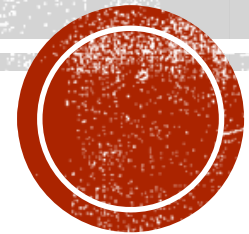


WSLCA CONFERENCE

STATE SOVEREIGNTY SESSION

STATE NAVIGABILITY DETERMINATIONS



Jim Walker
DNR DMLW PAAD Manager
July 12, 2017



Clear Title to Submerged Lands

1. Quite Title
Litigation

2. Recordable
Disclaimers of Interest

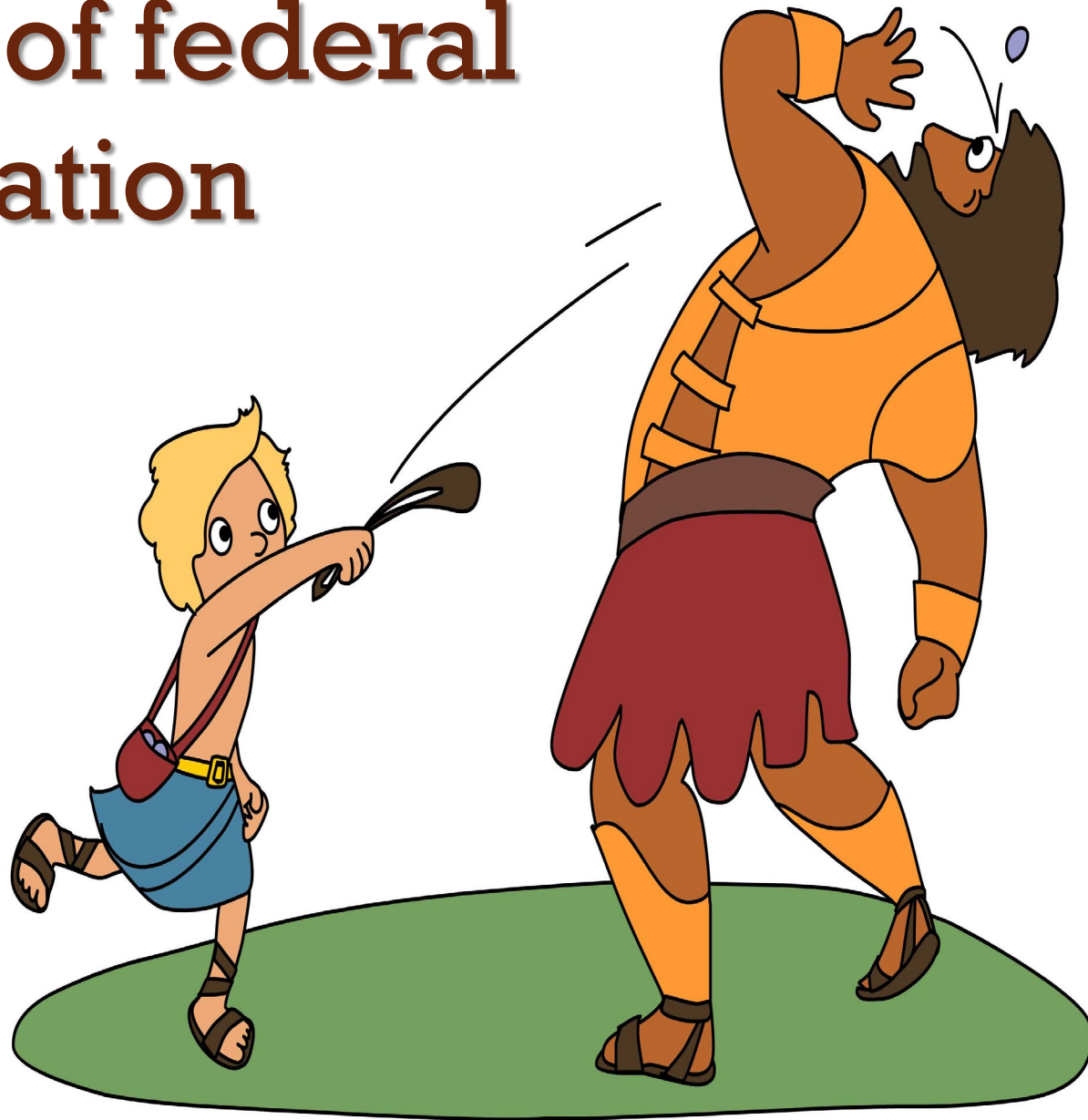
3. State Navigability Determinations

Federal quiet-title litigation

- ➔ **Case or controversy.**
- ➔ **Use of “standing” to frustrate SOA in quieting title.**
- ➔ **Expensive and time consuming.**
- ➔ **More complicated than State Court.**
- ➔ **Keep litigation to single river.**

RECENT examples of federal quiet-title litigation

- *Mosquito Fork River*
- *Stikine River*
- *Knik River*



FEDERAL QUIET-TITLE LITIGATION

- Actively pursue litigation to the **maximum of our resources.**
- Create favorable judicial precedent.
- SOA decide where to plant its flag.
- Get BLM to change its behavior.
- Current pace= hundreds of years and billions of dollars.

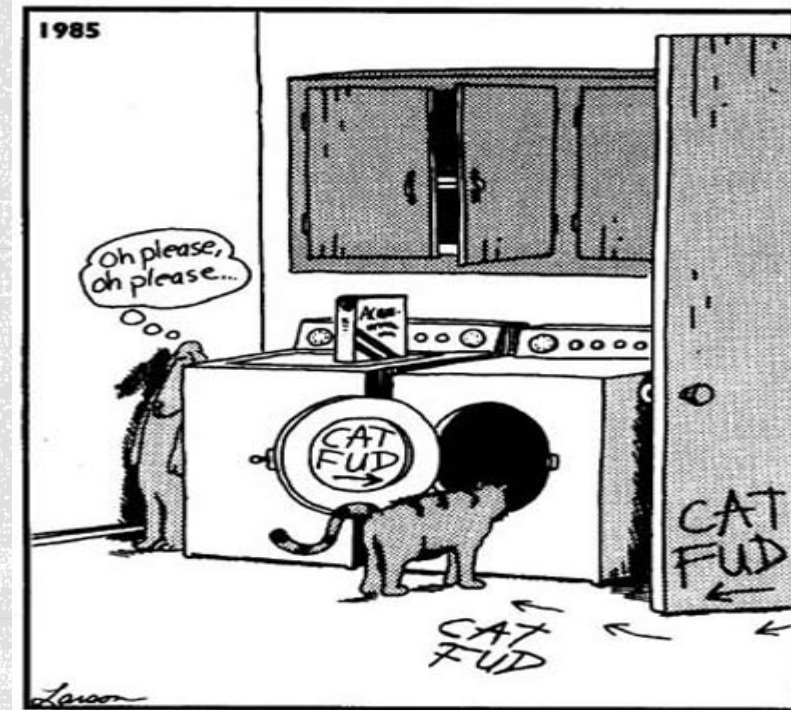
Lessons
Learned and
Future Plans



RECORDABLE DISCLAIMERS OF INTEREST

- Congress provided a “quick and easy” way to clear title where the United States does not claim title.
- Secretary of DOI (BLM is delegee) is authorized by FLPMA to issue Recordable Disclaimers of Interest.
- BLM has the authority to disclaim the United States’ interest in submerged lands under navigable waters where there is no pre-statehood reservation.

BLM'S
PREFERRED
METHOD OF
HANDLING



Some Recent Successful RDI Applications

Kuskokwím Ríver (2013)

Lake Míinchumína (2016)

Kantíshna Ríver (2016)

Aníak Ríver and Aníak Lake (2012)

Chílkoot Ríver and Chílkoot Lake (2012)

Chísana Ríver (2016)

Pending RDI applications

Arolík River System

George River

Goodnews River

Eek River System

Kanektok River

Pegatí Lake

Kagatí Lake

Kísaralík River

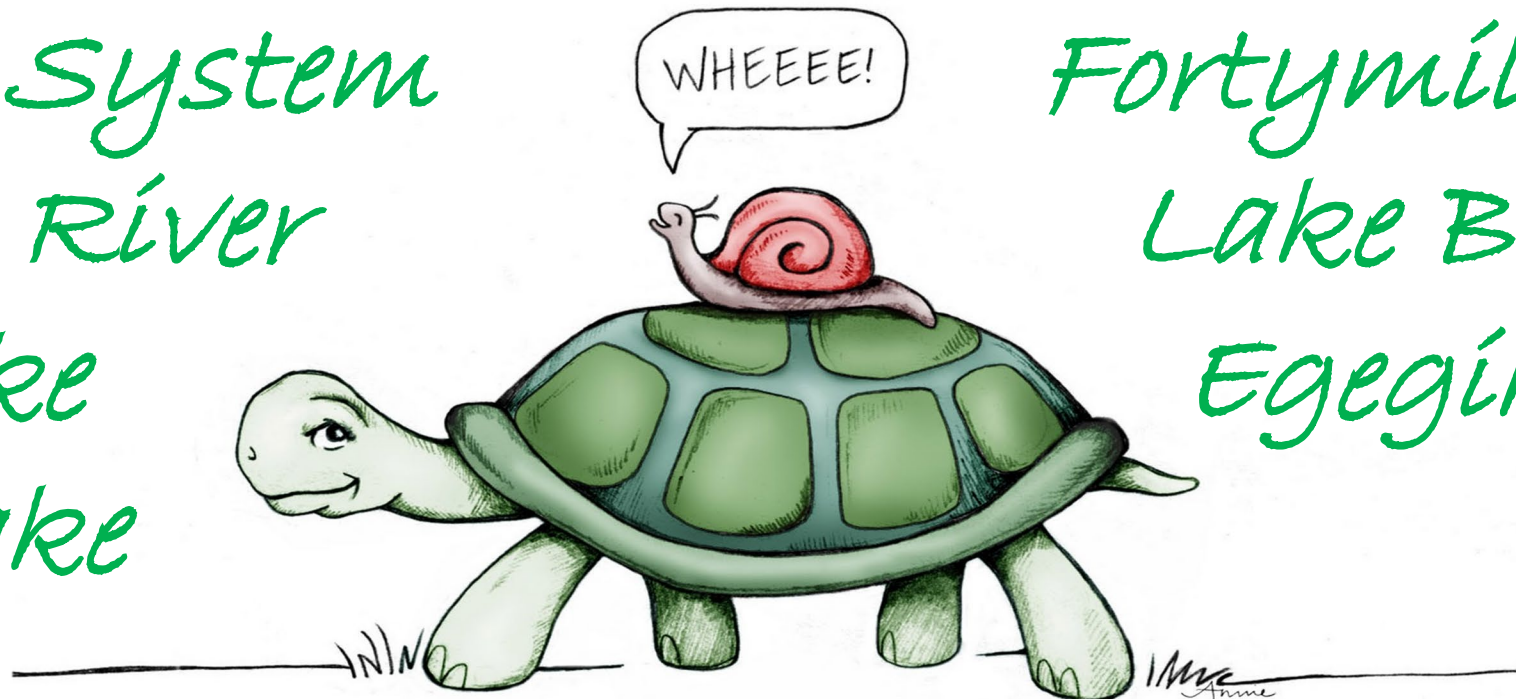
Kísaralík Lake

Taku River

Fortymile River

Lake Becharof

Egegík River



RDI program challenges

Limited federal resources
devoted to reviewing.

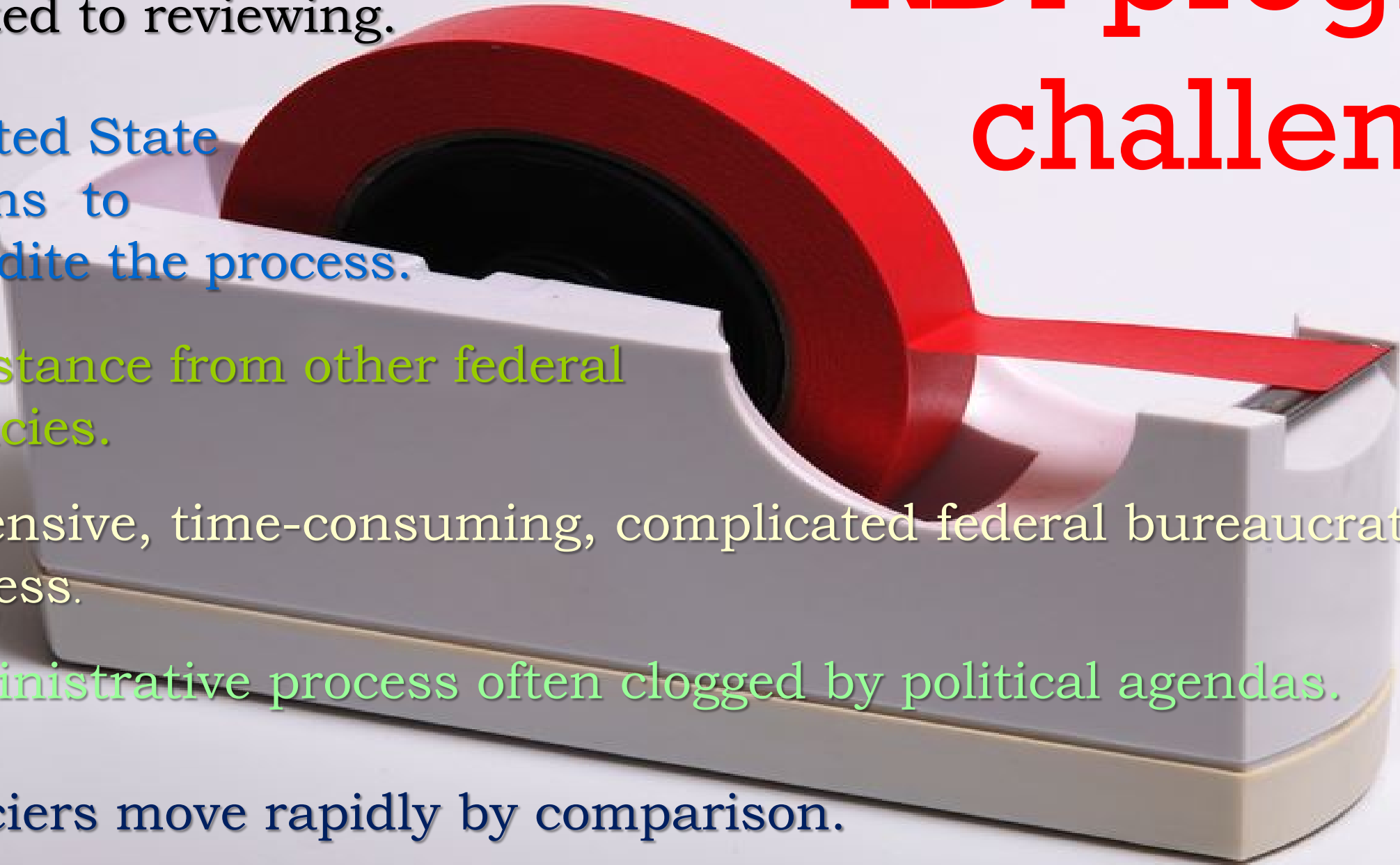
Limited State
means to
expedite the process.

Resistance from other federal
agencies.

Expensive, time-consuming, complicated federal bureaucratic
process.

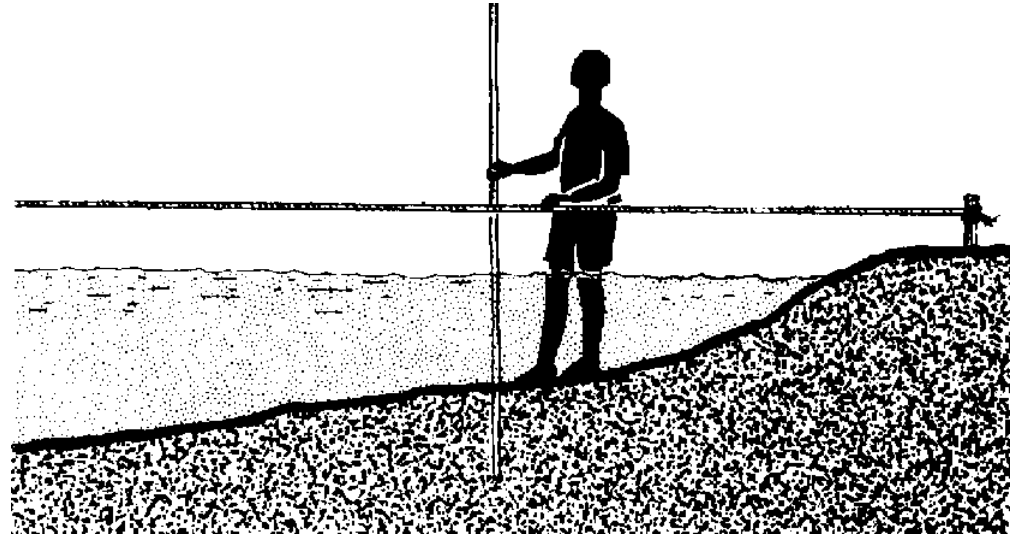
Administrative process often clogged by political agendas.

Glaciers move rapidly by comparison.



STATE NAVIGABILITY DETERMINATIONS

- Historically made by DNR primarily for intergovernmental purposes.
- We plan to expand our state navigability program to clear state title.
- Administratively resolve clouds on valid state title and withstand court challenge.



STATE NAVIGABILITY DETERMINATIONS (CONTINUED)

- Show the Federal Government the path forward to clearing title and enable sound land management.
- State navigability determinations will be used as a predicate for active state management of state property.
- Should the Federal Government attempt to interfere with such active management, the SOA will acquire necessary legal standing.



STATE NAVIGABILITY DETERMINATIONS

(CONTINUED)

THE QUESTION ...

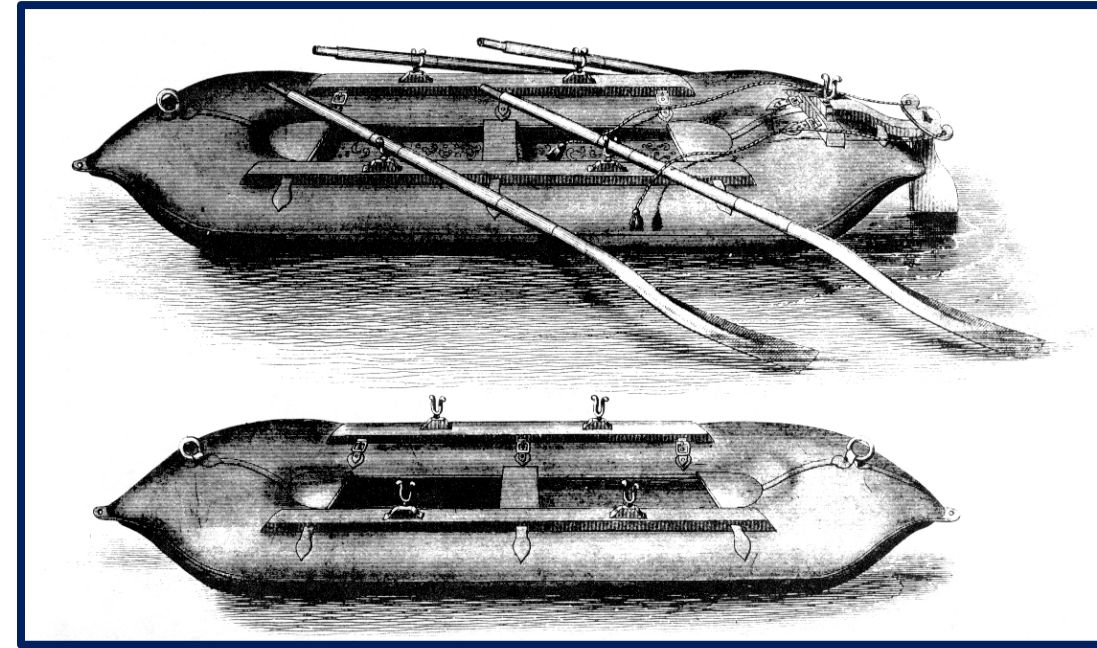
At statehood could the waterways in question be used as highways for commerce over which trade and travel were or could have been conducted in the customary modes of trade and travel on water.

“Materially Similar” watercraft

Flow Duration Curve

Long-Term Gauge

Various Limited Local Gauges



THE ANTICIPATED RESULTS

Navigability Determinations

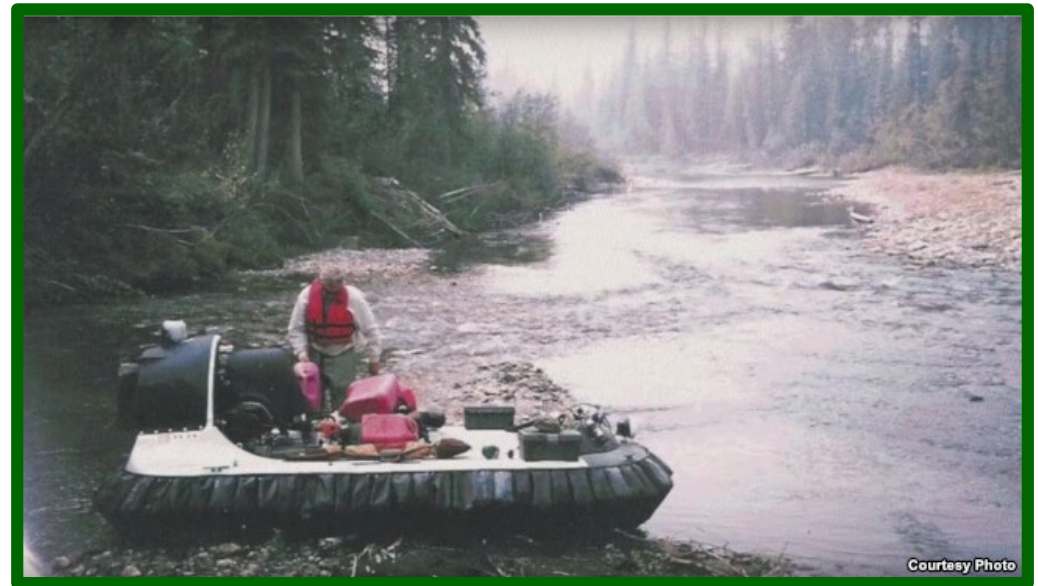
- Affirmative or Negative.
- Either State owns the submerged lands or not.
- Apply relevant laws.
- Prepare to withstand Federal Court scrutiny.
- We will act like owners ... *because we are.*



RESULTS (CONTINUED)

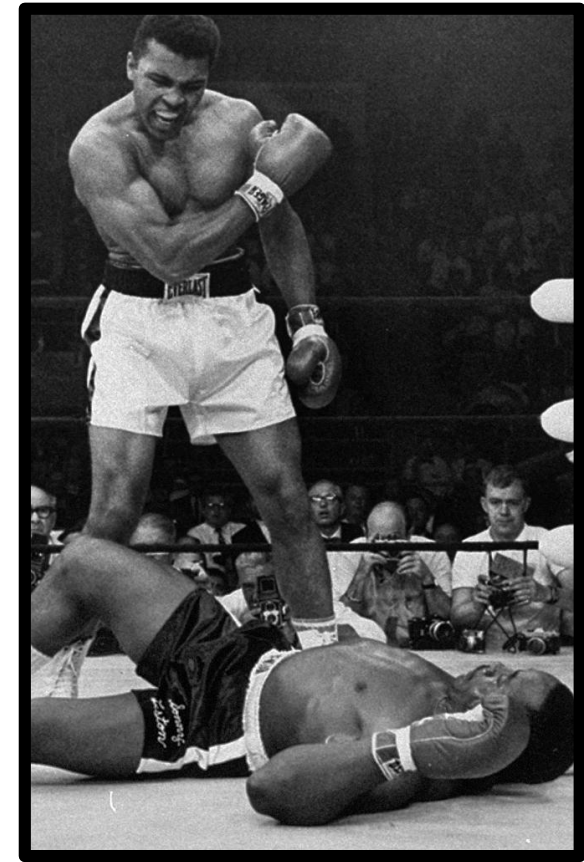
Effects of State Decisions

- Standing?
- Federal Court Subject-Matter Jurisdiction?
- Sturgeon scenario?
- Skin in the game?
- Triple-dog dare?



RESULTS *(CONTINUED)*

- Published, peer-reviewed articles establishing scientifically validated physical-characteristics and susceptibility criteria.
- Clear state title to its waters basin-by-basin, watershed-by-watershed, not river-mile-by-river-mile.
- Break the decades-long BLM log jam and obstructionism that has frustrated the state's efforts to fully enjoy the promised fruits of statehood.



QUESTIONS?

