

281

Judge Concedes State Ownership of Mosquito Fork Submerged Lands

By **Craig Tuten** - Jul 29, 2015



Mosquito Fork Wild and Scenic River. Photo by [Angela](#), [Creative Commons](#) Licensing.

Gov. Bill Walker's office announced Tuesday that the U.S. Department of Justice has conceded state ownership of 80.5 river miles of Mosquito Fork near Chicken, Alaska, ending a three-year legal battle just before trial.

Mosquito Fork is a meandering 140-mile tributary of the [Fortymile River](#), designated a National Wild and Scenic River. Rivers with this designation may not be dammed or altered, and their boundaries must be preserved. In the lower 48, the boundaries typically extend one-quarter mile beyond each bank, but in Alaska, the protections extend one-half mile.

The headwaters of Mosquito Fork are located in a portion of the Tanana Valley State Forest. From there, the river winds East-Southeast, meeting Wolf Creek in the boggy wetlands known as Mosquito Flats before turning Northeast and intersecting Dennison Fork just south of Chicken. The river is then referred to as the South Fork of Fortymile River, which eventually flows into the Yukon River on the Canadian side of the international boundary.

At issue in the legal dispute was the navigability of Mosquito Fork. According to the [State's complaint](#), "the Submerged Lands Act of 1953 vested in the states 'title to and ownership of lands beneath navigable waters within the boundaries of respective States.' Congress expressly applied the Submerged Lands Act of 1953 to Alaska in the Alaska Statehood Act."

The Fortymile River corridor, including a portion of Mosquito Fork north of Mosquito Flats, was added to the list of Wild and Scenic Rivers in 1980. Congress passed the [Alaska National Interest Lands Conservation Act](#) (ANILCA) that year.

Mosquito Fork and Fortymile River fall under Section 603 of ANILCA.

Despite the designation, the submerged lands beneath Mosquito Fork were presumptively the property of the State. However, in 1983, the Bureau of Land Management (BLM) determined that Mosquito Fork was non-navigable, except for a short stretch from the confluence with Dennison Fork upstream to the confluence with Chicken Creek.

"This casts a cloud on the rights and title of the State of Alaska to the lands underlying the Mosquito Fork," the State's complaint reads. Because the BLM's determination was not binding, it also "casts a cloud" on the short stretch of river that BLM did deem navigable.

Further, the federal government issued several mining claim patents, including portions of the disputed submerged lands, that have transferred to Chicken Ventures, LLC. The State argued that the Submerged Lands Act nullified those patents.

The federal government owns much of the upland around Mosquito Fork. "An upland owner typically owns the bed of a non-navigable river to its center," the complaint notes.



Mosquito Fork Bridge Wayside. Photo by J. Stephen Conn, Creative Commons Licensing.

The State's Claim

"The area surrounding Mosquito Fork has a rich mining history dating back to the 1886 gold strike at the mouth of Franklin Creek, eight miles downstream from Chicken," reads a Tuesday [press release](#) from Walker's office. "In more recent years, the State of Alaska has issued state mining claims to these submerged lands but BLM has objected and claimed that the United States owns the lands beneath the river. Furthermore, the disputed ownership has created confusion and hardship for Alaskans seeking to use and navigate the river."

Confusion over ownership chilled mining interests, as well.

"Although this is not in my district, I have miners that do live in my district, and a lot of them will have more permitting that will be required by the federal government," Rep. Tammie Wilson (R-North Pole) reported during a February 2012 [House Finance Committee hearing](#). "If we don't start moving on this, they're basically going to be put out of business."

Then-Alaska Attorney General John Burns advised the U.S. Department of the Interior of the State's intent to sue in 2010. The official complaint was filed in June of 2012.

The State filed a [quiet title action](#), a legal avenue for resolving a dispute over real property that will "quiet" the claim of another party — in this case, the federal government.

BLM continues to dispute the navigability of Mosquito Fork, even writing in a [brochure](#) for prospective rafters, "The Mosquito fork is too shallow to float except during periods of high water."

However, the State [successfully](#) quieted federal claim to the Gulkana River in 1987 by demonstrating that multiple types of craft used the river, including "inflatable rafts... with a river load capacity between 1,250-2,000 pounds and a draft of 6-8 inches when loaded to capacity[.]"

In 2012, the Citizens' Advisory Council on Federal Areas (CACFA) had ample [evidence](#) of similar craft being used on the "non-navigable" portion of Mosquito Fork. It also noted that, legally, "the use or potential use [of the water] does not need to have been without difficulty, extensive, or long and continuous" to be deemed navigable.

"The designated portion of the Mosquito Fork was navigable in fact at the time of statehood," the State argued. Historical use of Mosquito Fork includes

floating of logs, use by wooden and skin boats, log and inflatable rafts, power and jet boats, and canoes providing transportation for individuals and supplies, for subsistence and recreational guided and non-guided hunting and fishing activities, for trapping, mining and prospecting, freighting and similar purposes, related to commerce and travel.





Fortymile River. Photo by [Chuck T](#), Creative Commons Licensing.

Eastern Interior Still in Play

U.S. District Court Judge Sharon Gleason signed the order designating the submerged lands of Mosquito Fork to be the property of the State. The order only applies to the lands from Wolf Creek to Dennison Fork. It does not change the river's federal scenic designation.

"In limiting this quiet title action to only the designated portion of the Mosquito Fork, the State is not presently taking a position on whether the upper portion of the Mosquito Fork [above Wolf Creek] is or is not navigable and is also not taking a position regarding what, if any, legal rights the State may possess or subsequently assert in and to the upper portion of the Mosquito Fork," the State wrote in its complaint.

Just as the State may not be done with Mosquito Fork, the federal government's concession does not indicate it is done with the river or its uplands.

BLM is nearing the end of a three-year process that would create a new Mosquito Flats Area of Critical Environmental Concern (ACEC). The [proposed ACEC](#) would end new mineral leasing and prohibit summer ATV use over 30,000 acres of the Mosquito Flats.

The State's newly determined ownership of Mosquito Fork ends in Mosquito Flats where the river intersects Wolf Creek. About half of the riverbed within Mosquito Flats, upstream of Wolf Creek, is still controlled by the federal government.

Within the proposed Area, the [BLM notes](#), "The Mosquito Fork River flows over continuous sand beds that are uncharacteristically clean, light colored, well-sorted, and low in organics. These sand beds provide unique aquatic habitat essential for maintaining diverse species within the planning area."

The public comment period for Mosquito Flats closed last year. The next step for BLM is publication of the proposed Final Eastern Interior Resource Management Plan/Environmental Impact Statement, which will likely include Mosquito Flats.

Share this:



Like this:

Related

[Anchorage Science Pub: Three Arctic Explorers Walk Into a Bar...](#)
In "Anchorage Science Pub"

[Governor Parnell's Political Grandstanding Exposes Double Standard](#)
In "Community Politics"

[Alaskans Don't Seem to Realize How Much They Love Motorsports](#)
In "Sports"

Craig Tuten

Craig Tuten moved from Florida to Alaska with his wife Rachael in 2006. He studied history at Florida State University while everybody else was having a good time. It is hard to list a low-wage job he hasn't briefly held.

[Switch to mobile version](#)