

State Ownership of Submerged Lands House Resources – HB 98



Presented by

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- April 14th, 2023



The Navigable Waters Issue



- Alaska holds an estimated **800,000 miles of navigable rivers**
- Alaska holds an estimated **30 million acres of navigable lakes**
- Alaska owns the submerged lands beneath every navigable-in-fact river and lake, and beneath tidally influenced waters in the state, unless a valid pre-statehood withdrawal **EXPLICITLY** defeats state title
- In Federal Conservation System Unit areas created in Alaska post-statehood, the submerged lands beneath navigable-in-fact and tidally influenced waters **are State-owned lands**

Federal Areas Where the State of Alaska Owns Submerged Lands



- **National Park Service:** Noatak National Preserve (NPr), Kobuk Valley National Park (NP), Bering Land Bridge NPr, Denali National Park and Preserve (NPP) (ANILCA additions), Wrangell-St. Elias NPP, Glacier Bay NPP, Katmai NPP, Kenai Fjords NP, Gates of the Arctic NPP, Lake Clark NPP, Yukon-Charley Rivers NPr, etc.
- **U.S. Fish and Wildlife Service:** Becharof National Wildlife Refuge (NWR), Innoko NWR, Izembek NWR, Kanuti NWR, Kenai NWR, Kodiak NWR, Koyukuk NWR, Nowitna NWR, Selawik NWR, Tetlin NWR, Togiak NWR, Yukon Delta NWR, Yukon Flats NWR, etc.
- **U.S. Forest Service:** Tongass National Forest, Chugach National Forest
- **Bureau of Land Management:** Beaver Creek Wild and Scenic River (WSR), Birch Creek WSR, Fortymile River WSR, Gulkana River WSR, Unalakleet River WSR, Delta River WSR, etc.

Status of Efforts to Clear Title 1959 to Present



The federal government acknowledges Alaska's clear title to its submerged lands beneath navigable-in-fact and tidally influenced rivers and lakes in only:

- **9 percent** of 800,000 river miles of submerged lands under state-owned rivers
- **16 percent** of 30,000,000 acres of submerged lands under state-owned lakes

Sturgeon vs. Frost

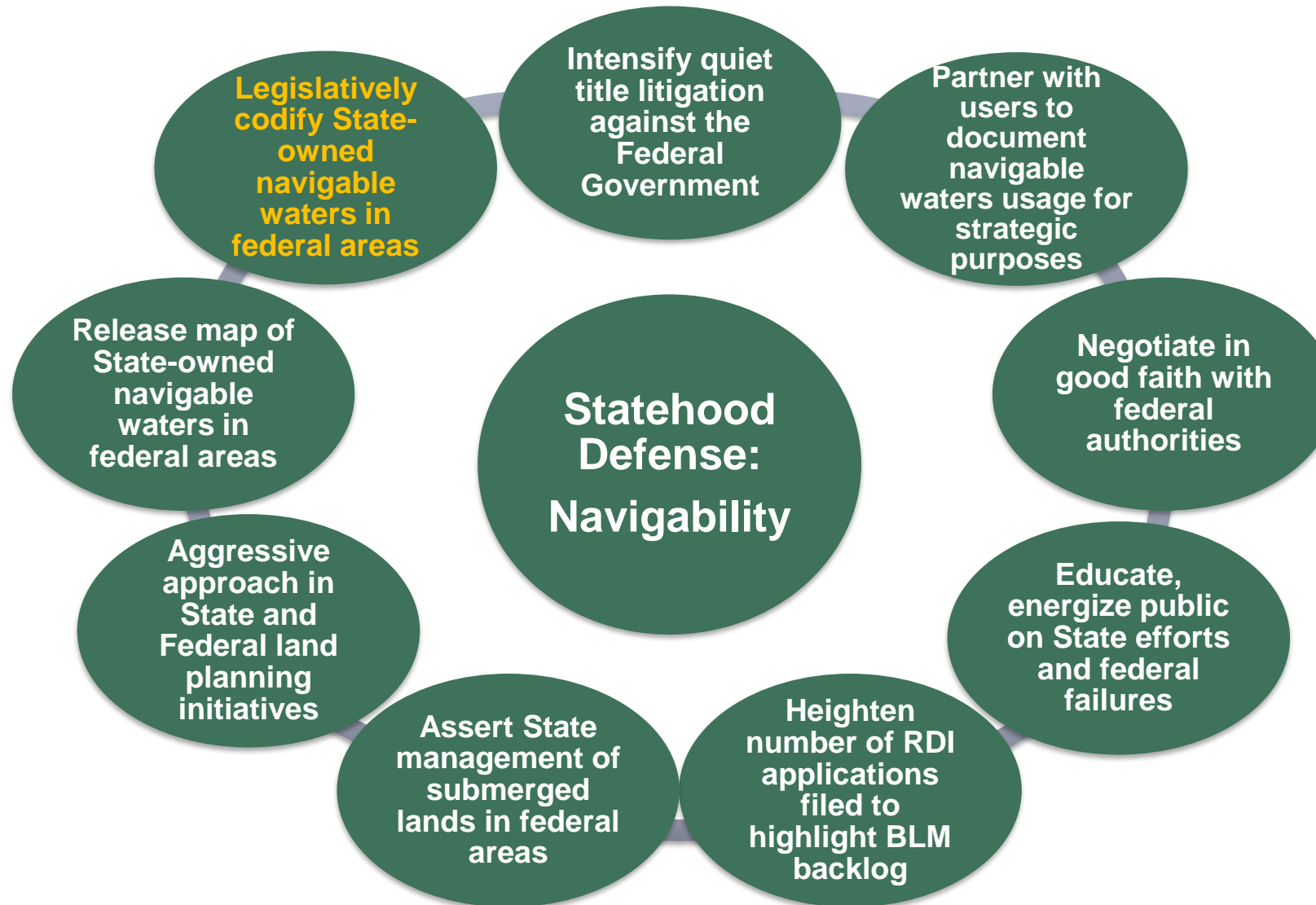
136 S. Ct. 1061 (2016) & 139 S. Ct. 1066 (2019)



U.S. Supreme Court rules unanimously: federal regulations do not supersede SOA ownership and management of navigable waters in ANILCA CSUs



Statehood Defense of Navigable Waters Involves Many Interrelated Assertions of State Ownership and Authority



Proposed Codification Legislation Overview



1. Codifies State of Alaska (SOA) ownership, management and control of navigable waters and submerged lands within federal areas not covered by a valid pre-statehood withdrawal explicitly defeating state title
2. Lists specific navigable waters and submerged lands in federal areas statewide belonging to SOA
3. Enshrines foundational elements of relevant caselaw to guide in navigability determinations
4. Establishes annual reporting requirement to legislature

Proposed Codification Legislation



1. Codifies SOA ownership, management and control of navigable waters and submerged lands within federal areas not covered by a valid pre-statehood withdrawal explicitly defeating state title
 - **Underscore state ownership, management and control** of lands owned by the state since statehood
 - **Clarify and educate:** Clearly enumerates the extent of state management authority within federal boundaries
 - Increases public understanding and aids in management
 - Correlates with publicly maintained records and maps
 - **Reflect reality:** Accurately depicts land ownership and state boundaries with ongoing quality control

Proposed Codification Legislation

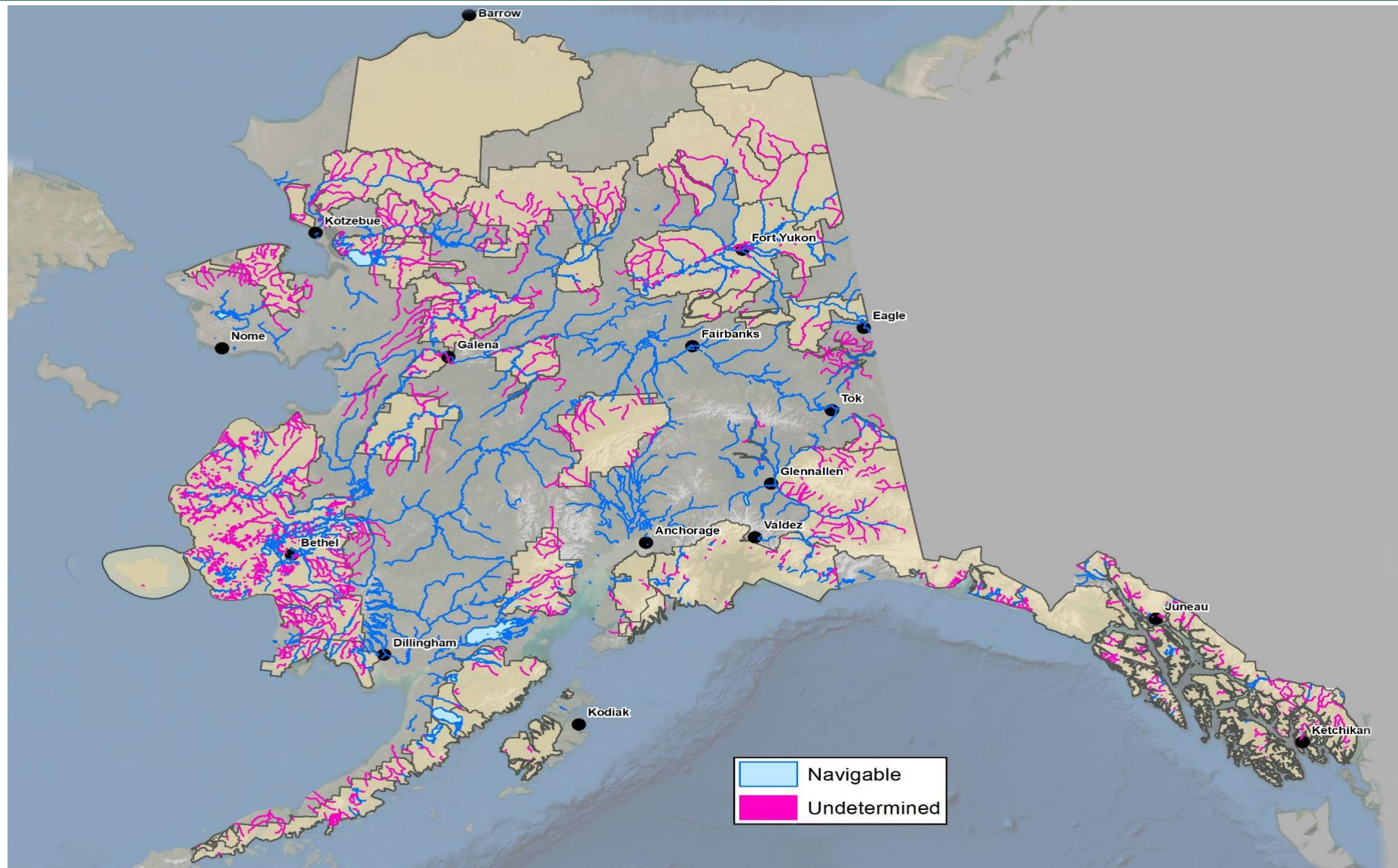


2. Lists specific navigable waters and submerged lands in federal areas statewide belonging to SOA

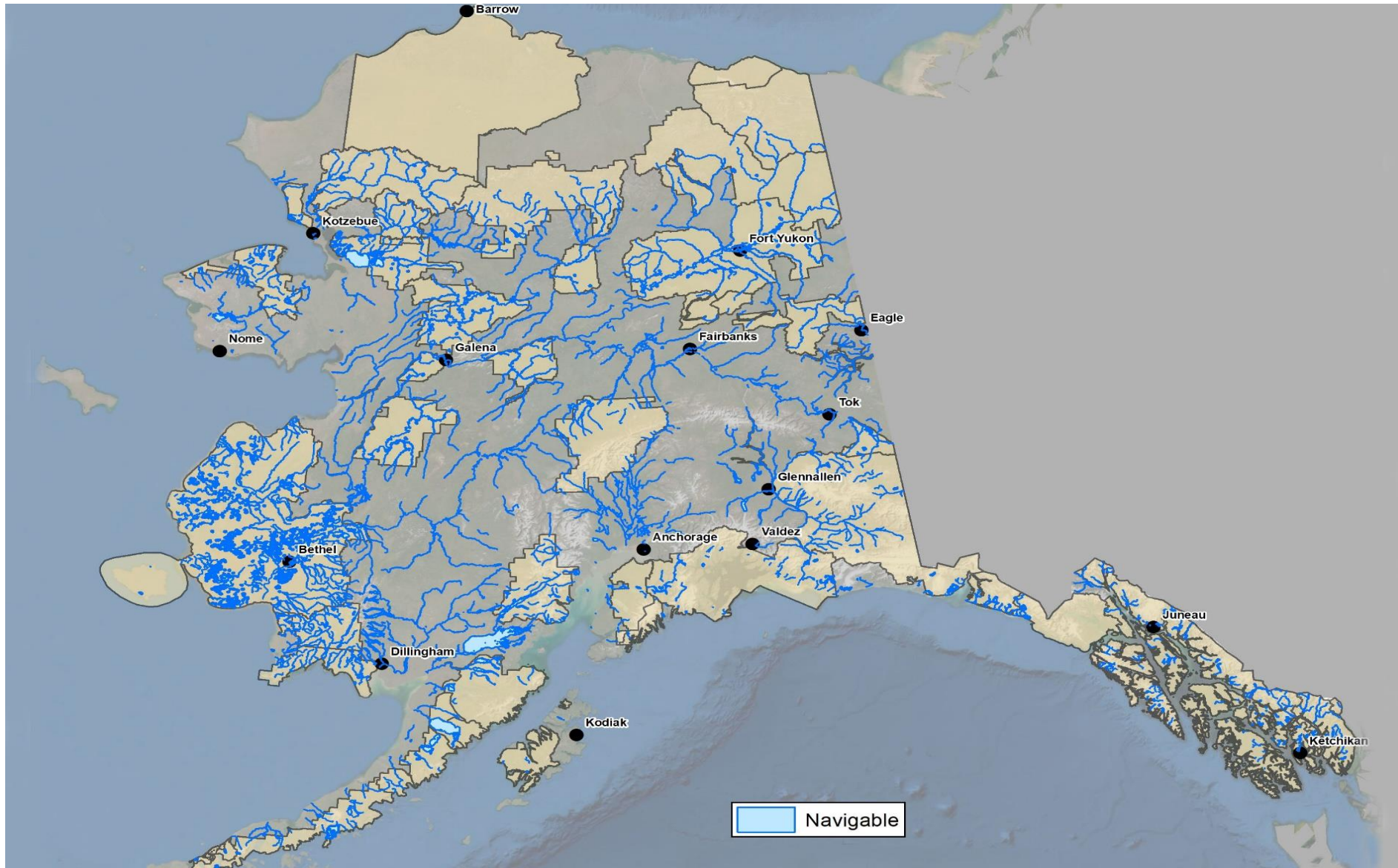
- **First phase:** All NPS and USFS areas statewide plus Tetlin National Wildlife Refuge
- **Second phase:** Remaining USFWS refuges
- **Third phase:** All BLM lands
- **Fourth phase:** Ongoing process of clarification, modification and amendment

Framework for proposed statute is based upon RS 2477 Right-of-Way codification project in 1990s [AS 19.30.400].

State-Owned Navigable Waters Federally-Acknowledged to Date

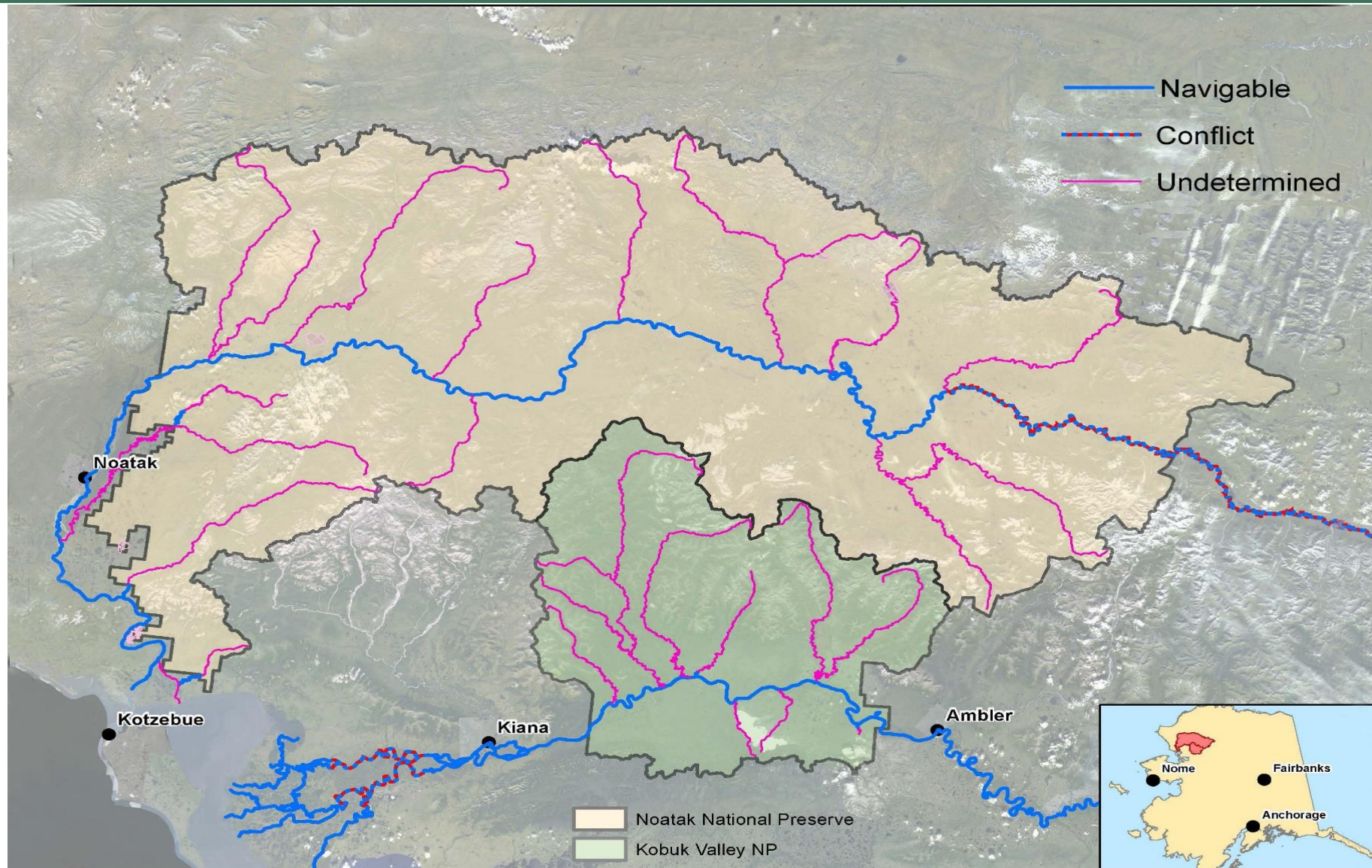


State-owned Navigable Waters after proposed codification

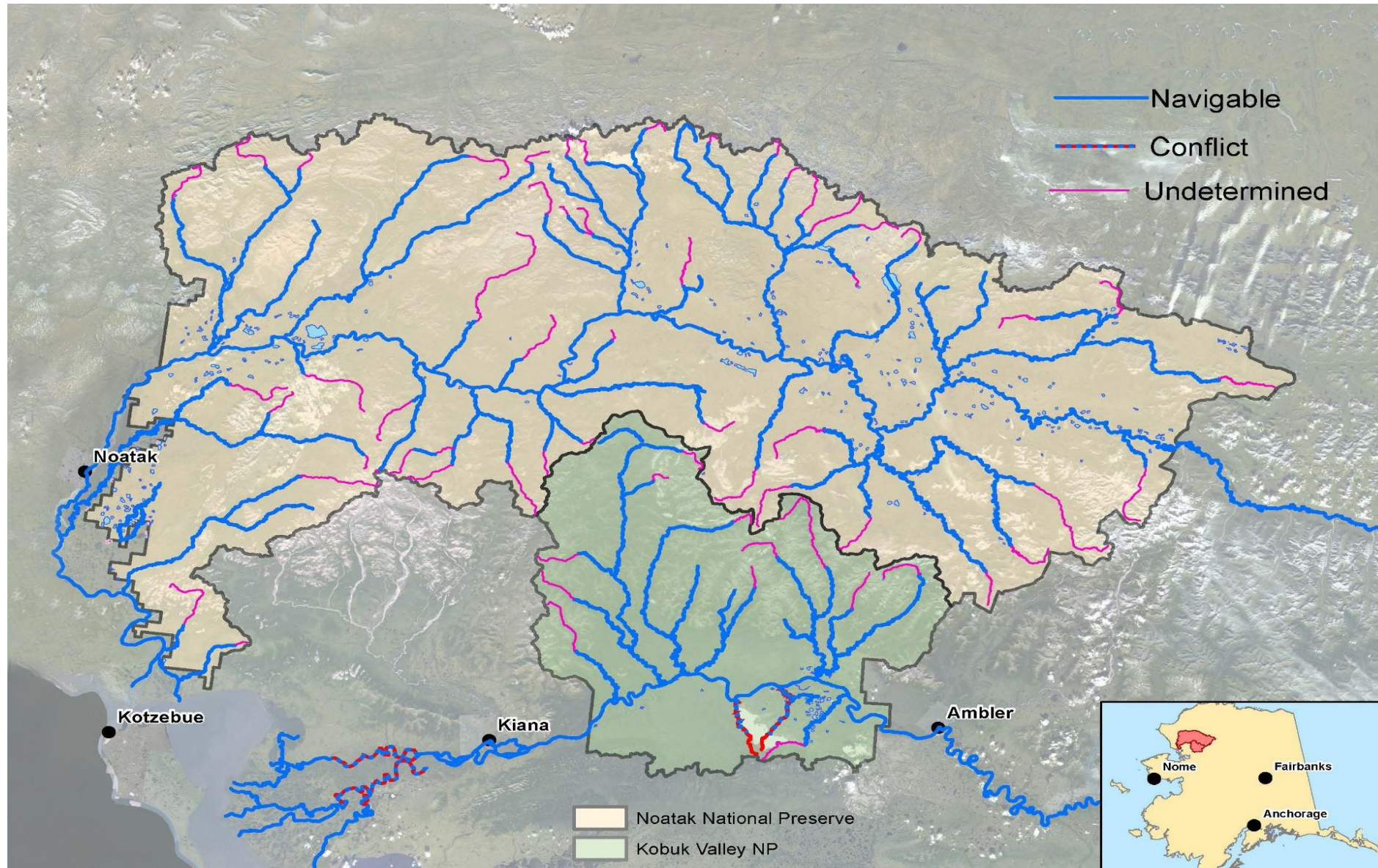


Noatak and Kobuk Valley National Parks

Federally-Acknowledged Navigable Waters



Noatak and Kobuk Valley National Parks Navigable Waters After Codification



Proposed Codification Legislation



3. Enshrines foundational elements of relevant caselaw to guide in navigability determinations

Susceptibility criteria to guide DNR in making navigability determinations includes, but is not limited to:

- Watercraft Type: Round raft, Canoe, Jon boat, Jet boat¹
- Susceptibility: Documented modern day use is sufficient²
- Navigability doesn't require a clear channel, two-way traffic, or historical evidence if the river is susceptible to navigation³

¹Alaska v. Ahtna, Inc., 891 F. 2d 1401 (9th Cir. 1989) (Gulkana River)

²Alaska v. United States, Case No. 3:12-cv-00114-SLG (D. Alaska 2016) (Mosquito Fork (Fortymile) River)

³PPL Montana, LLC v. Montana, 132 S. Ct. 1215 (2012); Utah v. United States, 403 U.S. 9 (1971); United States v. Utah, 283 U.S. 64 (1931)

Proposed Codification Legislation



3. Enshrines foundational elements of relevant caselaw to guide in navigability determinations

- Section Ten:
 - **Define geographical scope of legislation**
 - Post-statehood federal area
 - **Define key navigability terms for purposes of legislation including**
 - Mean high water
 - Mean high water line
 - Navigable water
 - Ordinary high-water mark
 - Submerged land

Proposed Codification Legislation



4. Establishes annual reporting requirement to legislature

Charges DNR with responsibility to conduct ongoing navigability research to determine state title to submerged lands within relevant federal areas

- Ensures non-exhaustive codified list best reflects reality
 - Ensures public facing document is accurate
- Further refinement and fine tuning as our quiet title litigation continues
- Provides leadership to federal authorities and a path forward to settle ambiguity so that land management benefiting the public will follow

Proposed Legislation



Alaska's ownership of Submerged Lands beneath navigable-in-fact and tidally influenced rivers and lakes is one of the fundamental promises of Statehood.

It's been 64 years. It is time for the Federal Government to keep its promise to the State of Alaska. HB 98 is a **bold** step in that direction.



Thank You



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Ordinary High Water Mark Practical Considerations



“Ordinary high water mark” means the mark along the bank or shore up to which the presence and action of the tidal or nontidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics.

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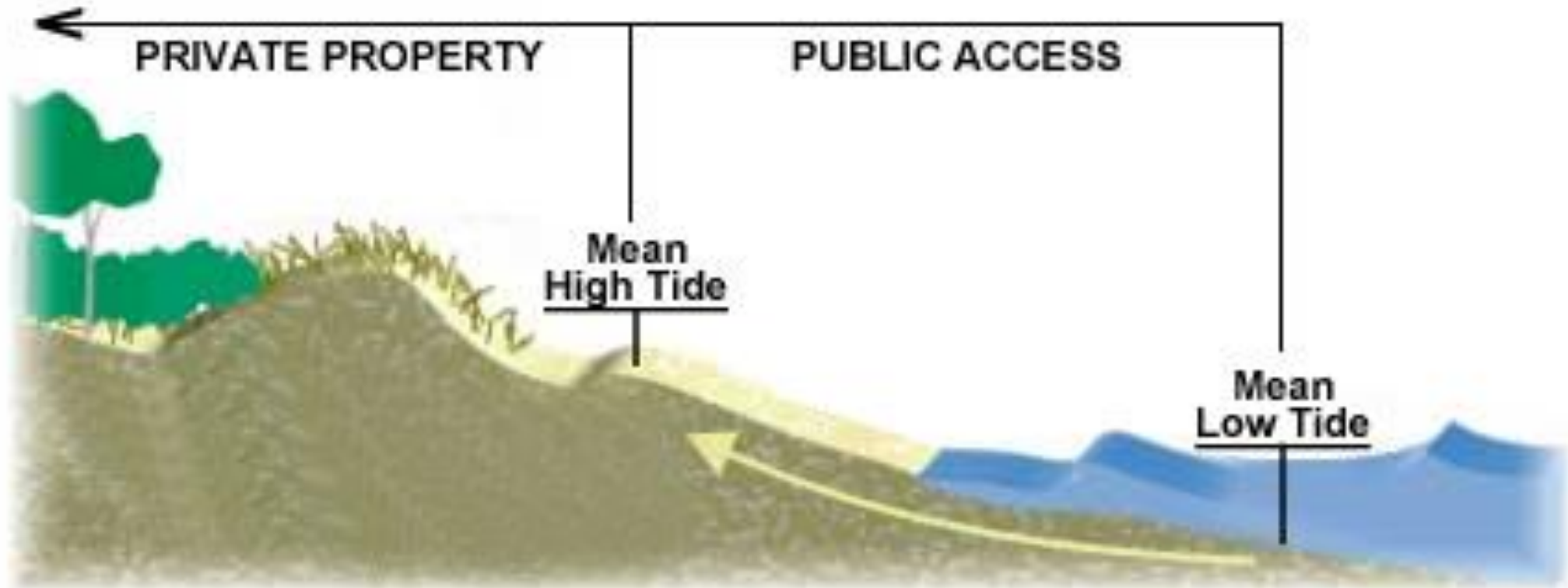


Mean High Tide Practical Considerations



“Mean high water” means the tidal datum plane of the average of all high tides, as would be established by the National Geodetic Survey, at any place of tidal influence.

Mean High Tide Practical Considerations



Mean High Tide Practical Considerations



Mean High Tide Practical Considerations

