

PRESENTATION
ALASKA SENATE RESOURCES COMMITTEE
STATEHOOD LAND ENTITLEMENT AND PUBLIC ACCESS PROJECTS
FEBRUARY 6, 2019

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TOPICS WE WILL ADDRESS

- Statehood land entitlement and obstacles
- Public Land Order 5150
- Efforts to enforce the lawful western boundary of ANWR and the controversy involving the Canning and Staines Rivers
- Efforts to protect and defend Alaska's title to its submerged lands and navigable waters
- Efforts to protect and defend Alaska's RS 2477 and other trail networks

STATEHOOD LAND ENTITLEMENT

Alaska Statehood Entitlement

105,775,500 acres¹



¹ Total acreage includes entitlement from Statehood Act, ANSCA, ANILCA, and various agreements and exchanges

OBSTACLES TO STATEHOOD LAND ENTITLEMENT



TAPS withdrawal
(PLO 5150)

- 1.74 million acres of Topfiled Priority I acres

Public Land Orders/
Military withdrawals

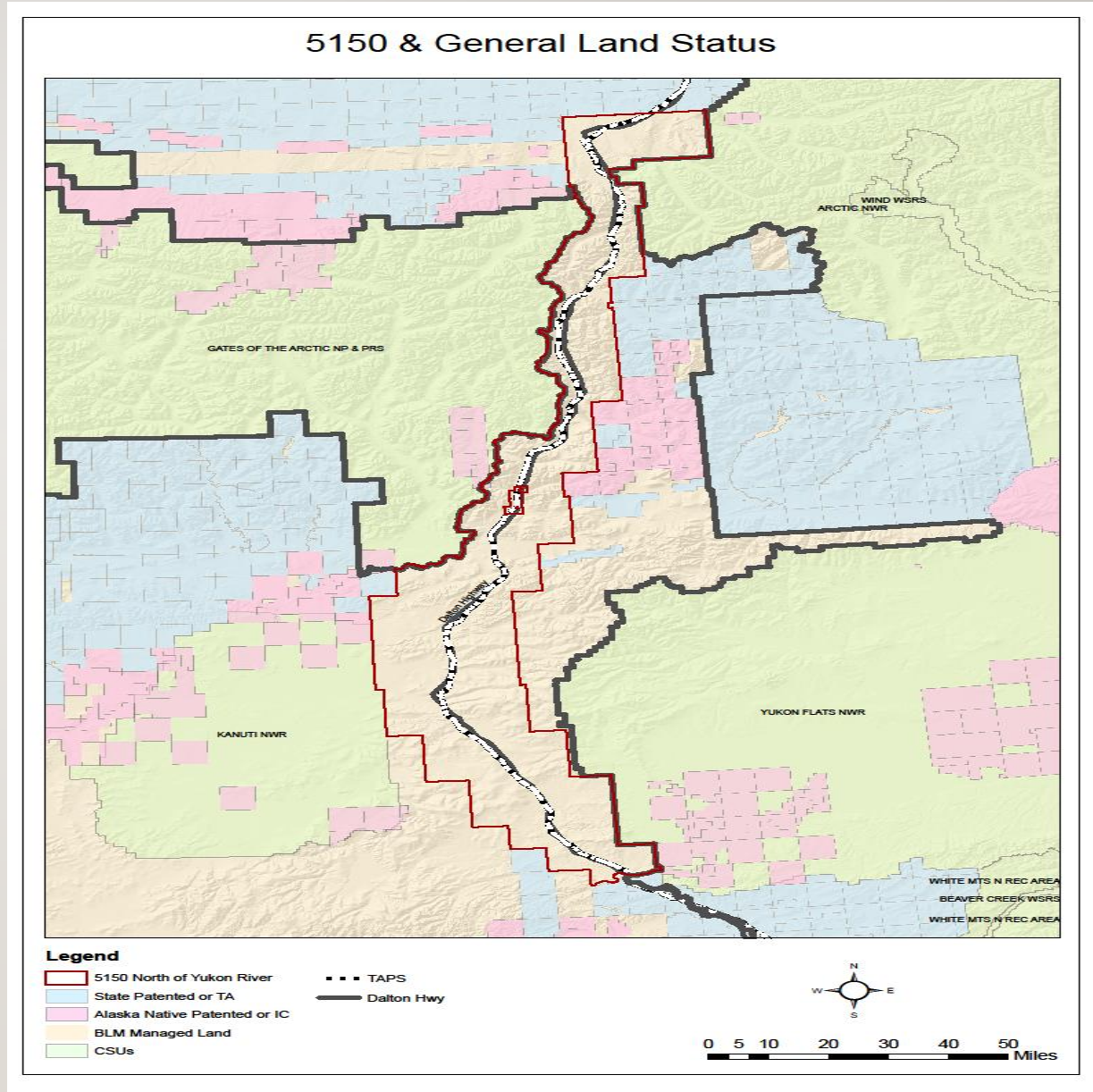
ANSCA selections

17(d)(1) withdrawals

- (impede, don't prevent)

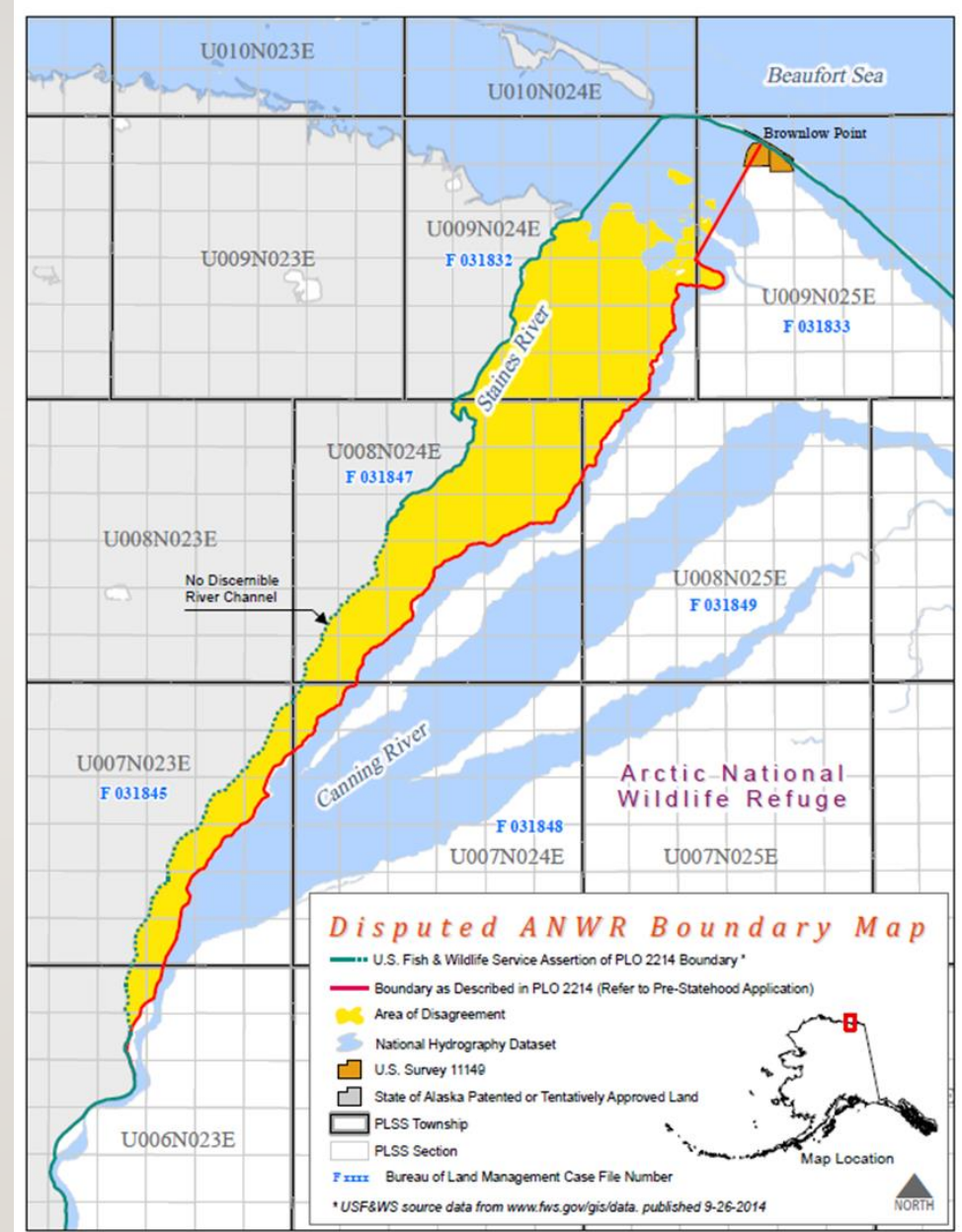
PUBLIC LAND ORDER 5150

- Established in 1971 to create a utility and transportation corridor along the general route of the Trans-Alaska Pipeline System (TAPS)
- Approximately 1.5 million acres in the central Yukon region including the TAPS pipeline
- Vital transportation / access corridor
- Vital for LNG pipeline
- Important access to highly mineralized areas



ANWR BOUNDARY DISPUTE

- 20,000 acres of uplands on the western boundary of ANWR
- 3,000 acres of tidal and submerged lands along the Beaufort Sea coastline in proximity to Point Thomson
- New importance with the passing of the Tax Cuts and Jobs Act of 2017





**STATE EFFORTS TO PROTECT AND DEFEND STATE
TITLE TO SUBMERGED LANDS AND NAVIGABLE
WATERS**

METHODS TO CLEAR STATE TITLE TO SUBMERGED LANDS UNDER NAVIGABLE WATERS

- Federal quiet title litigation
- Recordable Disclaimers of Interest (RDIs)
- State court litigation



RECENT examples of federal quiet-title litigation

- *Mosquito Fork River*
- *Stikine River*
- *Knik River*
- *Delta River (180 Day Notice)*
- *Fortymile River (West Fork and Dennison Fork) (180 Day Notice)*
- *Kisaralik River (180 Day Notice)*

PENDING AND INTENDED NAVIGABILITY LITIGATION



- DNR recently filed QTA litigation against the federal government on the North Fork and Middle Fork of the Fortymile River
- DNR filed 180-day-notice of intended litigation to clear its title to the submerged lands underneath the Koyukuk River (South Fork), Koyukuk River (Middle Fork), Bettles River, Dietrich River, Birch Creek and Beaver Creek that will expire soon
- DNR intends to file additional 180-day notices on more rivers and lakes in the near future

We still have a long way to go ...

- SOA has cleared title to only a small fraction of its submerged lands under navigable waters statewide with its combined efforts to date:
 - Approximately 14% of submerged lands under navigable lakes
 - Approximately 6% of submerged lands under navigable rivers

- Are there ways to expedite the process of clearing title?
 - Negotiations/agreements with DOI/BLM?
 - Moving away from “historical” evidence of navigability and more towards a “susceptibility” model?

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

Kanektok River

Kagatí Lake

Pagatí Lake

George River System

Kísaralík River

Lake Míinchumína

Kantíshna River

Taku River

Lake Becharof and Egegík River

POSSIBLE LIGHT AT THE END OF THE TUNNEL

- The Knik River mediation with DOJ and BLM for improvements to the RDI process?



NEW BATCH OF RDI APPLICATIONS

- Johnson River System
- Unuk River
- Alsek River
- Kwethluk River
- Tuluksak River
- Fog River
- Kanuti River
- Andrefsky River
- Anvik River
- Hogatza River
- Kateel River
- Tozitna River
- Takslesluk-Kayigyalik Lake System

STATE NAVIGABILITY DETERMINATIONS

- Historically made by DNR primarily for intergovernmental purposes
- An affirmative recent example is the Middle Fork of the Koyukuk River
- A negative recent example is Kongiganak Lake



STATE NAVIGABILITY DETERMINATIONS (CONTINUED)

- We plan to expand our state navigability program to clear state title
- Determinations will include painstaking scientific and legal analysis
- State navigability determinations will be used as a predicate for active state management of state property – to act (in other words) like owners
- “Susceptibility” and “Physical Characteristics” vs. historical proof
- Allows the SOA to change the narrative and assert ownership



NAVIGABILITY METRICS CLASSIFICATION PROJECT



THE CHALLENGE

We need to establish a scientific and authoritative manner to demonstrate reliably which rivers, lakes and other waters within a particular basin are “boatable” using data and other factors available remotely that minimizes reliance upon the historical record and avoids in-depth, multi-year analysis of the actual segment at issue.

THE FACTORS INFLUENCING “BOATABILITY”

- Catchment size
- Length/duration of the open-water season
- Strahler Stream Order Classification
- Precipitation
- Hydrography
- Flow rate
- Width
- Gradient
- Channel pattern
- Substrate
- Dimensions of the watercraft
- Reasonableness of portage

SCHOLARSHIP UPON WHICH TO BUILD

- Fish passage studies
- Hydrological exceedance modelling for bridges, culverts, etc.
- Efforts of other states to categorize and inventory rivers and lakes
- Principles of hydraulic geometry

Strahler Stream Order Hierarchical Network

1st Order is a headwater stream (perennial or ephemeral) with no tributaries

2nd Order = joined 1st order streams

3rd Order = joined 2nd order streams

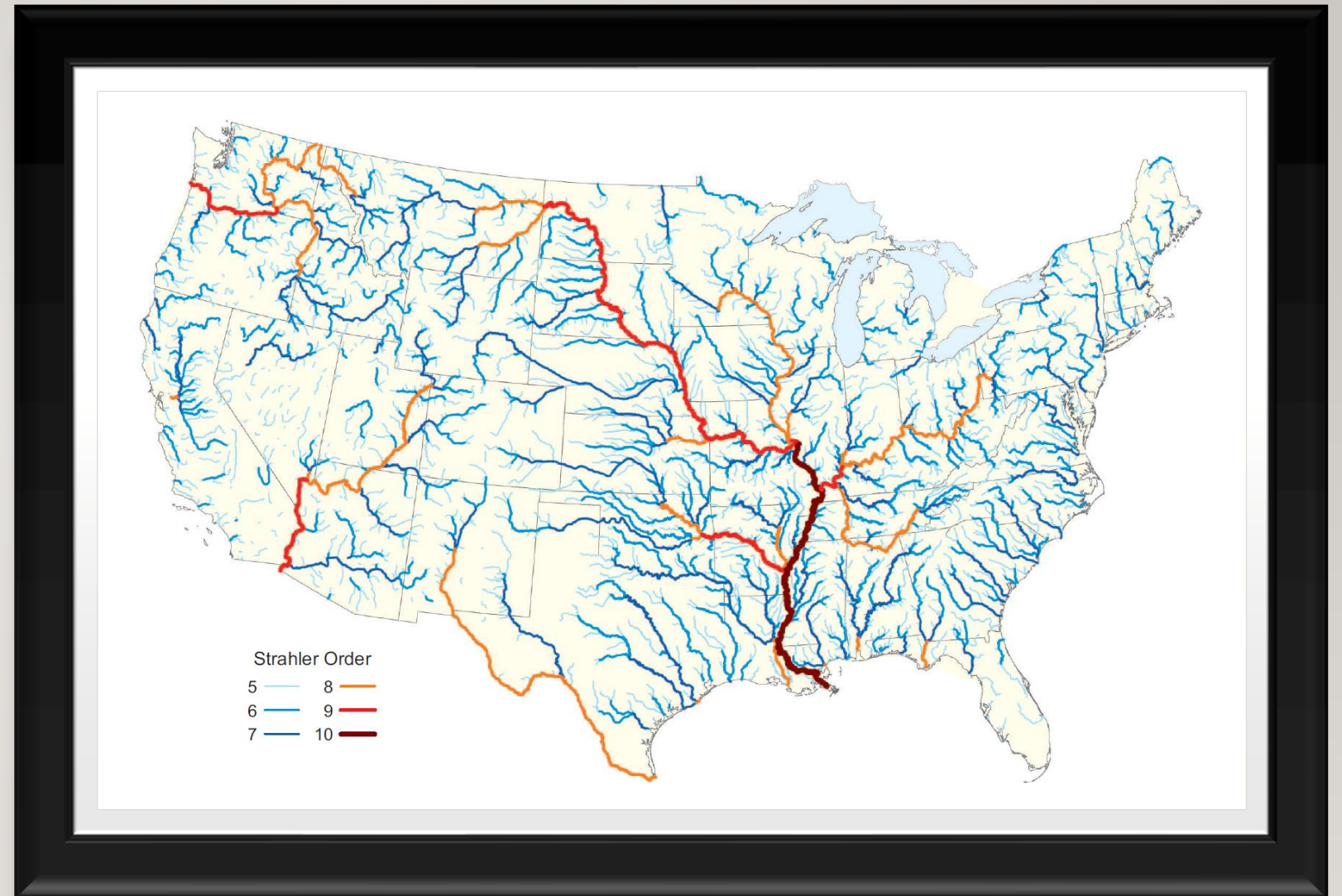
Lower order streams entering the network of a higher order stream will not increase the stream order

4th order stream = joined 3rd order streams



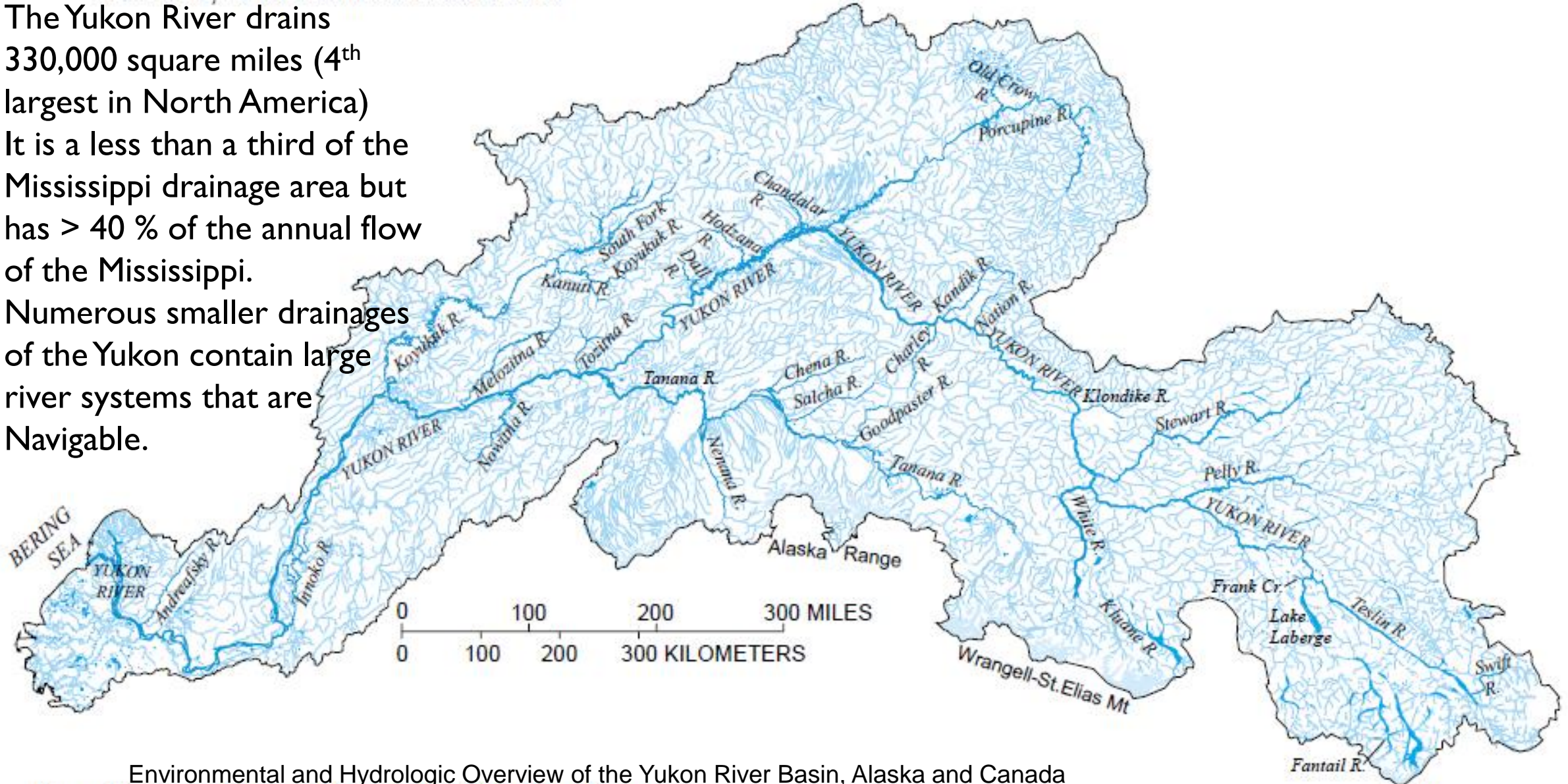
Figure 2. Stream ordering using the Strahler stream ordering system.

STREAM ORDER CLASSIFICATION IN THE LOWER 48 STATES



Yukon River Basin

- The Yukon River drains 330,000 square miles (4th largest in North America)
- It is less than a third of the Mississippi drainage area but has > 40 % of the annual flow of the Mississippi.
- Numerous smaller drainages of the Yukon contain large river systems that are Navigable.



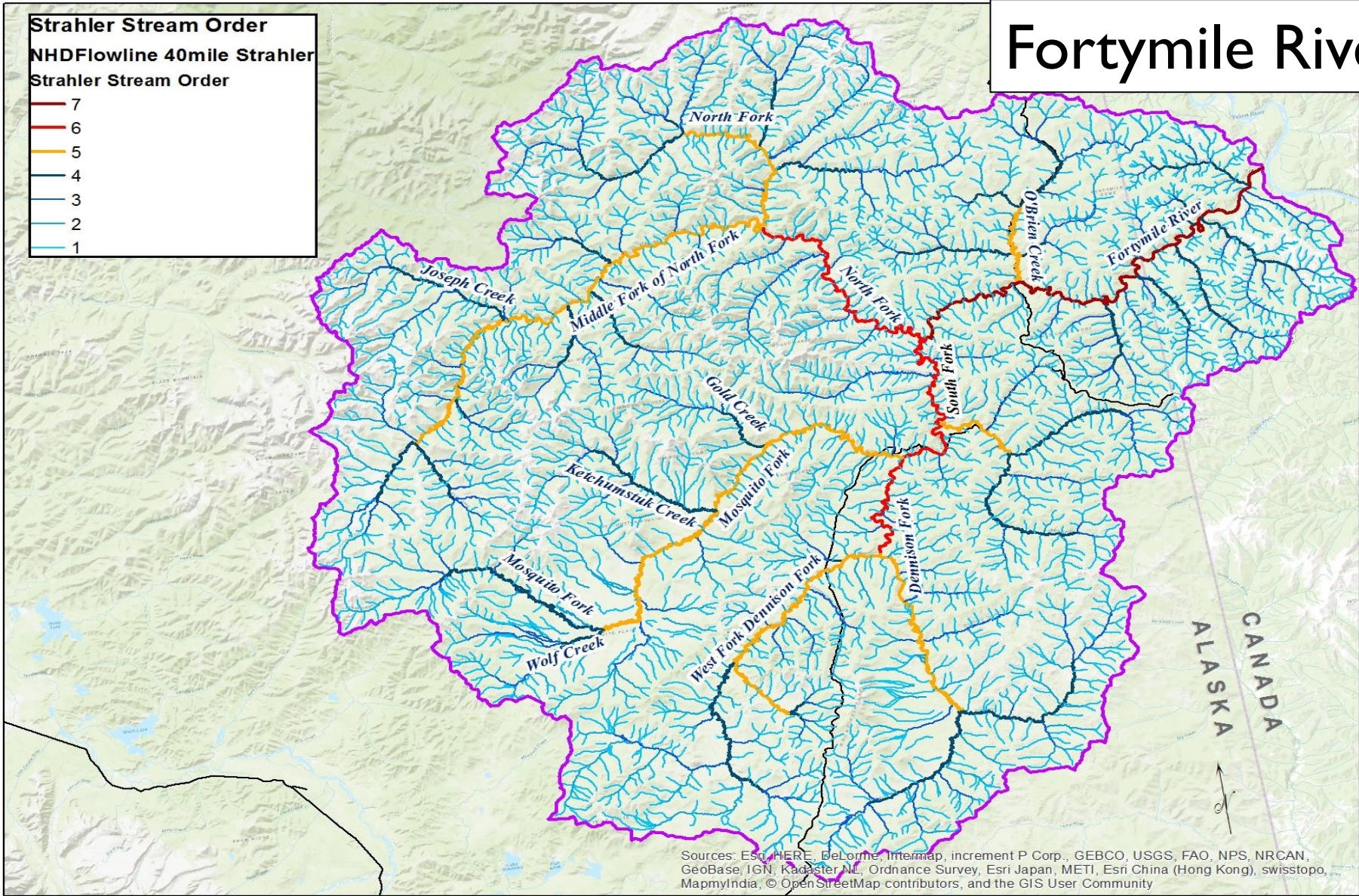
Environmental and Hydrologic Overview of the Yukon River Basin, Alaska and Canada

<https://pubs.er.usgs.gov/publication/wri994204>

Fortymile River Basin

Strahler Stream Order
NHDFlowline 40mile Strahler
Strahler Stream Order

- 7
- 6
- 5
- 4
- 3
- 2
- 1

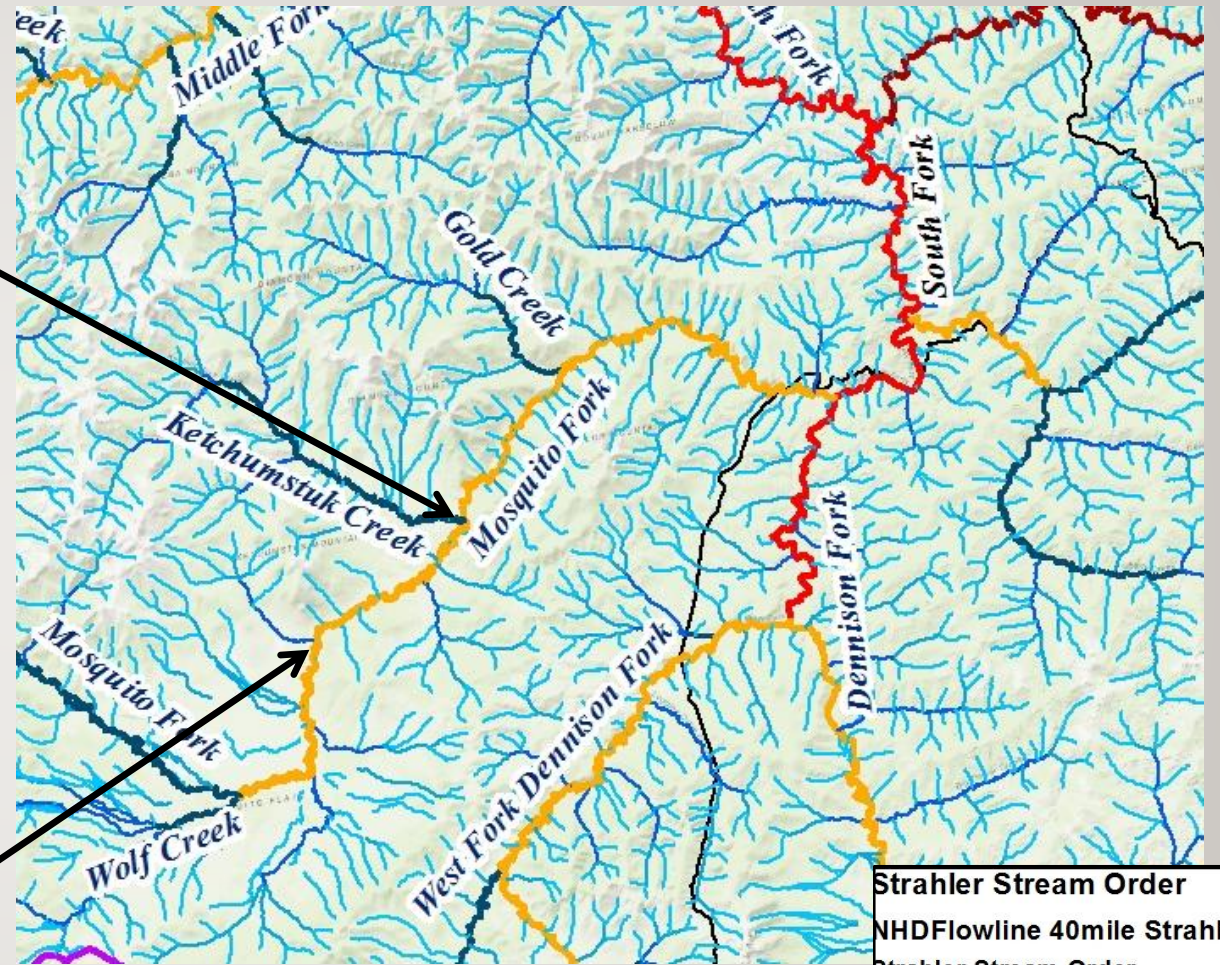


Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

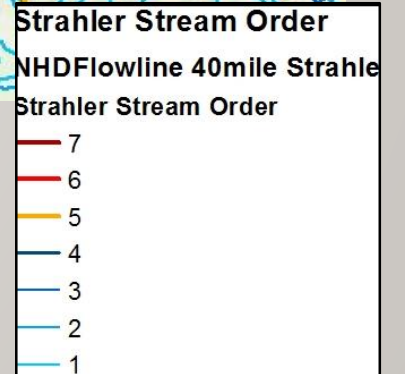
Mosquito Fork at Ketchumstuck



Mosquito Fork of the Fortymile



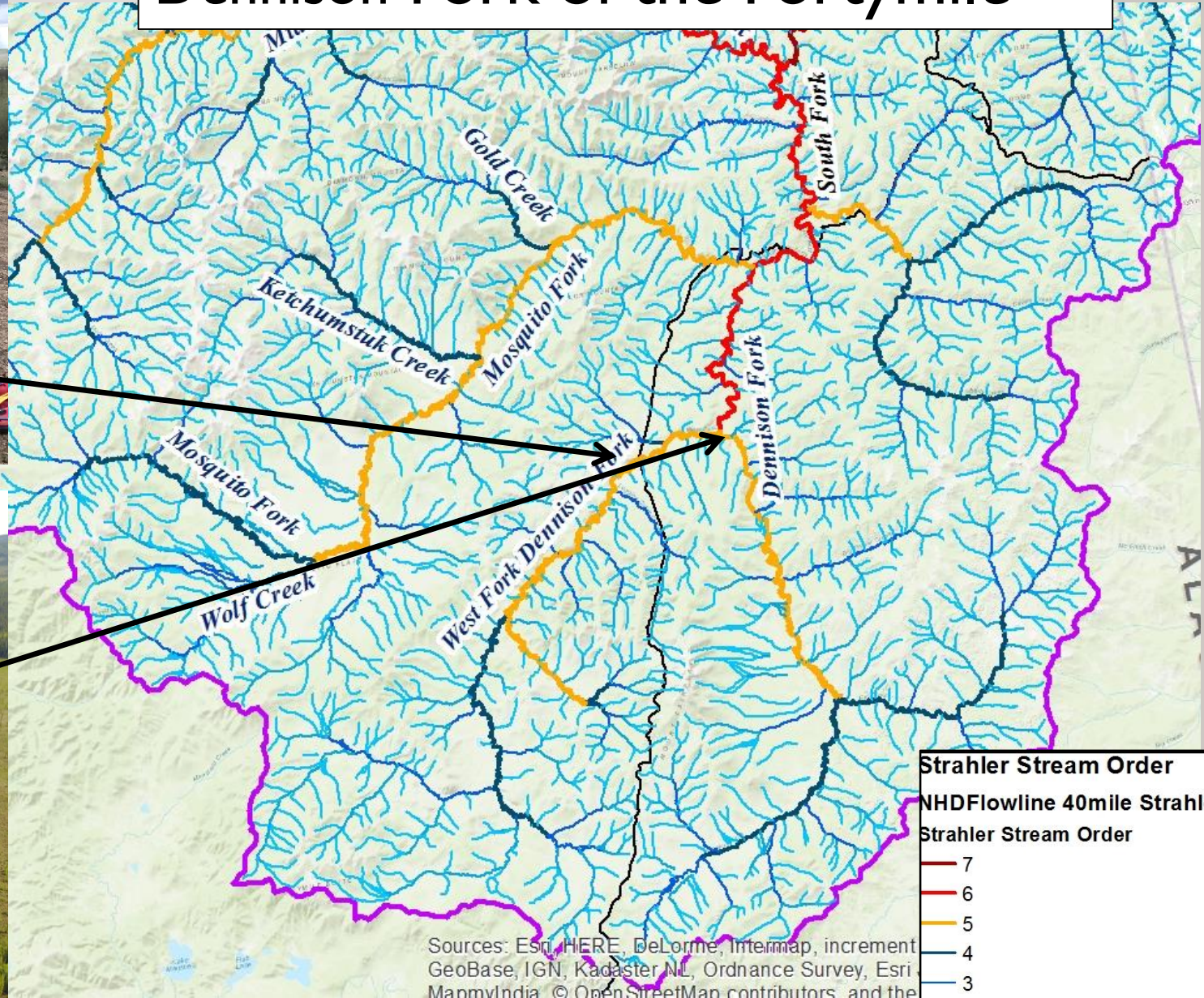
Mosquito Fork RM 61



West Fork Dennison at Taylor Hwy Bridge



Dennison Fork of the Fortymile

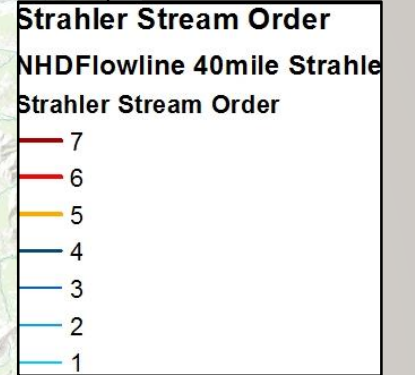


Confluence West Fork and Dennison Fork



Kandik and Nation Rivers

Kandik at US-CAN Border



Kandik at Indian Grave Cr



Nation at US-CAN Border



Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), Swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

HOW TO USE

- We intend to use our work with the Navigability Metrics Project in TWO ways.
 - Seek federal partnerships (USGS, etc.) to apply this system statewide and thereby establish navigability for title purposes basin-by-basin, watershed-by-watershed, drainage-by-drainage,
 - Utilize this system in state navigability determinations and in peer-reviewed papers to establish the scientific benchmark for establishing navigability.



PROTECTING AND DEFENDING ALASKA'S RS 2477 AND OTHER TRAIL NETWORK

- The Dickson case
- The Klutina Lake Road case
- Eklutna partnership for 17(b) easement access in Knik River Public Use Area
- The Chicken RS 2477 federal litigation



THE DICKSON CASE

- An iconic RS 2477 right-of-way and historic transportation corridor traversing much of Alaska
- Out-of-state landowners attempted to block the trail that crosses their property and then sued to quiet title
- The SOA won on all issues after a multi-week trial in the Superior Court and recovered a significant portion of its attorney's fees and costs
- Alaska Supreme Court affirmed the Superior Court's judgment
- This favorable opinion will be useful precedent in future cases



KLUTINA LAKE ROAD CASE



- Highly contested litigation against Ahtna, Inc.
- Important victories for the SOA on aboriginal title, the width of the right-of-way, etc.
- Pending motion for summary judgment on the existence of RS 2477 from Richardson Highway to state land on the north shore of Klutina Lake
- Trial date for remaining issues in April of 2019

CHICKEN RS 2477 LITIGATION

- Historic litigation to preserve SOA's RS 2477 right-of-way network on federal lands (Fortymile River Wild and Scenic Corridor)
- SOA seeking important federal caselaw regarding the existence and validity of state transportation corridors on federal lands



KNIK RIVER PUBLIC USE AREA FRIDAY CREEK 17(B) EASEMENTS

- Highly popular Knik River Public Use Area
- Controversy dating to 1980s
- Historic agreement between SOA and Native Corporation (Eklutna, Inc.) concerning 17(b) access
- Important concessions to SOA include dual crossings of Friday Creek and agreement that submerged lands belong to SOA
- Vital public access preserved in perpetuity
- A blueprint for the future



NON-BINDING RS 2477 DETERMINATIONS FOR ROUTES ACROSS FEDERAL LANDS



QUESTIONS?

