

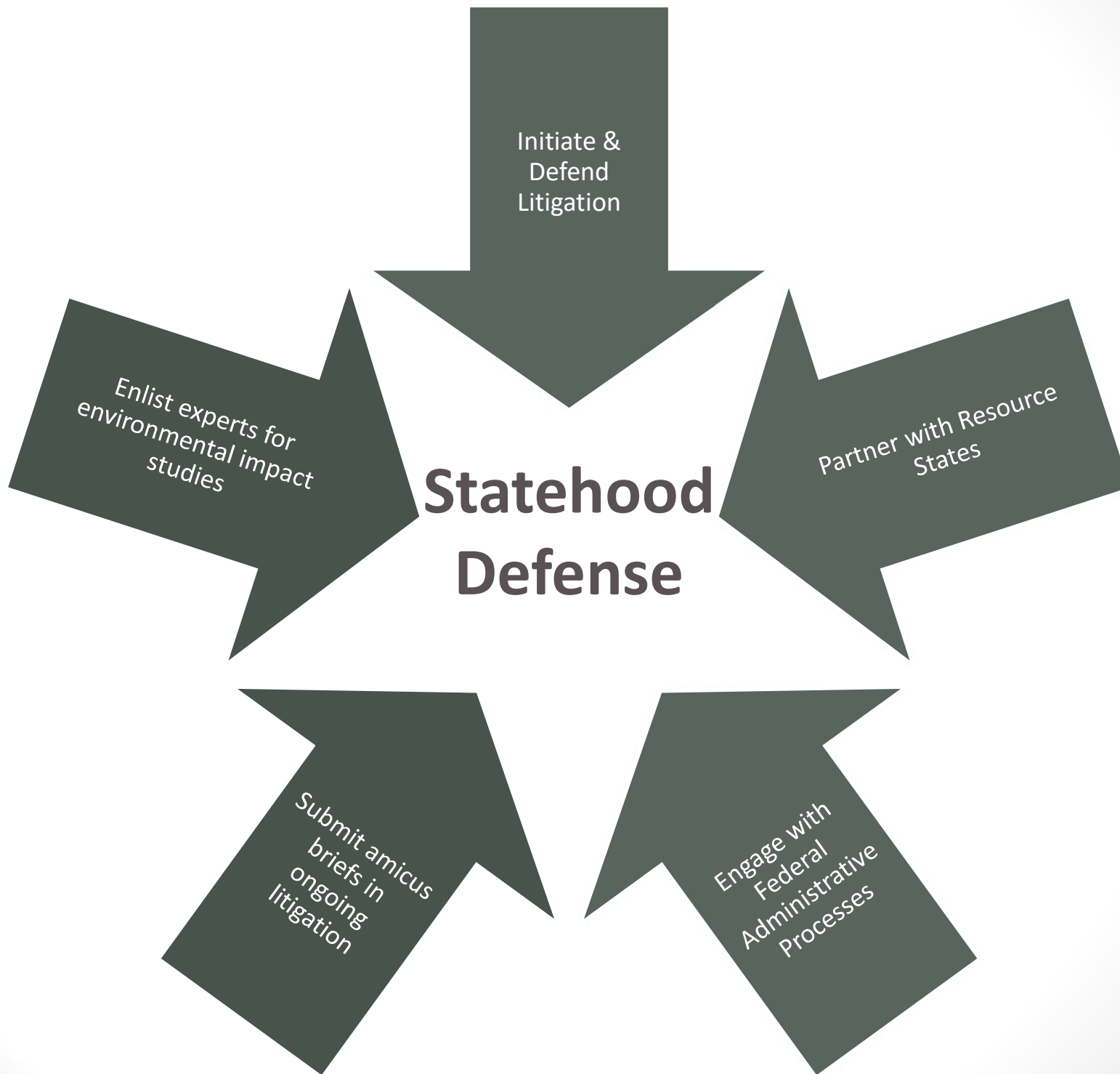
Statehood Defense

Treg Taylor
Attorney General

Corri Feige
Commissioner of Natural Resources

Jason Brune,
Commissioner of Environmental Conservation

Doug Vincent-Lang
Commissioner of Fish and Game



What is Statehood Defense?

Defending the rights and privileges promised to the Citizens of the State of Alaska upon the State's admission into the Union, especially concerning the use, conservation, and management of the State's lands, waters, and natural resources.

Why Statehood Defense?

Protect Alaska's Rights to Manage our Land, Waters, Fish, Wildlife

- United States Constitution:
 - Equal Footing Doctrine – State submerged lands, inland and tidal waters
 - 10th Amendment – Cooperative federalism
- Federal Submerged Lands Act
 - State submerged lands – inland, tidal, and coastal waters
- Statehood Act:
 - State land selections
 - State submerged lands
 - Management of state lands, waters, fish, and wildlife confirmed
- ANILCA:
 - State land selections
 - Management of state lands, waters, fish and wildlife confirmed
 - *Sturgeon v. Frost* – limits the extent of federal lands in Conservation System Units

Taking On Statehood Defense

- Limit federal overreach into issues that are best handled by the State
- Assert and defend State's ownership and management of its resources for the benefit of the citizens of the State
- Defend State and its citizens' ability to access State, private, and Tribal resources

By

- Direct litigation
- Intervention
- Amicus support

Multi-State Efforts

19 ongoing cases

Affordable Clean
Energy Rule

Endangered
Species Act Rule

Emissions
Regulation
(Clean Air Act)

Oil and Gas
Drilling Ban

FERC

Social Cost
of Carbon

Attorney General Treg Taylor
Deputy Attorney General Cori Mills

On Federal Issues

Where the state and federal agencies agree, Alaska will work vigorously to support those efforts (e.g. contaminated lands) and where there is friction, the state will fight back.

General Strategy for Statehood Defense

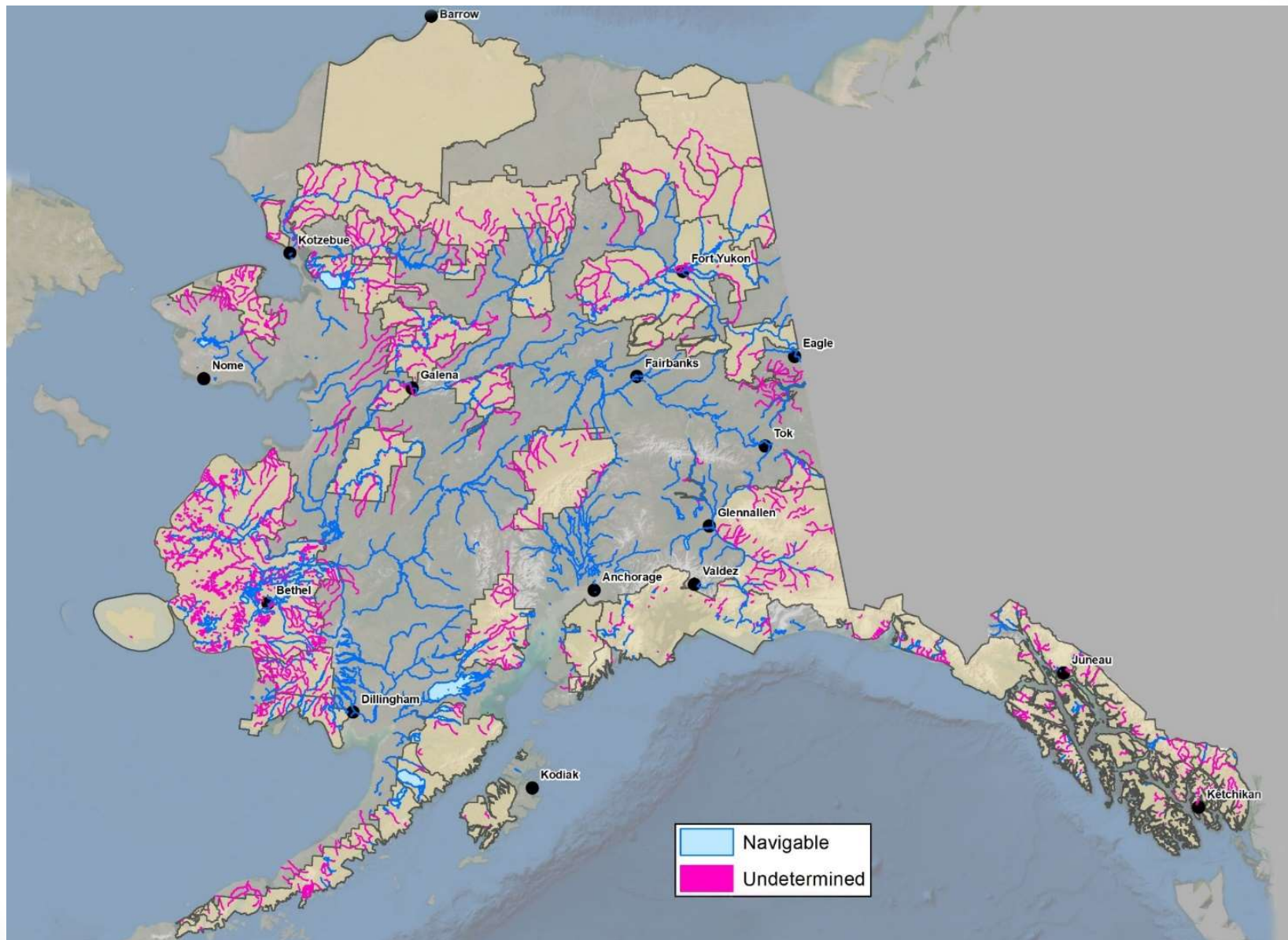


Navigability

Commissioner Corri Feige
AAG Ron Opsahl

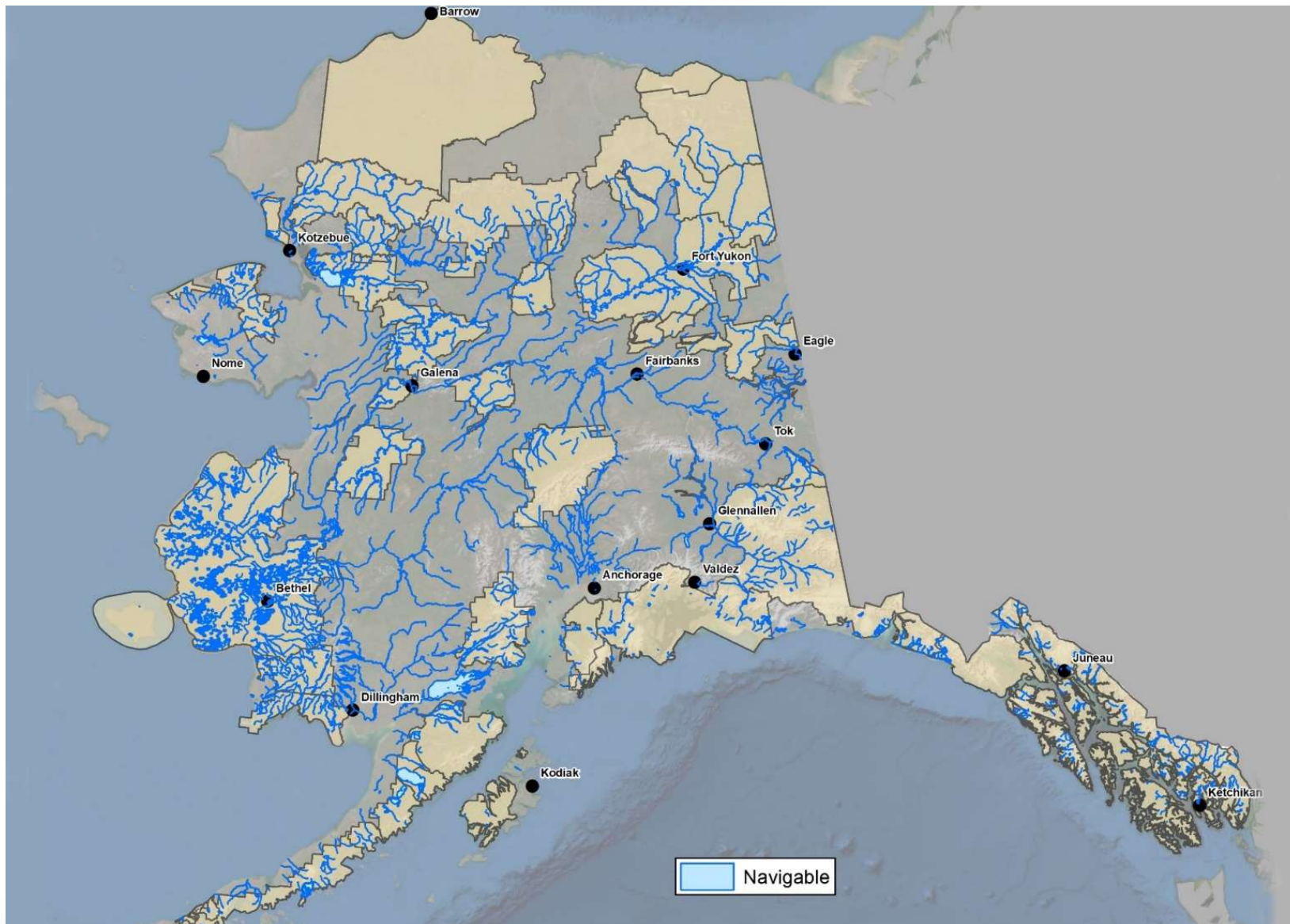
STATE-OWNED NAVIGABLE WATERS

ACKNOWLEDGED TO DATE



STATE-OWNED NAVIGABLE WATERS

AFTER STATE MANAGEMENT ASSERTION





Alaska State Submerged Lands

- Kuskokwim River
 - *State of Alaska* (Interior Board of Land Appeals)
- Middle Fork and North Fork of Fortymile River
 - *Alaska v. United States* (U.S. Dist. Alaska)
- Middle Fork of Koyukuk River, Dietrich River, and Bettles River
 - *Alaska v. United States* (U.S. Dist. Alaska)
- Mulchatna River, Chilikadrotna River, Twin Lakes, and Turquoise Lake
 - *Alaska v. United States* (not yet filed, anticipated May 2022)
- Sarkar Canoe Route
 - *Alaska v. United States* (not yet filed, anticipated October/November 2022)

Access to Lands

Commissioner Corri Feige
AAG Ron Opsahl

Statehood Entitlements and Access

- King Cove – Dep't of Interior land exchange (Izembek Road)
 - *Friends of Alaska Nat'l Wildlife Refuges v. Haaland* (9th Cir.)
- Defense of federal rights-of-way to access Ambler Mining District (Ambler Road)
 - *Northern Alaska Environmental Center v. Haaland & Alatna Village Council v. Heinlein* (U.S. Dist. Alaska)
- Challenge to delay of revocation of ANCSA Section 17(d)(1) withdrawals covering 28 million acres of federal public lands
 - *Alaska v. Haaland* (U.S. Dist. Alaska)

Oil and Gas

Commissioner Corri Feige
AAG Ron Opsahl

Oil and Gas Development

- Defense of National Petroleum Reserve—Alaska Integrated Activity Plan
 - *National Audubon Society v. Haaland & Northern Alaska Environmental Center v. Haaland* (U.S. Dist. Alaska)
- Challenge to Bureau of Land Management de facto suspension of processing pre-development activity permits
 - *Alaska Industrial Development and Export Authority v. Biden* (U.S. Dist. Alaska)
- Defense of federal oil and gas leasing program for Arctic National Wildlife Refuge
 - *Gwich'in Steering Committee v. Haaland, National Audubon Society v. Haaland, Native Village of Venetie Tribal Government v. Haaland, & Washington v. Haaland* (U.S. Dist. Alaska)
- Defense of Willow Project Master Plan
 - *Sovereign Inupiat for a Living Arctic v. Bureau of Land Management & Center for Biological Diversity v. Bureau of Land Management* (U.S. Dist. Alaska)

Clean Water Act

Commissioner Jason Brune
AAG Julie Pack

Waters of the United States (WOTUS)

ALASKA WATERS:

- Nearly 900,000 miles of navigable rivers and streams
- 22,000 square miles of lakes (3 million lakes larger than 5 acres)
- Nearly 27,000 miles of coastline (more coastline than L48 combined)



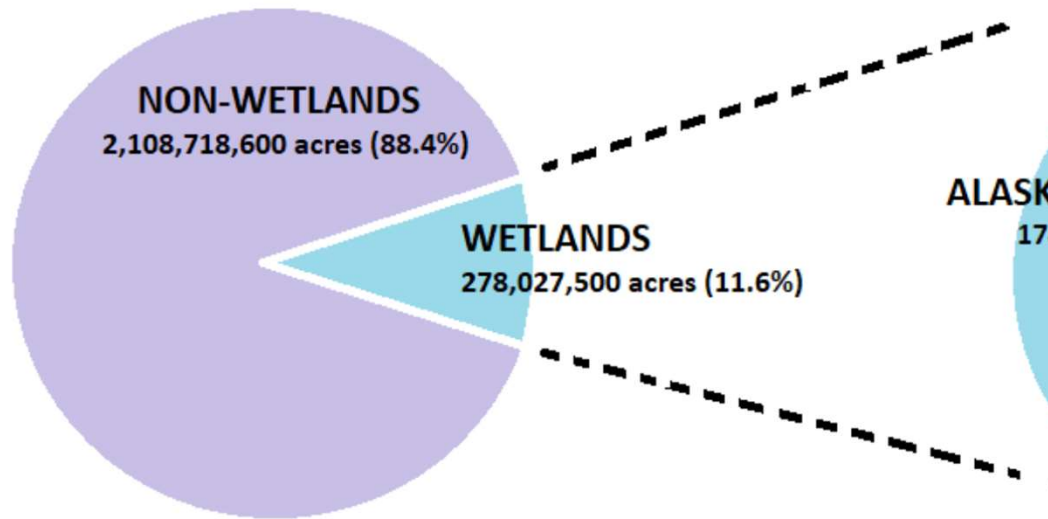
Grewingk Glacier River, Kachemak Bay, Cook Inlet

Waters of the United States (WOTUS)

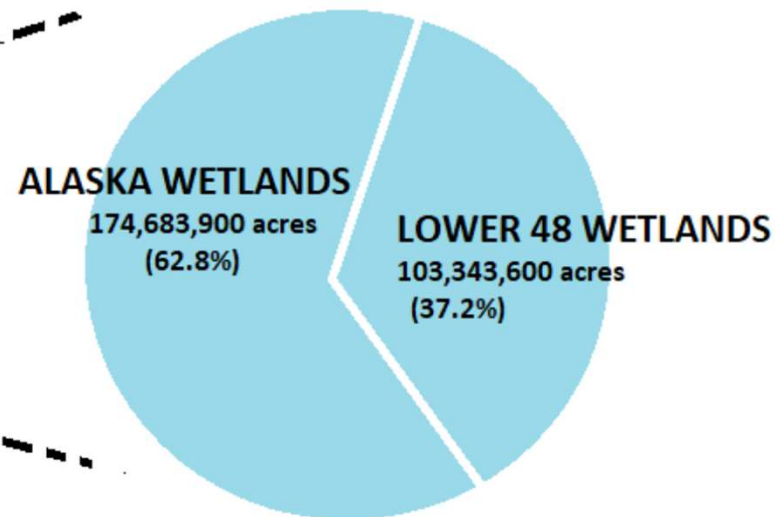
WETLANDS:

- 63% of total US wetlands
- 43% of AK surface area
- **More wetlands than L48 combined**

TOTAL SURFACE AREA - U.S.



WETLANDS



**Lower 48 had 200 million acres of wetlands –
now only 100 million acres**

Waters of the United States (WOTUS)

DOL & DEC efforts to narrow the WOTUS definition:

1. Rulemaking Proceedings - Working with EPA & Corps at WOTUS roundtables

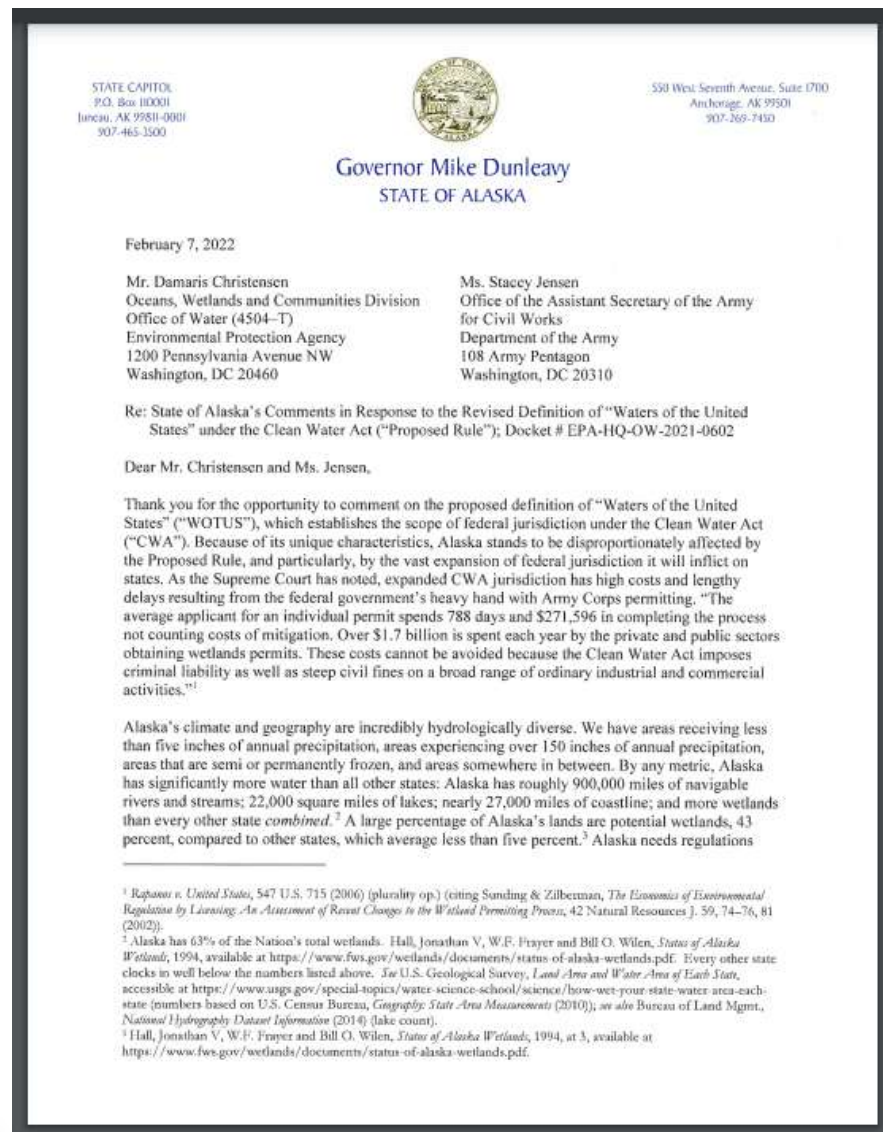


WOTUS Regional Roundtable, Anchorage, AK (Feb. 25, 2022)

Image source – DEC

Waters of the United States (WOTUS)

3/25/2022



Comment Letter submitted February 7, 2022 challenging the agencies' "unprecedented expansion of federal WOTUS power" and requesting Alaska-specific exclusions from the rule:

- Permafrost Wetlands
- Forested Wetlands
- Wetland Mosaics
- Other Waters Category

Waters of the United States (WOTUS)

DOL & DEC efforts to narrow the WOTUS definition (con't):

2. *Sacket v. EPA* Amicus Brief

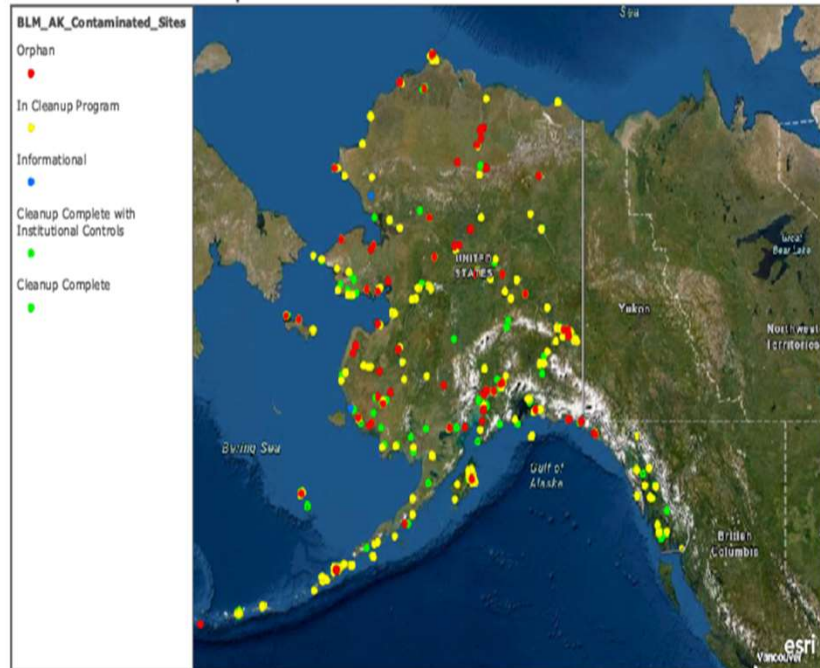
- Requesting narrower WOTUS definition
- Recognizing constitutional and statutory limits
- Alaska-specific examples

Contaminated Sites

Commissioner Jason Brune
AAG Cody Doig

ANCSA Contaminated Sites Litigation

Contaminated Sites ownership



Earthstar Geographics | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA | Bureau of Land Management, Alaska

- ANCSA (Public Law 92-203) conveyed 44 million acres to Alaska Native people in exchange for termination of aboriginal claim to other lands and certain hunting rights.
- On at least three occasions over the past 32 years, Congress requested that the Department of Interior (DOI) compile information on over 1,200 contaminated sites and provide detailed clean up plans for those sites.

ANCSA Contaminated Sites



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

Jason W. Brune
Commissioner
Department of Environmental Conservation
State of Alaska
Post Office Box 111800
Juneau, AK 99811-1800

Dear Commissioner Brune:

Thank you for your letters of May 27, 2021, regarding sites conveyed out of Federal ownership to Alaska Native corporations through the Alaska Native Claims Settlement Act (ANCSA) and to the State of Alaska through the Alaska Statehood Act. This letter serves as a response to the three separate letters received by the Department of the Interior (DOI) from the Alaska Department of Environmental Conservation (ADEC). I apologize for the delay and any resulting inconvenience as we worked to coordinate a response to the important issues raised in these inquiries.

In the Bureau of Land Management's (BLM) 2016 Updated Report to Congress on behalf of DOI, *Hazardous Substance Contamination of Alaska Native Claims Settlement Act Lands in Alaska* (2016 Report), the bureau summarized the significant progress made by both ADEC and BLM as part of a collaborative multiagency effort to develop an inventory of potentially contaminated sites that have been conveyed to Alaska Native corporations (Inventory). While the 2016 Report recommended that ADEC host the ANCSA Contaminated Site Database, the BLM continues to provide that service to the public. Developing an accurate, working Inventory is the essential first step in completing a comprehensive database of contaminated sites on conveyed lands, and the ADEC is uniquely positioned among the collaborating agencies to advance subsequent cleanup and remediation efforts for sites identified through this process.

Specifically, the ADEC has the regulatory mission of identifying and monitoring contaminated sites and the authority to ensure that the preliminary Inventory is finalized into a comprehensive database that includes a Potentially Responsible Party (PRP) determination. Additionally, with the passage of the Brownfields Utilization, Investment, and Local Development Act and SB 202, Alaska Native corporations may be more likely to work with the ADEC to report potential contamination now that they may have liability relief as a PRP from both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and associated state laws. The ADEC also has the authority to implement a remedial action process and can provide for specific training of local residents to enhance participation in ongoing and future site work.

By contrast, the DOI has no statutory authority to compel or conduct the cleanup of lands that have been conveyed out of Federal ownership, nor is it able to impose liability for contamination

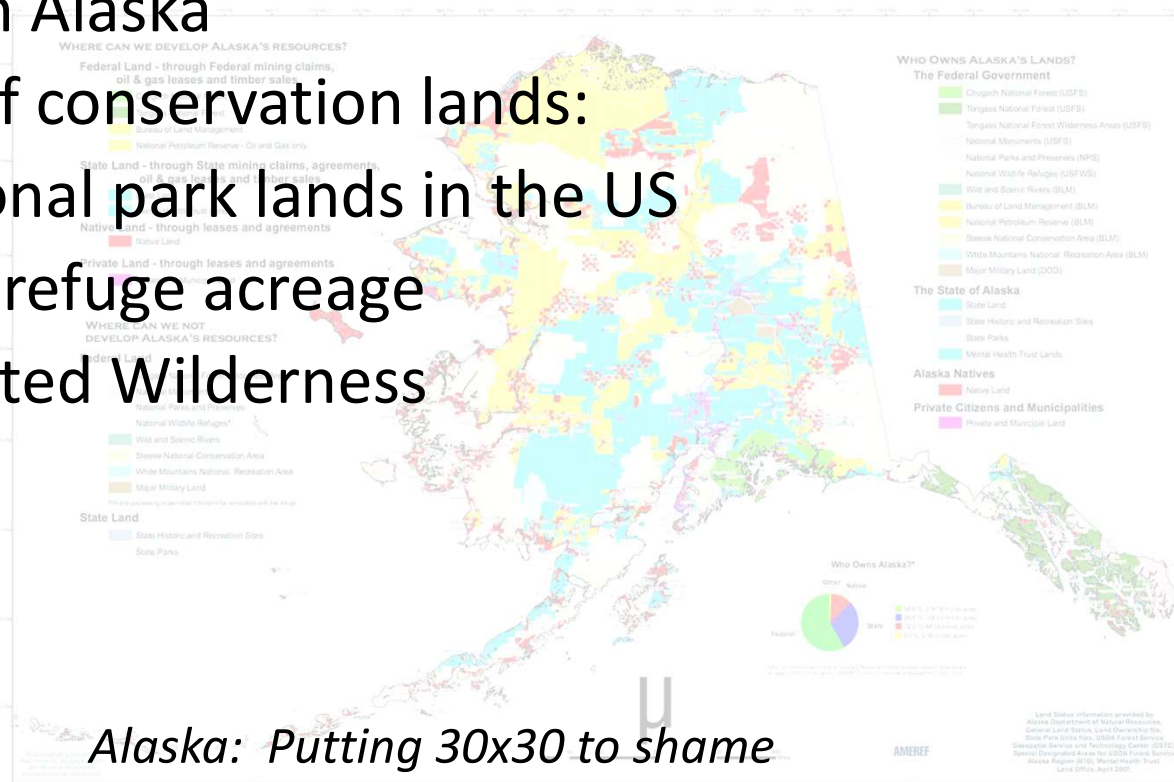
- DEC urged the Department of Interior to act after 50 years of doing nothing.
- DOI responded that “[t]he BLM **has no continuing obligation for documenting or remediating contaminated sites conveyed under ANCSA** unless future documentation shows contamination occurred while the BLM managed or controlled a particular parcel.”

ANCSA Contaminated Sites

- DEC sent 548 Notices of Intent to Sue under CERCLA and RCRA. DEC reserved the right to bring other claims.
 - NOI's Available here:
<https://dec.alaska.gov/spar/csp/federal/formal-correspondence/>
- A complaint has not been filed.
- DEC has hired outside counsel with significant experience and a proven track record litigating against the United States.
- DEC has had two preliminary conversations with DOI regarding the NOIs and eagerly awaits a written response.

Conservation of Lands in Alaska

- 365 million acres in Alaska
- 148 million acres of conservation lands:
 - 70% of all national park lands in the US
 - 80% of wildlife refuge acreage
 - 53% of designated Wilderness



Alaska: Putting 30x30 to shame

Fish and Game

Commissioner Doug Vincent-Lang
AAG Cheryl Brooking

Fish and Game

Right to manage our state's fish and game resources and their uses

Ensure the best available information is being used in federal permitting processes

Right to Manage our State's Fish and Game Resources and their uses

Fight for statehood was driven by federal fish and game mismanagement

As a result our statehood contract gave us control over fish and game

This was confirmed under ANILCA

Bottomline: The state is the primary manager of fish and game on all lands throughout Alaska

Right to Manage our State's Fish and Game Resources and their uses

Why is this important?

- Alaskans ability to access and utilize its fish and game resources is being unnecessarily restricted by federal agencies.
- This is impacting the ability of Alaskans to hunt and fish and the food security of Alaskans

Alaska v. Federal Subsistence Board

22-35097

Alaska appealed to the Ninth Circuit, challenging actions taken by the FSB in 2020 alleged by the state to be beyond the authority granted by Congress in ANILCA.

Alaska Wildlife Alliance v. Haaland

3:20-cv-00209-SLG

Alaska intervened to defend a National Park Service Rule adopted in 2020 that recognizes the state as the manager of hunting on national preserves.

Ensure the best available information

Ensure the best available information is being used in federal permitting processes

- Participate in lawsuits to defend federal findings we support
- Collect state science to inform federal decision processes

Alaska Wildlife Alliance v. Haaland

3:20-cv-00209

Alaska intervened on behalf of the federal defendants to support a decision to allow nonlethal incidental take (harassment) of polar bears in the Southern Beaufort Sea area for oil and gas activities.

Cook Inletkeeper v. Ross

3:19-cv-00238-SLG

Alaska intervened to support federal authorization for conducting underwater seismic surveys that may cause nonlethal take (harassment) of beluga whales in Cook Inlet. Use of tugs towing drilling rigs for certain purposes was vacated and the rest of the incidental take regulation remained in place.

Center for Biological Diversity v. Haaland

4:19-cv-05206-JST; 4:19-cv-06013-JST; 4:19-cv-
06812-JST

Alaska joined 12 other states to intervene in three related cases in California to defend federal Endangered Species Act regulations adopted in 2019.

Ensure the best available information

Ensure the best available information is being used in federal permitting processes

- Collect state science to inform federal decision processes

State science initiatives

Inform Endangered Species Act potential listing decisions

Inform Endangered Species Act Biological Opinion and incidental take provisions, including decisions involving the Marine Mammals Protection Act

Thank you