United States Department of the Interior

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Memorandum

To: File AA-085787 (1864)

From: Jack Frost, Navigable Waters Specialist (AK9410) J. Frost

Subject: Supplemental Report on the Federal Interest in Lands Underlying Portions of the Stikine River, in Southeast Alaska

On Feb. 17, 2005, the State of Alaska (State) filed an application for a recordable disclaimer of interest for the bed of the Stikine River from its mouth to the United States-Canada International Boundary, a distance of approximately 27 miles. The State also applied for lands underlying "all named interconnecting sloughs including Binkleys Slough, Red Slough, Guerin Slough, King Slough, Andrew Slough, Hooligan Slough, Shakes Slough, Shakes Lake, North Arm, and Ketili River, between the ordinary high water lines of the left and right banks. . . ." The State included with its application a legal description of the river, supporting evidence, and a map dated Apr. 5, 2004 showing the Stikine River.[1] The State's submissions are more fully described in Attachment A.

On June 4, 2007, the State submitted additional information in support of its application for the bed of the Stikine River. In this letter, the State asserted that the Tongass National Forest did not include the beds of navigable waters within the exterior boundaries of the reserve and, therefore, did not defeat the State's title to the bed of the navigable Stikine River.[2]

As the State's evidence shows, the Stikine River has been used almost continuously as a highway of commerce since before the Purchase of Alaska in 1867. Both Great Britain and the United States recognized the river's importance as a highway in the Washington Treaty of May 8, 1871. Article XXVI of the treaty stipulated: "The navigation of the rivers Yukon, Porcupine, and Stikine, ascending and descending, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the subjects of her Britannic Majesty and to the citizens of the United States, subject to any laws and regulations of either country within its own territory, not inconsistent with such privilege of free navigation." Historian Robert DeArmond has compiled a thorough list of commercial boats operating on the Stikine River from before the Purchase to well into the 1960's. Bonnie Demerjian's recent book includes a history of commercial boat operations on the Stikine River.

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[1] Thomas Irwin to Henri Bisson, BLM, Feb. 17, 2005, file AA-085787 (1864), Alaska State Office, BLM records, Anchorage (hereafter BLM records). Dick Mylius, Director of the Division of Mining, Land and Water, signed the letter.

[2] Dick Mylius to Callie Webber, Realty Specialist, June 4, 2007, file AA-085787, BLM records.

This memo, intended to review the merits of the State's application, does not attempt to repeat the Stikine River's history as a highway of commerce. Rather it focuses on use of the river at the time of statehood (1959), the operative date when title to the beds of navigable waters transferred to the new state. The paper also considers whether the Tongass National Forest withdrawal defeated the State's title to the bed of the river and whether there is sufficient information to determine the navigability of the various sloughs listed in the State's application.

Land Status

The Stikine River in Alaska flows through nine townships: Townships 59 South, Ranges 84 and 85 East; Tps. 60 S., Rs. 82-86 E.; and Tps. 61 S., Rs. 83 and 84 E., Copper River Meridian (CRM), Alaska. In this distance, the river flows through two federal withdrawals, both extant at the time of statehood: the Tongass National Forest and the United States-Canada International Boundary. There are nine patented homesteads in the delta area; there are no private land entries or State lands along the remainder of the river.

By Presidential Proclamations dated June 15, 1908 and May 3, 1912, the United States reserved a strip of land, 60-feet wide, along the International Boundary. This reservation included the bed of the Stikine River in T. 60 S., R. 86 E., CRM. When the State of Alaska entered the Union, the United States retained the bed of the Stikine River where it crosses the International Boundary. The reservation continues to be in effect to this date.

The river is located entirely within the exterior boundaries of the Tongass National Forest, administered by the U.S. Forest Service in the Department of Agriculture. On Feb. 16, 1909, President Theodore Roosevelt issued a proclamation adding public lands to the Tongass National Forest. The Stikine River is located within the withdrawn area.[3]

Did the withdrawal of Feb. 16, 1909 defeat the State's title to the bed of the navigable Stikine River? Language used in this withdrawal is very similar to that used in a Presidential Proclamation issued only a week later. The Presidential Proclamation of Feb. 23, 1909, enlarged the Chugach National Forest to include the Katalla River drainage area. In 1988, the Interior Board of Land Appeals (IBLA) considered the question whether this proclamation defeated the State's title to the navigable Katalla River. It concluded that it did not. Under the equal footing doctrine, title to the Katalla's riverbed in the Chugach National Forest passed to the State of Alaska at the time of statehood.

In reaching its decision, the IBLA applied the U.S. Supreme Court's two-pronged test relating to ownership of submerged lands in Federal withdrawals and reservations. In *Utah Division of State Lands v. United States* [482 U.S. 193 (1987)], the Court held that there is a "strong presumption" that title to the beds of navigable waters passed to the State. To hold that the beds of navigable water bodies are federally owned, the United States must demonstrate not only that Congress clearly intended to include land under navigable waters with the Federal reservation, but also that Congress affirmatively intended to defeat the future State's title to the submerged lands. The IBLA concluded in the Katalla River case that "the facts here . . . do not show that Congress clearly intended to include land under navigable waters within the Chugach National

[3] President Theodore Roosevelt, Proclamation No. 846—Tongass National Forest, Alaska, Feb. 16, 1909.

Forest reservation or that Congress affirmatively intended to defeat the future State's title to that land [102 IBLA 357 (1988), reinstated, IBLA 85-768 (1994), order, decision reinstated, stay lifted]."

After reviewing the IBLA's reasoning and the facts, we conclude that the Presidential Proclamation of Feb. 16, 1909, which enlarged the Tongass National Forest and included the Stikine River drainage area, did not defeat the State's title to the bed of the navigable Stikine River.

Federal Navigability Determinations

To date, the Bureau of Land Management (BLM) has not issued a navigability determination for the Stikine River. The BLM's navigability determinations are usually made in support of land conveyances under the Alaska Statehood Act or Alaska Native Claims Settlement Act. No such land conveyances have been made along the Stikine River.

So far as is known, the U.S. Army Corps of Engineers (Army Engineers) is the only federal agency to have made a navigability determination for the Stikine River.[4] The agency determined that the Stikine River in Alaska is navigable: "The Stikine River is navigable from approximately 1 May to 15 October for shallow draft boats transporting supplies between Wrangell, Alaska, and Telegraph Creek, British Columbia, a distance of 130 miles."[5]

On Nov. 11, 2015, the State filed a complaint in U.S. District Court noting that the Stikine River is navigable and that the Presidential Proclamation of Feb. 16, 1909 did not defeat the State's right to submerged lands of the Stikine River.[6] On June 17, 2016, the United States disclaimed all interest adverse to the States complaint in the submerged lands of the Stikine River, between the ordinary high water mark of the left and right banks, from the upper limit of tidal influence to the 60-foot wide reservation at the Canadian border.[7] The disclaimer expressly excluded "any sloughs, interconnected channels, or associated waterways."

Physical Characteristics

The Stikine River, approximately 379 miles long, originates in British Columbia, Canada. The river drains an area of 20,000 square miles.[8]

Only the lowermost 27 miles of the river are located in Alaska. Here the river is located within the Stikine-LeConte Wilderness Area (created by the Alaska National Interest Lands

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[4] The U. S. Corps of Engineers' determinations are made under the commerce clause of the Constitution. The BLM determinations are made under property clause. The two agencies make navigability determinations for different purposes; they use similar but not the same criteria.

[5] U.S., Army, Corps of Engineers, Alaska District, Project Maps 2003.

[6] State of Alaska v. United States of America, "Complaint to Quiet Title," Civil Action NO: 3:15-cv-00226-RRB, Nov. 11, 2015, BLM records.

[7] State of Alaska v. United States of America, "United States' Amended Quiet Title Act (28 U.S.C. § 2409a(e)) Disclaimer," June 17, 2016, BLM records.

[8] Demerjian 2006, p. 10. The writer thanks John Westlund of the Alaska Department of Fish and Game for bringing this source to his attention.

Conservation Act of 1980), which in turn is located within the Tongass National Forest. The river's mouth is located approximately two miles north of the town of Wrangell and 20 miles south of the town of Petersburg.

From the boundary with Canada, the river flows westerly to empty into Eastern Passage through a large estuary. The main channel of the river is approximately three-quarters of a mile wide. At its estuary, the river also flows through numerous named and unnamed channels of varying widths.

Telegraph Creek in Canada (at river mile 167) is the only village along the Stikine River. From this point, the river falls approximately 560 feet for an average gradient of four feet per mile. The river's gradient in Alaska is almost flat.

The U.S. Geological Survey (USGS) has maintained a gauge station on the Stikine River since August 1976. The mean monthly discharges peak in June, July, and August at 136,000 cubic feet per second (cfs), 134,000 cfs, and 107,000 cfs, respectively. In May the mean discharge is 68,200 cfs; and in September and October the discharge was 80,200 cfs and 56,900 cfs, respectively. The flow is significantly lower in other months.[9]

In his 1948 study of the lower Stikine, F. A. Kerr, a Canadian geologist, described the river's seasonal flow: After the spring breakup, the river is at a "very low stage." "As summer approaches the river rises and generally reaches its maximum in the latter half of June, continuing high through July and August. In September, the level falls rapidly, and is very low by the middle of the month or soon after. This period is usually short, for late September rains raise the level and navigation is fair until mid-October when snow begins to fall and the river level is lowered."[10]

The river carries a great deal of silt through most of the open season. Fallen trees and driftwood are hazards to navigation. These are carried by the spring high waters from the upper reaches of the river to its lower reaches. Transportation companies, as well as the United States and Canadian governments, usually contracted with local residents to remove these hazards. Beginning in the 1930's, the federal government contracted to clear snags. Army Engineers' records show that these operations started in 1937 and continued intermittently to the present day. In 1958, for example, the Army Engineers issued a contract to the Cassiar Transportation Company to remove twenty snags from the channel in October and November. Since the 1960s, the snag program has been conducted by the U.S. Forest Service under contract to the Army Engineers.[11]

The Canadians also employed men to remove snags, dead trees, and stumps from the river. This could be dangerous work. In August 1957, for example, foreman Walter Sampson and three crew members swamped their boat and lost all possessions as a result. The accident occurred at Glenora Rapids, seven miles below Telegraph Creek. C. W. Snedden, publisher of the

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[9] See website: waterdata.usgs.gov/nwis. The site number is 15024800.
[10] Kerr, p. 3.
[11] *Wrangell Sentinel* (hereafter cited as WS), May 9, 1958, 3; June 13, 1958, 1; and U.S., Army, Corps of Engineers, Project Maps 2003.

Fairbanks Daily News-Miner, witnessed the event from the deck of the riverboat *Judith Ann* and described it in his newspaper: "When the larger boat stopped below the rapids to put cables ashore so it could be winched through, the current unexpectedly swung the *Judith Ann* at an angle across the swift water when the cable hung up on a rock. This exposed the small boat alongside to the full force of the rapids, quickly swamping it and breaking the rope which tied it to the Judith Ann."[12]

The river's estuary, approximately eight miles wide and sixteen miles long, is a "major resting and feeding area for waterfowl along the Pacific Flyway."[13] The area consists of extensive mud flats, numerous sloughs of varying widths, and large islands. Andrew Island, Limb Island, Cottonwood Island, Farm Island, Dry Island, and Sergief Island are the principal islands. The Stikine's main channel, formerly called the "South Arm," empties into Eastern Passage. The North Arm, much smaller than the main channel, empties into Frederick Sound. King Slough, which empties into Dry Strait, may once have been called the "Middle Arm."[14] Andrew Slough and Hooligan Slough (formerly Eulachon Slough) are the principal named sloughs in the delta. Binkley's Slough—listed in the State's application—is a dead-end slough located on the south end of Farm Island in Sections 2 and 3, T. 61 S., R. 83 E., CRM. It is little more than a mile long.

The delta's channels are shallow. In 1887, the Canadian geologist George Dawson reported that the channel across the flats was only one to two feet deep at low tide.[15] Historically, riverboat operators relied upon the incoming tides to pass through this area, proceeding cautiously as deckhands called out the depths. Occasionally they encountered problems with low water in the flats. In October 1953, for example, the Wrangell newspaper carried a report that the *Judith Ann* was stranded on a sandbar: "At last report, the Judith Ann crew was poling and pulling for a favorable tide."[16]

How far up the Stikine River tidewater extends is uncertain. The Army Engineers reported, "tidal effects have been noted for a distance of 20 miles from the mouth." The USGS maps show tidal flats at least as far as up the river as Euchalon Point in Sec. 27, T. 60 S., R. 83 E., CRM. Examining a 1979 color infrared aerial photo (1:60,000), BLM photo-interpreters saw no indication of the river being tidal beyond its mouth. They "saw tidal vegetation in the area Eastern Passage and Dry Strait, but there was not past the mouth or further up the River."[17]

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[12] *Fairbanks Daily News-Miner*, Sept. 6, 1957, 2.
[13] U.S., Forest Service, 1986, p. 4.
[14] Fred H. Gray, Report on Stikine River, Oct. 12, 1914, Records of the U.S. Fish and Wildlife Service, RG 22, NA.
[15] Dawson, pp. 48-49B. See also Kerr, p. 3: "The mouth of Stikine River is best entered at or near high tide, to avoid the bars and snags that at low water are difficult to detect in the slow current there."
[16] WS, Oct. 16, 1953, 1. The *Beaver* magazine published a photo of the Judith Ann showing a deckhand sounding for shallow water and indicating the depth with his fingers. See "The Stikine, *Beaver*, 22.
[17] U.S., Army, Corps of Engineers, Project Maps and Index Sheets (Stikine River), c. 2003; USGS Petersburg Quadrangle, 1953, minor revisions 1963; and Rhonda Reynolds to Callie Webber, e-mail message, May 31, 2006, file AA-085787.

The river is ice-free from late April or early May to late October or early November. The river ice goes out late in April or early in May. It is rare that the river does not freeze over. By the first of January, the river is usually solid enough for surface travel.[18]

The principal tributaries of the Stikine River in Alaska are, in downstream order, Kikahe River, Goat Creek, Shakes Slough, and Andrew Creek. All except Shakes Slough are mountain streams with steep gradients and shallow water. Heading in Shakes Lake, Shakes Slough flows south approximately two miles into the lower reaches of Stikine River in Section 36, T. 59 S., R. 84 E., CRM. At its narrowest point, the slough is about 200 feet wide. In its lower reaches, it is approximately a quarter mile wide. Nothing more is known about the system's physical character (e.g., water depths, velocity).

A number of sloughs are located along the Stikine River between the delta and the international boundary. Other than what may be gleaned from the USGS maps, little is known about them. Just upstream about two miles, Ketili River (Hot Spring Slough) empties into the Stikine River in Section 31, T. 59 S., R. 85 E., CRM. The slough, approximately eight miles long, heads in the Stikine River in Section 18, T. 59 S., R. 85 E., CRM. Chief Shakes Hot Springs is located near its lower reaches, in Section 32, T. 59 S., R. 85 E., CRM.

Guerin Slough and Red Slough are located near the international boundary. Red Slough is located on the left bank of the Stikine River. The slough, located south of the Stikine River, flows from the lower reaches of Katete River in British Columbia to intersect the Kikahe River in Alaska in Section 27, T. 60 S., R. 86 E., CRM. From the maps, it is not clear whether Kikahe River empties into Red Slough or the Stikine River. Guerin Slough appears on the USGS map as a dead-ended slough. It is approximately three miles long, and is located a short distance north of the Stikine's main channel in Sections 15-18, T. 60 S., R. 86 E., CRM.

Evidence of Commerce

Located in British Columbia, Canada, Telegraph Creek (at approximately river mile 167) is the practical head of commercial riverboat navigation on the Stikine River. The town (the only one on the entire Stikine River) is located approximately 135 miles upstream of the international boundary. The place was named after the fact that in 1866 the Western Union Telegraph Company, then planning to build a telegraph line to Europe by way of Alaska and Russia, had a steamboat land more than 16 tons of wire at what was considered the head of steamboat navigation on the Stikine River. With the successful laying of the Atlantic cable, the project was abandoned, and the steamer *Otter* successfully retrieved the wire at Telegraph Creek. During the Cassiar gold rush of 1874-76 and the Klondike gold rush of 1897-1900, many stampeders ascended the Stikine River in a wide variety of boats en route to the gold fields. Steamboats stopped at Glenora, located about 12 miles below Telegraph Creek, whenever water levels were very low. Telegraph Creek was recognized as the ordinary head of navigation, however, and the Canadian government built a trail from there to Dease Lake and the Cassiar diggings and later (in 1899) established a telegraph station. Glenora was virtually abandoned, as most people, including the Tahltan Indians, moved to Telegraph Creek. The small village had a several

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[18] Kerr, p. 1.

trading posts, mission school, police post, and gold commissioner's office. By 1959, its population was approximately 300.[19]

In the 1950's and 1960's, the Ritchie Transportation Company was the principal riverboat operator on the Stikine River. The company operated the riverboat *Judith Ann*. (Al Ritchie, the owner, also ran the *Taku Chief* or the *Totem* on Taku River.) Named after Ritchie's daughter, the flat-bottomed boat was constructed in 1950 at a well-known boatyard in Wrangell. The boat was 64 feet long with a 17-foot beam and drew 14 inches of water (unloaded). The hull was based on the tunnel design, the propellers seated in a tunnel in the stern. Powered by a 165-horsepower diesel motor, the boat had a galley and six staterooms for passengers and four crewmembers.[20]

For much of the 1950's, Sid Barrington was the captain of the riverboat *Judith Ann*, with his brother Hill sometimes assisting. The Barrington brothers were well-known riverboat men in Alaska, having operated steamboats on the Upper Yukon River during the gold rush era, in Cook Inlet during the early construction years of the Alaska Railroad, and on the Stikine River from the late 1910's to the late 1940's when the transportation company was sold to Ritchie and Vern Anderson. Their riverboats on the Stikine were usually named after Sid's wife, Hazel. In 1951, Captain Sid Barrington, who maintained his home in Oak Harbor, Washington, returned to Wrangell after an absence of ten years to pilot Al Ritchie's boat, the *Judith Ann*.[21] He continued to serve as the captain of the boat until at least 1957.[22] Thereafter, Ritchie piloted the boat.

The riverboat *Judith Ann* usually made its first trip up the Stikine River around May 10.[23] The boat's arrival at Telegraph Creek three days later was "always a cause for celebration, as it brings the first fresh food of the season for that community after being 'frozen in' all winter."[24] In July 1954, Robert DeArmond, then a special assistant to Alaska's territorial governor, published an account of a trip that he and his wife took a month earlier to Telegraph Creek. The boat, he wrote, "takes three long days to grind her way up to Telegraph Creek but slides back down the river in twelve hours or less." "At certain places during stages of high water the current is so fast that her 225-horsepower [sic] diesel engines won't churn her up against it and it becomes necessary to run out a long steel cable, fasten the end ashore and then wind her up the cable on her power capstan."[25] The trip back to Wrangell took about a day. The end of the navigation season occurred in early October.

The boat transported both cargo and passengers. Upriver freight principally consisted of packaged oil products, machinery, and food. On its return to Wrangell, the riverboat's barge carried empty oil drums, furs, and some ore.[26] Besides Telegraph Creek residents, passengers included tourists and big game hunters from Alaska, the States, and other countries. They usually traveled to Telegraph Creek or George Ball's Diamond B Ranch, located a short distance

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[19] Patterson, pp. 80-81.
[20] See website www.Stikineriverhistorical.org and DeArmond 1979, 74.
[21] WS, May 4, 1951, 1.
[22] WS, Oct. 11, 1957, 1.
[23] WS, Mar. 7, 1952, 3.
[24] WS, May 9, 1952: 1.
[25] WS, July 23, 1954, 1.
[26] U.S., Department of the Army, *Southeastern Alaska*, p. 37.

downstream of Telegraph Creek.[27] Each fall Mr. and Mrs. R. W. McKibben, owners of a Wrangell variety store, sent a load of boxes filled with Christmas gifts for the children at the Telegraph Creek mission. In May 1957, Wrangell's graduating senior high school class took the trip to Telegraph Creek.[28]

In the late 1950's, the Ritchie Transportation Company also advertised automobile service to Telegraph Creek. The Canadian government was then improving the road from the Alaska Highway to Dease Lake, making it possible to access Dease Lake and Telegraph Creek by automobile.[29] The *Judith Ann* would transport autos up and down the river on a barge. Travelers could then drive to Dease Lake, 70 miles, cross the lake on a ferry, and then continue the drive to the Alaska Highway. (The Dease Lake ferry ceased operations in 1959 when the road around the lake was finished.[30]) The company charged a fee of $75 to haul an automobile to Telegraph Creek and $50 to Wrangell. In addition, the passengers had to pay a fare of $50 for the upriver trip, $30 for the downriver trip, or $75 round-trip. The company also offered the service to Petersburg residents once the Mitkof Island road was completed to Blind Slough.[31] The Wrangell newspaper carried several accounts of persons (including Al Ritchie in 1960) making the trip. Based on these reports, at least five autos were taken over the route during the years 1958 to 1960.[32]

When, in the early 1960's, the Ritchie Transportation Company ceased operations on the Stikine, Edwin Callbreath organized the Stikine River Transportation Company and acquired the riverboat *Judith Ann.*[33] He operated the riverboat successfully for three years before replacing it with a new riverboat called the *Margaret Rose*. Last of the riverboats to operate commercially on the Stikine, the *Margaret Rose* was 65 feet long with a 30-foot beam and had accommodations for 26 passengers. The boat could operate in 22 inches of water. Passengers were charged $120 for a four-day round-trip between Wrangell and Telegraph Creek. Two years later, Callbreath had to sell the boat (and the *Judith Ann*) because of the lack of freight and passenger traffic. By that time, Telegraph Creek was primarily served by road.[34]

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[27] George Ball died on Jan. 16, 1955, from a heart attack at the ranch. Survivors include his wife Agnes, son Bobby, and two daughters, Georgianna and Barbara. WS, Jan. 21, 1955, 1.

[28] WS, Sept. 12, 1952: 1. During the 1950's, the *Wrangell Sentinel* often reported the departures and arrivals of the *Judith Ann* and the names of the passengers and their places of residence.

[29] WS, May 24, 1957, 1, and Oct. 31, 1958, 2.

[30] WS, Sept. 4, 1959, 1.

[31] WS, June 20, 1958, 1.

[32] WS, Aug. 15, 1958, 1; July 31, 1959, 3; Sept. 18, 1959, 1, and July 29, 1960, 3.

[33] Callbreath worked as an engineer on the riverboat *Judith Ann* for most of the 1950's. WS, Feb. 1, 1952, 1; May 11, 1956, 1; and May 24, 1957, 4. In 1957, he and Keith Bloom organized the Cassiar Transportation Company and launched the riverboat *Kathleen* at Wrangell for service on the Stikine River. The new boat, with "a new type stern and tunnel, was 55 feet long with a 16-foot beam and was powered by a 225-horsepower diesel motor. In May 1957, the riverboat made its first round-trip to Telegraph Creek. Nothing else is known about the riverboat's history. WS, Apr. 12, 1957, 3, and May 24, 1957, 4.

[34] *Fairbanks Daily News-Miner*, Apr. 16, 1968, 10, and May 8, 1968, 10; DeArmond 1979, 74; Demerjian 2006, 57. For an account of a trip on the *Margaret Rose* to Telegraph Creek, see Connelly 1971.

Named and Unnamed Sloughs

In addition to the Stikine River, the State applied for certain named sloughs and all "interconnecting sloughs." Named sloughs include Binkleys Slough, Red Slough, Guerin Slough, King Slough, Andrew Slough, Hooligan Slough, Shakes Slough, Shakes Lake, North Arm and Ketili River. "Interconnecting sloughs" were not identified by name or by legal description.

There is insufficient information to determine whether any of these sloughs (named or unnamed) were used, or susceptible to use, for travel, trade, and commerce at the time of statehood. This is true of Shakes Slough and Lake in particular. As for the remainder, if the Stikine River's waters flow through the sloughs, then the sloughs are considered part of the Stikine River proper. In other words, if the sloughs were an integral part of the Stikine River at statehood, then they automatically transferred to the State. The same applies to sloughs containing tidal waters. Thus, there is no need to assess the navigability of these sloughs.

Conclusions

The Federal test of navigability is found in *The Daniel Ball*, 77 U.S. (10 Wall.) 557 (1870). There, the U.S. Supreme Court stated: "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water."

In assessing the navigability of inland water bodies, the BLM relies upon this test as well as Federal statutes, Federal case law, and the advice of the Department of the Interior's Office of the Solicitor. Relevant Federal statutes include the Submerged Lands Act of 1953 and the Submerged Lands Act of 1988. The Supreme Court's most recent decision on title navigability, *PPL Montana, LLC v. Montana*, 132 S. Ct. 1215 (2012), summarizes and explains the proper interpretation of *The Daniel Ball* criteria. Additional guidance is provided in *Alaska v. Ahtna, Inc.*, 891 F.2d 1401 (9th Cir. 1989), *cert. denied,* 495 U.S. 919 (1990) [Gulkana River]; *Alaska v. United States,* 754 F.2d 851 (9th Cir. 1983), *cert denied,* 474 U.S. 968 (1985) [Slopbucket Lake]; and *Appeal of Doyon, Ltd.*, Alaska Native Claims Appeal Board RLS 76-2, 86 I.D. 692 (1979) [Kandik and Nation Rivers].

In cases concerning prestatehood reservations, BLM uses the established criteria set out and applied in Alaska cases including *Alaska v. United States,* 545 U.S. 75 (2005) ("*Glacier Bay*"); *United States v. Alaska*, 521 U.S. 1 (1997) ("*Arctic Coast/Dinkum Sands*"); *Utah Division of Lands v. United States,* 482 U.S. 193 (1987) (Utah Lake); *Alaska v. United States*, No. 98-35310 (9th Cir. 2000) [Kukpowruk River]; *Alaska v. United States*, 102 IBLA 357 (1988) (Katalla River); and *United States v. Alaska*, 423 F.2d 764, 1 ERC 1195, (9th Cir. Dec. 21, 1970) (Tustumena Lake).

1. After reviewing the State's application, the land status, and the historic record pertaining to the Stikine River, and the legal guidance on title navigability, we previously concluded that the Stikine River in Alaska was used for travel, trade, and commerce at the time of statehood. Other than the

60-foot wide reservation at the International Boundary, lands underlying the Stikine River were not reserved at the time of statehood. On June 17, 2016, the United States disclaimed all interest adverse to the States complaint in the submerged lands of the Stikine River, between the ordinary high water mark of the left and right banks, from the upper limit of tidal influence to the sixty-foot reservation at the Canadian border. The disclaimer did not include "any sloughs, interconnected channels, or associated waterways."

2. By Presidential Proclamations in 1908 and 1912, the United States reserved lands lying within 60-feet of the boundary line between the United States and the Dominion of Canada. As a result, title to the bed of the Stikine River within this 60-foot wide strip did not pass to the State at the time of statehood.

3. In view of the fact that the State of Alaska did not submit any information regarding the hydrology or navigability of the other named waterways, sloughs, or interconnected sloughs, such as Shakes Lake, Shakes Slough, Red Slough, and Guerin Slough, the BLM is unable to determine whether these waterways were used, or were susceptible to use, for travel, trade, and commerce at the time of statehood. There is insufficient information to make a determination. However, to the extent that they were an integral part of the river at statehood (that is, the waters of the Stikine River flowed through the sloughs as appears to have been the case for the Ketili River), title to the submerged lands underlying those named and unnamed waterways, sloughs and interconnected sloughs passed to the State along with title to the lands underlying the mainstem of the river.

Attachments

1-State of Alaska's Documentary Submissions in Support of RDI Application for Stikine River

2-Selected Bibliography

ATTACHMENT 1

STATE OF ALASKA'S DOCUMENTARY SUBMISSIONS IN SUPPORT OF RDI APPLICATION FOR STIKINE RIVER

Executive Orders, Presidential Proclamations, Public Land Orders, and Acts

President Theodore Roosevelt. Proclamation: The Alexander Archipelago Forest Reserve, August 20, 1902.

President Theodore Roosevelt. Proclamation, July 20, 1907.

President Theodore Roosevelt. Proclamation, Sept. 10, 1907.

President Theodore Roosevelt. Executive Order No. 908, July 2, 1908.

President Theodore Roosevelt. Proclamation, Tongass National Forest, Alaska, Feb. 16, 1909.

President Woodrow Wilson. Proclamation, Annette Island Fishery Reserve, Apr. 28, 1916.

President Woodrow Wilson. Proclamation No. 1351, Oct. 25, 1916.

President Warren G. Hardin. Proclamation, Feb. 7, 1922.

President Calvin Coolidge. Proclamation No. 1733: Glacier Bay National Monument, Alaska, Feb. 26, 1925.

President Calvin Coolidge. Proclamation No. 1742, Tongass National Forest, Alaska, June 10, 1925.

President Calvin Coolidge. Executive Order No. 4712: Tongass National Forest, Alaska, August 30, 1927.

President Calvin Coolidge. Executive Order No. 4842: Tongass National Forest, Alaska, Mar. 22, 1928.

President Calvin Coolidge. Executive Order No. 4955: Tongass National Forest, Alaska, Aug. 30, 1928.

President Herbert Hoover. Executive Order No. 5425: Tongass National Forest, Alaska, Aug. 20, 1930.

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