



# Governor Dunleavy's Navigable Waters Initiative "Unlocking Alaska"

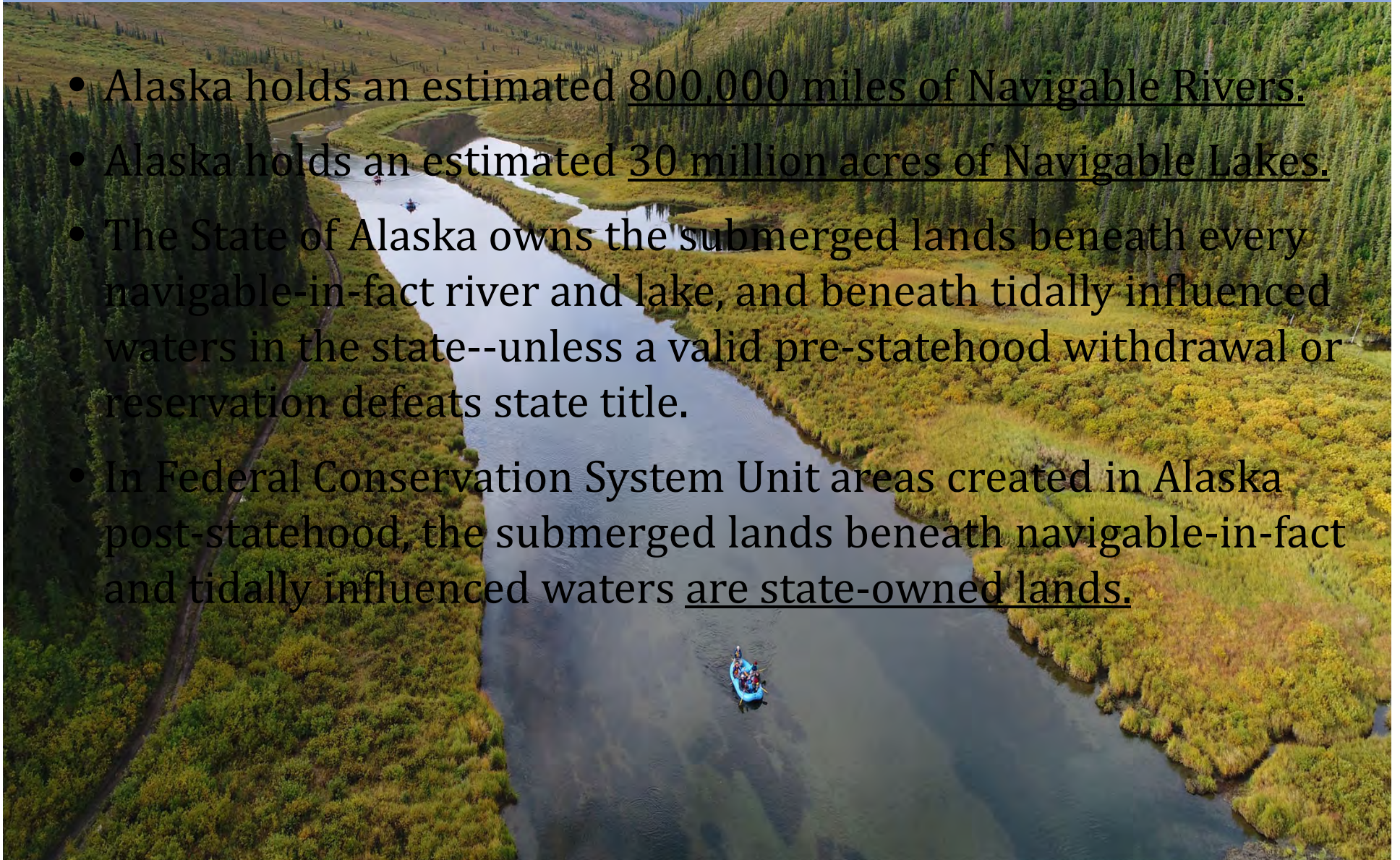
Presentation to the Alaska Alliance  
DNR Deputy Commissioner Brent Goodrum  
DNR DMLW Public Access Manager Jim Walker  
April 8, 2021





# THE NAVIGABLE WATERS ISSUE

- Alaska holds an estimated 800,000 miles of Navigable Rivers.
- Alaska holds an estimated 30 million acres of Navigable Lakes.
- 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.





# FEDERAL AREAS WHERE SOA OWNS SUBMERGED LANDS

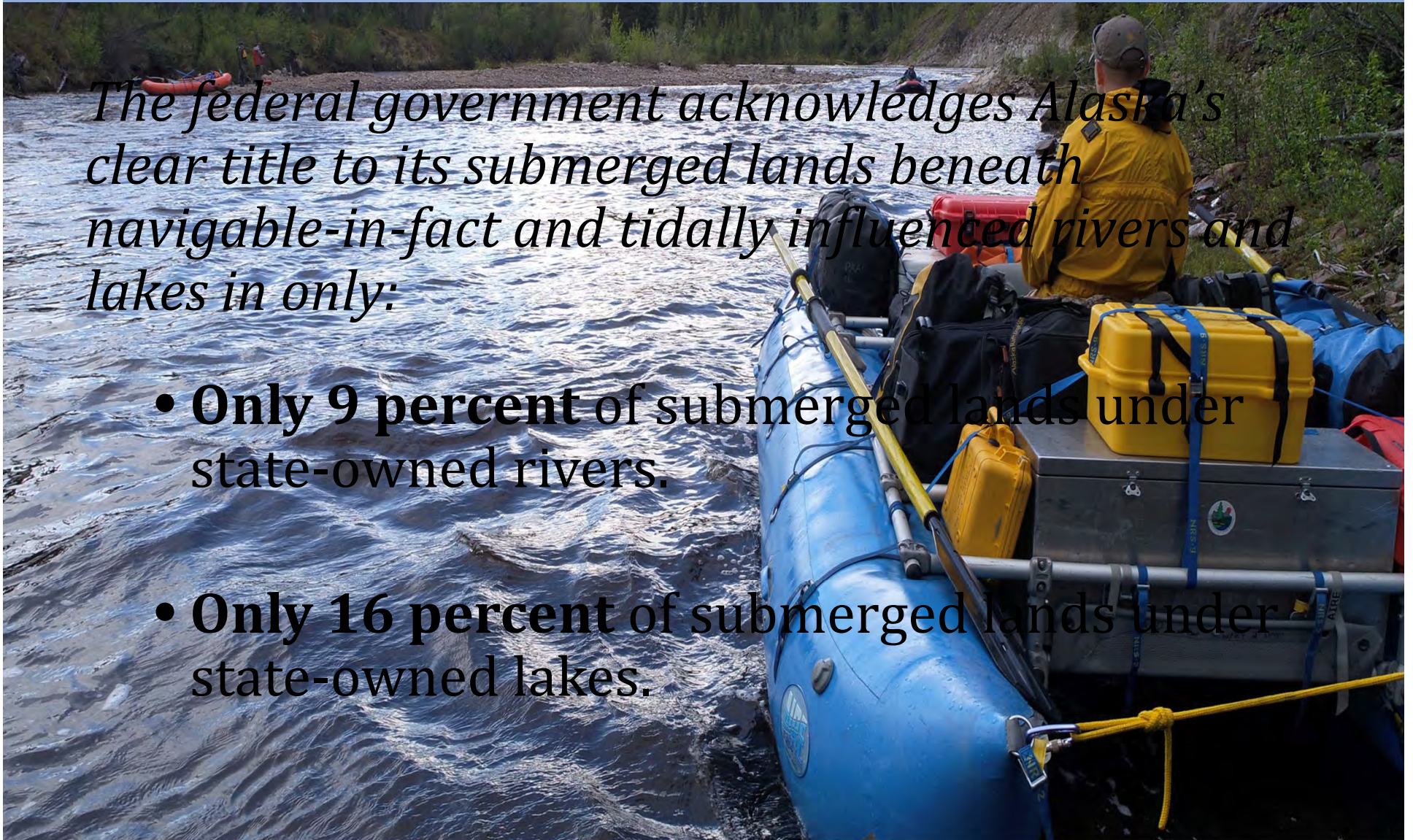
- **National Park Service:** Noatak NPr, Kobuk Valley NP, Bering Land Bridge NPr, Denali NPP, Wrangell-St. Elias NPP, Glacier Bay NPP, Katmai NPP, Kenai Fjords NP, Gates of the Arctic NPP, Lake Clark NPP, Yukon-Charley Rivers NPr, etc.
- **U.S. Fish and Wildlife Service:** Becharof NWR, Innoko NWR, Izembek 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:** Steese National Conservation Area, Beaver Creek 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

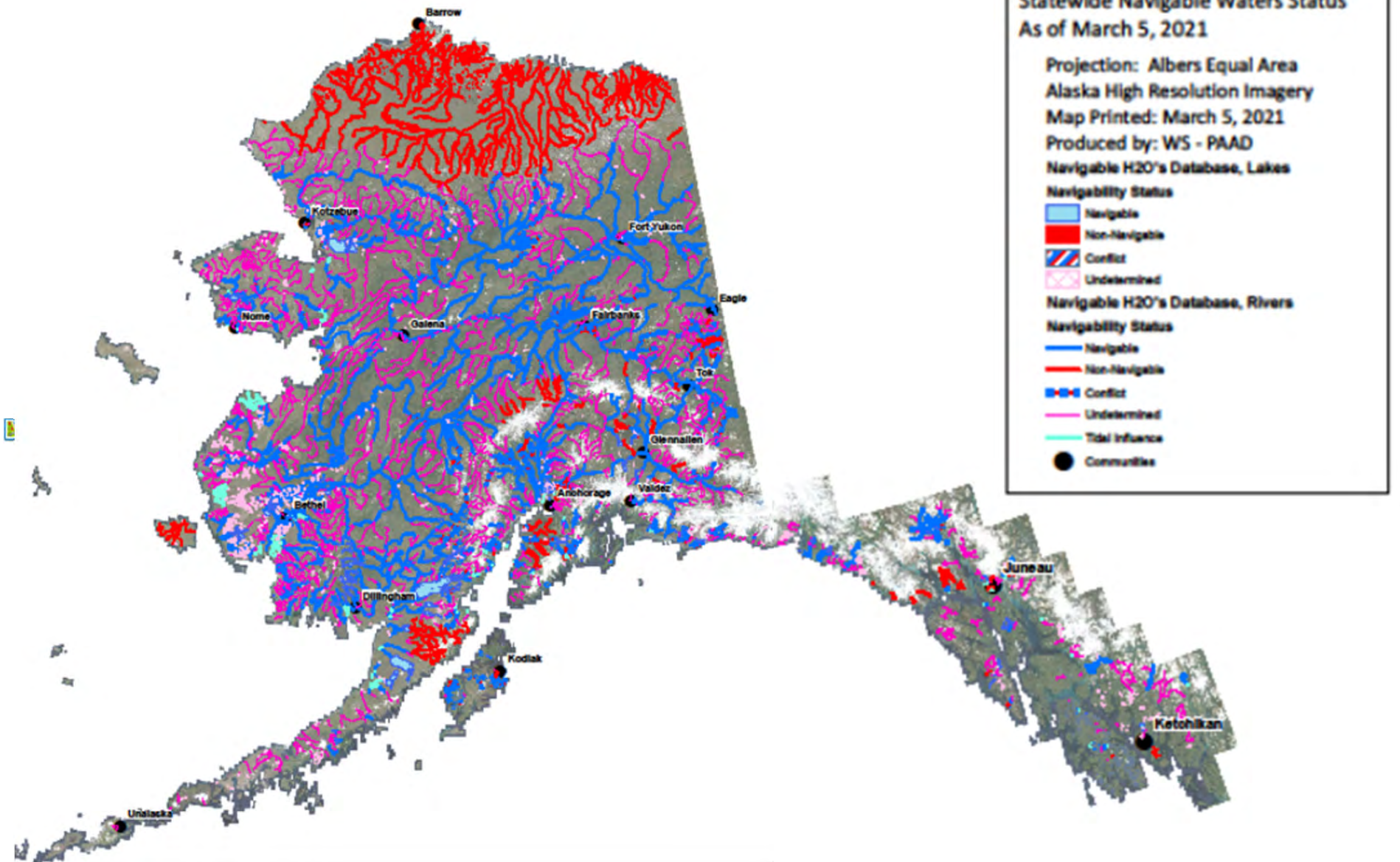
*The federal government acknowledges Alaska's clear title to its submerged lands beneath navigable-in-fact and tidally influenced rivers and lakes in only:*

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

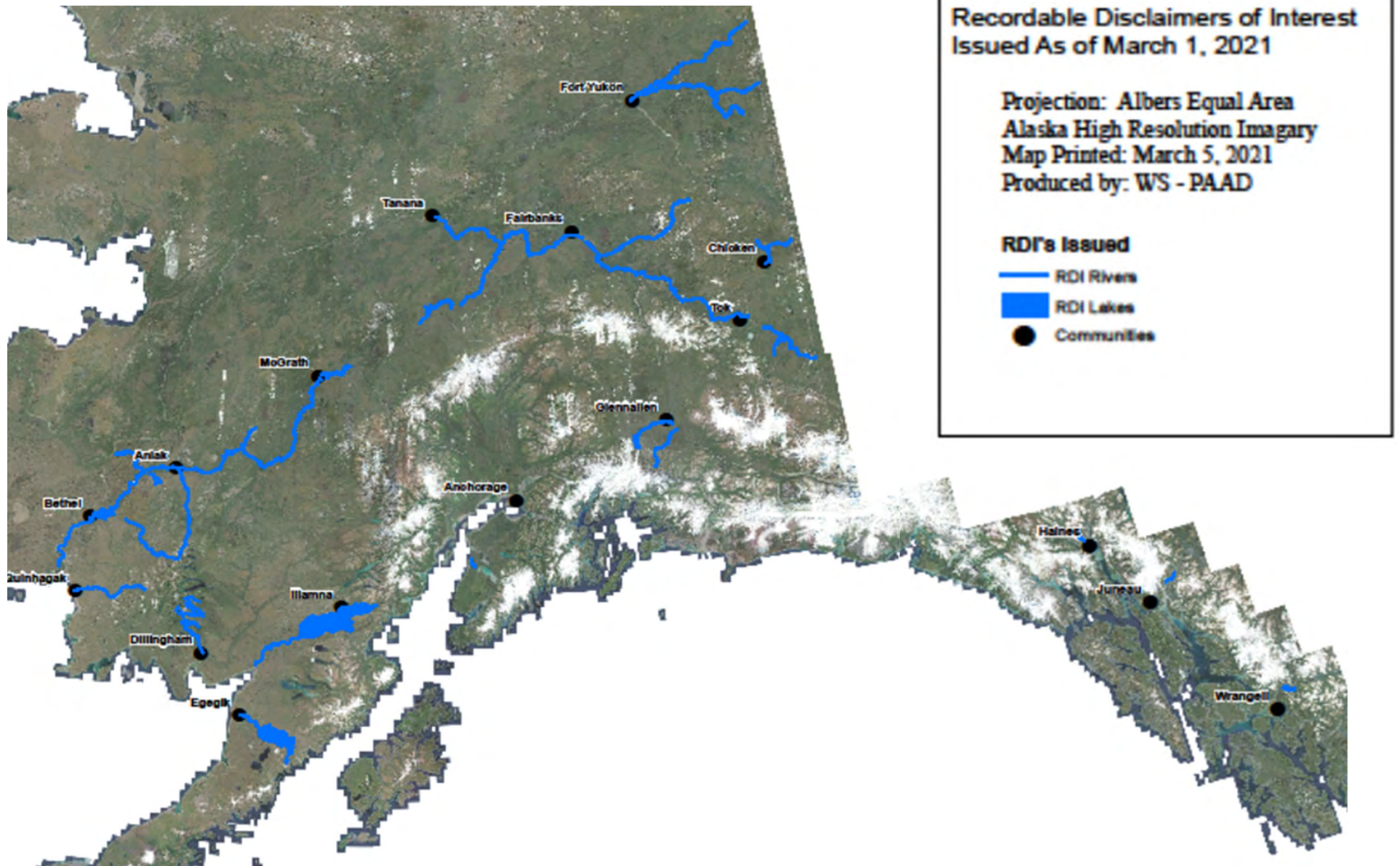




# CURRENT STATUS OF NAVIGABLE WATERS

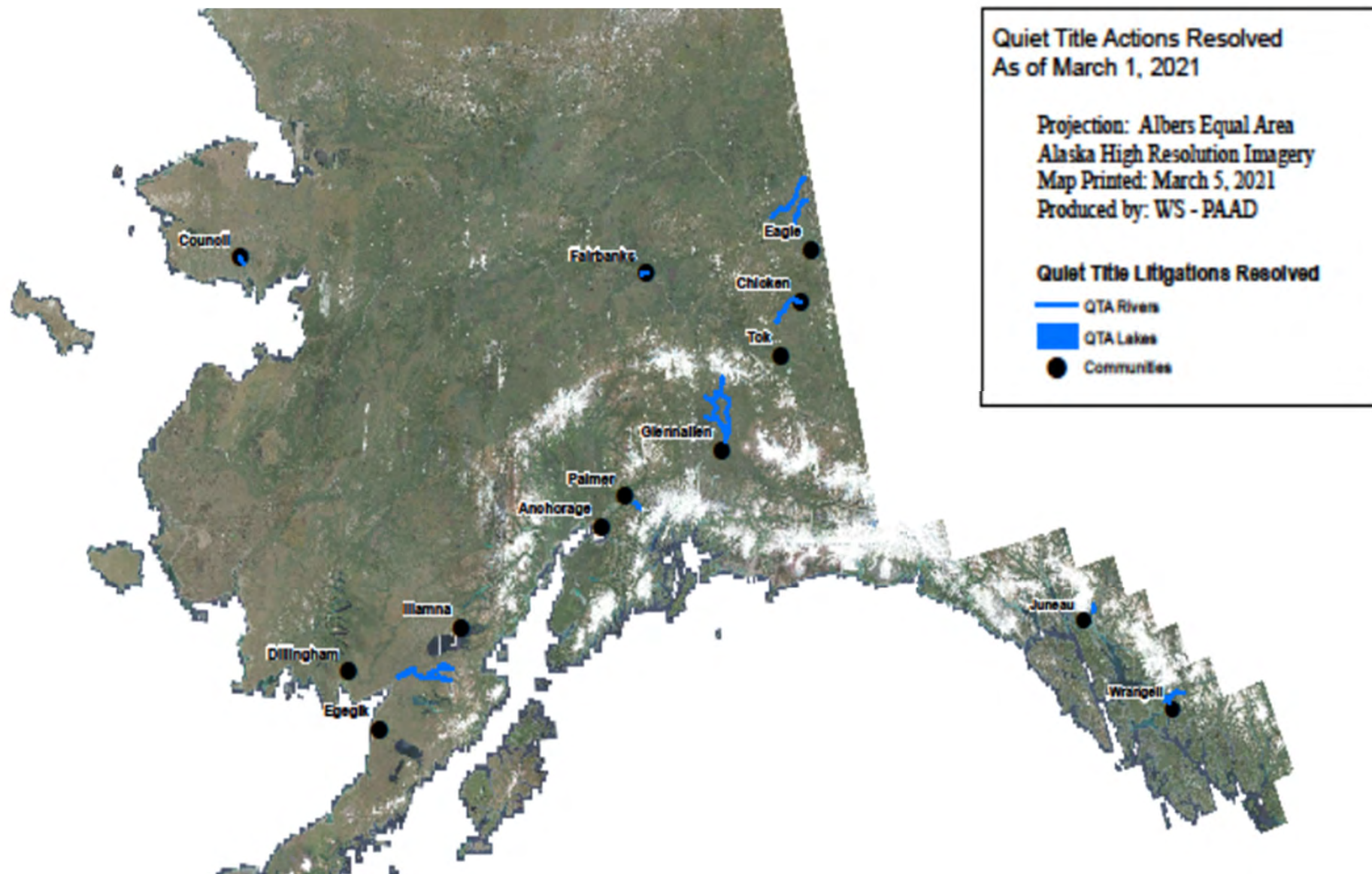


# SUCCESSFUL RDI APPLICATIONS





# SUCCESSFUL QTA LITIGATION



# *STURGEON V. FROST 2016*

U.S. SUPREME COURT RULES FEDERAL REGULATIONS DON'T  
SUPERSEDE SOA WATER MANAGEMENT IN ANILCA CSUS





# The Navigability Phase of the Initiative will involve all of these interrelated assertions of state ownership and authority:

Intensify quiet title litigation against the federal government

Partner with users to document navigable waters usage for strategic purposes

Negotiate in good faith with federal authorities

Educate, energize public on State efforts and federal failures

Increase number of RDI applications filed with the BLM

Assert State management of submerged lands in federal areas

Aggressive approach in State and federal land planning initiatives

Release map of State-owned navigable waters in federal areas

Legislatively codify State-owned navigable waters in federal areas

***“Unlocking Alaska”***

**Phase One - Navigability**

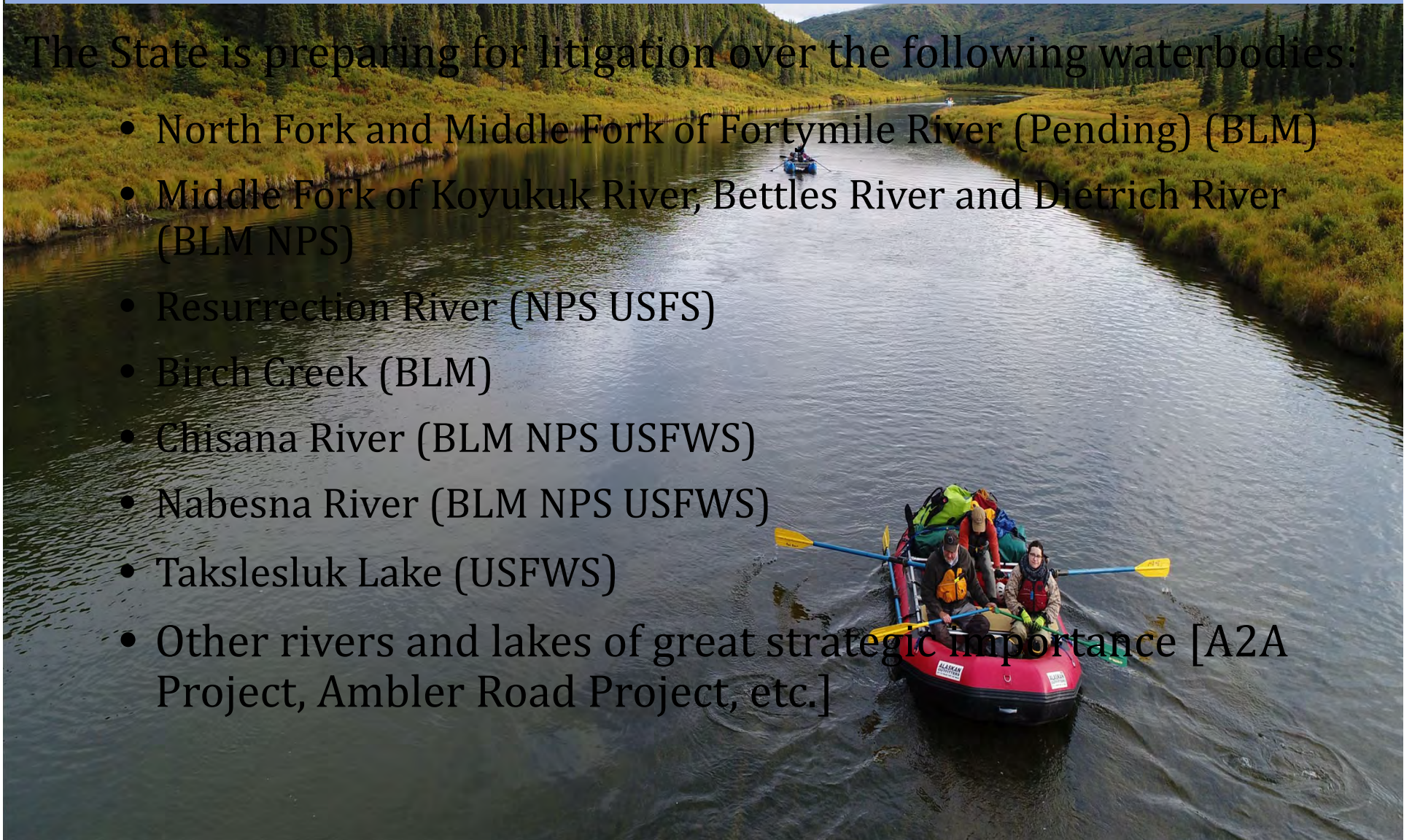




# INTENSIFY LITIGATION PURSUANT TO THE FEDERAL QUIET TITLE ACT

The State is preparing for litigation over the following waterbodies:

- North Fork and Middle Fork of Fortymile River (Pending) (BLM)
- Middle Fork of Koyukuk River, Bettles River and Dietrich River (BLM NPS)
- Resurrection River (NPS USFS)
- Birch Creek (BLM)
- Chisana River (BLM NPS USFWS)
- Nabesna River (BLM NPS USFWS)
- Takslesluk Lake (USFWS)
- Other rivers and lakes of great strategic importance [A2A Project, Ambler Road Project, etc.]





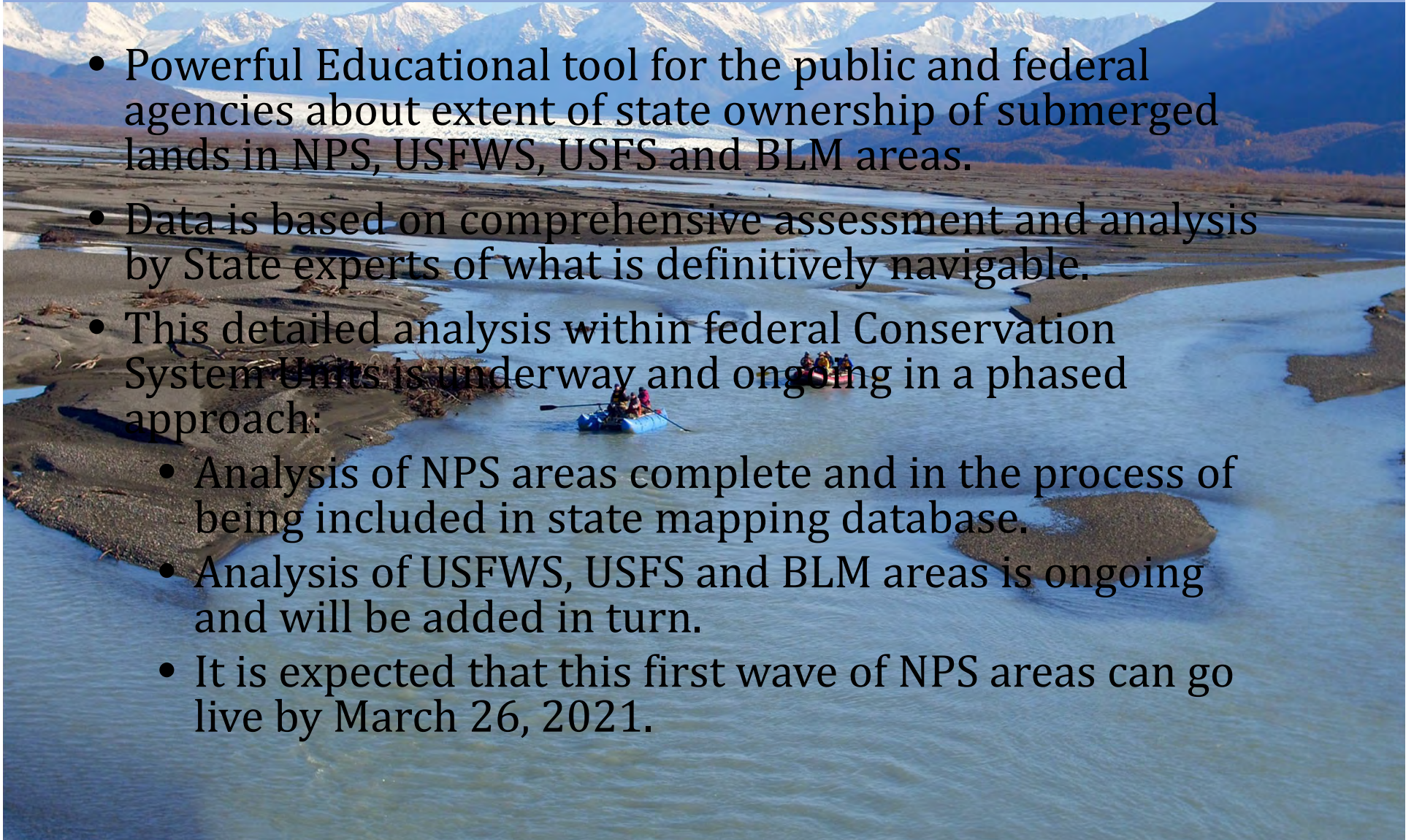
# ASSERT STATE MANAGEMENT OF RIVERS AND LAKES

- Goal: Force federal acquiescence to state sovereignty or enable direct litigation to quiet title.
- We will ACT like owners.
- Crescent Lake example:
  - State navigability determination led to third party filing a state permit application. The State provided public notice to the NPS as uplands landowner, and NPS acquiesced to state ownership. The State issued the permit. Additional permit applications from third parties have been received and are underway with the same notice process.
- Apply model statewide through:
  - State permitting and authorizations of federal construction on state-owned submerged lands;
  - Notice to federal authorities of overreaching and unlawful federal permits;
  - Public outreach and education delineating the extent of state and federal management authority with permit applicants and the general public; and
  - Heightened permitting and authorizations of activities by private parties to underscore state ownership and authority.



# RELEASE NAVIGABLE WATERS MAP SHOWING STATE OWNERSHIP OF SUBMERGED LANDS IN FEDERAL AREAS

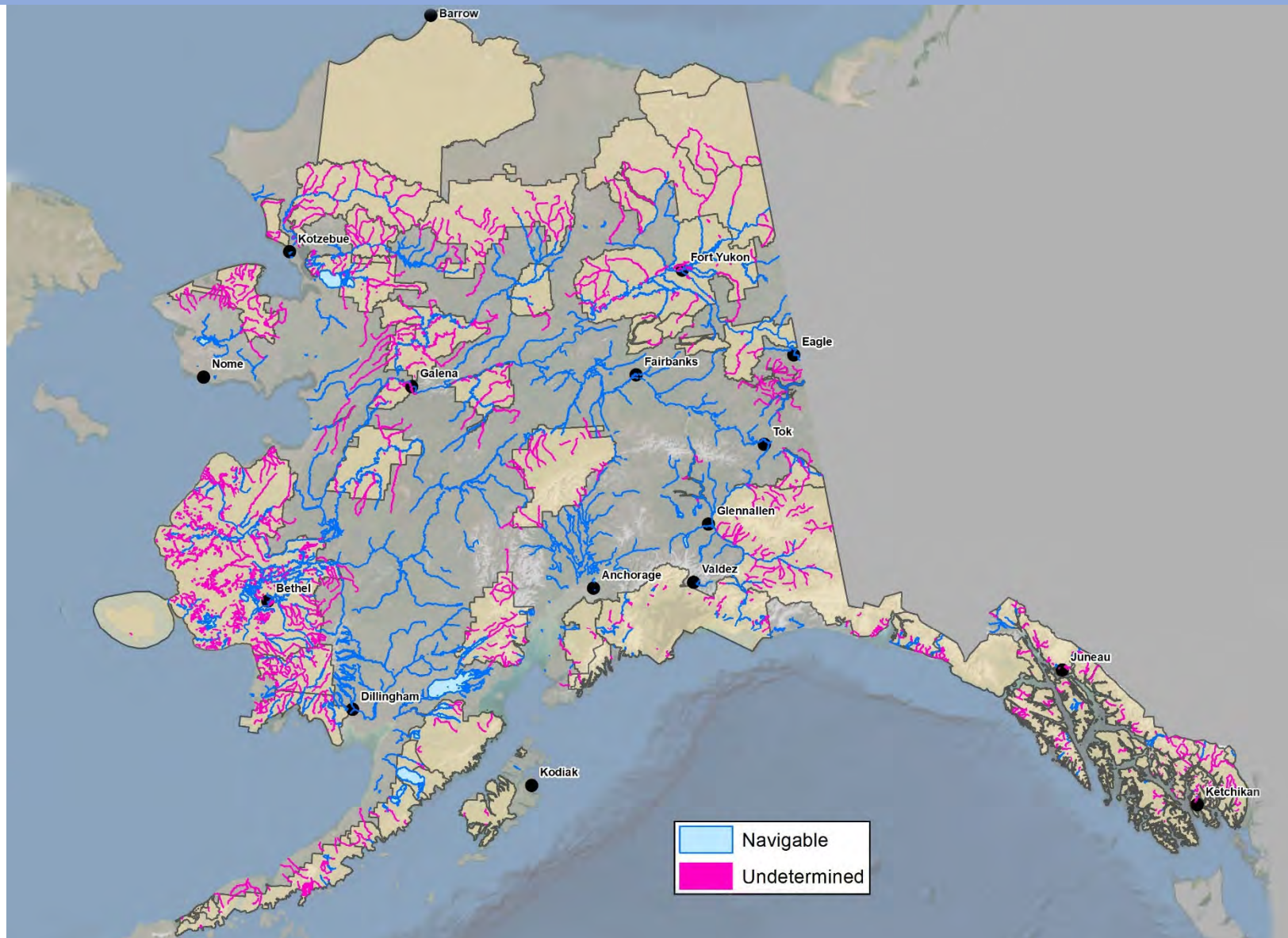
- Powerful Educational tool for the public and federal agencies about extent of state ownership of submerged lands in NPS, USFWS, USFS and BLM areas.
- Data is based on comprehensive assessment and analysis by State experts of what is definitively navigable.
- This detailed analysis within federal Conservation System Units is underway and ongoing in a phased approach:
  - Analysis of NPS areas complete and in the process of being included in state mapping database.
  - Analysis of USFWS, USFS and BLM areas is ongoing and will be added in turn.
  - It is expected that this first wave of NPS areas can go live by March 26, 2021.





# STATE-OWNED NAVIGABLE WATERS

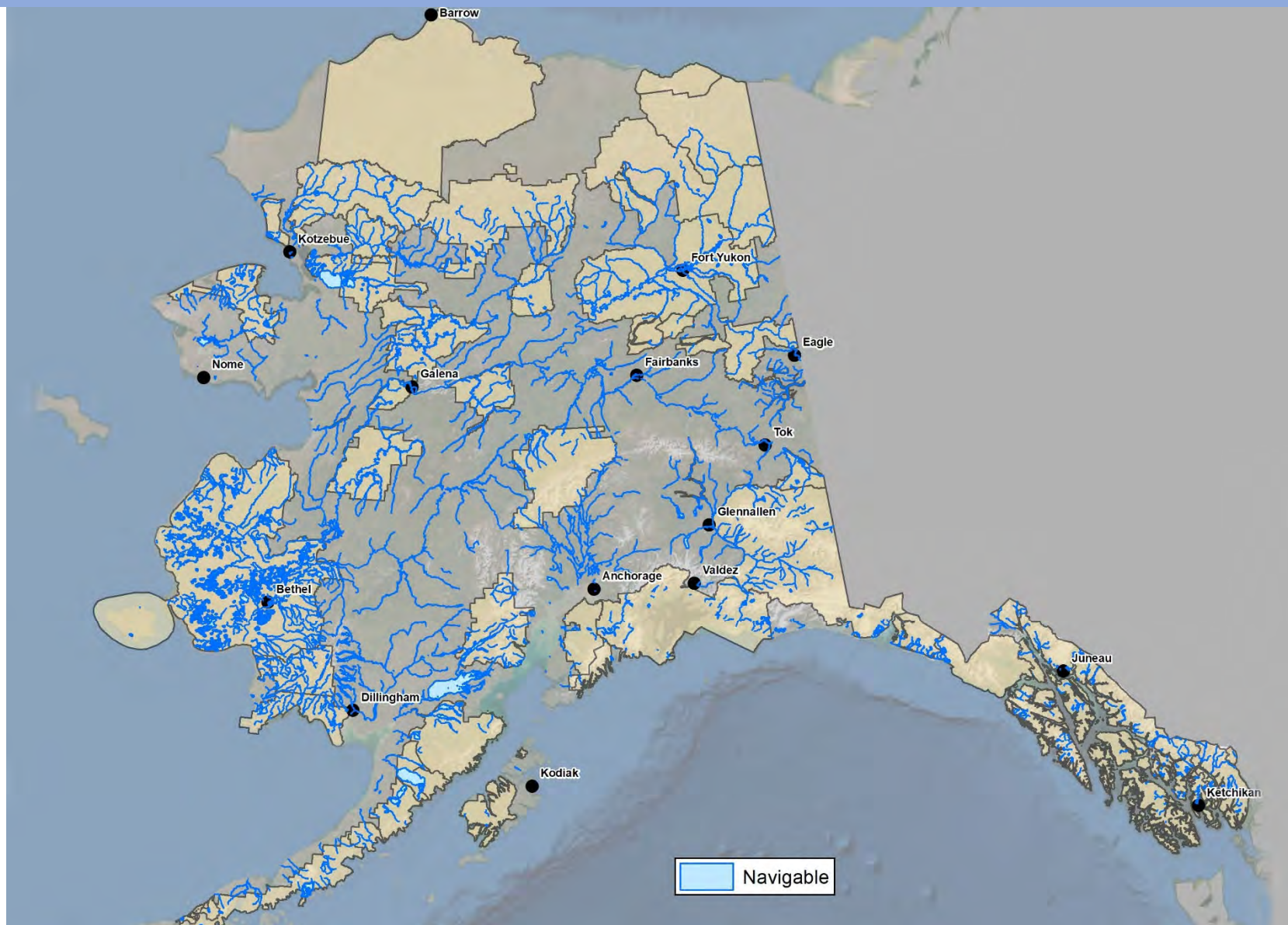
## ACKNOWLEDGED TO DATE





# STATE-OWNED NAVIGABLE WATERS

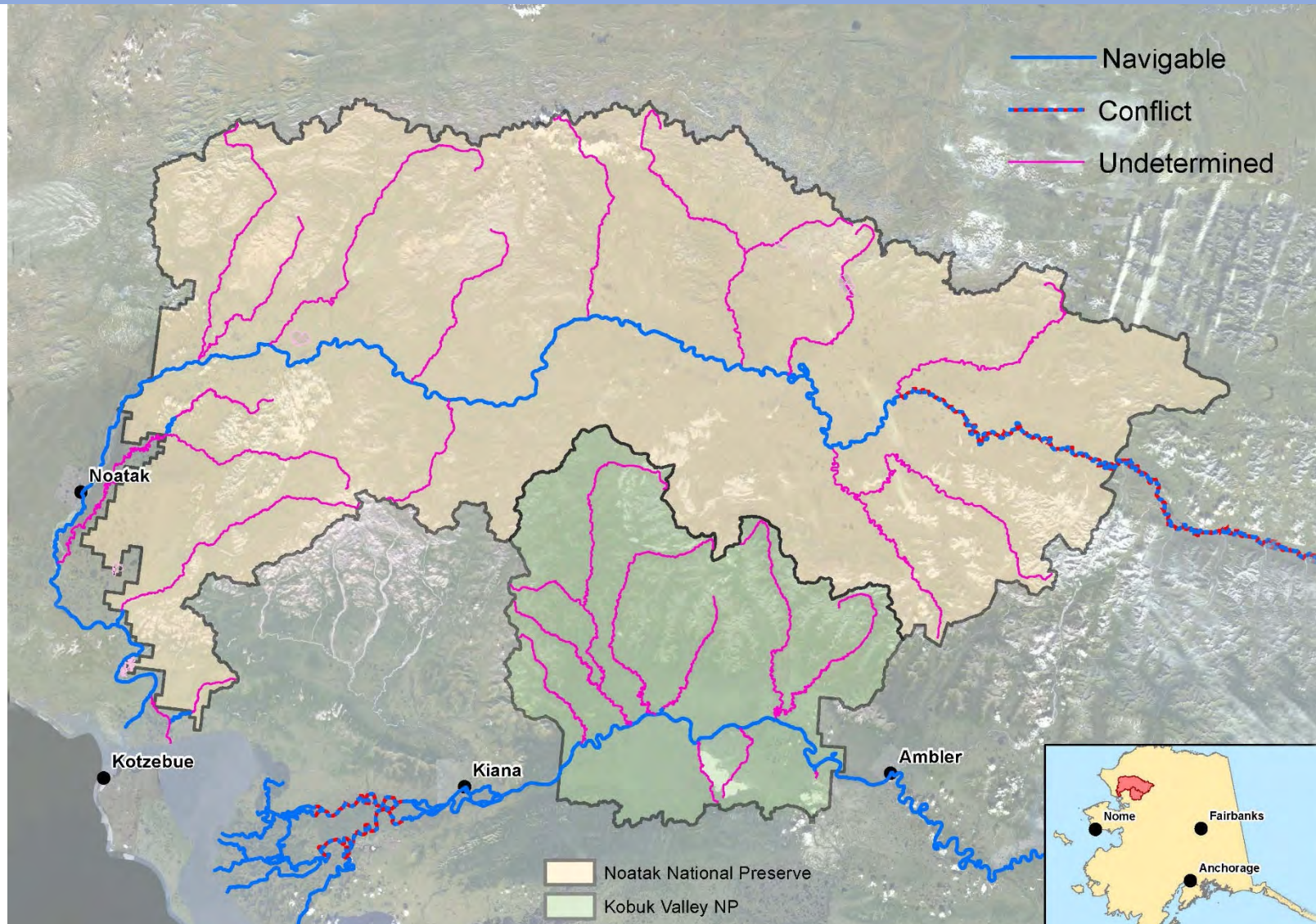
## AFTER STATE MANAGEMENT ASSERTION





# NOATAK NP/KOBUK VALLEY PRESERVE

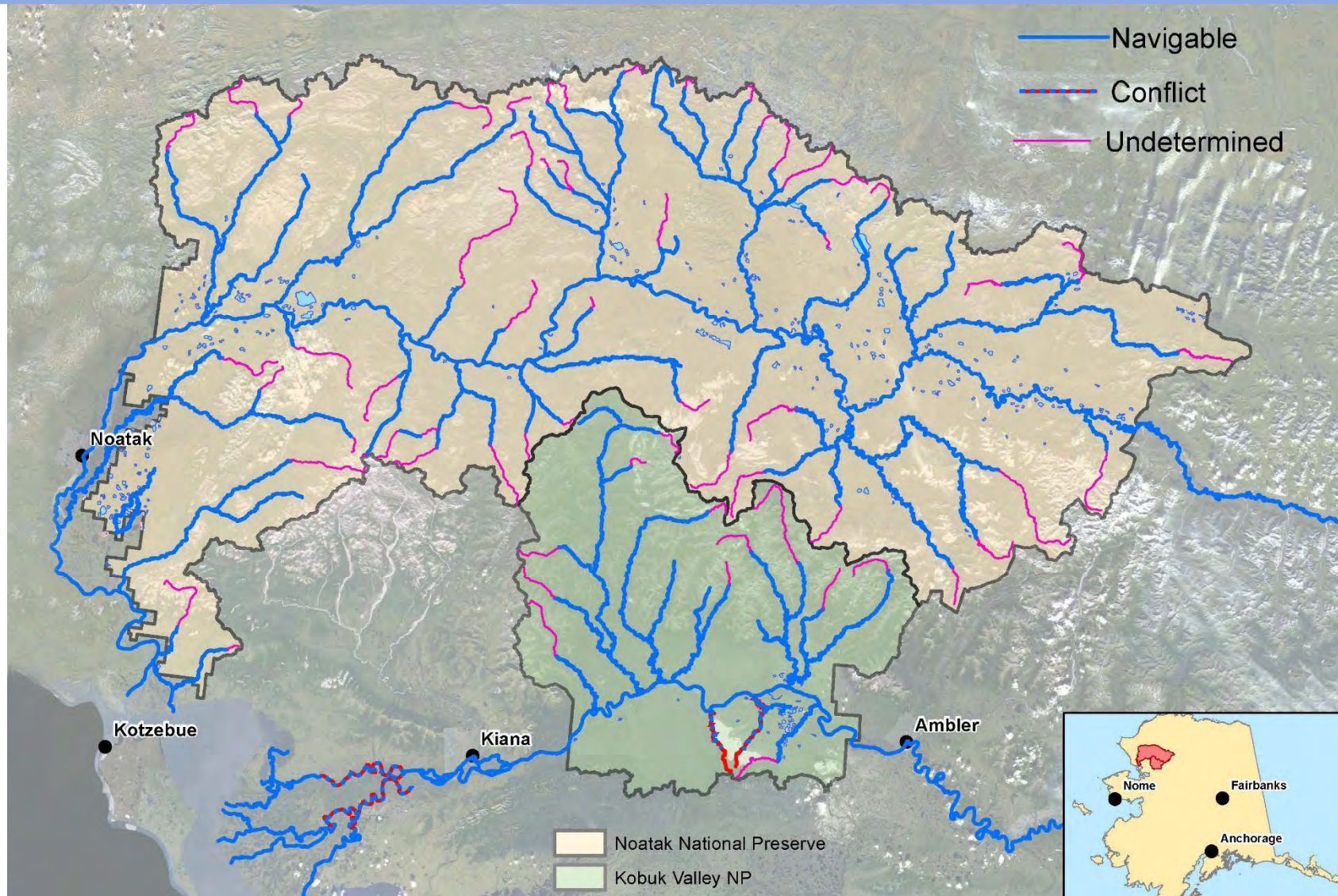
## NAVIGABLE WATERS ACKNOWLEDGED TO DATE





# NOATAK NP/KOBUK VALLEY PRESERVE

## NAVIGABLE WATERS AFTER STATE ASSERTION





# PLAY “OFFENSE” IN FEDERAL AND STATE LAND PLANNING PROJECTS

- Insist federal government recognize navigable-in-fact and tidally influenced waters, as well as state-owned submerged lands, in all federal land planning efforts.
- Pursue administrative appeals when federal land planning authorities refuse to do so.
- Demand clear guidance for the public in federal planning documents regarding state ownership and management authority.
- Prepare state planning documents, such as river management plans or regional transportation plans, to describe state ownership, management intent, and interests in navigable waters.



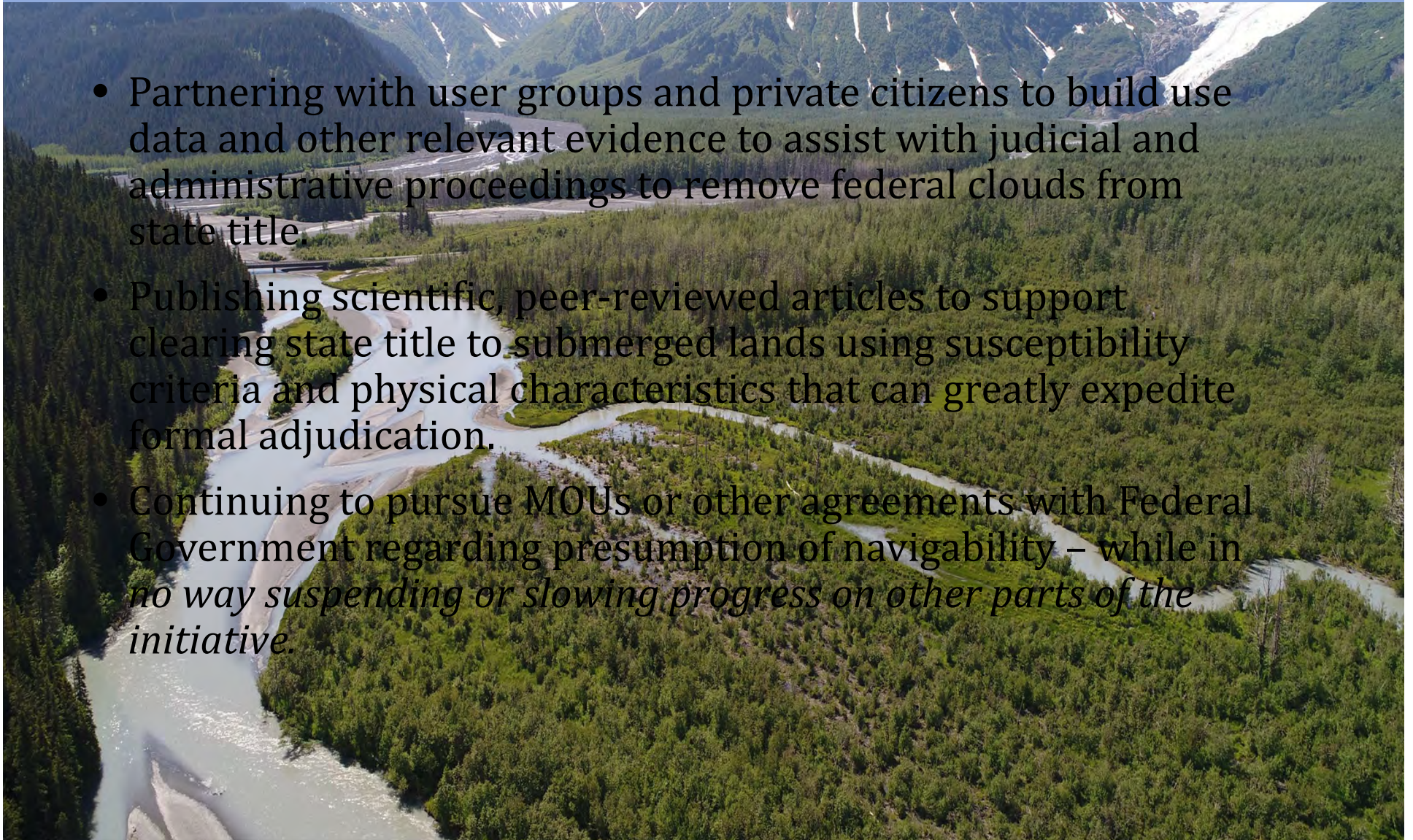
# FILE ADDITIONAL RECORDABLE DISCLAIMER OF INTEREST APPLICATIONS

- The RDI process is supposed to be a “quick” and “inexpensive” alternative to litigation: in practice, it is neither.
- Large application backlog, little annual progress continue despite BLM’s repeated promises to change.
- DNR paused new RDI applications based on federal requests for more time to reduce backlog and promises to negotiate improved process.
- Since BLM has refused to improve or reform process, DNR proposes to ramp up RDI filings to amplify scope of the problem and push for meaningful change.



# OTHER WAYS TO ADVANCE STATE OWNERSHIP INTERESTS

- Partnering with user groups and private citizens to build use data and other relevant evidence to assist with judicial and administrative proceedings to remove federal clouds from state title.
- Publishing scientific, peer-reviewed articles to support clearing state title to submerged lands using susceptibility criteria and physical characteristics that can greatly expedite formal adjudication.
- Continuing to pursue MOUs or other agreements with Federal Government regarding presumption of navigability – while in *no way suspending or slowing progress on other parts of the initiative.*





# NORTH FORK OF FORTY MILE RIVER

SOA DISPUTES BLM NON-NAVIGABLE CLAIM; IN LITIGATION





# KNIK RIVER

BLM CLAIMED NON-NAVIGABLE; LOST QUIET TITLE LAWSUIT,  
PAID SOA LEGAL FEES; BLM APPEALED, THEN WITHDREW





# DELTA RIVER

BLM REVERSED NON-NAVIGABLE CLAIM UNDER SOA LAWSUIT  
THREAT; BUT 2 YEARS LATER, NO ACTION ON RDI APPLICATION





# MOSQUITO FORK RIVER

BLM CLAIMED NON-NAVIGABLE BUT LOST SOA LAWSUIT; BLM FOUND GUILTY OF “BAD FAITH,” HAD TO PAY SOA LEGAL FEES





# **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 62 years. It is time for the  
Federal Government to keep its  
promise to the State of Alaska.

