

# The Public Trust Doctrine Alaska State Lands

May 2011

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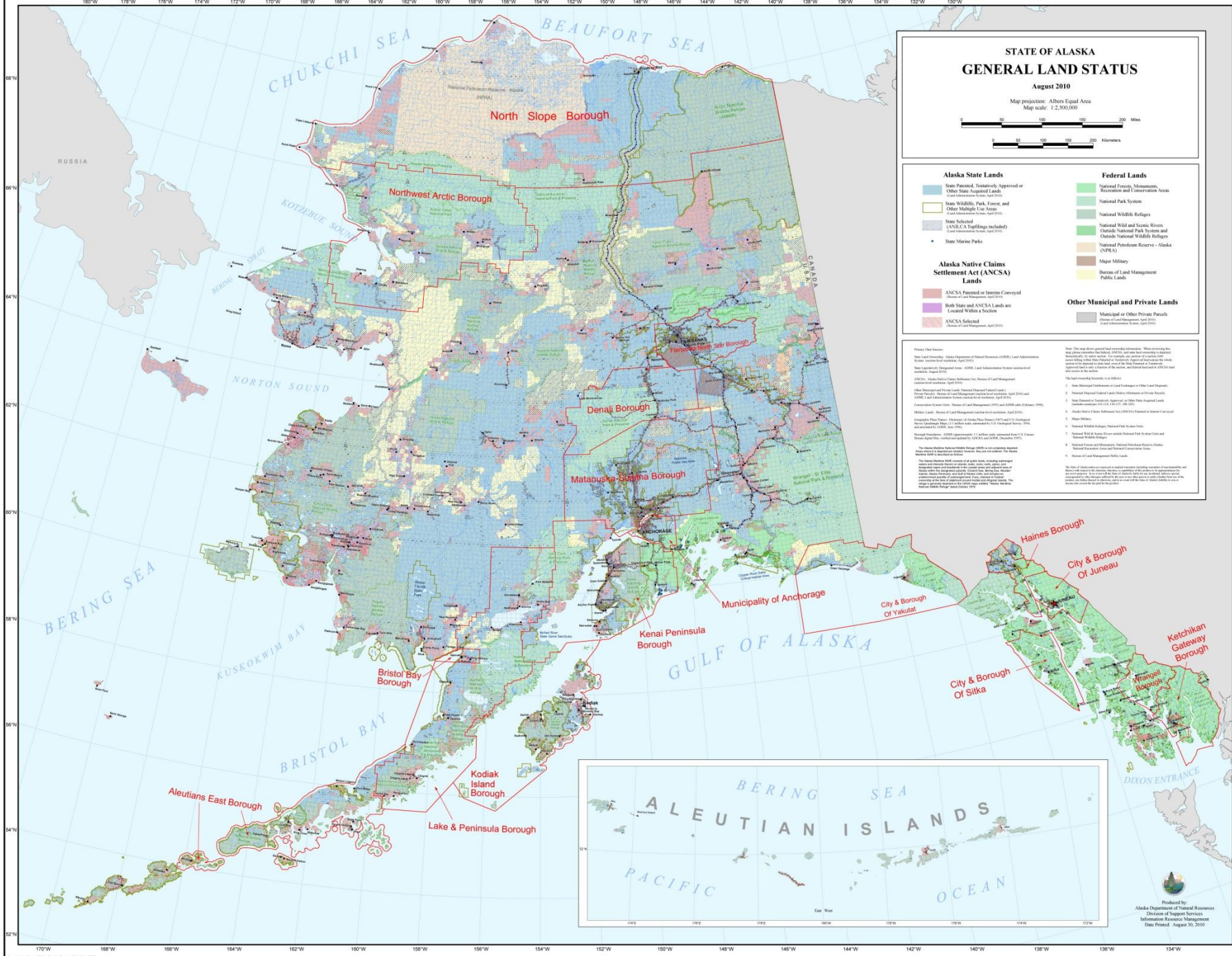
# The Public Trust Doctrine Alaska State Lands

May 2011

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Division of Mining, Land and Water  
Alaska Department of Natural Resources

# Presentation Outline

- Overview of Alaska's Public Trust Lands and Waters
- Applying the Public Trust Doctrine on state owned lands
- Applying the Public Trust doctrine on Public Waters



**STATE OF ALASKA**  
**GENERAL LAND STATUS**  
 August 2010  
 Map projection: Albers Equal Area  
 Map scale: 1:2,500,000

- |  |   |
|--|---|
| <p><b>Alaska State Lands</b></p> <ul style="list-style-type: none"> <li><span style="color: blue;">■</span> State Patented, Tentatively Approved or Other State Acquired Lands (Last Administration Review, April 2010)</li> <li><span style="color: yellow;">■</span> State Wildlife Park, Forest, and Other Multiple Use Areas (Last Administration Review, April 2010)</li> <li><span style="color: grey;">■</span> State Selected (ANCSA Treatments included) (Last Administration Review, April 2010)</li> <li><span style="color: black;">●</span> State Marine Parks</li> </ul> <p><b>Alaska Native Claims Settlement Act (ANCSA) Lands</b></p> <ul style="list-style-type: none"> <li><span style="color: red;">■</span> ANCSA Patented or Interest Conveyed (Review of Land Management, April 2010)</li> <li><span style="color: purple;">■</span> Both State and ANCSA Lands are Located Within a Section</li> <li><span style="color: pink;">■</span> ANCSA Selected (Review of Land Management, April 2010)</li> </ul> | <p><b>Federal Lands</b></p> <ul style="list-style-type: none"> <li><span style="color: green;">■</span> National Forests, Monuments, Recreation and Conservation Areas</li> <li><span style="color: lightgreen;">■</span> National Park System</li> <li><span style="color: lightblue;">■</span> National Wildlife Refuges</li> <li><span style="color: lightyellow;">■</span> National Wild and Scenic Rivers Outside National Park System and Outside National Wildlife Refuges</li> <li><span style="color: lightorange;">■</span> National Petroleum Reserve - Alaska (NPRCA)</li> <li><span style="color: brown;">■</span> Major Military</li> <li><span style="color: yellow;">■</span> Bureau of Land Management Public Lands</li> </ul> <p><b>Other Municipal and Private Lands</b></p> <ul style="list-style-type: none"> <li><span style="color: grey;">■</span> Municipal or Other Private Parcels (Last Administration Review, April 2010)</li> </ul> |
|--|---|

Present Data Sources:  
 State Land Ownership: Alaska Department of Natural Resources (ADNR), Land Administration Bureau (Last Administration Review, April 2010).  
 State Wildlife Park, Forest, and Other Multiple Use Areas: ADNR, Land Administration Bureau (Last Administration Review, April 2010).  
 ANCSA Lands: Alaska Native Claims Settlement Act, Bureau of Land Management (Review of Land Management, April 2010).  
 Other Municipal and Private Lands: Municipal or Other Private Parcels (Last Administration Review, April 2010).  
 Federal Lands: Bureau of Land Management (Review of Land Management, April 2010).  
 National Park System: Bureau of Land Management (Review of Land Management, April 2010).  
 National Petroleum Reserve - Alaska: Bureau of Land Management (Review of Land Management, April 2010).  
 Major Military: Department of Defense (Last Administration Review, April 2010).  
 Bureau of Land Management Public Lands: Bureau of Land Management (Review of Land Management, April 2010).  
 The Alaska Native Claims Settlement Act (ANCSA) is a federal law that transferred approximately 440 million acres of federal land to 12 Alaska Native Corporations (ANCs) and 12 Alaska Native Villages (ANVs). The ANCSA also established the National Petroleum Reserve - Alaska (NPRCA) and the National Wildlife Refuge System. The ANCSA is a complex and controversial law that has shaped the land ownership and management in Alaska for decades.



# 1959 - Alaska Statehood Act

Alaska received a 103,350,000 acre land grant

Section 6(m) applied Submerged Lands Act to Alaska



# State Constitution – Article VIII

- Settlement of its land and development of its resources by making them available for maximum use consistent with the public interest
- *Fish, wildlife and waters are reserved to the people for common use*
- Manage for sustained yield
- Legislature can establish special sites and areas (parks, refuges, etc.)
- State must give public notice of and safeguard public interest in any disposal (sale, lease, etc.)
- *Public access to navigable and public waters assured*

# Where does DNR apply the Public Trust Doctrine?

- When managing the state's 165 million acres of state owned lands (including land under state owned waters)
- When managing state public waters – regardless of underlying land ownership

# Alaska's State Land Grants

- All statehood and territorial land grants total over 105 million acres
- 1.4 million acres in trust land grants to Territory for University, Mental Health and Public Schools
- 103,350,000 acres in Statehood Act, not trust land
- Revenue from State land has supported state government since 1979

# State owned land – 60-65 million acres shorelands, tidelands and submerged lands

- Shorelands – land under inland navigable waters – e.g. Chena, Tanana, Gulkana
  - Acquired under equal footing doctrine
  - Includes land within federal Conservation System Units established after statehood
- Tidelands – lands under tidal influence
  - Acquired under submerged lands act/ equal footing doctrine

# State owned land – 60-65 million acres shorelands, tidelands and submerged lands

- Submerged lands – lands out to three mile territorial limit
  - Acquired under submerged lands act
- EXCEPTION – lands withdrawn at statehood may defeat state's title – resolved by Supreme Court
  - Utah Lake
  - ANWR, NPRA (Dinkum Sands)
  - Glacier Bay

# Pre-statehood Federal Withdrawals

- Chugach and Tongass National Forests (1907)
- Mt McKinley National Park (1917)
- Katmai (1918) and Glacier Bay (1925) Monuments
- Naval Petroleum Reserve #4 (NPRA - 1923)
- National Wildlife Refuges: Kenai (Moose Range), Kodiak, Arctic, Aleutian Islands
- Native Reservations:
  - St Lawrence Island, Tetlin, Elim, Arctic Village – Venetie
  - Unalakleet, Tyonek, others
  - Annette Island (Metlakatla)

# What are the Navigable Waters ?

Alaska acquired title in 1959, BUT –

- There is no list
- There is disagreement about what is navigable
- Pre-statehood withdrawals may have defeated state title
- There is disagreement about the impact of pre-statehood withdrawals

# How do we determine what are the navigable waters ?

- Federal courts have established criteria
- State asserts ownership and manages waterways it feels meet criteria
- Finality may require Quiet Title through federal court
- State and BLM have used Recordable Disclaimer of Interest

# What about those pre statehood withdrawals ?

US Supreme Court has established criteria (Utah Lake)

Pre-statehood withdrawal determinations in Alaska:

Defeated State Title: NPRA, ANWR, Glacier Bay, Denali (McKinley) Park

State Received Title: Tongass National Forest marine waters, Chugach NF rivers

Currently in dispute: Stikine River (IBLA)

# Applying the Public Trust Doctrine to State Owned Land

DNR must identify, reserve out, and ensure access to public and navigable waters in any land disposal action, including:

- Land sales
- Land transfers to municipalities
- Land leases
- Mineral leases
- Land exchanges

## Specific Land Management Actions:

- Retain title to beds of navigable waters
- Retain ownership of corridors along key waterways (such as Kenai River)
- Establish easements to and along public and navigable waters
  - 50 feet in width by regulation
  - access to waters approximately every mile
  - exception if “regulating or limiting access is necessary for other beneficial uses or public purposes” (AS 38.05.127)

## Some Issues

- Public often does not know where these easements are located
- Private owners may block easements
- Private owners permanent improvements may encroach on easements
- Docks, etc. may block easements
- DNR has no regulations that define what uses are and are not allowed in easements
- Some in public/legislature believe 50 feet is too wide
- DNR has limited staff and authority to enforce public's rights

DNR cannot sell or transfer ownership of Public Trust Lands except:

- Tideland conveyances to municipalities
- Certain pre-statehood occupied tide and submerged lands
- Still subject to public trust doctrine

# Where does DNR apply the Public Trust Doctrine?

When managing the state's 165 million acres of state owned lands (including land under state owned waters)

When managing state public waters – regardless of underlying land ownership





**ALERT: The Public Trust Doctrine applies to all waters in Alaska regardless of land ownership**

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GENERAL LAND STATUS**  
August 2010  
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Map scale: 1:2,500,000

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|---|---|

Present Date Issues:  
This map shows general land ownership information. When reviewing this map, please understand that ownership of land is not necessarily a guarantee of title. For complete and current information on land ownership, please refer to the Alaska Department of Natural Resources, Division of Survey Services, Information Resource Management System (IRMS) website at <http://www.dnr.state.ak.us/irms/>.  
Map Scale: 1:2,500,000  
Map Projection: Albers Equal Area  
Map Date: August 2010  
Data Source: Alaska Department of Natural Resources, Division of Survey Services, Information Resource Management System (IRMS)  
Produced by: Alaska Department of Natural Resources, Division of Survey Services, Information Resource Management System (IRMS)  
Date Printed: August 30, 2010



# 89 % of Alaska is public land



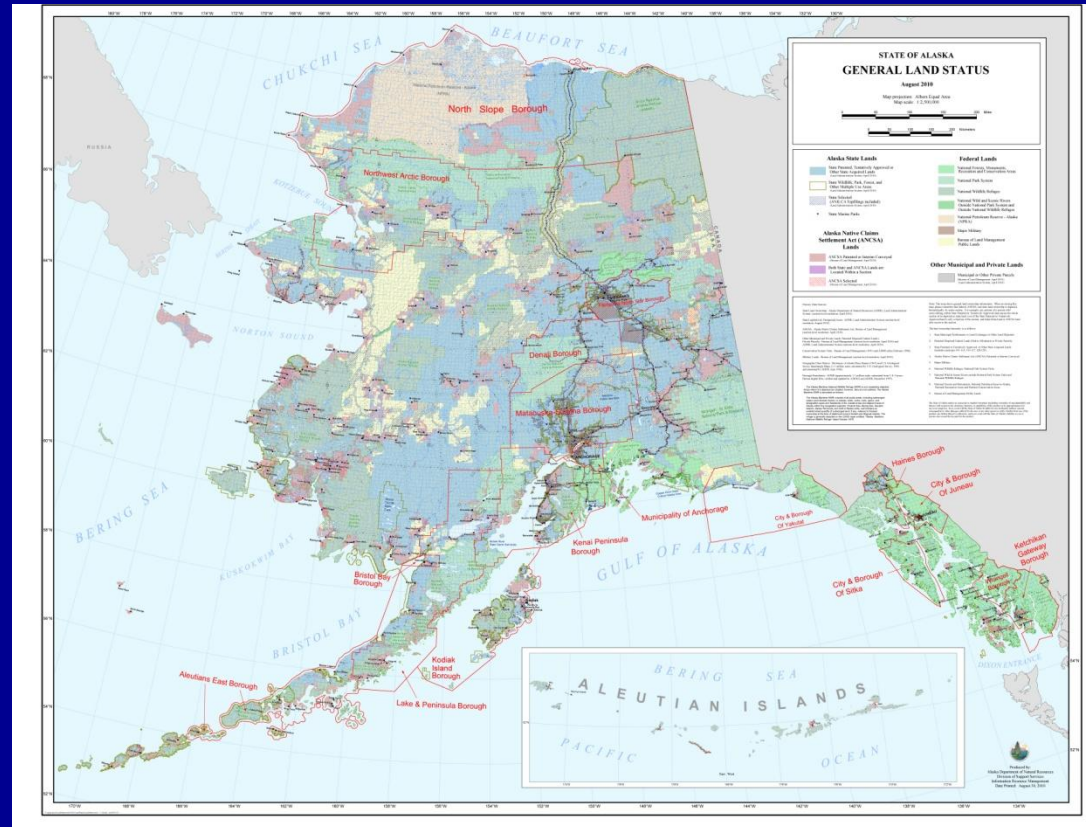


**Public Trust Doctrine applies on waters that flow through State, Municipal, ANCSA, private lands**

**State Land – 105 million acres**

**Native Corporation Land – 45 million acres**

**Private or municipal land – 5 million acres**



**State lands (blue), ANCSA lands (pink), private and municipal land (gray)**

# How does DNR apply the Public Trust Doctrine when the state does not own the land

Interagency Navigability Team – DNR, ADFG, Law

Education – Public and Landowners

Review of federal land transfers under ANCSA

Review of federal regulations

Court actions

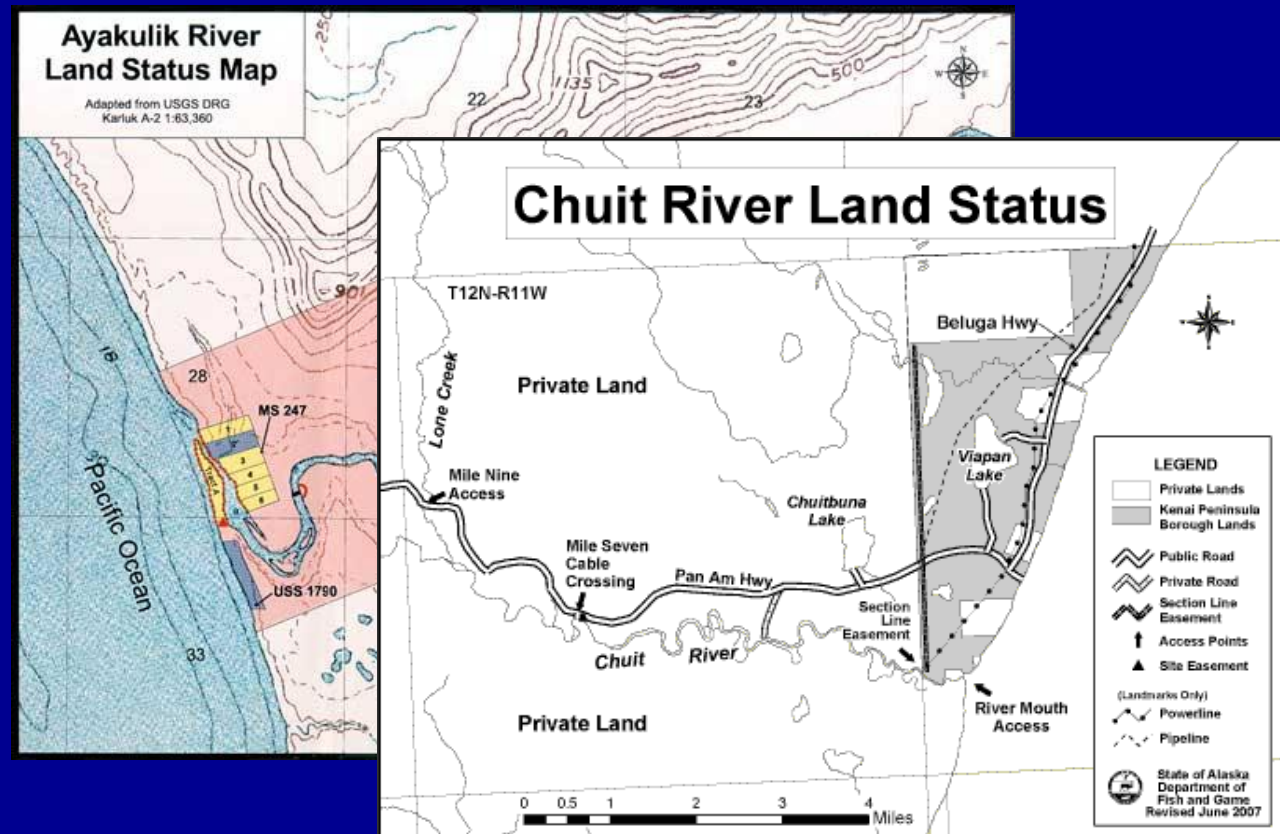
Enforcement

# Interagency Navigability Team

- State departments of Natural Resources, Fish and Game, Law
- Coordinate on policy and legal issues regarding navigable and public waters issues
- Share resources, information, staff
- Attempt to head off access problems before they escalate

# Education – Public and Landowners

- Brochures, web site, other publications
- Meetings with private landowners and user groups
- Letters
- Phone calls



# Education

Public is often not aware of limits of Public Trust Doctrine:

- changing land ownership has altered historical use
- public cannot trespass onto uplands
- must use legal access
- legal access may not be known/marked

Landowners often not aware of public rights:

- public can boat, fish, walk in waterway
- state and private upland owners sometimes disagree on ownership and legal access routes

# Review of federal land transfers

- Alaska Native Claims Settlement Act Section 17(b) requires reservation of access to “major waterways” when federal lands are transferred under ANCSA
- State identifies potential access needs and then reviews/comments on BLM decisions
- State can and has appealed unfavorable decisions
- State can only advocate for reasonable (not all existing) access
- Ongoing issues regarding locating and managing easements

# Review of federal plans and regulations

- State and federal agencies work towards mutually agreeable management of public use and access (Gulkana River, earlier Togiak Refuge Plan)



BLM photo

- Federal agencies may have different objectives than state managers – may be more restrictive than state
- State and federal agencies sometimes disagree on ownership (navigable waters)
- Federal agencies don't always agree with what state asserts are public's rights on waterways



# Court actions

To assert state ownership:

- in federal courts when dealing with land transfer issues (such as Gulkana River)
- In state court when dealing with private owners (such as Kotsina River)

To protect public rights – such as recent case on Kenai Peninsula – easement use restricted due to “homeland security” issue at dock site

# State enforcement actions

- Preferred approach is education and negotiation
- Most past state enforcement actions have been when a clearly navigable waterway is physically blocked – such as a cable strung across a river or a fence across a creek

# Where does DNR apply the Public Trust Doctrine?

- When managing the state's 165 million acres of state owned lands (including land under state owned waters)
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# Questions and Answers

