

Statehood Defense Overview

Senate Resources Committee
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Statehood Defense

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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:

- Establishes a federal government of limited power
- 10th Amendment – Expressly reserves State rights
- Equal Footing Doctrine – State submerged lands, inland and tidal waters
- Anti-commandeering doctrine

Statehood Act:

- State land selections
- State submerged lands
- Right to manage state lands, waters, fishery resources, mineral development, and wildlife

Federal Submerged Lands Act:

- *State submerged lands – inland, tidal, and coastal waters*

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
 - State of Alaska Science
 - Comment/Record development
 - Direct litigation
 - Intervention
 - Amicus support
 - Multi-State Coordination



STATEHOOD DEFENSE GENERAL STRATEGY

Multi-Year Statehood Defense Funding

| <u>Matter</u> | <u>Summary</u> | <u>Anticipated Duration</u> | <u>Anticipated Costs</u> |
|--|--|-----------------------------|--------------------------|
| ANCSA 17(D)(1) Delay | Challenge to delays in revoking ANCSA Section 17(d)(1) withdrawals covering 28 million acres | 2-4 years | \$300,000 |
| Biden Oil & Gas Leasing Moratorium | Coalition of States challenging Biden administration moratorium on oil and gas leasing activities | 2-4 years | \$94,000 |
| Fortymile Rivers Quiet Titles | Assertion of State ownership to submerged lands underlying North Fork and Middle Fork, Fortymile River, AK | 2-4 years | \$1,335,000 |
| GHG Social Costs | Coalition of States challenging Biden administration use of social costs modelling in GHG emission costs | 2-4 years | \$94,000 |
| Koyukuk River Quiet Titles | Assertion of State ownership to submerged lands underlying portions of the Koyukuk and the Bettles Rivers | 2-4 years | \$1,335,000 |
| Sackett Amicus Brief | Urge Supreme Court to adopt Scalia's test for waters of the U.S. | Under 1 year | \$50,000 |
| Texas v. EPA | Challenge to new Clean Air Act rules regarding passenger vehicles and trucks | 2-4 years | \$94,000 |
| Ringed Seal Delisting | Challenge to National Marine Fisheries Service 90-day finding regarding SOA's petition to delist ringed seal | 3-5 years | \$400,000 |
| Mulchatna family of rivers Quiet Titles | Continued actions to formally recognize strategic navigability for title waters | 3-5 years | \$1,335,000 |
| Mendenhall Lake Quiet Titles | Continued actions to formally recognize strategic navigability for title waters | 3-5 years | \$1,335,000 |
| Former Federal Site Cleanup | Suit to compel cleanup of formerly used defense and other federally contaminated sites located on Alaska Native Claim Settlement Act lands | 3-5 years | \$2,000,000 |
| ESG Investment Rule | Coalition of states challenging the Department of Labor's ESG rule | 2-4 years | \$94,000 |
| Kenai Refuge Rule | Challenge to federal rules that attempt to regulate the means and methods of hunting | 2-4 years | \$150,000 |
| NPS Rule | Challenge to federal rules that attempt to regulate the means and methods of hunting | 2-4 years | \$150,000 |
| | | Total | \$8,766,000 |

Department of Environmental Conservation

COMMISSIONER JASON BRUNE



Implementing Primacy Programs

DEC can find flexibility in federal laws to make these programs work better for Alaska and Alaskans.

Federal Programs Currently Implemented by DEC:

- Resource Conservation and Recovery Act, Solid Waste
- Safe Drinking Water Act
- Clean Air Act
- Clean Water Act section 402, APDES Program

Potentially coming soon ...

- RCRA, Hazardous Waste
- Clean Water Act section 404, Dredge & Fill Permitting



Commenting on Federal Proposals

DEC experts evaluate federal proposals and push back where the federal agencies seek to expand federal authority or impose standards that don't make sense for our state.

WOTUS: EPA and the Army Corps continue to push the limits of federal jurisdiction under the Clean Water Act and Congress's authority under the U.S. Constitution. DEC and Law prepared comments and are evaluating the final rule.

404(c): DNR, DEC, ADF&G, and Law comment letter on EPA proposal, now preparing to challenge final determination setting over 300 square miles of state-owned lands off limits to resource development.

Fairbanks PM_{2.5} Non-Attainment Area: EPA proposes to disapprove stakeholder-driven plan for correcting air quality concerns; DEC will engage to address concerns raised. [DEC also intervened in lawsuit brought by Earth Justice seeking to force EPA's hand to ensure the state is heard.]

Aviation Gas Endangerment Finding: EPA proposal may compromise access to rural communities.

Oil & Gas Methane Rule: EPA proposes to penalize maintenance activities and unleash third-party observers to oversee facilities.

Engagement on National Policy Priorities

DEC ensures the State's perspective is represented on a number of other fronts.

Arctic Policy

Environmental Justice Initiatives

M&O for IIJA-Funded Facilities

Human Health Criteria

ESG and Greenhouse Gas Analyses

Toxic Release Inventory



Holding Federal Agencies Accountable

DEC works to ensure the federal government corrects its own failures.



ANCSA Contaminated Sites: DEC is pushing the Department of Interior to clean up contamination they left on properties the federal government transferred to Alaska Native Corporations under ANCSA.

EPA Woodstove Certification Program EPA required DEC (and Fairbanks residents) to replace old woodstoves in the non-attainment area with EPA-certified woodstoves. DEC discovered that the EPA certification program is fundamentally flawed and is pushing the agencies to do its job to ensure the new stoves are actually cleaner.

Department of Natural Resources

COMMISSIONER DESIGNEE JOHN BOYLE

Navigability: A vital aspect of State sovereignty



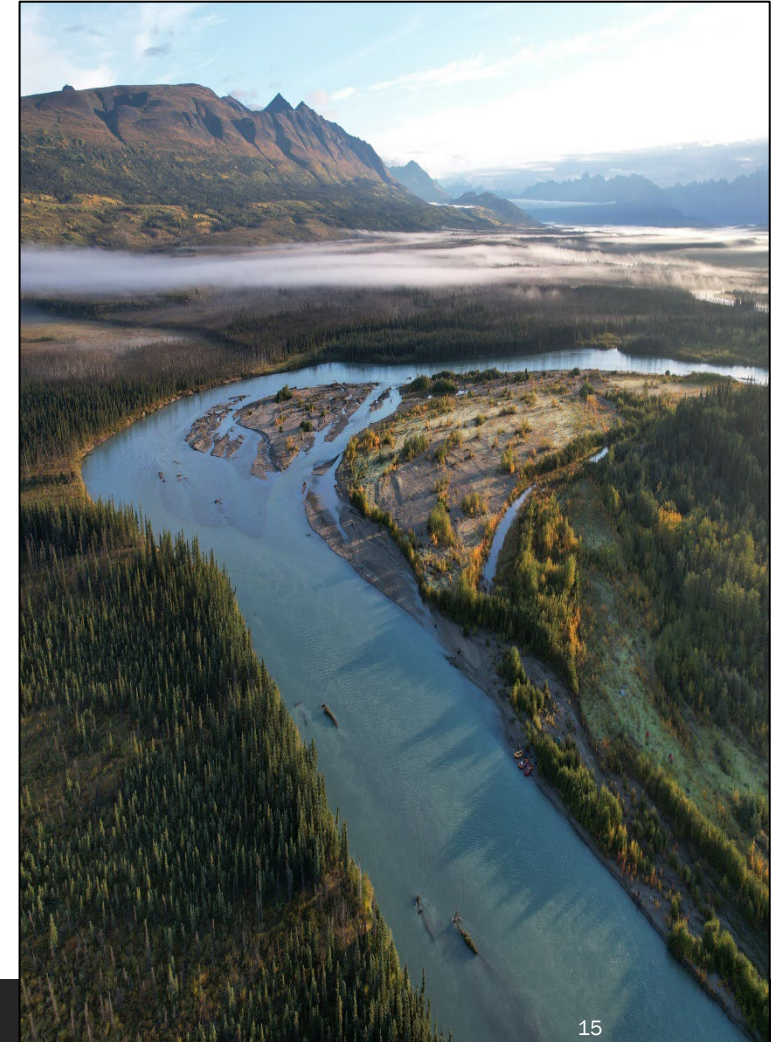
Estimated **800,000 miles of Navigable Rivers** in Alaska

Estimated **30 million acres of Navigable Lakes** in Alaska

The State of 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 or reservation 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.

This is a fundamental promise of Statehood enjoyed by Alaska—like all other states—pursuant to the Equal Footing Doctrine of the United States Constitution.



Federal acknowledgement of State title to submerged lands (1959-present)

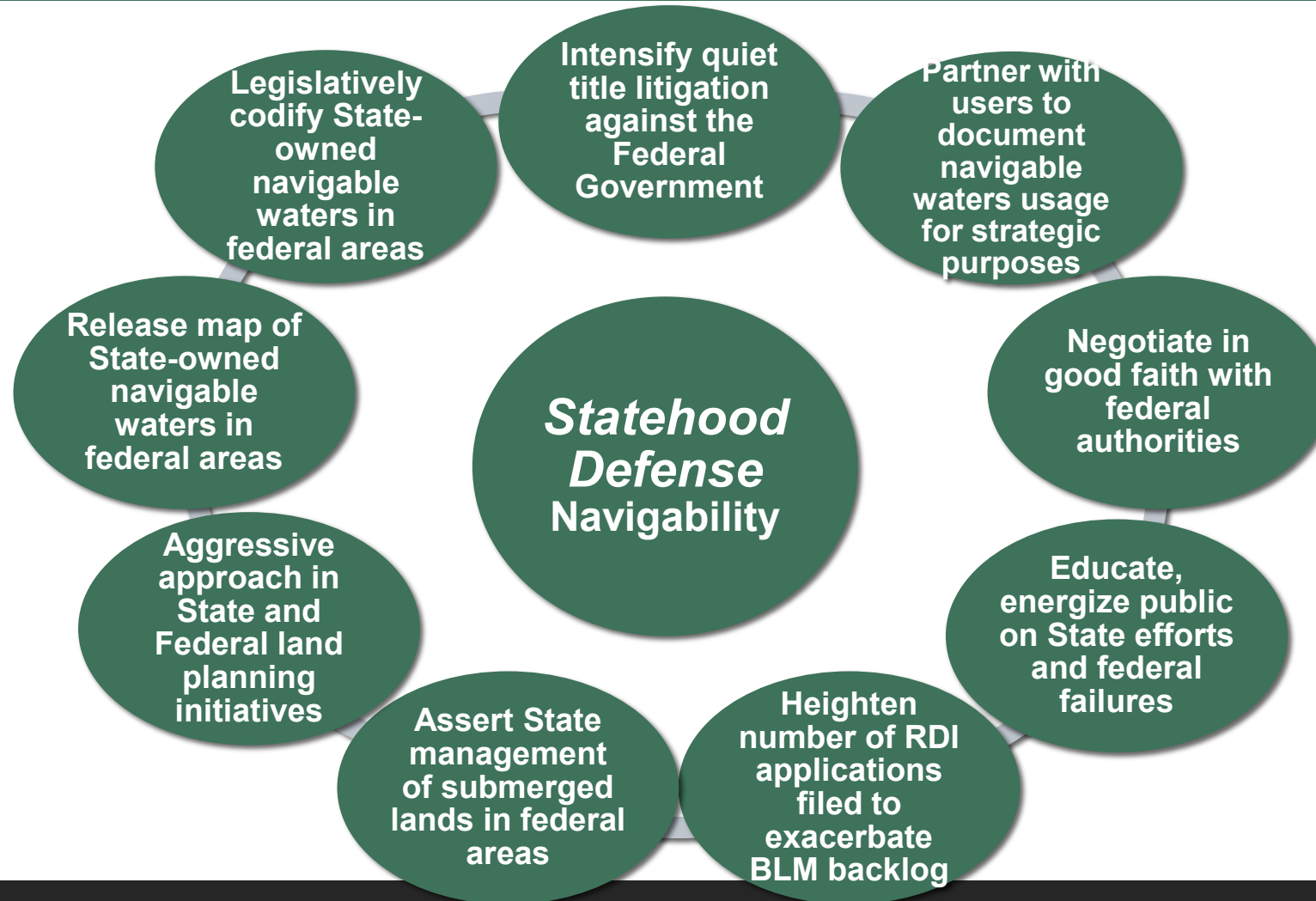


The federal government acknowledges Alaska's clear title to its submerged lands beneath navigable-in-fact and tidally influenced rivers and lakes in:

- Only 9 percent of submerged lands under state-owned rivers
- Only 16 percent of submerged lands under state-owned lakes



Assertions of State ownership and authority under the Governor's *Unlocking Alaska* Statehood Defense Initiative



Aggressive assertion of State interests pursuant to federal Quiet Title Act



Pending Cases:

North Fork and Middle Fork of Fortymile River (Pending) (BLM)

Middle Fork of Koyukuk River, Bettles River and Dietrich River (Pending) (NPS, BLM)

Mulchatna River, Chilikadrotna River, Turquoise Lake, Twin Lakes (Pending) (NPS, BLM)

Mendenhall River and Mendenhall Lake (Pending)(USFS, BLM)

Ready to File (Expired 180-Day QTA Notice of Intent):

Birch Creek (BLM)

Sarkar Lake and Prince of Wales Island (USFS, BLM)

Walker Lake and Kobuk River (NPS, BLM)

Ready to Serve 180-Day QTA Notice of Intent:

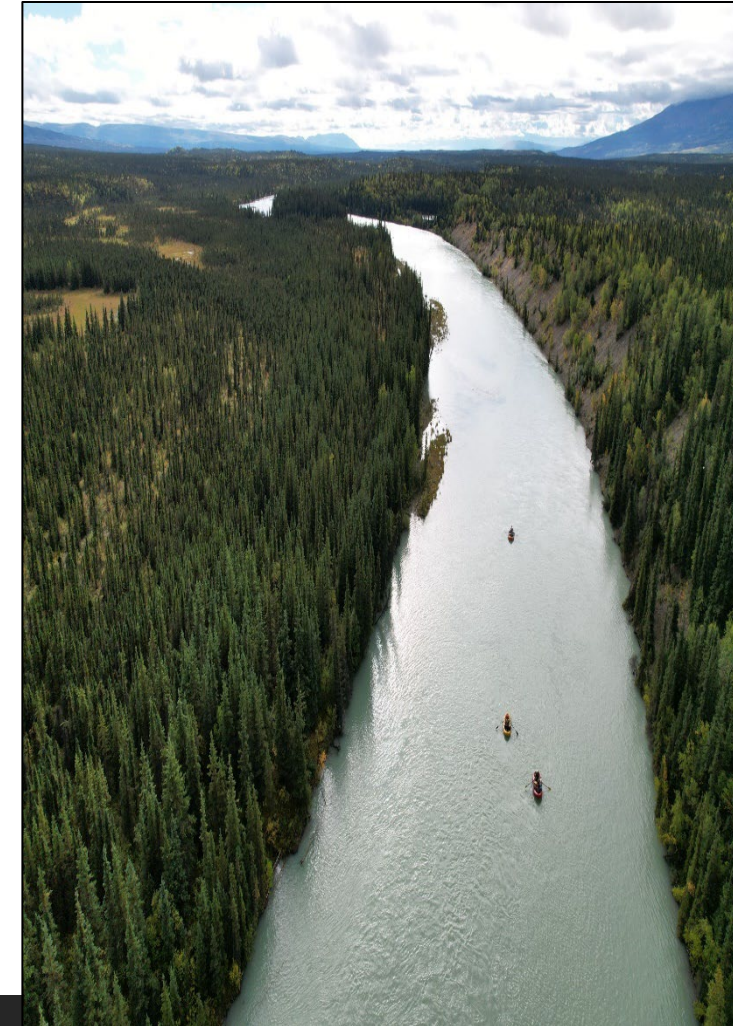
Telaquana River, Necons River, Stony River, Two Lakes, Telaquana Lake (NPS, BLM)

Nabesna River (BLM NPS USFWS)

Noatak River (NPS, BLM)

Resurrection River (USFS, NPS, BLM)

Other rivers and lakes of great strategic importance



Statehood Defense and RS 2477 rights-of-way



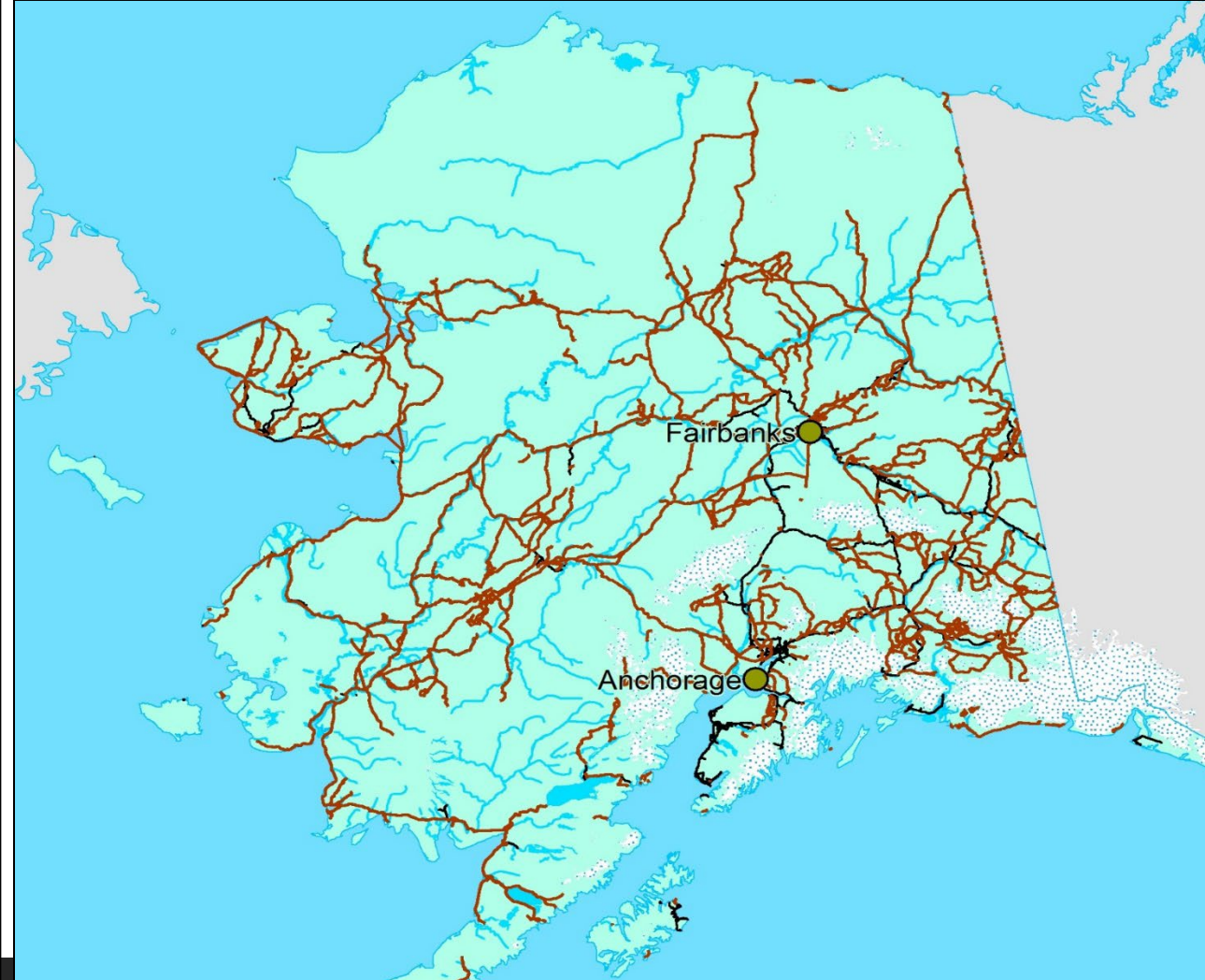
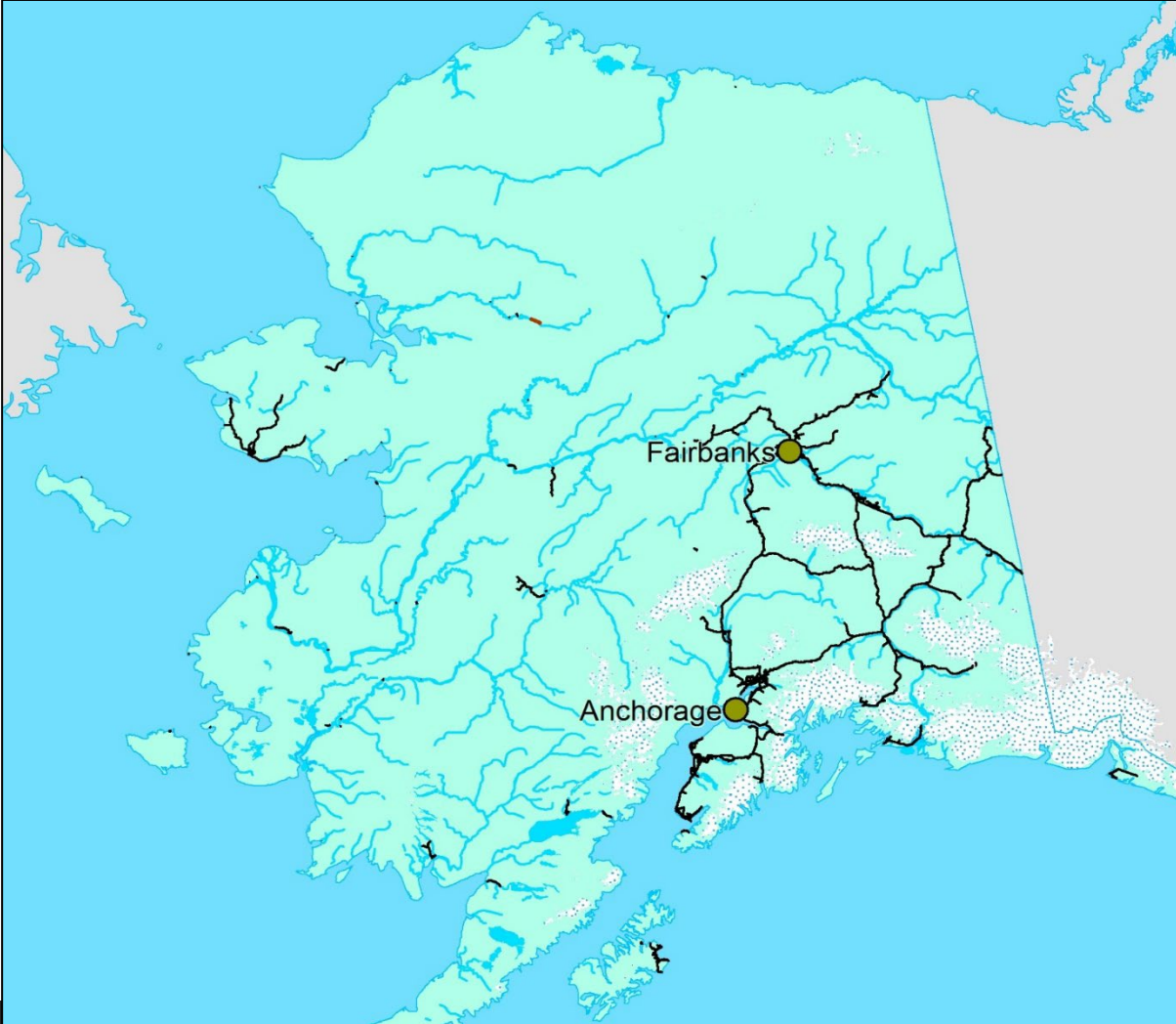
Alaska has a vast network of RS 2477 rights-of-way (ROWs) that often provide the only land-based public access to many areas statewide.

Many of Alaska's state-owned RS 2477 ROWs cross federal lands in conservation system units (CSUs) across the state.

Even when located within the external boundaries of a federal CSU, a valid RS 2477 ROW remains a property interest of the SOA and remains subject to state ownership, management and control.



Importance of RS 2477 ROWs for public access including federal areas



Yukon-Charley Rivers National Preserve

RS 2477 project



A Possible path forward: An “omnibus” civil action pursuant to the Federal Quiet Title Act for ALL known RS 2477 rights-of-way in an entire federal conservation system unit.

- A single case seeking judicial recognition for all routes for the entirety of a particular federal area
- A giant leap forward in RS 2477 jurisprudence for the State and largely unprecedented anywhere else
- Breaking with previous history of litigating the validity of RS 2477 ROWs route-by-route, mile-by-mile





Willow and NPR-A Update

Permitting

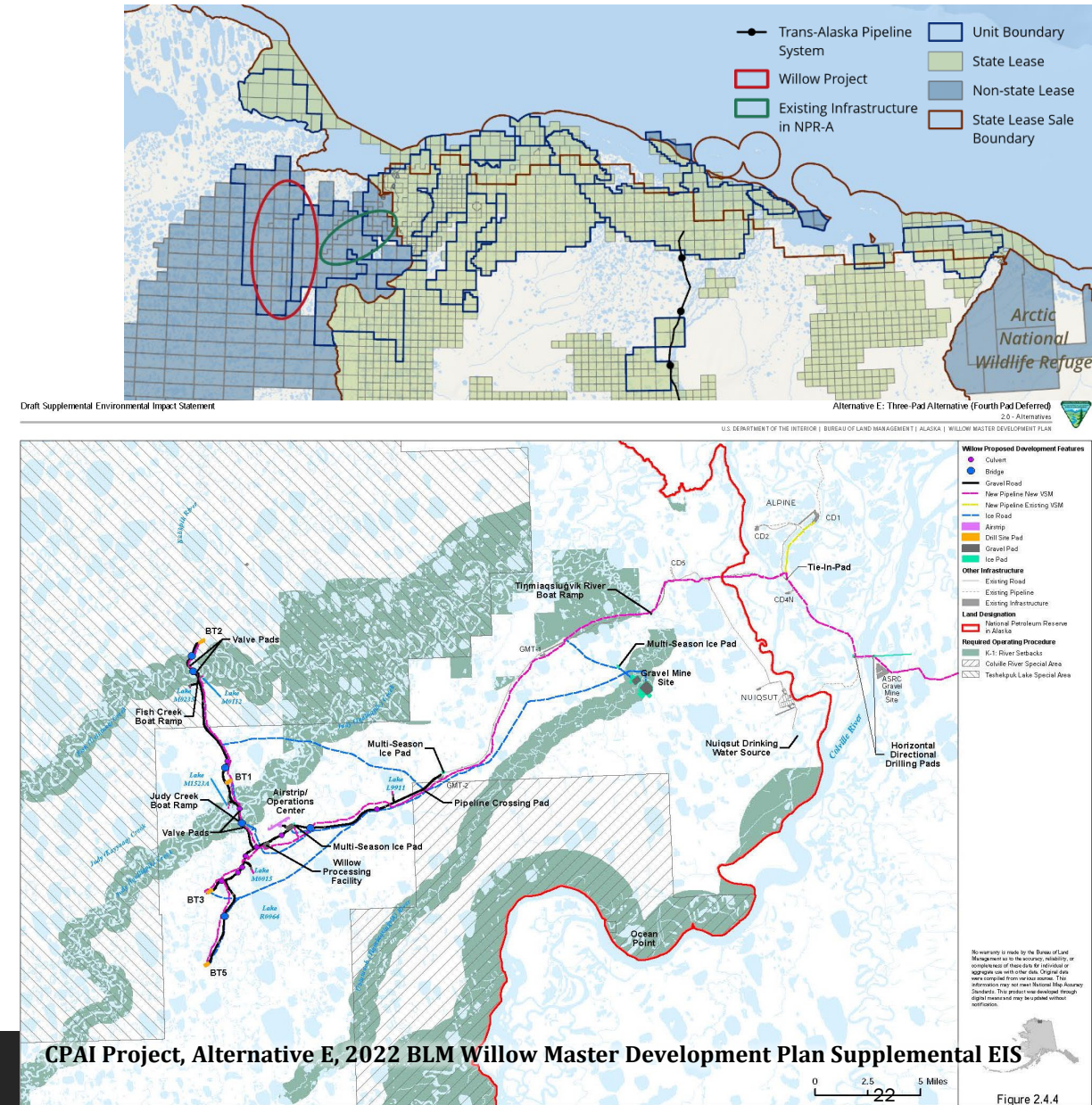
- Comment period for Draft Final Supplemental Environmental Impact Statement (SEIS) closed August 29, 2022
- Final SEIS review completed by cooperating agencies in January 2023
- Publication of Final SEIS February 1, 2023
- A Record of Decision (ROD) should follow as soon as 30 days after Final SEIS publication – potentially early March

Anticipated Performance

- Expected peak production of 180,000 barrels of oil per day
- 600 million barrels of oil estimated total production over project life
- \$8–17 billion in royalty and property tax payment to State of Alaska, US, and municipal governments

Integrated Activity Plan (IAP) Litigation

- Biden Administration has reverted to 2013 management plan for the broader National Petroleum Reserve – Alaska (NPR-A) and some parties are continuing to litigate
- No lease sales have been scheduled/planned at this time





ANWR Update

Federal law still requires a second lease sale by the end of 2024

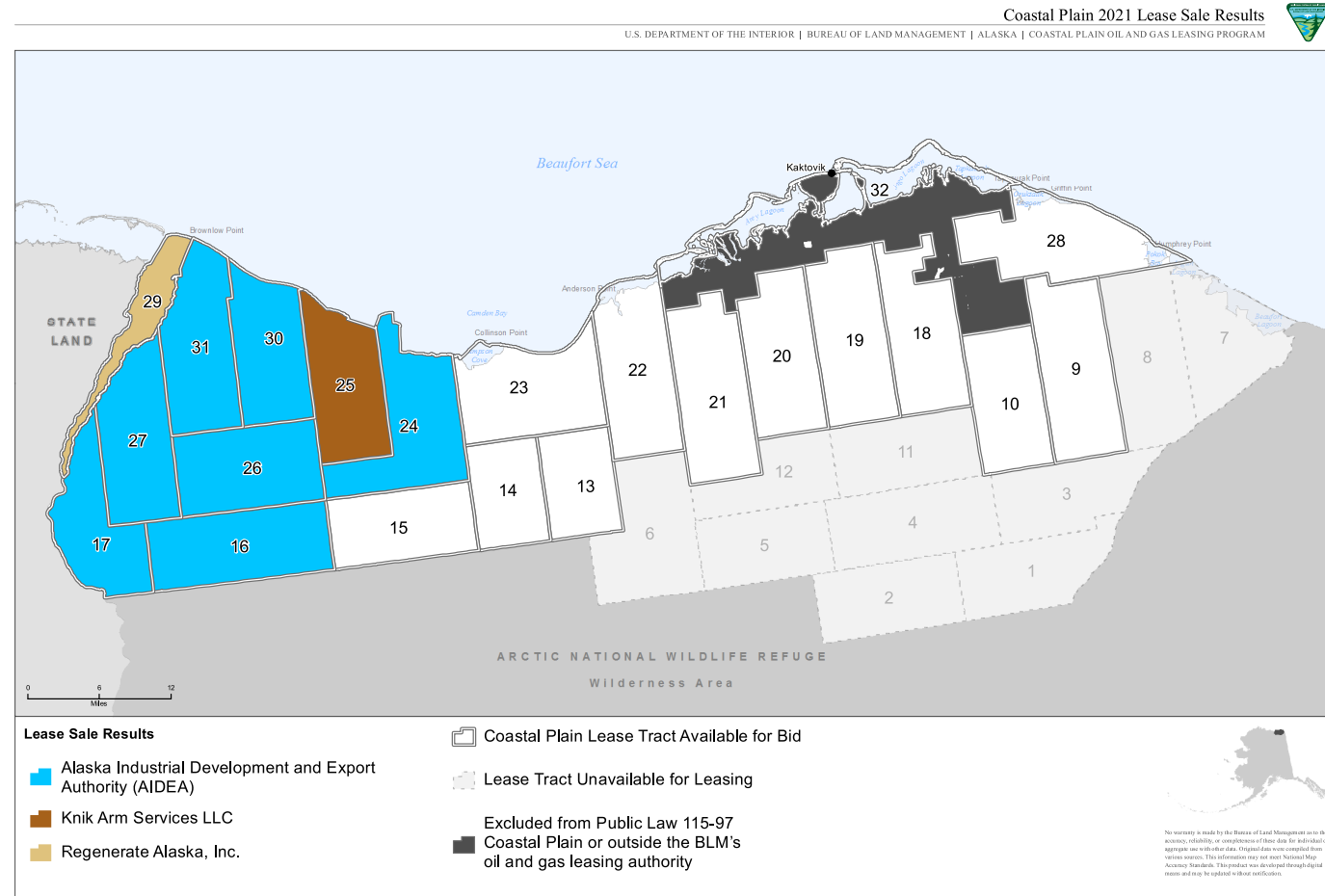
AIDEA's leases remain suspended pending completion of a Supplemental Environmental Impact Statement (SEIS) for the oil and gas leasing program

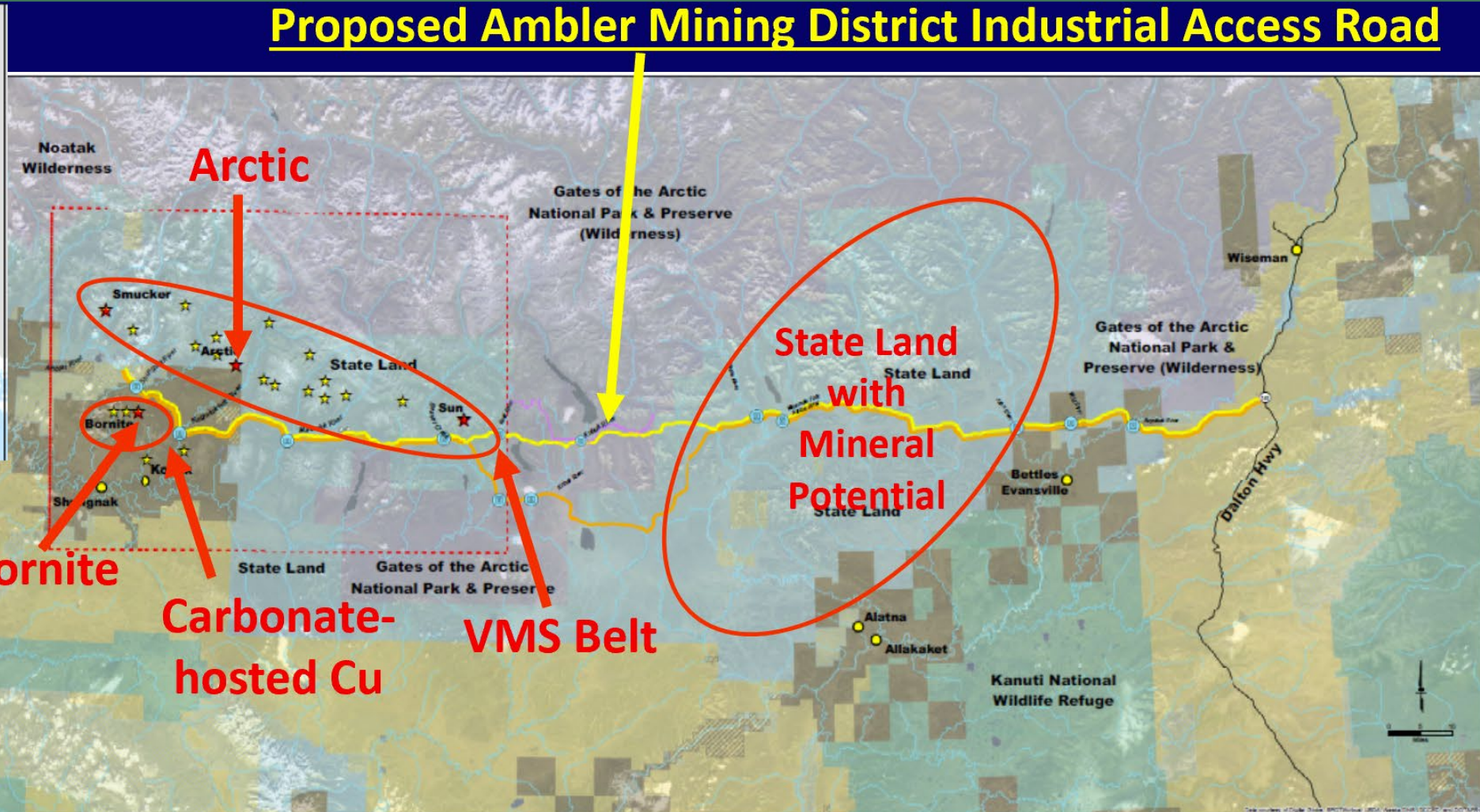
The other two lessees relinquished their leases, so AIDEA's are the only remaining (blue in lease map)








Litigation challenging the lease suspension is ongoing, with cross-motions for summary judgment








- Plaintiffs' and State's opening briefs were filed December 5, 2022
- BLM's response was due February 3, 2023
- Briefing should conclude in mid- to late-March





The leasing program litigation remains stayed pending completion of the SEIS. Next status report is due April 28, 2023





 Ambler Mining District
  AMDIAP Preferred Corridor (211 Miles)
  Existing Roads
  Proposed Large Bridge
  Bureau of Land Management (Federal Land)
  ANCSA (Native Corporation Land)
  State Land

 Major Mineral Deposit
  AMDIAP Alternative Corridor (228 Miles)
  Milepost 161
  Cities
  Fish and Wildlife Service (Federal Land)
  ANCSA Selected
  State Selected

 Mineral Resources
  Rivers and Streams
  Wilderness Boundary
  National Park Service (Federal Land)

24

Department of Fish & Game

DEPUTY COMMISSIONER BEN MULLIGAN



Right to Manage

Protect Alaska's 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

Challenge unnecessary and unjustified listings of species and their critical habitats under the Endangered Species Act



Right to Manage

Fight for statehood was largely driven by federal fish and game mismanagement

Alaska's statehood compact gave us control over fish and game

On December 29, 1959, President Eisenhower formally recognized the transfer of authority over fish and game to Alaska (Executive Order 10857)

These rights were re-affirmed with the passage of ANILCA

BOTTOMLINE

The State is the primary manager of fish and game on all lands throughout Alaska



Right to Manage

Why is this important?

Alaskans must have the ability to access fish and game resources without being unnecessarily restricted by federal agencies



Best Available Science

ADF&G collecting and utilizing sound science to inform federal decision processes



State Science Initiatives

Inform Endangered Species Act potential listing decisions

- Yellow cedar
- Bumble bees
- Bats
- Northern Bog Lemmings
- Southeast Alaska wolves

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

- Polar Bear ITR
- Ringed Seal listing



Informed Participation

Participate in the federal subsistence program

- Federal Subsistence Board
- Federal Subsistence Regional Advisory Councils

Participate in lawsuits to defend federal findings we support

- Intervention in the Polar Bear ITR suit
- Cook Inlet ITR suit



Challenging Decisions

Unnecessary and unjustified listings of species and their critical habitats under the Endangered Species Act

- Ringed Seal Listing
- Ringed Seal Critical Habitat
- Humpback Whale Critical habitat



Current Litigation

Kuskokwim River Management

- *United States v. Alaska*

Kake Special Hunt

- *State v. Federal Subsistence Board*

Nelchina Caribou Herd

- *State v. Federal Subsistence Board*

Kenai Wildlife Refuge Rule

- *State v. Haaland, et. al.*

National Park Service Rule

- *Alaska Wildlife Alliance v. Haaland*

Metlakatla Fishing Jurisdiction

- *Metlakatla Indian Community v. State*

Chinook Salmon & Southern Killer Whales

- *Wild Fish Conservancy v. Rumsey, et. al.*

Upper Cook Inlet Salmon Management

- *United Cook Inlet Drift Association v. NMFS*

Questions?

Legislative Liaisons

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