

WILD AND SCENIC RIVERS IN ALASKA --
WATER RESOURCES AND LAND MANAGEMENT
RELATIONSHIPS:

A CASE HISTORY OF THE FORTY MILE WILD AND SCENIC RIVER, ALASKA
(1970-2019)

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For – the Alaska Section AWRA Annual Conference, Juneau, Alaska

September 17, 2019

DISCLAIMER: (ALWAYS READ THE FNE PRINT)

Jules has lived in Anchorage since 1972. He is a RECOVERING BUREAUCRAT who worked for the Department of the Interior for 30+ years with the Bureau of Land Management and the Bureau of Outdoor Recreation, and 6 years with the Alaska Department of Natural Resources. His jobs included initial screening of potential wild rivers in 10 States in the early 1960s to the lead interagency coordinator for implementing the Wild and Scenic Rivers Act of 1968. He lead interagency Wild River Studies in Alaska; was the BLM Alaska Deputy State Director for Renewable Resources, and; Director Mining and Water Management for the Alaska Department of Natural Resources. In addition to mining and water right issues, Jules worked on navigability ownership determinations as well as a consultant holding various roles in gas pipelines and mining evaluations and for oil and gas winter exploration on the North Slope.

BOTTOM LINE:

THIS TALK REPRESENTS THE SOLE PROFESSIONAL OPINIONS OF THE AUTHOR. ANY MISTAKES ARE MINE. FINALLY, THE CONCLUSIONS DO NOT REPRESENT AGREEMENT OR APPROVAL BY EITHER BLM OR ADNR.

WHAT IS SO SPECIAL ABOUT THE FORTYMILE WILD AND SCENIC RIVER?

WHAT DRIVES OWNERSHIP AND MANAGEMENT OF WATER RESOURCES IN ALASKA'S FORTYMILE WILD AND SCENIC RIVERS?

HOW IS THE FORTYMILE SIMILAR TO OR DIFFERENT FROM OTHER WILD AND SCENIC RIVERS IN THE U.S. AND ALASKA?



It is easy to get lost in the minutiae associated with complex land and water ownership and land use in the Fortymile River Watershed, (and in Alaska generally), e.g., who owns what and where.

We all know (or should know) Alaska is different when it comes to managing National Parks, Wildlife Refuges, Forests , and Wild and Scenic Rivers.

BUT.....

Did you know the U.S. Supreme Court recently affirmed the fact that indeed Alaska is different?

The U.S. Supreme Court concluded ANILCA “repeatedly recognizes that Alaska is different.” and “reflects the simple truth that Alaska is often the exception, not the rule” (Sturgeon v Frost. March 26, 2018. p. 11)

https://www.supremecourt.gov/opinions/18pdf/17-949_6kgn.pdf

HOW did the Fortymile River become a Candidate Wild and Scenic River in Alaska?

- Added to a list of Potential Wild and Scenic Rivers in 1970
- 166 Free-flowing Rivers having Special Values with an estimated 15,000 river-miles in 1972.
- 69 Selected for aerial examination and screening for regional representation and river type with an estimated 7,000 river-miles in 1972.
- 40 Selected for having very special values with an estimated 4,000 river-miles with adjacent land largely in Federal ownership in 1972.
- 26 Included in ANILCA Title VI as a Unit of the National Wild and Scenic Rivers System with 3,210 river-miles in 1980. (Fortymile Wild and Scenic River = 392 river-miles)

About the Fortymile Wild and Scenic River in Alaska?

ANILCA created 26 Wild and Scenic Rivers in Alaska:

- **13 are located within the National Park System**
- **6 are located within units of the National Wildlife Refuge System**
- **7 are located outside both NPS and USFWS Conservation System Units (CSUs)**

The Fortymile is one of 6 Wild and Scenic Rivers managed by BLM. (1 stand-alone is managed by the National Park Service.)

- **The Fortymile is a stand-alone CSU. It is not included within a larger CSU with overarching ANILCA mandated management objectives on top of those established as a Wild and Scenic River.**
- **The Fortymile River is the only Alaskan Wild and Scenic River where historic and regulated placer gold mining is identified as one of the Outstanding Remarkable Values.**

ANILCA also identified other potential Wild and Scenic Rivers in Alaska

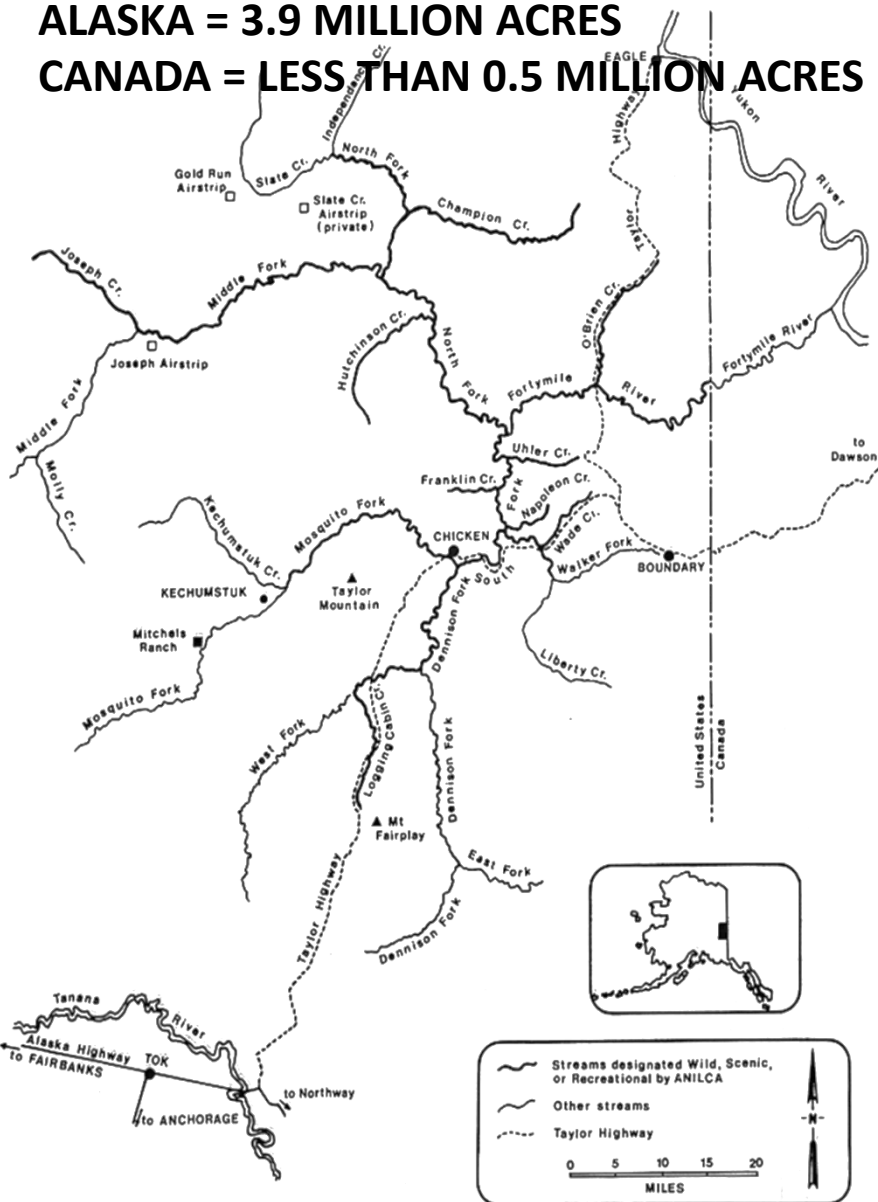
- **12 listed as Alaskan Rivers needing further evaluation.**

WHERE is the Fortymile River?

Fortymile National Wild and Scenic River Regional Map

ALASKA = 3.9 MILLION ACRES

CANADA = LESS THAN 0.5 MILLION ACRES



Source: 1983 Fortymile BLM River Mgt. Plan

- 1970 Potential Wild River list
- 1972 Aerial overviews AK-Yukon Territory Fortymile River Basin and interagency several canoe trips totaling about 220 river-miles
- 1973 overflight with Doyon, Ltd
- 1973 Interagency overflight with Canadian Park Service
- 1977 Family canoe vacation 150 miles West Fork to Clinton Creek Bridge
- 1980s-1990s BLM and ADNR trips
- 2018 AiR pontoon raft 38 river-miles between South Fork Bridge and Main Stem Fortymile Bridge plus road to Eagle and to Dawson

FORTYMILE RIVER

Stream Order ^a	River-Miles Alaska	River-Miles Yukon Territory
7	39.9	22.7
6	79.3	0.0
5	306.5	0.0
4	426.0	58.2
3	734.1	68.4
2	1,223.7	119.4
1	<u>3,740.0</u>	<u>322.8</u>
	Total 6,549.0	Total 591.5

Source: ADNR September 10, 2018

^a “In the Strahler method, all links without any tributaries are assigned an order of 1 and are referred to as first order. The stream order increases when streams of the same order intersect. Therefore, the intersection of two first-order links will create a second-order link, the intersection of two second-order links will create a third-order link, and so on. The intersection of two links of different orders, however, will not result in an increase in order. For example, the intersection of a first-order and second-order link will not create a third-order link but will retain the order of the highest ordered link.”

(See: Strahler, A. N. (1952), "Hypsometric (area-altitude) analysis of erosional topology" in Geological Society of America Bulletin 63 (11): 1117–1142.)

Note: More than 12,000 AK rivers and thousands of streams and creeks are at least 5th Order.



1979



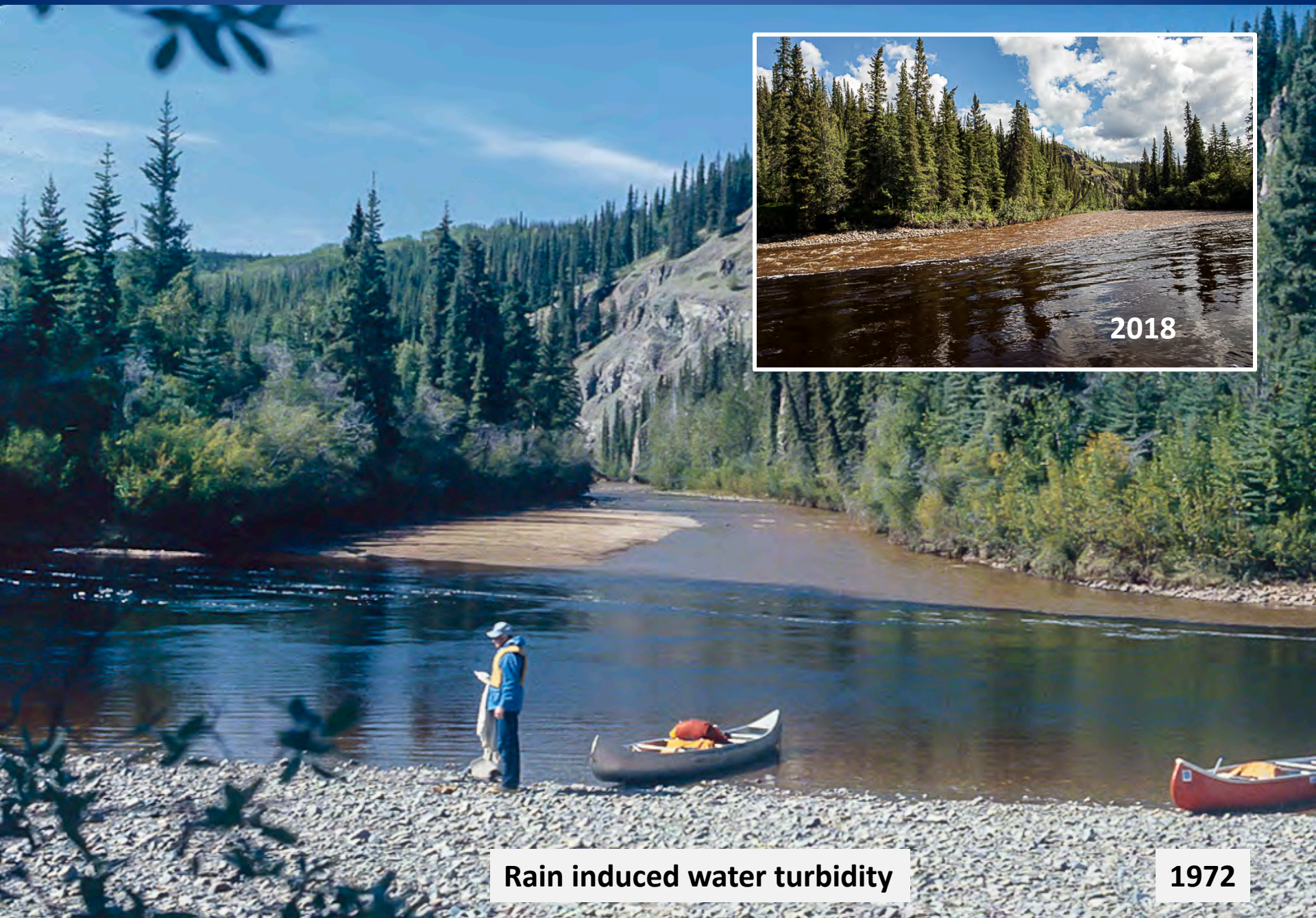
1979

Predictable Ice Scour and unpredictable, erratic High Water

Natural (Background?) Water quality



Spring (before any mining) photos by Dr. Jessica Cherry



Rain induced water turbidity

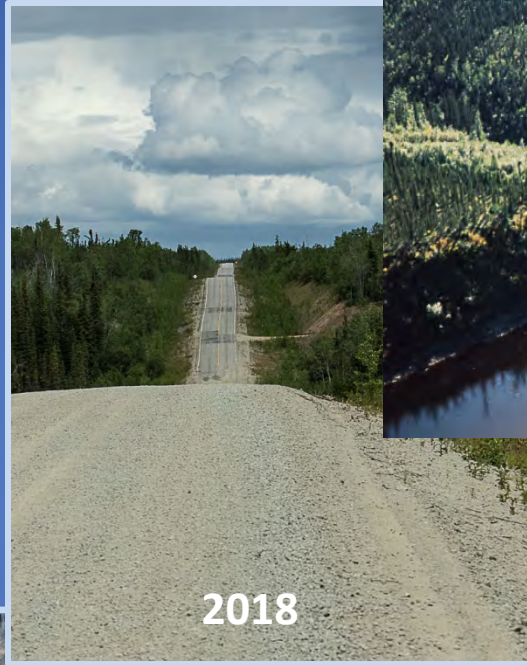
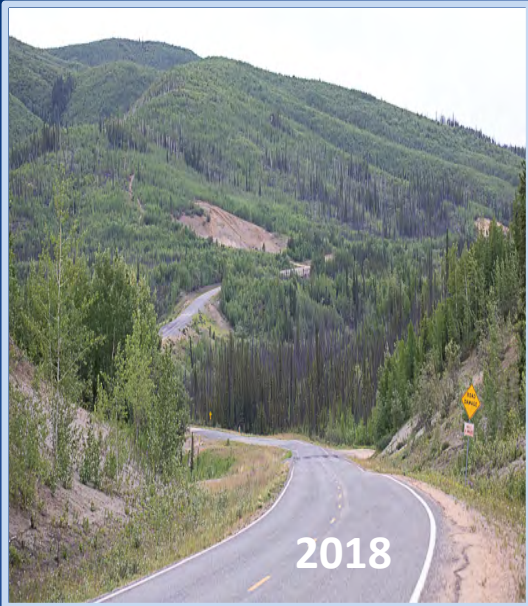
1972

WHY the Fortymile?

A Final Environmental Impact Statement for the Proposed Fortymile Wild and Scenic River was completed in 1974. The “outstandingly remarkable” values leading to the designation of this River were:

- (1) Access at several points by road;
- (2) Boatability by non-motorized water craft on a clear-water river flowing through an area with a long history of human use with river banks largely having a natural appearance;
- (3) Current and Historic placer gold mining predating the Klondike Gold Rush;
- (4) An area where modern regulated placer gold mining will be visible to river travelers and by tourist travelling by car; and
- (5) A place where time stood still.

Road Access



Non-Motorized Watercraft



Canoe on North Fork

1972



Above: Pontoon Raft with Your Glorious Leader on the South Fork, BLM Artist in Residence and BLM leader, 2018

Right: Raft on Middle Fork, BLM Recreations Workshop, 1984



1977

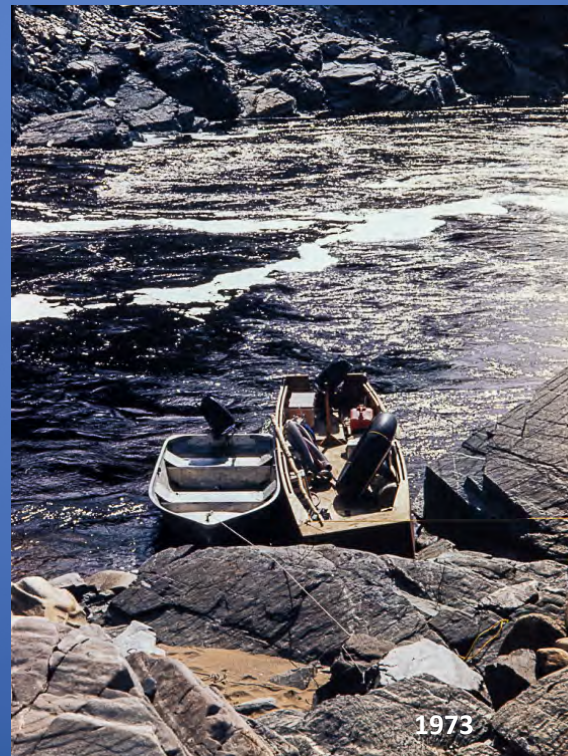
West Fork Dennison Fork



1977



Motorized Watercraft



Left: Two power boats at the Kink. This photo was used to establish the initial upstream point of navigability and State Ownership of the submerged lands below ordinary high water mark on the North Fork.

Air Access



Left: Joseph Bush Airstrip at the confluence of Joseph Creek with the Middle Fork

Right: Chicken Airport, center right. Mosquito Fork in foreground. Dredge piles at Chicken in upper right



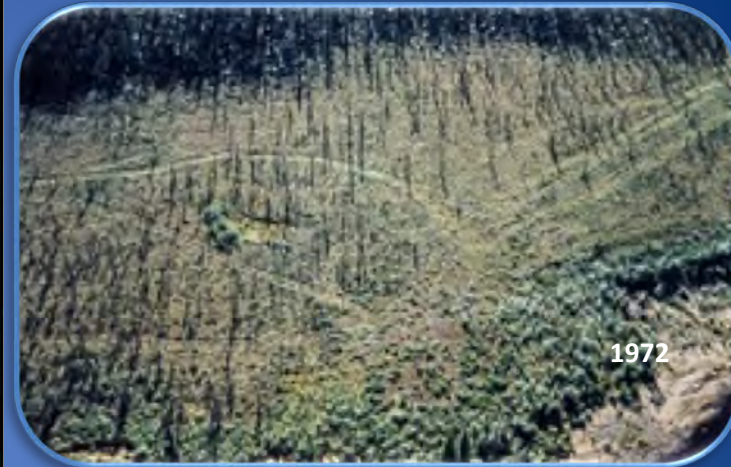


1972

2018

WALKER FORK CAMPGROUND/FORMER MINING AIRSTRIP

Non-Road Overland Access



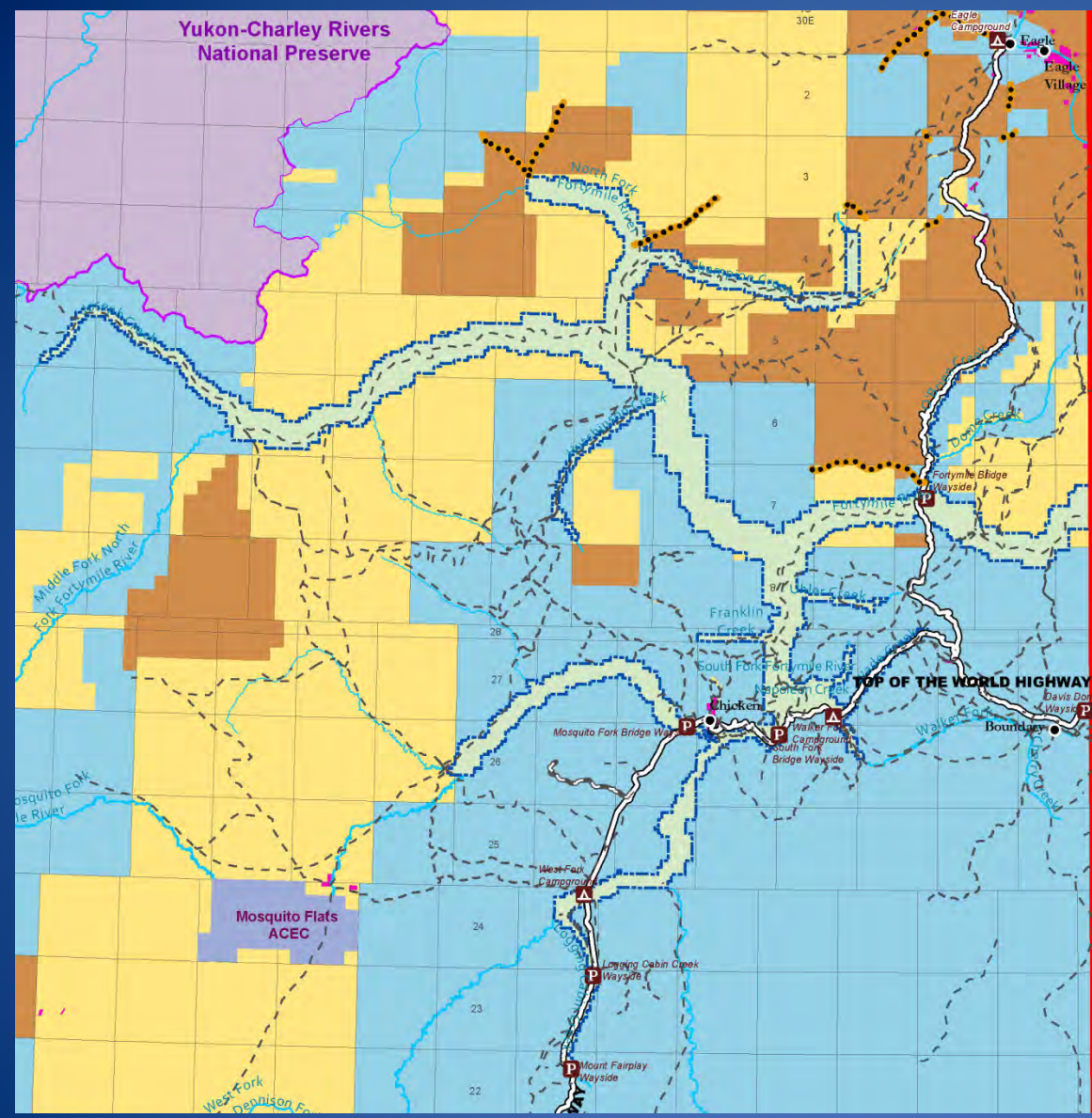
1972

Overland winter (?) trails along the South Fork



2018

Mine access road from the shore of the South Fork to an upland gold placer mining operation on Napoleon Creek



Management Units	Land Status (Current as of April 2016)
Fortymile Wild & Scenic River Corridor	National Park Service
Mosquito Flats ACEC	US Fish & Wildlife Service
Remaining BLM Land	State of Alaska
	Native Patent
	Other Federal
	Native Allotment / Private

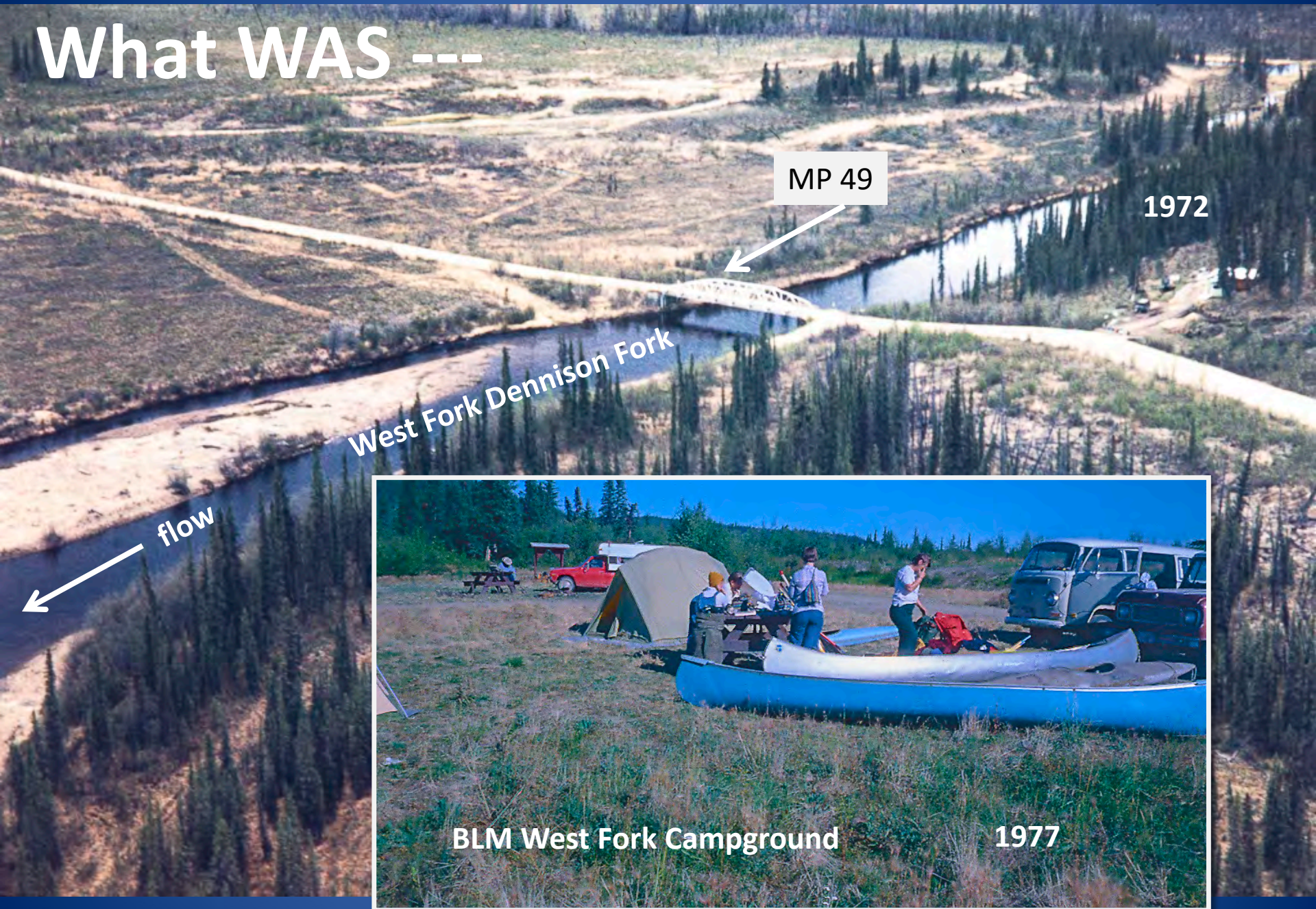
	Fortymile Planning Area Boundary
	Trails
	17(b) Easements
	Campground
	Wayside

Fortymile Planning Area - Record of Decision
Bureau of Land Management - Alaska

Projection: Albers Conic Equal Area referencing NAD83
Source: USDOO-BLM, 2016

The information displayed on this map should be used for graphic display only. For official land status information, refer to Cadastral Survey Plats, Master Title Plats, and case files.

What WAS ---



MP 49

1972

West Fork Dennison Fork

flow

BLM West Fork Campground

1977



What IS ---

Recreation Facilities (2018)

BLM maintains

- 2 modern campgrounds with campground hosts on the Taylor Highway
- 5 waysides on the Taylor Highway (4 with river access)
- 4 free-use public cabins on the river
- 1 1.5 – 2.0 mile trail to an overlook of the Mosquito Fork Dredge
- 1 area open to the public for recreational mining
- 1 complex with fuel, temporary employee housing, shop, helipad, and equipment storage (Chicken Field Station)

Private Enterprise on Private Land at Chicken maintains

- Fuel
- RV campground with electrical hookups
- Cabins
- Gift and general merchandise store
- Restaurant and Bars
- Recreational gold panning
- Mini-golf course
- Display of historic mining equipment including the F.E. Dredge No. 4

Chicken also has a Post Office



1979



2018



1972



2018



1972

July 1 2018
I flew for more than 14 hours to Alaska
from Panama in Central America and drove
for more than 4 hours to meet so nice
people they receive me as a part of their team
and had the best time of my life fishing
in this river. I will remember this forever
2018

River Camping –



2018

Sand bars, 4 free-use cabins, and 70 Commercial long-term campsites for placer gold miners



ATTENTION FORTYMILE SUCTION DREDGE GOLD MINERS!

Volunteer Claim Staking Program

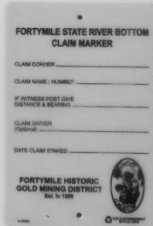
The Bureau of Land Management (BLM) is implementing a *Volunteer Claim Staking Program* and would appreciate your cooperation. We are asking suction dredge miners to stake all of their claims with BLM standardized claim markers that will be provided to miners for free. The claim markers are made out of a polydura material with a light brown color. They can be written on with a permanent marker and firmly attached to trees with screws. We believe that transitioning over to these new claim markers is in everyone's best interest because they are:

- Highly durable and weather resistant
- Less unsightly and visibly intrusive

Suction dredge miners can pick up claim markers at the BLM Fairbanks District Office or the Chicken Field Station. Also, upon request, they can be mail ordered free of charge. Please contact Kevan Cooper if you would like to request claim markers or have any questions/comments about the program.

Phone #: (907)474-2316
Email: Kevan_cooper@ak.blm.gov

Miners will not and can not be penalized for not using the new claim markers. However, we feel the program is mutually beneficial and would be grateful for your participation. Thank you.



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RECREATION SITE REGISTER

Name of Site _____
Peak _____
Bureau BLM Office _____

This recreation site has been provided by the Bureau of Land Management for your conduct and enjoyment. Please leave the site as you would like to find it— neat, clean, and attractive. To help insure this condition, please observe the posted rules. Report any unsatisfactory, unsanitary, or unsafe conditions to the caretaker or to the Bureau of Land Management Office noted at the right.

DATE	STATE OF RESIDENCE	NUMBER IN PARTY	LENGTH OF STAY		ACTIVITIES								COMMENTS		
			DAYS	HOURS	CAMPING	FISHING	HUNTING	BOATING	BIRDING	OTHER	OTHER				
6-22-18	Alaska	5	1	-	X									X	Goldpanning @ Chicken Gold Camp
6-24-18	SC	2	1		X										
6-27-18	Utah	2	2												Apple tree's place - Cydust
6-28-18	FL	1	1												Carl
6-29-18	Alaska	2	1												Tom - Beaver's Bobby
6-30-18	Alaska	10			X					X					
7-1-18	Republic of Panama	2	1												Love it - Longests
7-2-18	Michigan	2	1		X	X									
7-2-18	Arizona	2	1		X										
7-3-18	Tenn	5	1												Breath Taking
7-4-18	AK	4	1		X										
7-5-18	Liberton	1	1		X	X									Are there trail maps?
7-6-18	Louis Clark, BC Canada	2	1		X										Be careful! on our way to TINTUPINE
7-6-18	Martha Canada	4	1		X										
7-6-18	Martha Canada	4	1		X										
7-7-18	California	2	1												Boating
7-7-18	UTAH	3	2												FABULOUS STATE

Form 8360-1 (July 1979) (Summary 8116-7)
U.S. GOVERNMENT PRINTING OFFICE: 1981 - 573-614/8414



**“I wanted the gold, and I sought it;
I scrabbled and mucked like a slave;
Was it famine or scurvy -- I fought it:
I hurled my youth into a grave.
I wanted the gold, and I got it --
Came youth with a fortune last fall, --
Yet somehow Life’s not what I thought it,
And somehow the gold isn’t all....”**

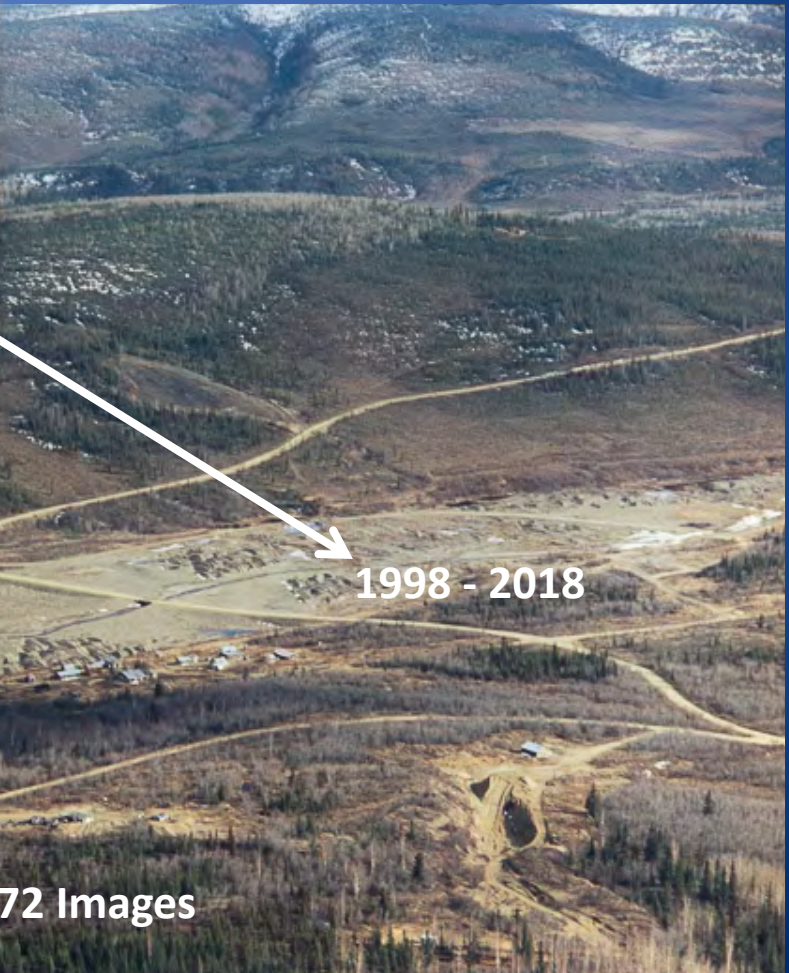
Robert W, Service: *The Spell of the Yukon*



CHICKEN 2018 --- a Surrogate for the Past and Harbinger for the Future

**F.E. Dredge No. 4
(Pedro Dredge) at Chicken**

**1938 Began operating in Fairbanks
1959 Moved to Chicken
1967 Last time operated**



1972

1998 - 2018

1972 Images



2018 photo

1998 Relocated one mile and stabilized

2006 Added to the National Historic Register

1 – 1.5 mile foot trail
to overlook of the Mosquito Fork Dredge



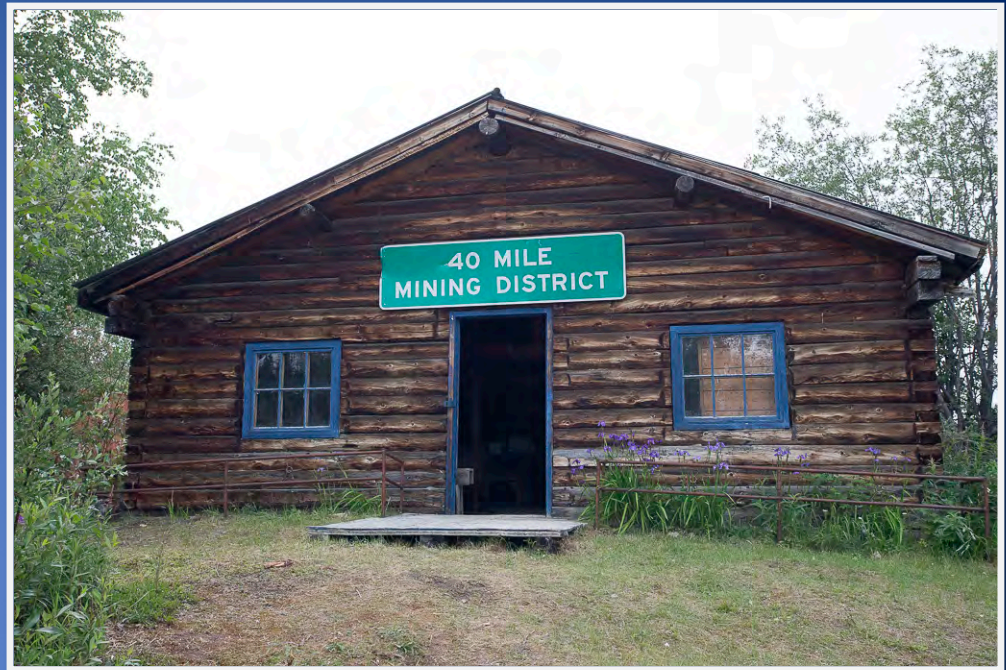
2018



1972



2018



CHICKEN HISTORIC DISTRICT (est. 2001)



(2018 photos)



1977

Walker Fork Dredge



2018



1977

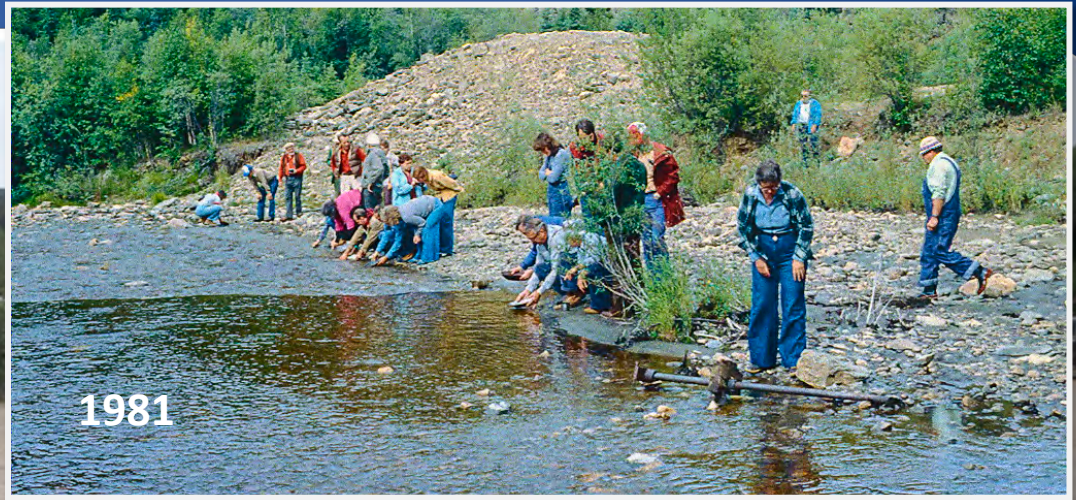


2018



2018

What IS



1981

Recreational mining
FOR A FEE---



2018

OR Recreational mining FOR FREE

Wade Creek




2018

Public Goldpanning Area

Jack Wade Creek is open to recreational gold panning from one-quarter mile (0.4 km) upstream from the Walker Fork Campground to the mining claims near Milepost 85. No permits are required. Panning is *not* allowed on adjacent mining claims.




- What's Allowed**
 - gold pans
 - shovels
 - picks
 - metal detectors
 - pry bars
 - manually fed rocker boxes and sluice boxes
- What's Not Allowed**
 - Motorized equipment, including suction, pumps, and earthmoving equipment
 - Disturbing the Taylor Highway roadbed or shoulders



With your cooperation, this panning area will offer its treasures to Fortymile visitors for years to come!

Bureau of Land Management
Eastern Interior Field Office
1150 University Avenue
Fairbanks, AK 99709
1-800-437-7021



The Fortymile River in 1972 and in 2018

represents — (1979 photos)

THE SATURDAY EVENING POST MARCH 31, 1945

THE "HOLE-PUNCHER!"

(76 MM. CANNON)



It's America's Hard-Hitting Tank Cannon—with Fire-Power to Punch Holes in Heavy Concrete!

Dismal days by hundreds for men a million, all we could do was lay the ground and hope for a miracle... Then in came—a 76 mm. "masher" that cracked into that fallen with a force not ever witnessed before and without... WHEN it hit other shells fell to work' and as they fell they fell behind us. You had this thing, they were up to the necks in mud, and his machine was firing forward again...

THE MAN WHO HAS CALLED AMERICA'S 76 mm. tank cannon a "Hole-Puncher" really knew his fire-power. Hundreds of milled enemy vehicles and shattered enemy fortifications bear witness to the effectiveness of this unique weapon, which Oldsmobile has been producing for over two years. Oldsmobile also builds automatic cannons for planes, aircraft carriers, anti-aircraft guns, heavy-duty trucks for military vehicles... plus the most critically important war product of all, heavy-duty commercial... 20 mm., 102 mm., 121 mm. shells. Fire-Power is our business... our secret... until Victory is fact!

YOUR MOST POTENT WEAPON IS A COLLAR BUILT
 This case is built a hole in your garden. Can it help your holes in enemy lines? No! It will when you buy a war bond... they will... "Hole-Puncher" cannon! **BUY WAR BONDS!**

OLDSMOBILE DIVISION OF GENERAL MOTORS
FIRE-POWER IS OUR BUSINESS

(Saturday Evening Post March 31, 1945)

THE SATURDAY EVENING POST

When Victory Gardening's in the Air... it's Maxwell House Coffee Time!

There's friendly stimulation and extra flavor in every cup of this richer, finer coffee!

There's so much flavor satisfaction in Maxwell House Coffee—the famous coffee that's bought and enjoyed by more people than any other brand in the world. Extra flavor that comes from fine Latin-American coffee skillfully blended! Mandarins for mellowness... Boursbonnets for full body... Madolines for richness... either Latin-American coffees for vigor! All combined in one great blend, then Italian-Flavored evenly through and through! No wonder its victory bag or vacuum jar, Maxwell House is truly "Good to the Last Drop!"

A Product of General Foods



Good to the last drop!

ONE-FOR VICTORY! Make this year's Victory Garden better than ever! Food is vitally important... so let's keep it growing! Make it grow in Victory Gardens! It's good for you—good for your country, too!

IT'S MAXWELL HOUSE COFFEE TIME ON THE AIR, TOO... THE MILWAUKEE FRANK MORGAN SHOW... REC. 3H45

A PLACE WHERE TIME STOOD STILL



1973



1979



1972



1979



1973



1979



WASHINGTON ALASKA MILITARY CABLE AND TELEGRAPH SYSTEM (WAMCATS)

1900 – 1905 (Line Cabin)

1973



WAMCATS Line Cabin – 1973 photos

Historical Documentation---
Issued by Ft Egbert via White Pass



(2.8 miles dewatered)

1972

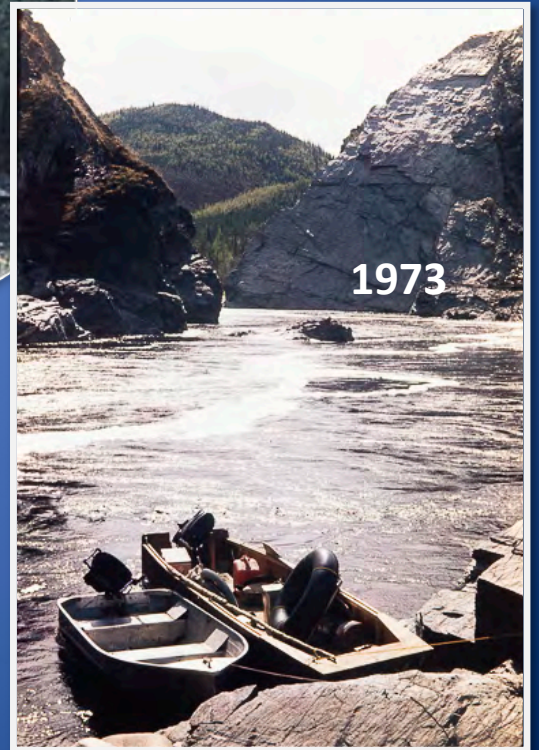
The "KINK"
(1903 – 1905)

End of Navigation?



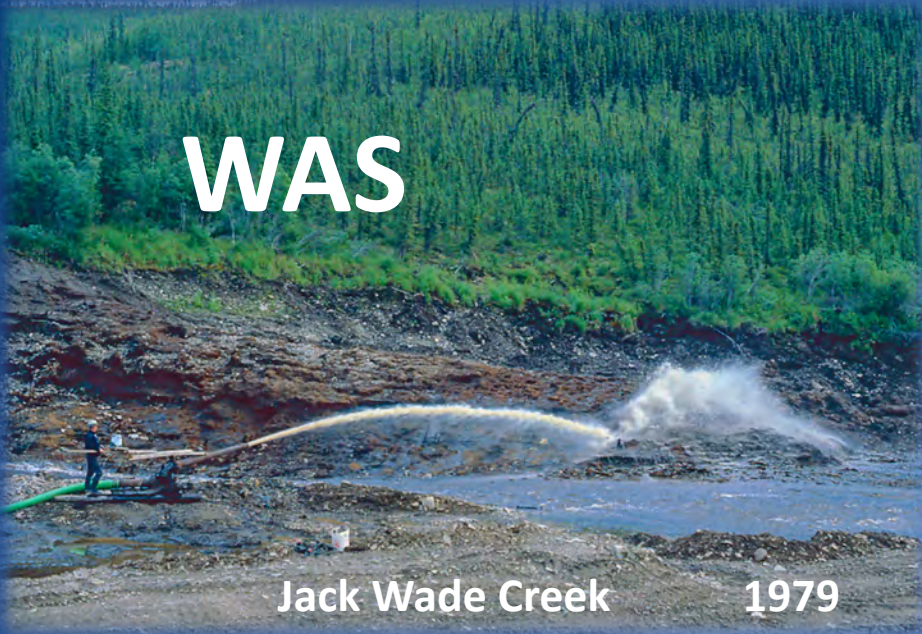
1972

1975 Added to
the National
Register of
Historic Places



1973

WAS

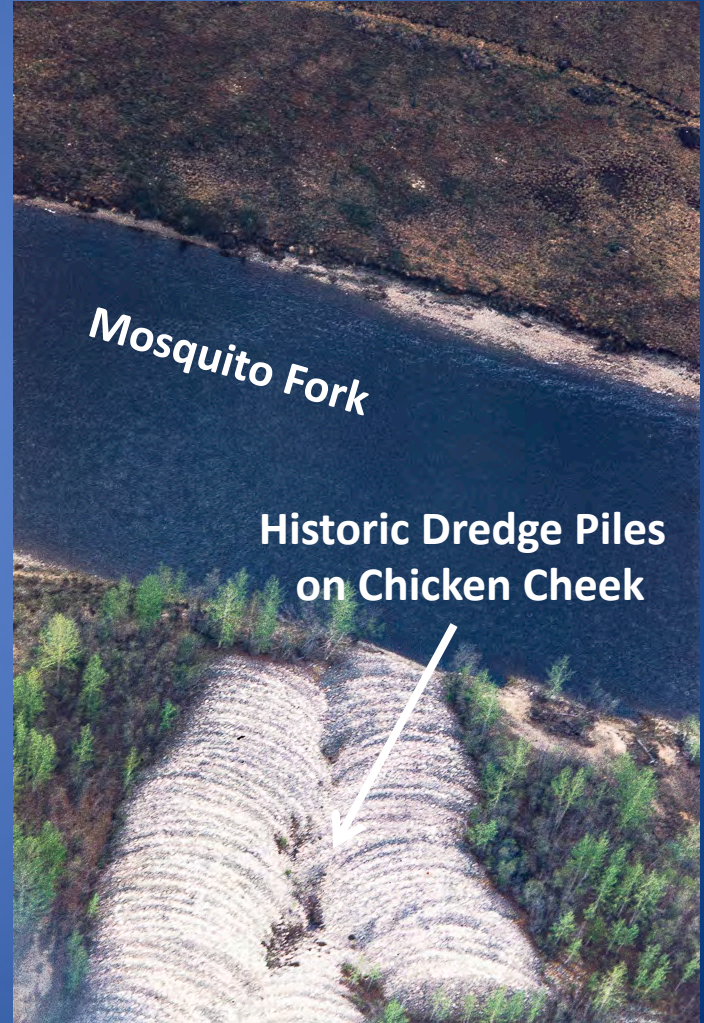


Jack Wade Creek 1979

Mining Practices no longer Acceptable !



Main Stem Fortymile 1977



Mosquito Fork

Historic Dredge Piles on Chicken Cheek

Rich in placer gold mining history



with

Potential to continue regulated mining Now
and
in the Future



WAS AND IS

ASBESTOS DEPOSITS – NORTH FORK FORTY MILE RIVER, AK



WAS IN Y.T. Canada





Company Town

PHOTO BY JESSICA CHERRY 2018

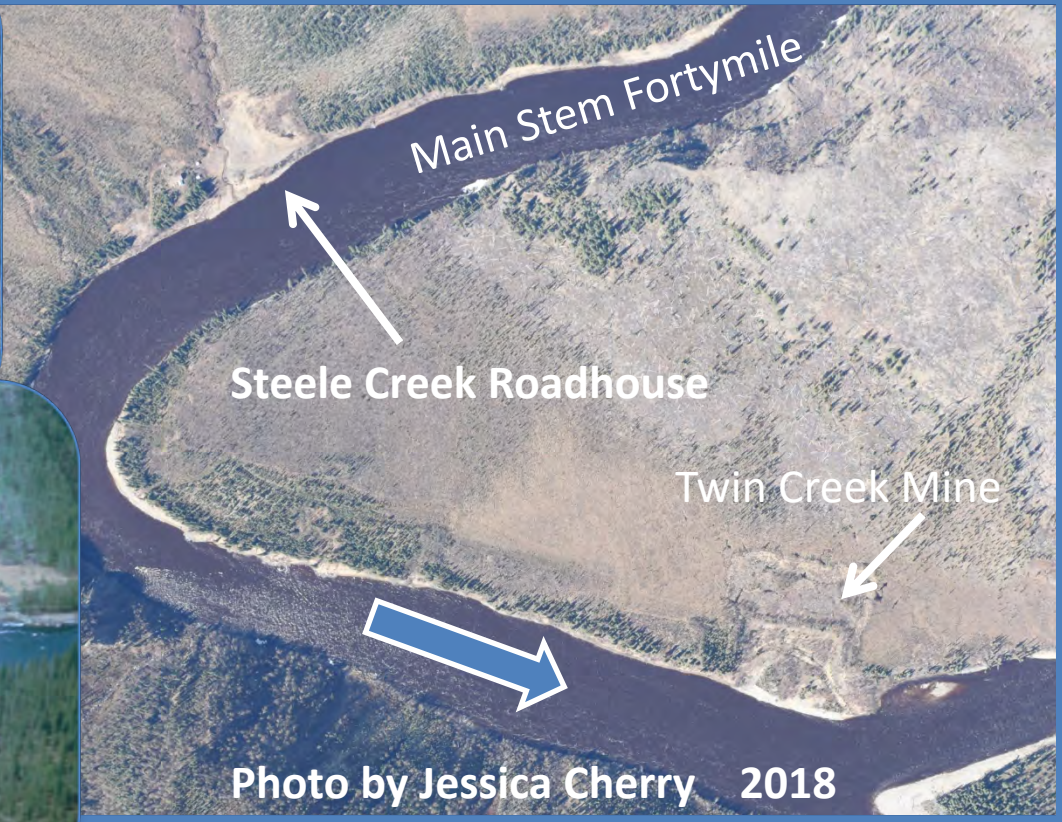


Mine Site

2018

IS in Y.T. Canada AND
UNLIKELY IN AK

Evolution of the Twin Creek Mine, Main Stem Fortymile





IS ---

2018

ZERO DISCHARGE

Above: BLM approved mining operation on FEDERAL LAND within the Wade Creek Recreational Segment.

Right: BLM National Director Issued Its 2006 Small Operator Reclamation and Sustainable Mineral Development Award to the Chicken Creek Mine located on private land in the Chicken area for *Environmental Stewardship and Economic Sustainability*.



2018



STREAM DIVERSION

2018

BLM approved mining operation on FEDERAL LAND within the Wade Creek Recreational segment

**BLM DEMONSTRATION MINE RECLAMATION PROJECT
ON FEDERAL LAND WITHIN THE WADE CREEK
RECREATIONAL SEGMENT**

“The beauty of demonstration projects is that the river tells you what you did right and adjusts what you did wrong.”

***Mathew S. Varner, BLM Aquatic and Riparian Resource
Program Leader, BLM, AK (February 14, 2019)***



Mid-July 2018

BLM Demonstration Reclamation Project on Wade Creek at Taylor Highway approximate MP 85. Photo 1 = General view of reclaimed area. Photo 2 = Boulder placement in Jack Wade Creek. Photo 3 = In-bank buried logs for erosion reduction. Photo 4 = End of Reclamation Project looking downstream. Photos 5 = Areas where willows and vegetation mat removed for relocation in re-contoured area.



2014 (before)

BLM



2016 (1st full growing season) BLM



2018 (after flood event)

BLM

20 years of natural recovery resulted in shallow riffles with only one pool. 5 – 7 year flood event caused stream Relocation.

Design criteria was for anchor logs in the 20 – 25 foot long. Used 8 – 10 foot long anchor logs --- Because they were available.

Also deep-Rooted relocated plants not established In the reworked unconsolidated mine tailings.

**“AS MUCH AS 99 PERCENT OF PLACER GOLD
MAY STILL EXIST” IN THE FORTYMILE WATERSHED**
1980 US BUREAU OF MINES (1980)

**“THESE [GOLD] PLACERS ARE
SELF RENEWING AS EACH FLOOD
DEPOSITS NEW MATERIAL FROM
UPSTREAM, ALLOWING THEM TO
BE MINED MANY TIMES”**
1973 USGS

BLM AND THE STATE SHARE RESPONSIBILITY FOR
MINING OPERATIONS IN THE FORTMILE WATERSHED.
WHO OWNS WHAT DETERMINES WHICH AGENCY
IS RESPONSIBLE.

**WHAT DRIVES OWNERSHIP AND MANAGEMENT OF
WATER RESOURCES
IN
ALASKA'S FORTYMILE WILD AND SCENIC RIVER?**

LAND USES TODAY IN THE FORTYMILE COUNTRY REFLECTS---

- 1872 FEDERAL MINING LAW
 - 1958 STATEHOOD ACT
 - 1958 ALASKA CONSTITUTION
- 1968 WILD AND SCENIC RIVERS ACT
- 1971 ALASKA NATIVE CLAIMS SETTLEMENT ACT
 - 1972 CLEAN WATER ACT
- 1976 FEDERAL LAND MANAGEMENT POLICY ACT
- 1980 ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT
 - 1983 BLM FORTYMILE RIVER MANAGEMENT PLAN
- 2016 EASTERN INTERIOR RESOURCE MANAGEMENT PLAN
 - LITIGATION

LAST BUT NOT LEAST the -- **PRICE OF GOLD**

(The Price of Gold drives Efforts to Obtain Gold)

Date	Ave. Annual U.S. Price of Gold in Troy Oz.	Event
1886	\$ 18.94	Gold discovered at the mouth of Franklin Creek, South Fork Fortymile River
1958	\$ 35.10	Alaska Statehood grants State right to select certain Federal land in Alaska
1968	\$ 39.31	Wild and Scenic Rivers Act
1971	\$ 40.62	Alaska Native Claims Settlement Act
1972	\$ 58.42	Public land in Fortymile Watershed closed to new or relocated mining claims
1974	\$ 154.00	<u>Proposed</u> Fortymile Wild and Scenic River FEIS
1980	\$ 612.56	ANILCA establishes the Fortymile WSR Lands
1983	\$ 424.00	Fortymile River Management Plan
1988	\$ 436.94	Long-Term Camping EA approves 62 sites in the “Wild” and “Scenic” segments
2012	\$1,668.98	Historic high price for gold
2016	\$1,250.74	Fortymile Resource Management Plan ROD proposes all Federal land in the Fortymile WSR Lands be close to new mineral entry, and Long-Term Camping EA approves 70 sites in the “Wild” and “Scenic” segments
2018	\$1,268.88	50 th Anniversary Wild and Scenic Rivers Act
2019	????	(Daily price on September 13, 2019 was \$1,504.30)

Just in case you are wondering:

**A Troy Oz of Gold @ \$18.94 in 1886
adjusted for inflation in 2019 =
\$498.50**

**vs. the actual price of
\$1,504.30 on Sept 13, 2019**

LAWS ---

The 1872 Mining Law, as amended establishes the right for a U.S. citizen to establish property rights to valuable minerals on Federal Land open to location and entry for mining and to get private ownership ownership of those minerals.

The 1972 Clean Water Act, as amended establishes a process to restore and maintain clean and healthy waters through a system that regulates discharge of pollutants into waters of the U.S.

1976 Federal Land Management and Policy Act, as amended for the first time provided that public land managed by BLM should be retained and managed for multiple uses for present and future generations. Among other things FLPMA created an “undue and Unnecessary” standard for mining.

Alaska Statehood Act

Selection of public lands, fish and wildlife, public schools, mineral permits, mineral grants, confirmation of grants, internal improvements, submerged lands

Section 6

- State promised +105 million acres.
- Section 6(m) grants the State all navigable waters like other States under the 1953 Submerged Lands Act.
 - Lands off-shore to the 3-mile Territorial limit.
 - Total State ownership approximately 165 million acres.

Note: The State believes there are an estimated 22,000 Waterbodies that are navigable and therefore owned by the State. BLM believes the number is probably closer to 2,000 or 3,000 navigable water bodies. (*Alaska Journal of Commerce*, 2003)

ALASKA CONSTITUTION

“...encourage the settlement of land and the development of its resources by making them available for maximum use consistent with the public interest.” (*Article VIII, Section 1, Alaska Constitution*)

“Whenever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.” (*Article VIII, Section 3, Alaska Constitution*)

“Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.” (*Article VIII, Section 4, Alaska Constitution*)

WILD AND SCENIC RIVERS ACT ---

Public Law 90-542

October 2, 1968
[S. 119]

AN ACT

To provide for a National Wild and Scenic Rivers System, and for other purposes.

Wild and Scenic
Rivers Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act".

(b) It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.



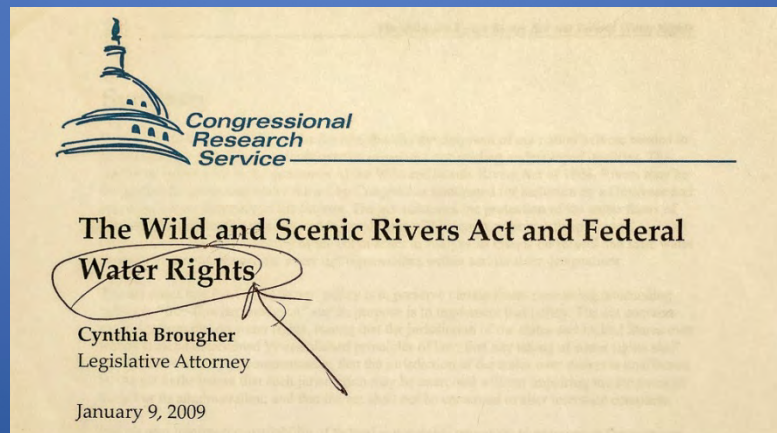
GUIDELINES FOR EVALUATING WILD,
SCENIC AND RECREATIONAL RIVER
AREAS PROPOSED FOR INCLUSION IN
THE NATIONAL WILD AND SCENIC
RIVERS SYSTEM UNDER SECTION 2,
PUBLIC LAW 90-542.

WILD RIVERS



The Wild and Scenic Rivers Act provided for ---

- Boundaries average 1/2-mile on both sides of the river.
- Mineral entry prohibited within 1/4 mile of river bank. (Only in Wild segments).
- Boundaries included both Federal and non-Federal ownerships.
- Mining on Federal land to be regulated to protect the values for which the river was added to the National Wild and Scenic Rivers System.
- Identification and limited protection for rivers that should be considered in the future for addition to the National Wild and Scenic Rivers System.
- It also states, subject to existing valid rights and protective regulations, mining on Federal lands and State water rights would not be adversely effected.
- The Act further provided for a Federal Reserved Water Right needed to protect the values that caused the RIVER to be included in the National Wild and Scenic Rivers System.



BLM Instream Flow Applications ---

River Segment	ADNR Case File	Date Filed
Fortymile (Navigable)	LAS 25792	August 03, 2006
North Fork (Navigable downstream from the Kink. Litigation on ownership upstream from the Kink has been filed by the State.)	LAS 26428	May 14, 2007
South Fork (Navigable)	LAS 27071	August 20, 2008
Walker Fork (Likely Navigable)	LAS 27070	August 25, 2008
West Fork Dennison Fork (Likely Navigable)	LAS 27917	December 17, 2010
Logging Cabin Creek (Not Navigable)	LAS 27916	December 16, 2010
O'Brien Creek (Likely Navigable)	LAS 27939	January 18, 2011
Mosquito Fork (Navigable)	LAS 28731	September 25, 2012
Notes: See ADNR Case File for the stream reach and quantities. Data provided by BLM , November 21, 2018 from Collin Cogley to Jules Tileston		

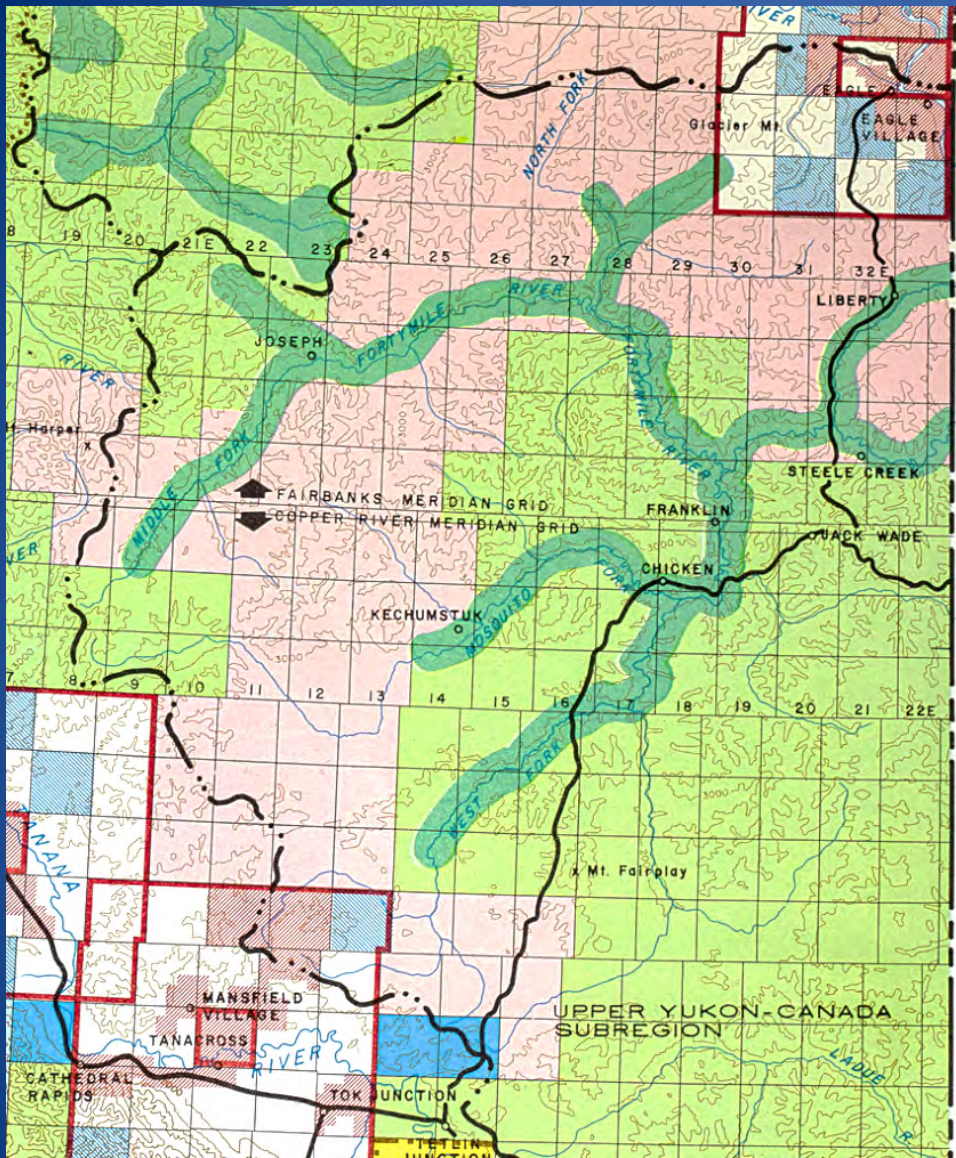
Alaska Native Claims Settlement Act of 1971, as amended (ANCSA) ---

Provides for 224 Alaskan Native Villages and 12 Regional Corporations to receive ownership of 46 million acres.

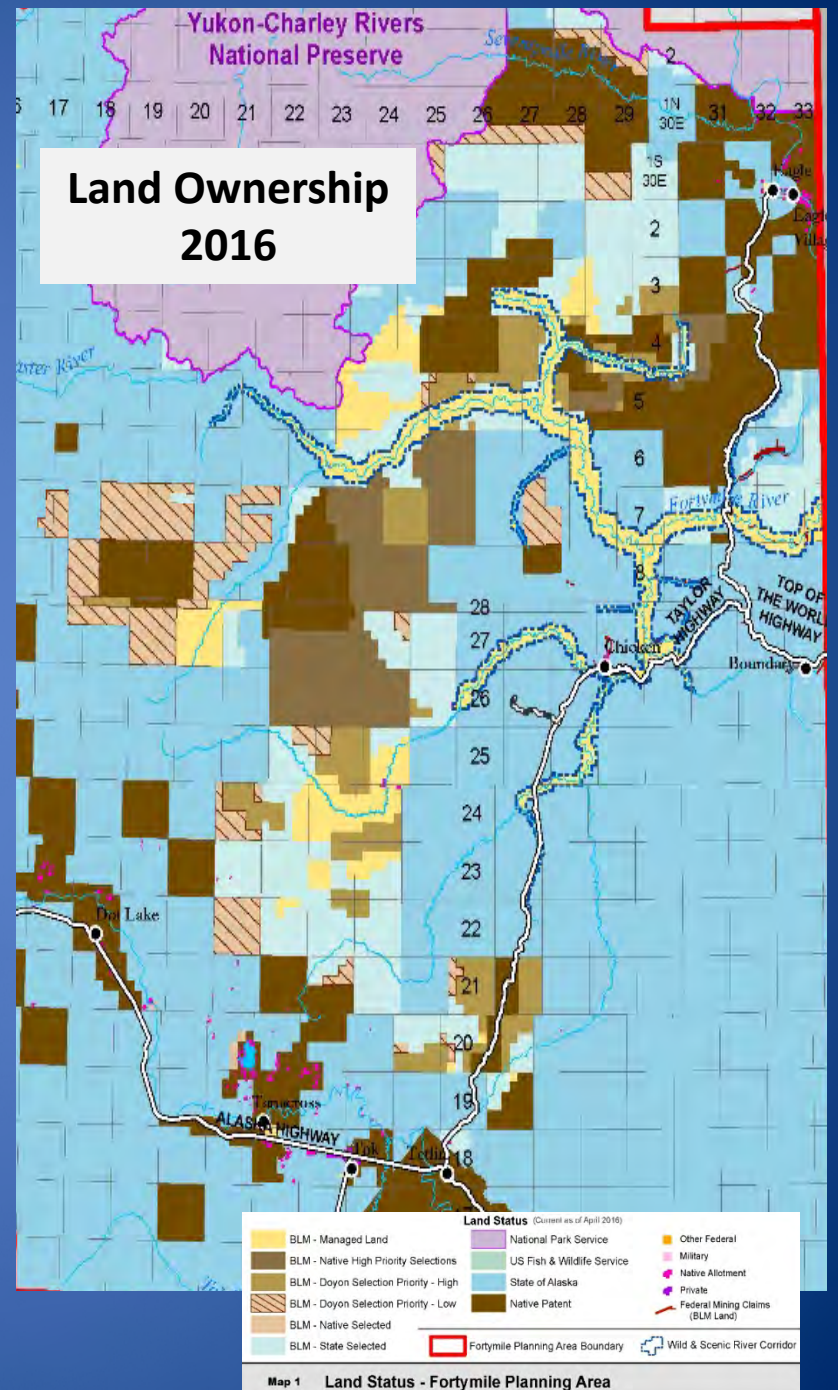
ANCSA Section 17(d)(1) withdrew all unreserved public lands in Alaska for 90 days. During that time the Secretary was required to review the public lands to determine if any of the lands should be withdrawn to insure the public interest in the lands was protected. These withdrawals had a secondary purpose of classification for protection of the public interests. The withdrawals are what we now call “d-1 withdrawals.”

ANCSA Section 17 (d) (2) provides authority of the Secretary of the Interior to withdraw up to, but not to exceed, 80 million acres of unreserved public lands in Alaska that the Secretary deems suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Scenic Rivers systems. The withdrawals are what we now call “d-2 withdrawals.”

Note: A total of 137 million acres were affirmed by ANILCA as units of the National Parks, National Wildlife Refuges, National Forests, and Wild and Scenic Rivers.



1972 ANCSA WITHDRAWALS



Land Status (Current as of April 2016)

BLM - Managed Land	National Park Service	Other Federal
BLM - Native High Priority Selections	US Fish & Wildlife Service	Military
BLM - Doyon Selection Priority - High	State of Alaska	Native Allotment
BLM - Doyon Selection Priority - Low	Native Patent	Private
BLM - Native Selected	Federal Mining Claims (BLM Land)	State Selected
Fortymile Planning Area Boundary	Wild & Scenic River Corridor	

Map 1 Land Status - Fortymile Planning Area

Fortymile
National Wild and Scenic River



- Recommended 375 river-miles for addition to the National Wild and Scenic Rivers System.
- Recommended the upstream and downstream boundaries.
- Recommended which segments should be classified as Wild, Scenic, or Recreational.
- Recommended Wild segments be closed entirely to new mineral entry.
- Recommended Scenic and Recreational segments be open to mineral entry.
- Recommended boundaries include State and other non-Federal land.
- Recognized pending applications by Doyon, Ltd. and private individuals within the proposed boundaries.

TITLE VI--NATIONAL WILD AND SCENIC RIVERS SYSTEM

PART A-WILD AND SCENIC RIVERS WITHIN NATIONAL PARK SYSTEM

§601. Additions.

(Added Fortymile and 25 other Alaskan rivers to the National Wild and Scenic Rivers System)

ANILCA amended the Wild and Scenic Rivers Act in several ways:

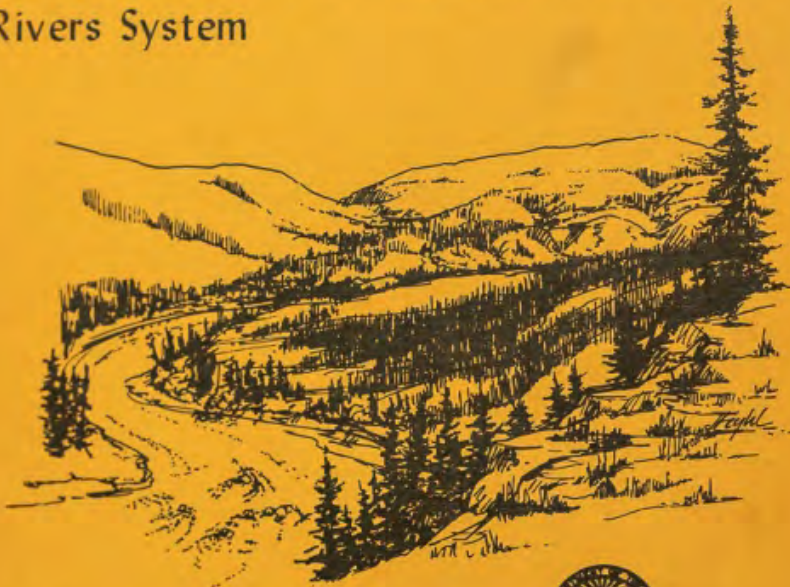
- Incorporated the recommended upstream and downstream boundaries and segment classifications evaluated in the 1974 FEIS.
- Doubled the acreage that could be included within the boundaries.
- Doubled the distance closed to mineral entry in Wild River Segments.

However, the most significant amendment ANILCA made to the Wild and Scenic Rivers Act was the requirement that BOUNDARIES in ALASKA MAY INCLUDE ONLY FEDERAL LAND AND WATERS.

River Management Plan

Fortymile River

Component of the National Wild and Scenic Rivers System



U.S. Department of the Interior
Bureau of Land Management
Fairbanks District, Alaska



December, 1983

- Established detailed boundaries.
- Determined there were 392 river-miles within the boundary.
- Recognized parts of the Fortymile River were owned by the State because they were navigable.
- Carried forward the 1974 FEIS that mineral entry be prohibited in Wild segments regardless of distance from the river bank.
- Recommended new mineral entry in Scenic and Recreational segments.
- Recommended classification for a short river segment omitted in ANILCA.
- Recommended a 100 foot undefined scenic buffer where clearing vegetation would be restricted.

Note: The Secretary of the Interior submitted the River Management Plan to Congress.

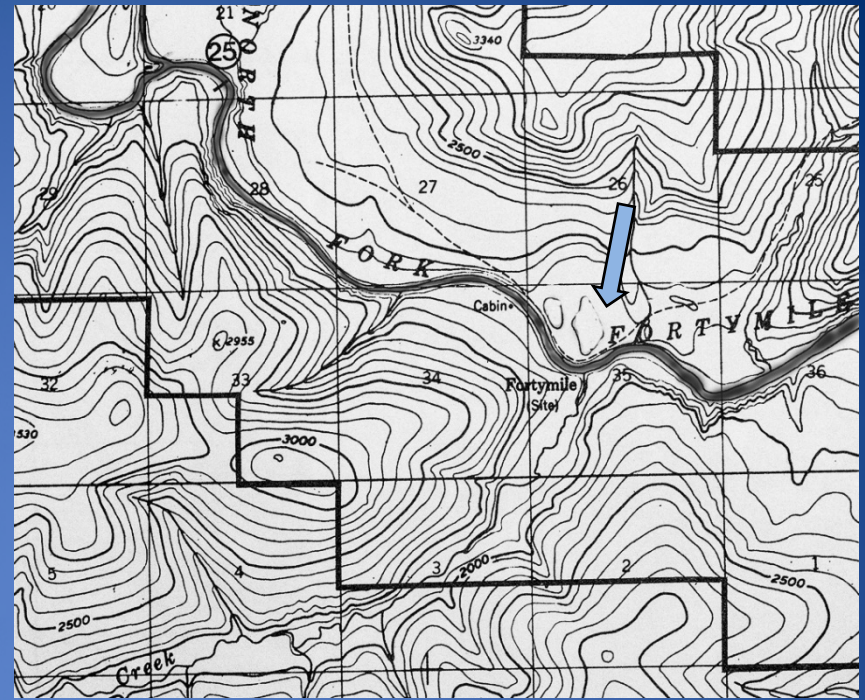
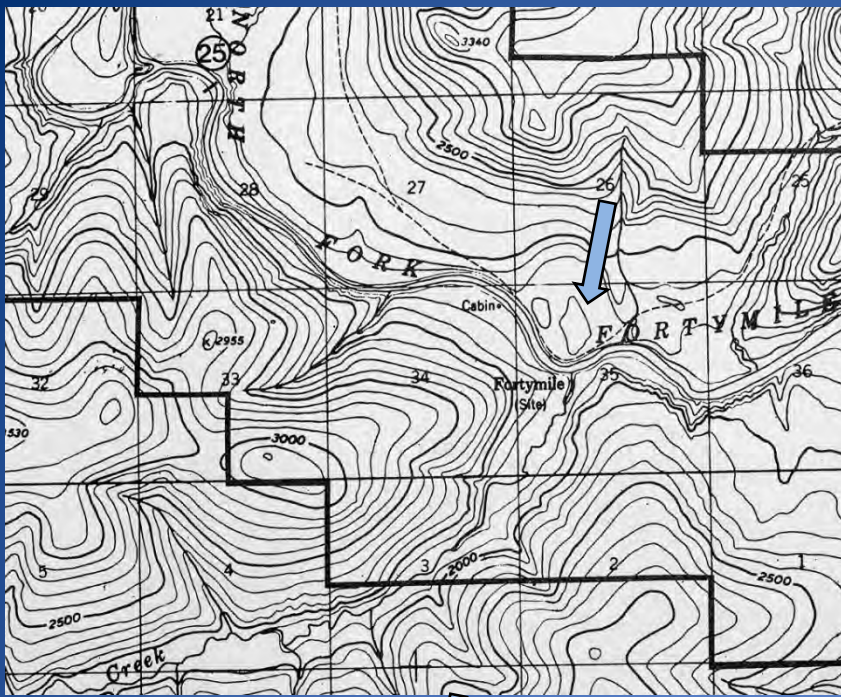


Photo by Dr. Jessica Cherry (2018)

BOUNDARIES (from the 1983 BLM Fortymile River Management Plan) ---

Above left: Similar to Other States.

Above right: ANILCA only Federal ownership within the Boundary.

Left:  = approximate limit of ordinary high water.



2018



2018



1984

Commercial Suction Dredging Operations on State Ownership with adjacent long-term camp on Federal land.



River Activity associated with Mining on State Ownership

2018 photos

**KEEP the ENTIRE COMMERCIAL
SUCTION DREDGE OPERATION on
STATE OWNERSHIP**

**or LEASE ONE OF 70 BLM LONG-
TERM CAMP SITES**



**WHO OWNS the LAND
WHERE these SUCTION
DREDGING CAMPS ???**

**⇨ = APPROXIMATE
LOCATION of ORDINARY
HIGH WATER**

The 2016 BLM Record of Decision (ROD) ---

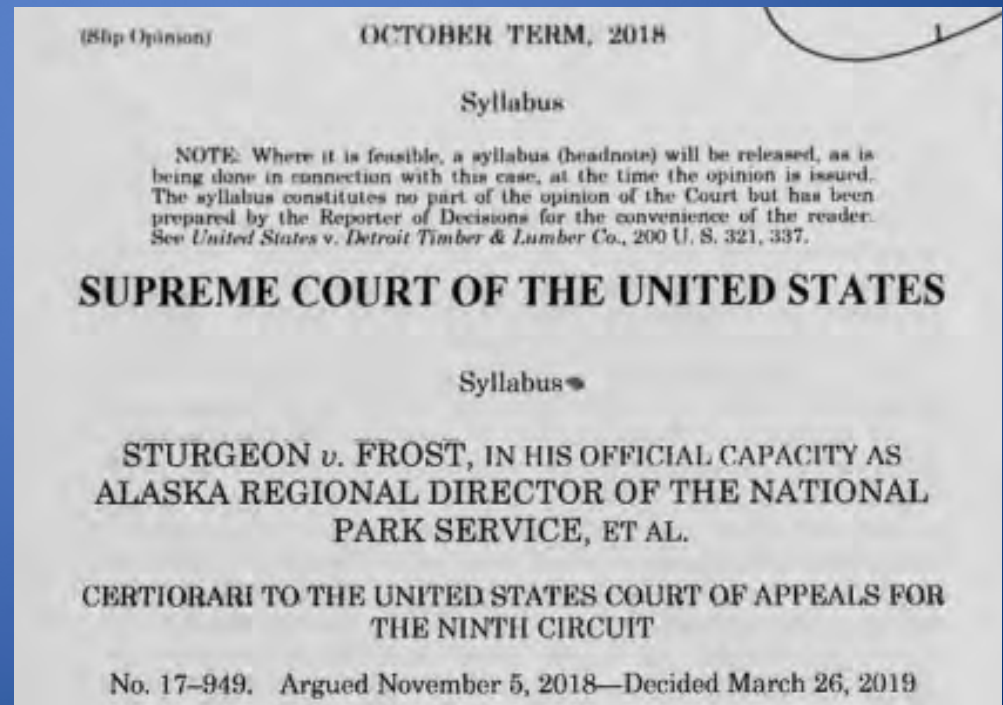
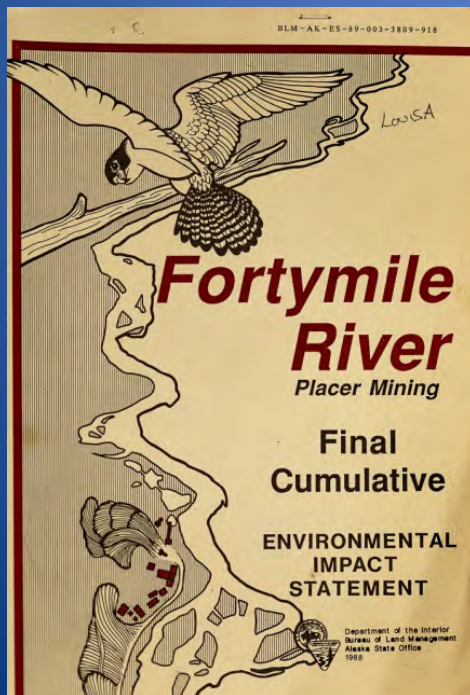
- The ROD noted the 1983 Fortymile River Management Plan was not revised or amended.
- However, it did recommend the updated River Management Plan incorporate land use decisions identified in the ROD that included resources inside the boundaries for the Fortymile Wild and Scenic River.
- BLM recommended the Secretary of the Interior prohibit new mineral entry anywhere on Federal land within the Fortymile Wild and Scenic River.

LITIGATION

1987 U.S District Court, Alaska re: individual BLM mining approvals.

2014 U.S. Supreme Court re: *Katie John* established the right to subsistence fish in navigable waters in Alaska.

2018 U.S. Supreme Court re: National Park Service authority to regulate boating on navigable waters of the Nation River located within the Yukon Charley National Rivers established by ANILCA.



Indeed, Alaska is Different ---

You are all encouraged to read the U.S. Supreme Court decision about the use of a hovercraft on the Nation River just referenced. The Unanimous Opinion reviews and summaries how ANILCA treats non-Federal land (inholdings) within the boundaries of a unit of the National Park System in Alaska that is different from National Park in Other States.

This Unanimous Opinion has direct implications for other National Parks, Wildlife Refuges, National Forests, National Recreation Areas, National Conservation Areas, and Wild and Scenic Rivers in Alaska that were created by ANILCA.

HOW IS THE FORTY MILE SIMILAR TO OR DIFFERENT FROM OTHER WILD AND SCENIC RIVERS IN THE U.S. AND IN ALASKA?

The Fortymile Wild and Scenic River is stand-alone Conservation System Unit. It is unique in that one of principal “Outstanding Remarkable Vales” is historic and ongoing regulated mining for placer gold.

In summary, the U.S. Supreme Court affirmed navigable waters (land below ordinary high water) are owned by the State and are not “Federal land” as defined by ANILCA. As such, navigable waters are not subject to the Federal regulation as a part of the Wild and Scenic Rivers Act or another Conservation System Unit.

Accordingly, the Fortymile Wild and Scenic River includes only Federal land extending outward an average of one mile from each river bank where the River is navigable and owned by the State of Alaska pursuant to the Alaska Statehood Act.

In other States a unit of the National Wild and Scenic Rivers System includes non-Federal ownership as well as the river regardless whether the river is or is not navigable. Other State have provisions for Federal Reserved Water Rights. And, other states do not have zones established for harvesting subsistence resources.

PROMISES MADE IN THE 1974 FEIS ---

The river and its immediate environment will be maintained in a free-flowing condition for its “Outstandingly Remarkable Values.” Mining for placer gold is one of these values.

“Except for those areas designated as wild rivers, we are not foregoing mineral activity. Even in those [wild] areas, existing valid claims are recognized. [It is] recognized that the regulations to be applied would result in an increase in the cost of the economics of mining and the loss of personal freedom on the part of the miners to do as they please...the impact of the proposal on the economics could be significant.”

Response to the State of Alaska comment on the 1974 FEIS by the Department of the Interior.

PROMISES MADE IN 1980 FOR THE FORTY MILE BY ANILCA ---

- ANILCA accepted the 1974 FEIS boundaries and the one of the overarching “Outstandingly Remarkable Values” in the Fortymile was historic and ongoing regulated mining for placer gold as promised by the Department of the Interior.
- ANILCA expected BLM would provide adequate facilities to accommodate recreational visitation.
- ANILCA conditionally approved road access across Wild segments to a potential asbestos mine on Doyon, Ltd. ownership in the Fortymile Watershed.
- ANILCA excluded all non-Federal ownerships.
- ANILCA closed to new mineral entry only Federal land located within 1/2 mile of the River bank in Wild segments .
- ANILCA expected Federal land in Wild segments beyond in Wild segments beyond 1/2 mile and all Federal land in Scenic and Recreational segments to be open to regulated mining.

PROMISES MADE BY THE SECRETARY OF THE INTERIOR IN THE 1983 FORTYMILE RIVER MANAGEMENT PLAN --

- Access to the River would be improved . (YES)
- Surface access within and across Federal land would be restricted. (YES)
- Public campgrounds would be improved. (YES)
- Cultural, archaeological, and Historic Resources would be protected. (YES)
- New mining claims on Federal land in Wild segments would be prohibited. (YES)
- New mining claims on Federal land in Scenic and Recreational Segments would be permitted . (NO)
- Mining claims established before the land closures in 1972 and subsequently maintained could be developed under regulations that protect the values for which the Fortymile Wild and Scenic River was established under ANILCA. (YES)
- Mining claims within an undefined 100 foot scenic buffer must provide evidence of commercial placer gold deposits before extensive vegetative clearing would be approved. (YES)

Establishing a subsistence hunting zone was not discussed. (Katie John was decided in 2014)

Promises Made in the BLM 2016 Record of Decision for the Fortymile Resource management Plan (ROD) ---

- The ROD noted the BLM 1983 Fortymile River Management Plan was neither revised nor amended.
- However, it did recommend that the updated River Management Plan incorporate land use decisions identified in the ROD that included resources inside the boundaries of the Fortymile Wild and Scenic River.
- BLM recommended the Secretary of the Interior prohibit new mineral entry everywhere on Federal land within the Fortymile Wild and Scenic River.

It is rare to have the opportunity to second guess yourself and to ask the critical questions:

Would I do something different? And, if so, What?

CONCLUSIONS

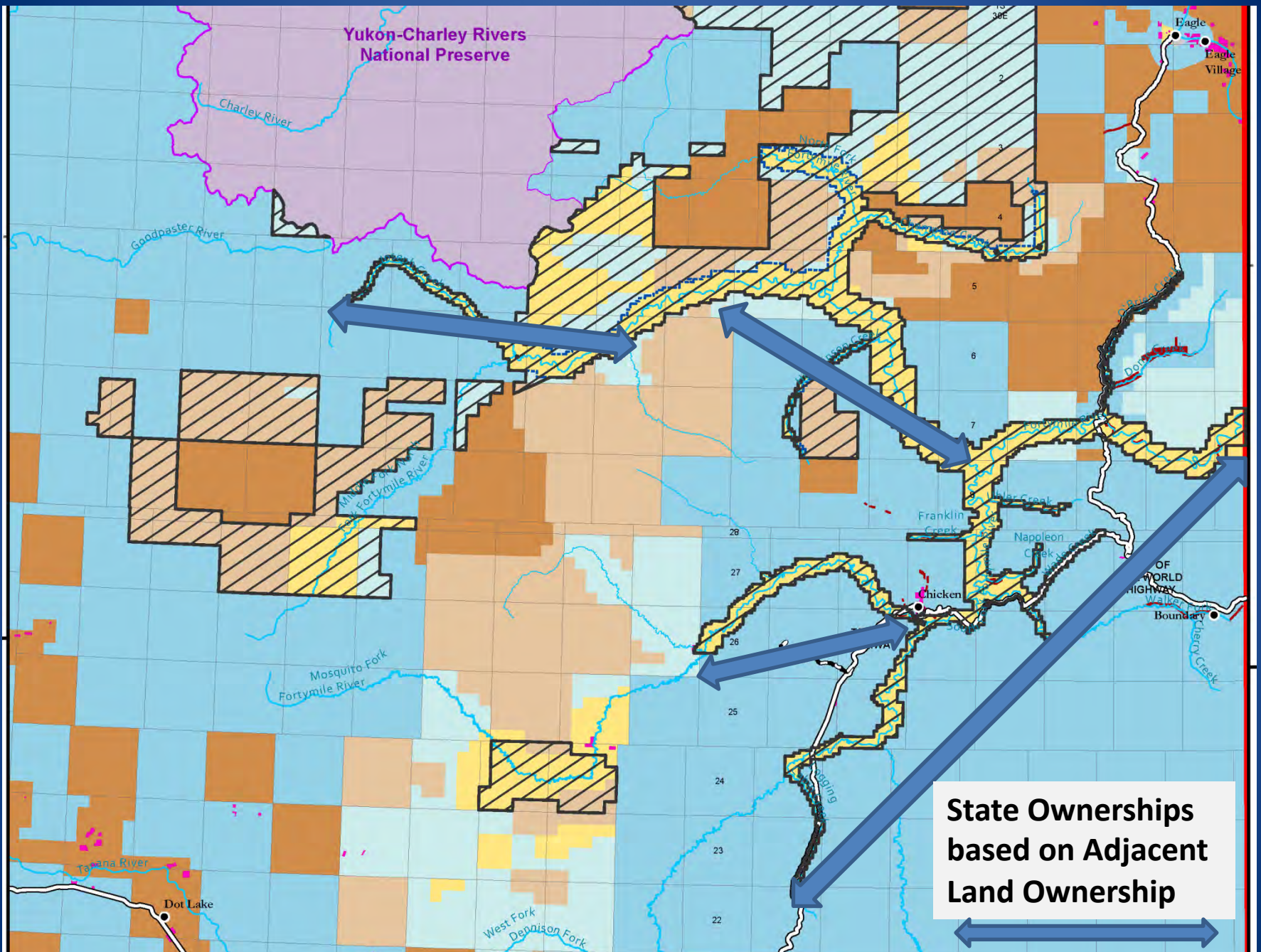
- The legal setting assumed in the 1974 FEIS was not valid.
- ANILCA made several modifications to Wild and Scenic Rivers in Alaska that are substantially different than units of the National Wild and Scenic Rivers in Other States.
- The most significant amendment was to require only Federal land be included within the boundaries. The result being that the Fortymile Wild and Scenic River does not include up to 274 river-miles, i.e. a Wild and Scenic River WITHOUT a River.
- The extent of active placer gold mining in the Fortymile in 1972 and 2018 are significantly different with numerous suction dredge operations on State ownership below ordinary high water and 70 BLM pre-approved long-term camps on the river bank for commercial placer gold miners.

CONCLUSIONS (CONTINUED)

- Motorized boat use in 1974 was limited to a few boats with small outboard motors. By 2018, the size of the boat and the horsepower were substantially larger (and noisier) with hovercraft becoming a major river transportation component.
- The motorized boat traffic, commercial suction dredging operations, and adjacent long-term camps collectively adversely impact the river classifications recommended in 1974 and adopted by ANILCA in 1980.
- Regulated mining on Federal land and on State ownership below ordinary high water do not adversely impact the “Outstandingly Remarkable Values” identified in the 1974 FEIS.
- The conclusions and data developed for the 1988 Cumulative Placer Mining FEIS showed minimum long-term impact to the existing environment from regulated placer gold mining in the Fortymile Watershed.
- Conditionally authorized a road to a potential asbestos mine on Doyon, Ltd. land the would adversely impact Wild segments of Champion Creek, North Fork, and Middle Fork.

If I had a “do over” ---

I likely would have treated the Fortymile like the Sagavanirktok or Ambler Rivers, both included in the initial list of 166 Alaskan rivers that should be considered for Wild and Scenic status, i.e., *Not in the 40 Rivers for detailed study.*



**State Ownerships
based on Adjacent
Land Ownership**

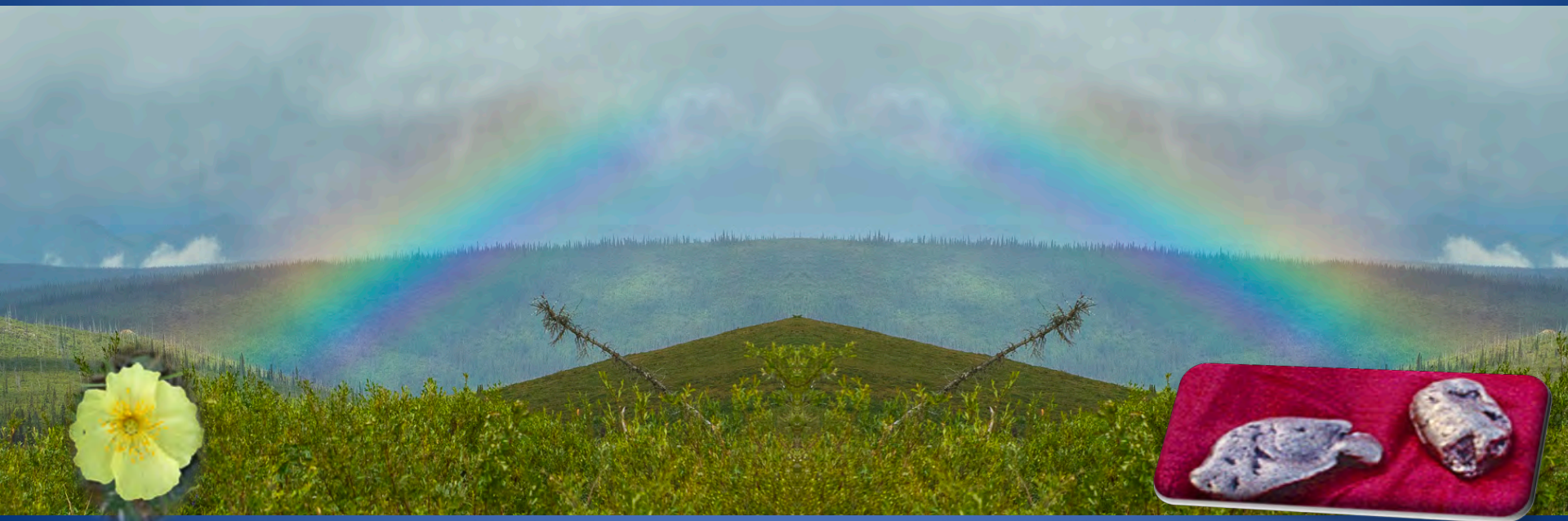
Fortymile River likely Ownership if not selected for Detailed Study

I Hope



I Didn't put y'all
to SLEEP!

....The Fortymile River Indeed is a *Special River* that offers a fantastic opportunity to visit and enjoy an area in Alaska where time stood still.



Questions?