the creek since the late 1960's. The weir is constructed of metal tripods and operates from May to October. It is constructed with a gate to allow boats to pass up and downstream.

B. Have you ever used the waterbody? Yes.

1) How long have you been using the waterbody, and how often? Include months and years. What sections of the waterbody are you most familiar with? Attach a map if necessary.

The Department has been operating the weir since the late 1960's. It is put in place in late May-early June each year, and is removed in late September-early October. Staff generally access Clear Creek from the Tsirku River, traveling upstream to the weir site.

2) What types of activities have you conducted on the waterbody? Example fishing, hunting, boating, transportation, and guiding.
   C. How do you access the waterbody? Department staff have used several boats to access the creek. They have used jet-powered boats as well as prop-powered boats.

1) Where do you actually enter the waterbody?
Boats are launched at Chikat Landing on the Tsirku River and then go upstream to Clear Creek and then up to the weir or lake.

2) Where do you travel to? Depending on our work activities, we either travel to the weir site or continue upstream into Chilkat Lake.

3) Where do you take out at? List names of roads, trails, etc.

Chilkat Landing and the weir site.

Are there more access points that you are familiar with but have not used? Some local residents use jet boats to travel up the Chilkat and Tsirku Rivers from Haines, but the Landing is easier and more convenient.

4) If there are obstructions, is it possible to portage?

Clear Creek does not have any obstructions except for the weir. The weir has a gate that lowers to allow boat passage. During the summer season, as many as 50-80 gate drops/day to allow boat passage.

D. What type of craft do you use when you are on the waterbody?.
18 foot aluminum boat with 30 hp prop, and 18-20 foot aluminum with 90 hp jet

1) What is the size of the craft used?

16 to 20 feet

2) What type of propulsion is used on the craft?
Outboard prop and outboard jet

3) What is the weight of the craft?

Less than 100 lbs	100-400 lbs	400-800	800-1000+ lbs.
		X	

4) What is the estimated weight of the gear and people transported?

Less than 100 lbs.	100-400 lbs	400-800	800-1000+ lbs.
			X

4) What is the largest size craft you have seen on this waterbody?
20-24 feet

5) Based on your experience, what is the largest craft this waterbody could support?

See above. 20-24 feet

E. Have you observed other people on the waterbody? In what types of crafts? What activities?

Yes. As many as 50-70 local residents have cabins or houses on Chilkat Lake. They have used boats to transport building materials for cabin construction, and they frequently visit their cabins for recreational purposes during the summer season. Lots of fishing, and recreational boating.

1) Do you know of anyone who is paid to take people out in a boat on the waterbody as a guide?
Yes. There are 2 or 3 lodges operating on Chilkat Lake with fishing guides.

2) Do you know of anyone that has used this waterbody but not actually seen them on the waterbody?

Yes.

F. Please list any other contacts that would provide first hand accounts of use on this waterbody.

Ben Kirkpatrick, Haines, 766-2636

Waterbody Use and Observation Questionnaire
Return mailing:
Attn: ANILCA PROGRAM
Access/Navigable Waters Section
Alaska Department of Fish and Game
333 Raspberry Road
Anchorage, AK 99518

Date: 5-9-05

Full Name of Interviewee: Mark M Sogge

Signature of Interviewee: _____

Current Address: Box 330, Haines, AK 99827

Phone Number: 907-766-2830

Waterbody Name: Clear Creek
U.S.G.S quadrangle map name known: ___

PLEASE ATTACH ADDITIONAL PAPER OR INFORMATION TO BEST DESCRIBE YOUR EXPERIENCES

A. Please describe the waterbody. Please be as specific as possible and include widths, depths, gradients, obstructions (artificial and natural), and seasonal water flows, i.e., lower dry periods, flood periods, and freeze up periods.

The waterbody is the outlet stream from Chilkat Lake. I would estimate the width at 50-75', with a depth of 3-8', maybe deeper. The gradient is fairly flat, and the current usually slow but steady. The stream probably flows all winter, and I don't know when it becomes ice covered. The Tsirku River occasionally reverses the flow of this stream and flow into Chilkat Lake, using the Clear Creek channel. Boat traffic keeps the stream clear of most obstructions. The Alaska Dept of Fish and Game operates a fish weir across the stream between May and September.

B. Have you ever used the waterbody? *Yes*

1) How long have you been using the waterbody, and how often? Include months and years. What sections of the waterbody are you most familiar with? Attach a map if necessary.

I have been using Clear Creek for the last five years. I work for ADFG and we operate the weir on the Creek. We also use the creek to access Chilkat Lake for additional management activities. We use the creek between June and October of each year. I am very familiar with the creek from its source at Chilkat Lake to its terminus at the Tsirku River. The weir has been in operation since 1967

2) What types of activities have you conducted on the waterbody? Example fishing, hunting, boating, transportation, and guiding.

I use the creek as a transportation corridor to access the weir and Chilkat Lake. By operating the weir across the creek we conduct extensive research in the creek, which involves enumeration and catching thousands of salmon

C. How do you access the waterbody?

By jet boat.

1) Where do you actually enter the waterbody?

The jet boats are launched at the Chilkat Landing on the Tsirku river. It is then necessary to travel a short way upstream to the mouth of clear Creek.

2) Where do you travel to?

The weir and Chilkat Lake

3) Where do you take out at? List names of roads, trails, etc.

We stop at the weir and also at Chilkat Lake. However, the take out is the same place as the put in.

4) Are there more access points that you are familiar with but have not used?

No.

5) If there are obstructions, is it possible to portage?

The only major obstruction in Clear Creek is the weir operated by ADFG. This weir has a gate in it that is dropped down to allow boat access.

D. What type of craft do you use when you are on the waterbody?.

Jet boat.

1) What is the size of the craft used?

16' to 18'

2) What type of propulsion is used on the craft?

Jet outboard.

3) What is the weight of the craft?
Less than 100 lbs 100-400 lbs 400-800 800-1000+ lbs.

4) What is the estimated weight of the gear and people transported?
Less than 100 lbs. 100-400 lbs 400-800 800-1000+ lbs.

5) What is the largest size craft you have seen on this waterbody?

Estimate 20' long and 8' wide, pontoon vessel.

6) Based on your experience, what is the largest craft this waterbody could support?

The vessel #5 above is about the largest.

E. Have you observed other people on the waterbody? In what types of crafts? What activities?

Many people use Clear Creek to access the numerous houses on Chilkat Lake, many occupied year around. The creek is also used for commercial guiding activities (salmon fishing) Jet boats are the prominent craft, since they are necessary to transit the Tsirku River. Some propeller craft are used exclusively in the creek and on the lake.

1) Do you know of anyone who is paid to take people out in a boat on the waterbody as a guide?

Yes, Weeping Trout Sport Resort

2) Do you know of anyone that has used this waterbody but not actually seen them on the waterbody?

I do not claim to know everyone that lives or recreates on Chilkat Lake and on Clear Creek. Clear Creek is a very well used system.

F. Please list any other contacts that would provide first hand accounts of use on this waterbody.

Weeping Trout Sport Resort 766-2827
John Katzeek 766-2168
Mike Ward 766-2991

Waterbody Use and Observation Questionnaire
Return mailing:
Attn: ANILCA PROGRAM
Access/Navigable Waters Section
Alaska Department of Fish and Game
333 Raspberry Road
Anchorage, AK 99518

Date: _4/26/2005_____

Full Name of Interviewee:___Roy M. Josephson_____

Signature of Interviewee: Telephone interview_____

Current Address: P.O. Box 662, Haines, AK 99827

_____

Phone Number:___9077663077 hm, 9077662120 wk_____

Waterbody Name:_Clear Creek_____
U.S.G.S quadrangle map name known:__Skagway B3

PLEASE ATTACH ADDITIONAL PAPER OR INFORMATION TO BEST DESCRIBE YOUR EXPERIENCES

A. Please describe the waterbody. Please be as specific as possible and include widths, depths, gradients, obstructions (artificial and natural), and seasonal water flows, i.e., lower dry periods, flood periods, and freeze up periods.

Clear Creek is the outlet of Chilkat Lake. It flows north northwest and empties into the Tsirku River. It is approximately 5600feet long and averages about 90 feet wide. Depths range from a few feet to 12 feet deep. The gradient of the stream is 1 percent or less and the stream can be described as gentle. The stream is lowest in the winter and spring and late fall and highest in the summer through snow melt and in the fall through heavy rains. It partially freezes in the winter but through much of the winter remains open. There is a weir across the creek near Chilkat Lake that is run by Northern Southeast Regional Aquaculture Association. They have a gate that they lower to allow boats through. 24 hours a day.

B. Have you ever used the waterbody? Yes

1) How long have you been using the waterbody, and how often? Include months and years What sections of the waterbody are you most familiar with? Attach a map if necessary.

We purchased a cabin on Chilkat Lake in 1998 and have been using Clear Creek as access since then. Typically we average one to two trips a month starting in May through November. We do not use the creek for access in the winter months. I am intimately familiar with the entire stream.

2) What types of activities have you conducted on the waterbody? Example fishing, hunting, boating, transportation, and guiding.

   Transportation, fishing, hunting, boating.

   C. How do you access the waterbody?

   We access the waterbody from the Tsirku River in a Jet boat and use it to gain access into Chilkat Lake.

1) Where do you actually enter the waterbody?

At the confluence with the Tsirku River and at the entrance at Chilkat Lake.

2) Where do you travel to? Chilkat Lake

3) Where do you take out at? List names of roads, trails, etc.

Chilkat Lake boat landing or Tsirku boat landing.

Are there more access points that you are familiar with but have not used?

A person could come up from near Klukwan but I have never done this since the Tsirku is a very braided glacial stream.

4) If there are obstructions, is it possible to portage?

The only obstruction is the weir run by NSRAA which allows boats to pass. There are occasional trees that fall across the creek but someone always cuts them out so people can get through.

D. What type of craft do you use when you are on the waterbody?.

I have a 17 foot GS skiff with a 70 hp Yamaha engine.

1) What is the size of the craft used?

17'

2) What type of propulsion is used on the craft?

jet

3) What is the weight of the craft?
Less than 100 lbs 100-400 lbs **400-800** 800-1000+ lbs.

4) What is the estimated weight of the gear and people transported?
Less than 100 lbs. 100-400 lbs **400-800** 800-1000+ lbs.

4) What is the largest size craft you have seen on this waterbody?

24 foot jon boat

5) Based on your experience, what is the largest craft this waterbody could support?

During high water the creek could support a very large craft but the access limits the type and size of boat that can get into the creek.

E. Have you observed other people on the waterbody? In what types of crafts? What activities?

Yes many, all sorts of skiffs, with both prop and jet drives as well as airboats. Doing the same activities we all do. Fish, hunt, boating, transportation as well as some guiding.

1) Do you know of anyone who is paid to take people out in a boat on the waterbody as a guide?

Yes

2) Do you know of anyone that has used this waterbody but not actually seen them on the waterbody?

Yes

F. Please list any other contacts that would provide first hand accounts of use on this waterbody.

Greg Brask - 7662827

Waterbody Use and Observation Questionnaire
Return mailing:
Attn: ANILCA PROGRAM
Access/Navigable Waters Section
Alaska Department of Fish and Game
333 Raspberry Road
Anchorage, AK 99518

Date: _April 26, 2005_____

Full Name of Interviewee:_Randolph Peder Ericksen_____

Signature of Interviewee: Telephone interview_____

Current Address: ADF&G – Division of Sport Fish
_PO Box 330 Haines, AK 99827_____

Phone Number:_(907) 766-3638_____

Waterbody Name: Chilkat Lake outlet stream (sometimes called Clear Creek) 115-32-10250-3001
U.S.G.S quadrangle map name known: Skagway B-3

PLEASE ATTACH ADDITIONAL PAPER OR INFORMATION TO BEST DESCRIBE YOUR EXPERIENCES

A. Please describe the waterbody. Please be as specific as possible and include widths, depths, gradients, obstructions (artificial and natural), and seasonal water flows, i.e., lower dry periods, flood periods, and freeze up periods.

This is the outlet stream to Chilkat Lake. It runs from the lake down to the Tsirku River (tributary of the Chilkat River). The stream channel is about 100' in width, 5' in depth, and 1% gradient on average. The stream is generally clear water but can run glacial during and after "flow reversals" that occur when the Tsirku River is higher than the lake elevation. The lake is typically frozen from December through April which coincides with the lowest flows. ADF&G and NSRAA typically operate a weir on the stream from May through September. The weir is outfitted with a gate to allow boat passage during all flows.

B. Have you ever used the waterbody? Yes.

1) How long have you been using the waterbody, and how often? Include months and years. What sections of the waterbody are you most familiar with? Attach a map if necessary.

I have used the stream every year since I moved to Haines in 1984, on average about 6 times a year. I am familiar with the entire outlet from the Tsirku River up to and including Chilkat Lake.

2) What types of activities have you conducted on the waterbody? Example fishing, hunting, boating, transportation, and guiding.
   C. How do you access the waterbody?

I have used the stream for work (fisheries research activities), recreational fishing, and other recreational activities. I typically access the outlet using a flat bottom jet boat, but have also used air boats, snowmachines, skiis, and waders.

1) Where do you actually enter the waterbody?

Either from the Tsirku River or Chilkat Lake.

2) Where do you travel to?

Chilkat Lake and inlet streams, the ADF&G weir on the stream, the boat launch at the Tsirku River.

3) Where do you take out at? List names of roads, trails, etc.

The boat launch on the Tsirku River which is accessed by the Chilkat Lake Road.

Are there more access points that you are familiar with but have not used?

There is another launch site upstream just below the mouth of the Little Salmon River.

4) If there are obstructions, is it possible to portage?

N/A

D. What type of craft do you use when you are on the waterbody?.

Typically an aluminum skiff

1) What is the size of the craft used?

16 – 20'

2) What type of propulsion is used on the craft?

40 – 90 hp jet motor.

3) What is the weight of the craft?
Less than 100 lbs 100-400 lbs 400-800 800-1000+ lbs.
100-400 lbs

4) What is the estimated weight of the gear and people transported?
Less than 100 lbs. 100-400 lbs 400-800 800-1000+ lbs.

400 – 800 lbs

4) What is the largest size craft you have seen on this waterbody?

24'

5) Based on your experience, what is the largest craft this waterbody could support?

32'

E. Have you observed other people on the waterbody? In what types of crafts? What activities?

Yes. There are numerous recreational cabins around the lake and most people access the lake by boat up the outlet. Airboats, float planes, propellor driven boats, hoover craft, jet skiis.

1) Do you know of anyone who is paid to take people out in a boat on the waterbody as a guide?

Yes.

2) Do you know of anyone that has used this waterbody but not actually seen them on the waterbody?

Lots.

F. Please list any other contacts that would provide first hand accounts of use on this waterbody.

Debra Schnabel/Greg Brask, Weeping Trout Sports Lodge
Steve Brooks, Chilkat Lake Trading
John Katzeek
Mike Ward