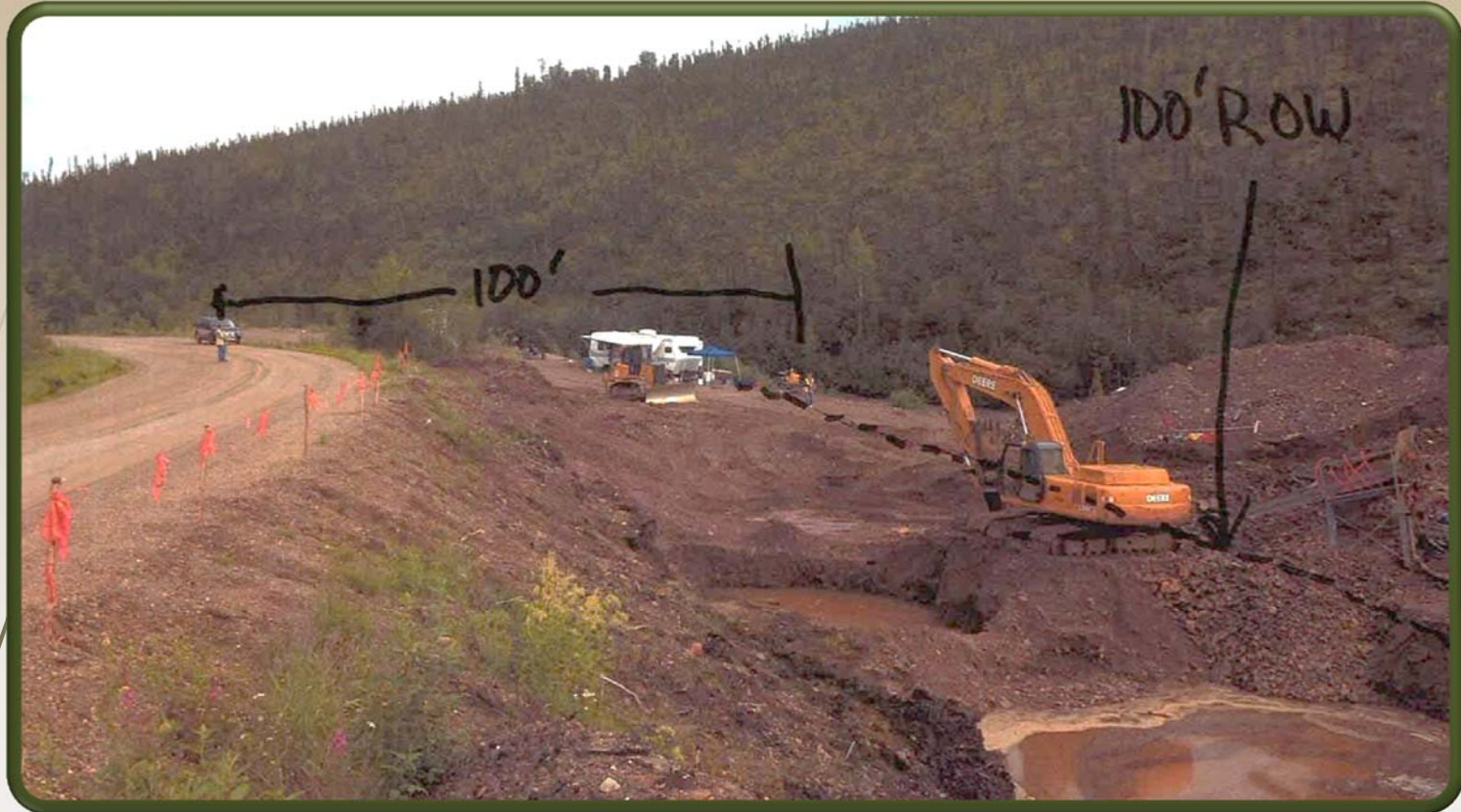


"Key to the Highway: Unlocking the Mysteries of Right of Way Research"

# Mining, Access & Highways



Alaska Surveying & Mapping Conference 2016



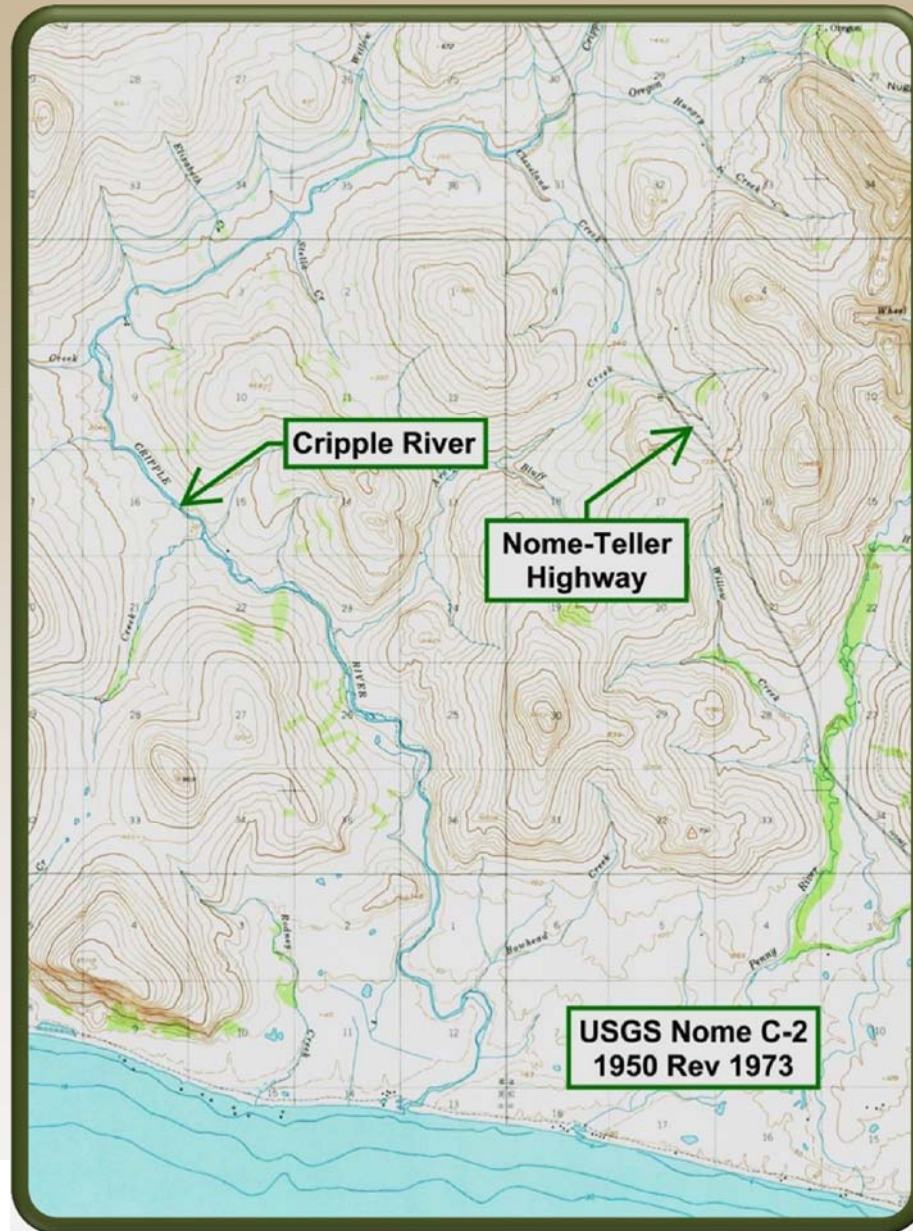
# Mining, Access & Highways

## Nome – Cripple River

- Patented Claims 11–15 Miles W. of Nome
- Claims surrounded by ANCSA Lands
- Question: Does Client need Permit from ANCSA Corp to Access Claims?
- Prior Access review was indefinite...
- Considered access by:
  - ANCSA 17(b) Easement
  - RS-2477 Trail Easement
  - Section Line Easement
  - Easement by Prescription



# Mining, Access & Highways



# Mining, Access & Highways

## Research

- Historic Mapping
- Historic Documents
- Case Law
- Alaska Road Commission Reports
- Record Documents
- Navigability Issues



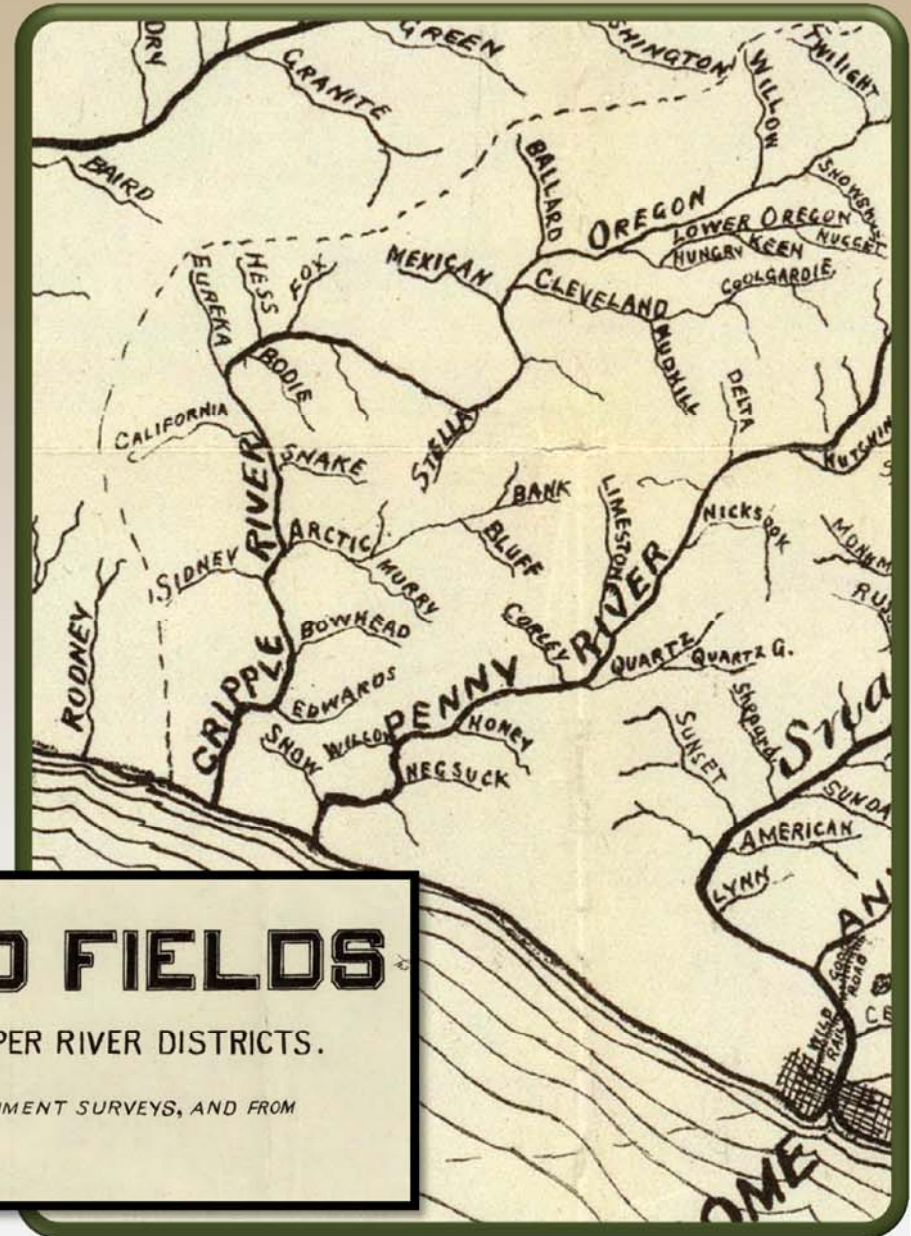
# Mining, Access & Highways

## Cripple River: Historic Mining Area

NOTICE TO PUBLISHERS AND OTHERS:  
ANY INFRINGEMENT OF THIS MAP WILL  
BE PROSECUTED.

ISSUED BY  
**THE SEATTLE DAILY TIMES**  
SEATTLE, WASHINGTON.  
PRICE 50¢.

MAP OF THE  
**NEW ALASKA GOLD FIELDS**  
SHOWING THE  
KOUGROCK, BLUESTONE, COUNCIL CITY, NOME AND COPPER RIVER DISTRICTS.  
COMPILED BY J. G. TEMPLE,  
FROM FIELD NOTES MADE ON THE GROUND, FROM THE LATEST GOVERNMENT SURVEYS, AND FROM  
THE MOST RELIABLE AUTHORITIES.  
**JAN., 1901.**

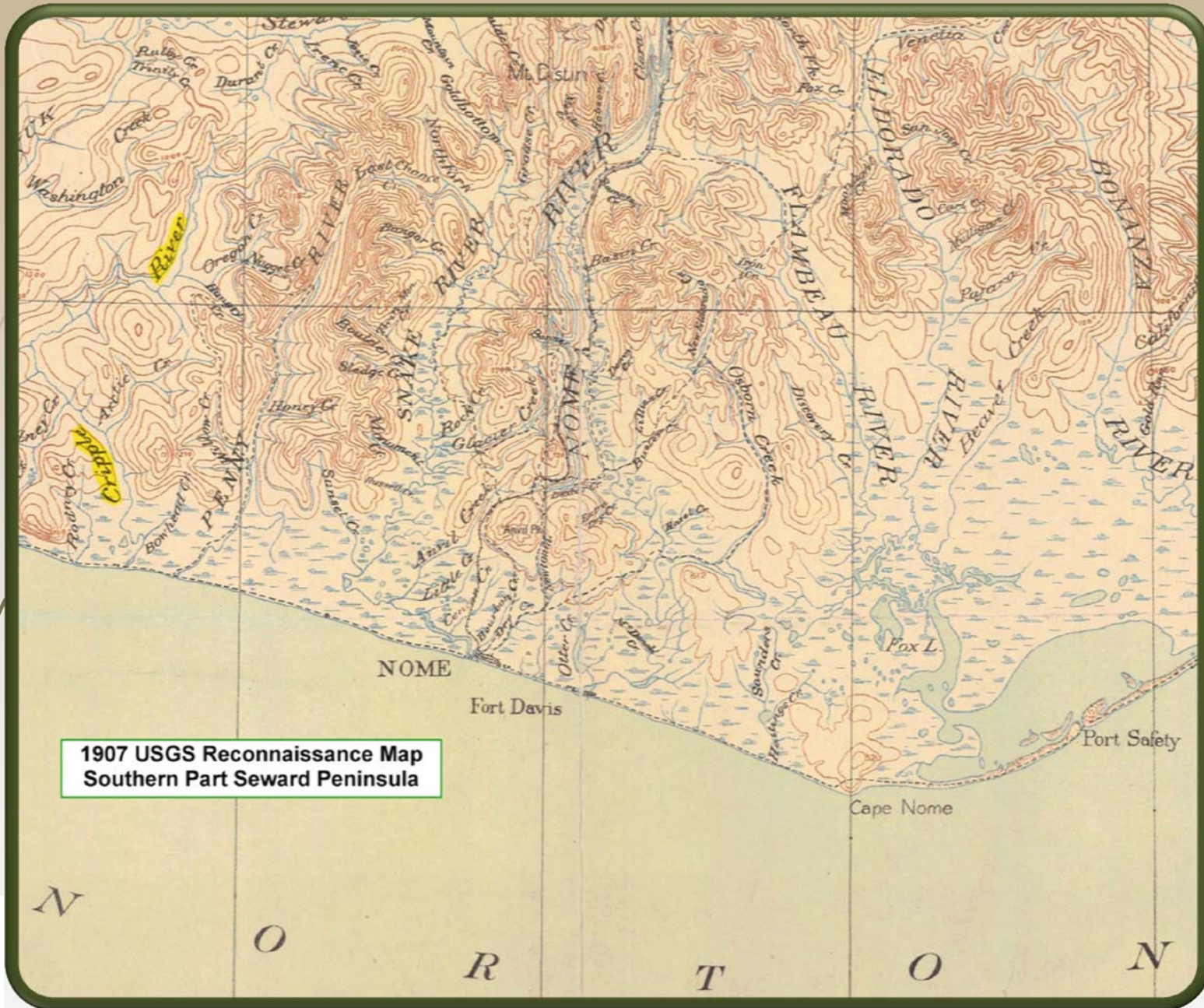








# Mining, Access & Highways



Detailed Topographic Mapping

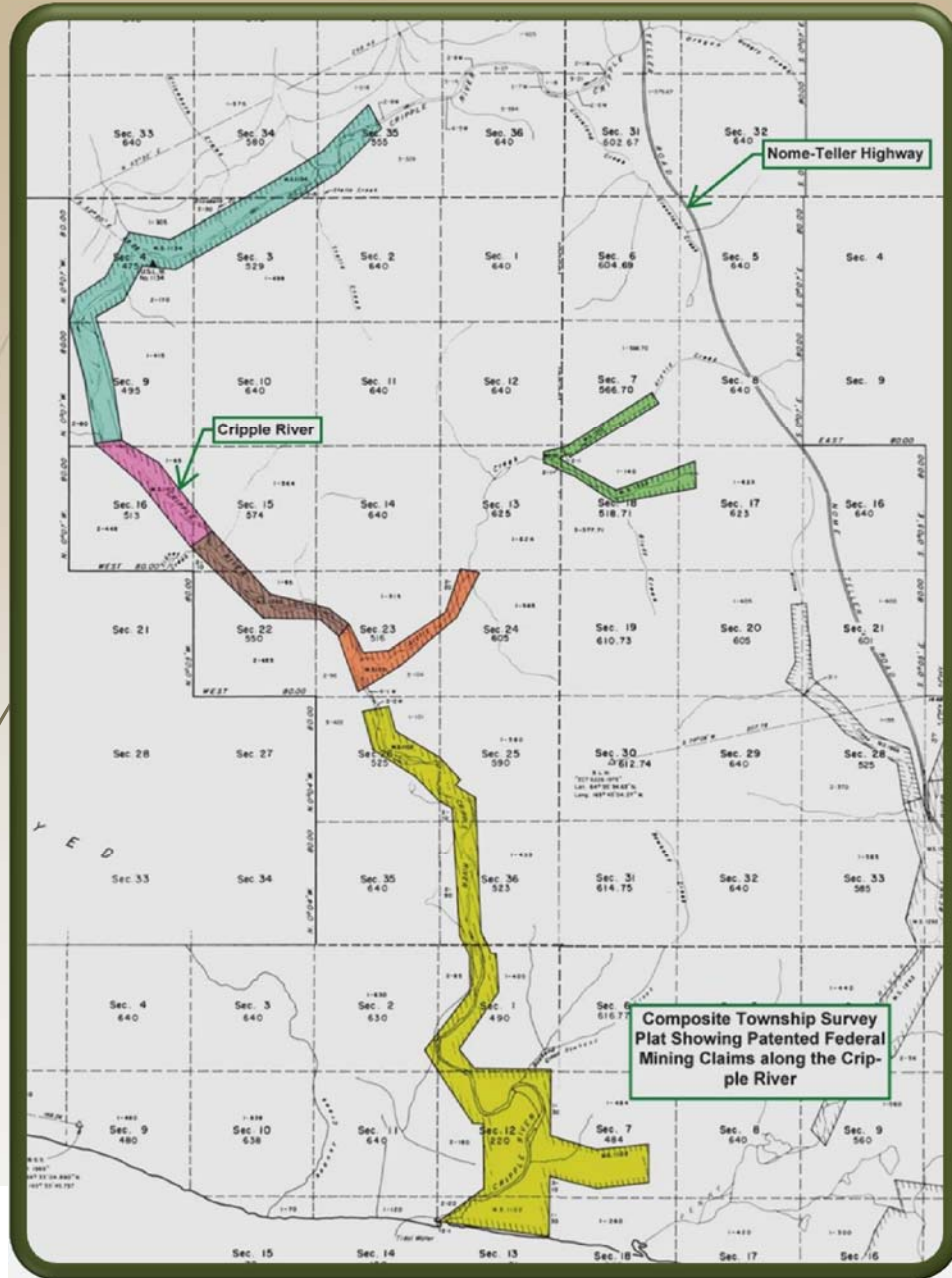
# Mining, Access & Highways

- R&M Requested to Review All Options
- Subject Property:

M. S. No.	Location Date	Plat Approval	Patent Date
1102	7/15/13	1/12/14	11/24/16
1134	6/12/14	8/19/14	8/9/20
1162	6/30/15	9/25/15	9/27/17
1260	8/30/19	9/15/20	3/23/23
1332	8/17/22	5/28/23	4/8/25
1331	8/17/22	5/29/23	11/25/25

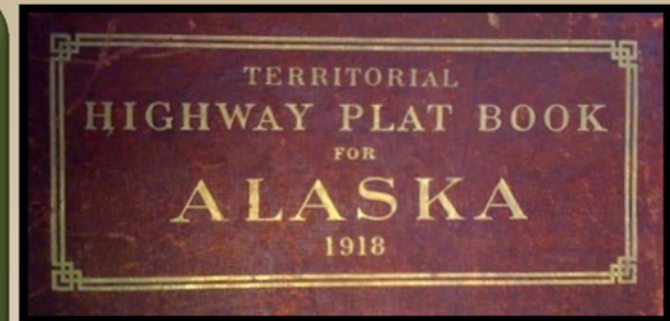
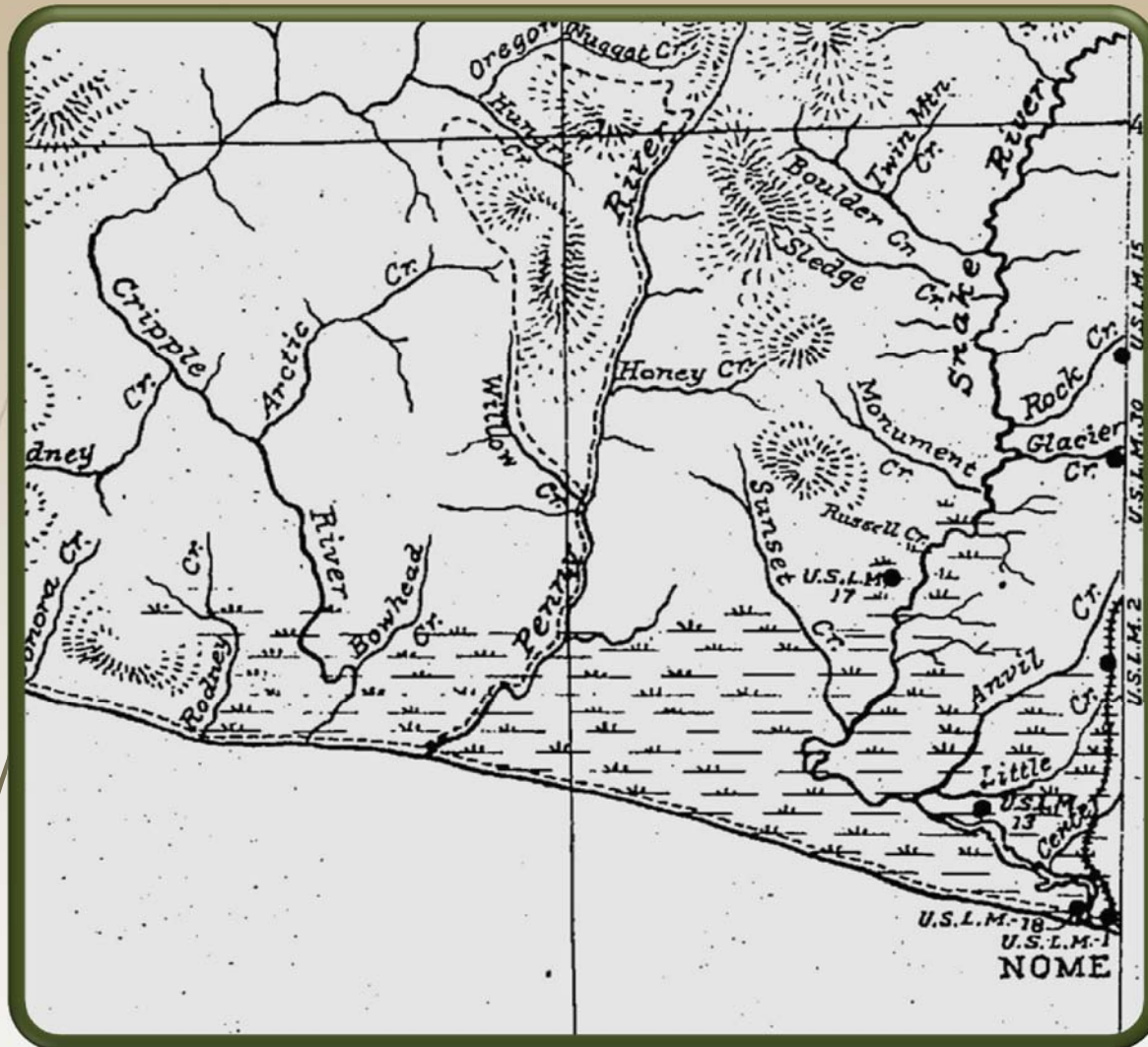


# Mining, Access & Highways



Composite Map  
of Township  
Survey Plats  
Showing  
Location of  
Patented Mining  
Claims

# Mining, Access & Highways



1918 Highway  
Plats Identify  
Cripple Creek





# Mining, Access & Highways

## Prescriptive Easement Across ANCSA Lands

- Adverse Possession: A.S. 9.45.052
- “Uninterrupted adverse notorious...”
- ...uninterrupted possession for 10 years;
- ...non-permissive, acted as if owner;
- ...reasonably visible to record owner.
- Undeveloped ANCSA Lands have special protection against alienation.
- Prior access agreements constituted “permissive use” that will defeat a claim of a private prescriptive easement.



# Mining, Access & Highways

## Section Line Easement (RS-2477)

- SLE must meet tests:
  - Must be surveyed – AGO Opinion;
  - Acceptance of RS-2477 grant;
  - Over unreserved public lands.
- Partial township surveys limit availability
- Rectangular SLEs subject to topographic reality: grades and stability (soils).
- New construction - high costs.
- Access option of last resort.

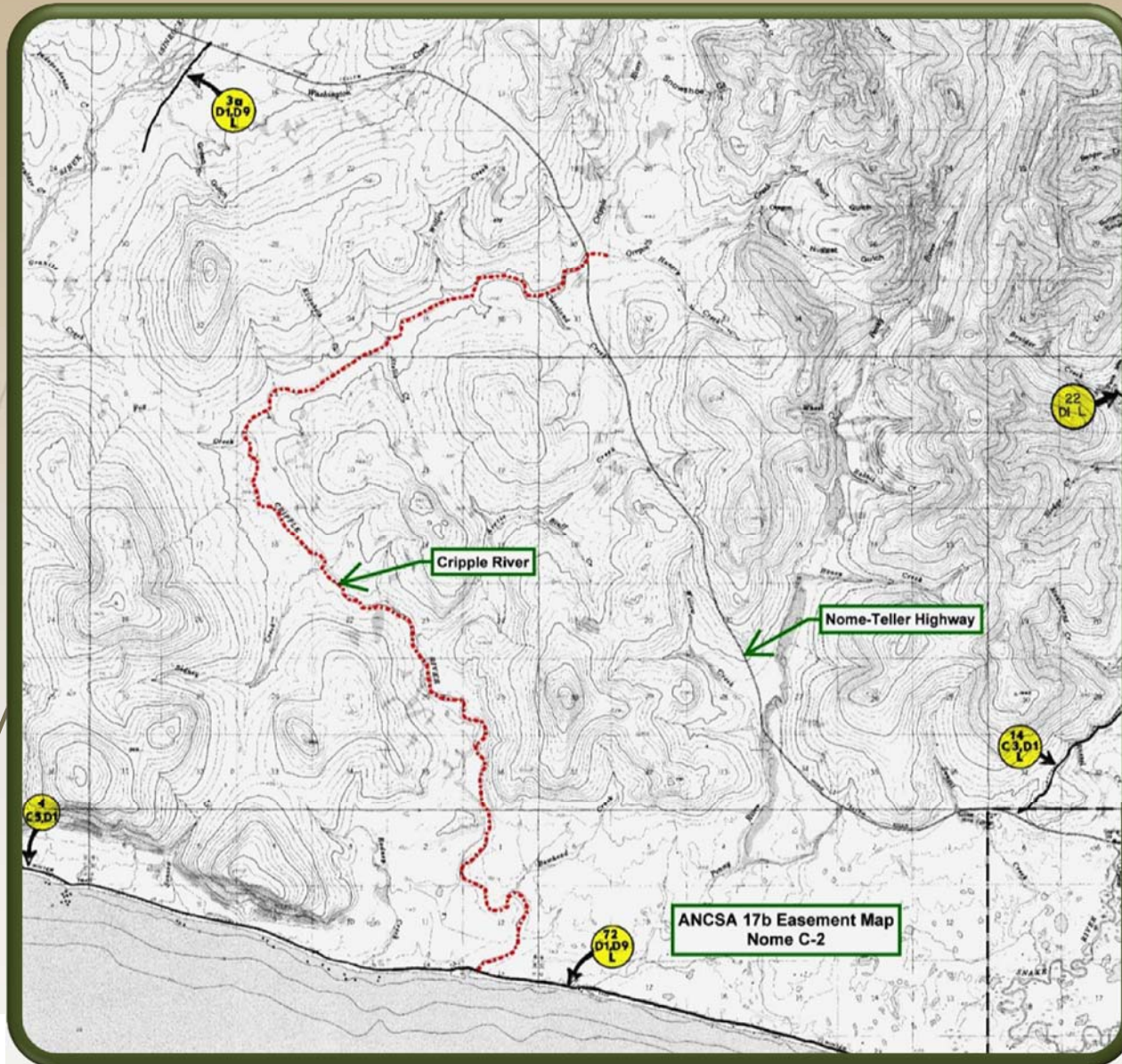
# Mining, Access & Highways

## ANCSA 17(b) Easement

- Location specified in ANCSA patent
- Limited easement scope and width
- Example: Nome to Teller easement
  - Width: 25 feet
  - Scope: foot, dogsleds...small ATVs;
  - Seasonal: Limited to winter use.
- BLM management jurisdiction
- No available 17(b) easements available for access to client's mining claims.



# Mining, Access & Highways



BLM 17(b) Easement Map: Only Nome - Teller coastal trail would provide limited access to mining claims.

# Mining, Access & Highways

## RS-2477 Trail Easement

- A.S. 19.30.400 only identifies 2 trails
  - RST 170 Penny River Trail – East of Nome-Teller Highway.
  - RST 158 Nome-Teller Coastal Trail - overlaps 17(b) Easement.
- No previously asserted RS-2477 Trails were identified as viable access to mining claims.
- Other un-researched trails may meet RS-2477 requirements.



# Mining, Access & Highways

RS-2477 Trail easement along Cripple River

- ARC reports provide evidence of public construction, maintenance & expenditures.
- 1922 report identifies 12 mile long “Cripple River Road – Route 25A” from beach.
- 1914 report: “Route 25A – Cripple River Road (13.5 miles)”
- Would assertion result in viable access?
  - Width: “ditch to ditch” or 60-feet?
  - Location: Mining activities moved trail.
  - Usefulness?: No access to highway.
- RS-2477 Trail not a viable access option.

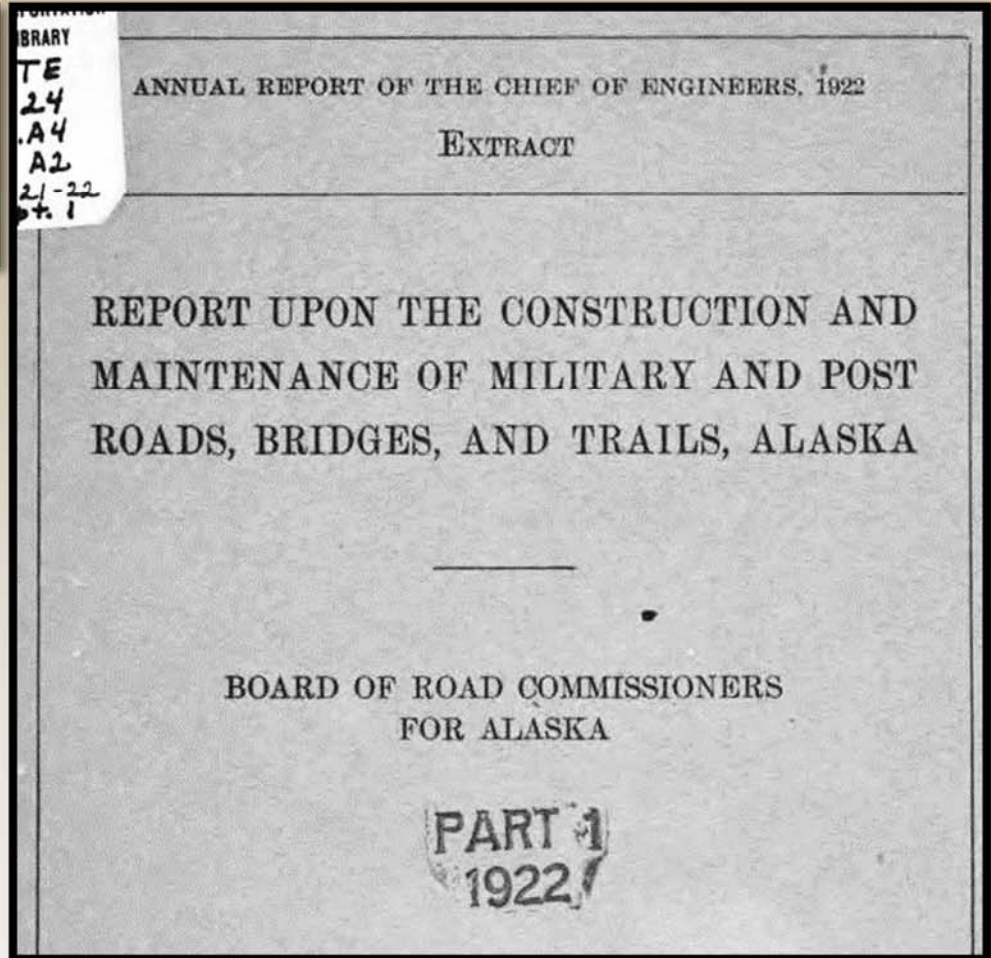
# Mining, Access & Highways

## ROUTE 25A—CRIPPLE RIVER.....(12 MILES WAGON ROAD)

This road commences at the beach at the mouth of Cripple River and follows the river for twelve miles to the workings near Willow Creek and on to Arctic and Sidney Creeks. It is mainly on the left bank of the river.

Total expenditure of \$64.95 was for temporary repairs to washout near the four mile post.

Alaska Road  
Commission  
Annual Reports  
can provide  
support for  
assertion of an  
RS-2477 Trail ROW.





# Mining, Access & Highways

## Navigability of the Cripple River

- Claim access along navigable river
- USGS mapped Cripple drainage in 1899 and reported that “small boats could proceed 8 to 10 miles to placer fields”.
- BLM: Cripple River non-navigable
- DNR: Cripple River navigable for 10 miles
- While water access along the coast and up the Cripple River is a potential option, it is not viable or reasonable for the purposes intended.

# Mining, Access & Highways



Nome-Council Road Gold Dredge



# Mining, Access & Highways

Access Over Public Lands  
October 20, 1959

Decisions of the Department of the Interior

---

## **RIGHTS OF MINING CLAIMANTS TO ACCESS OVER PUBLIC LANDS TO THEIR CLAIMS**

### **Mining Claims: Generally—Rights-of-Way: Act of January 21, 1895**

The United States Mining Laws give to the locators and owners of mining claims as a necessary incident the right of ingress and egress across public lands to their claims for purposes of maintaining the claims and as a means toward removing the minerals.

# Mining, Access & Highways

## ANCSA 17(b)(2) "Valid Existing Right"

- 17(b) not limited to specific trails.
- *"That any valid existing right recognized by this Act shall continue to have whatever right of access as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access."*
- See: Herbert I. Stewart 82 IBLA 329 -1984
- May require coordination with ANCSA Corp. re: construction & maintenance.
- Provides viable access option to claims.

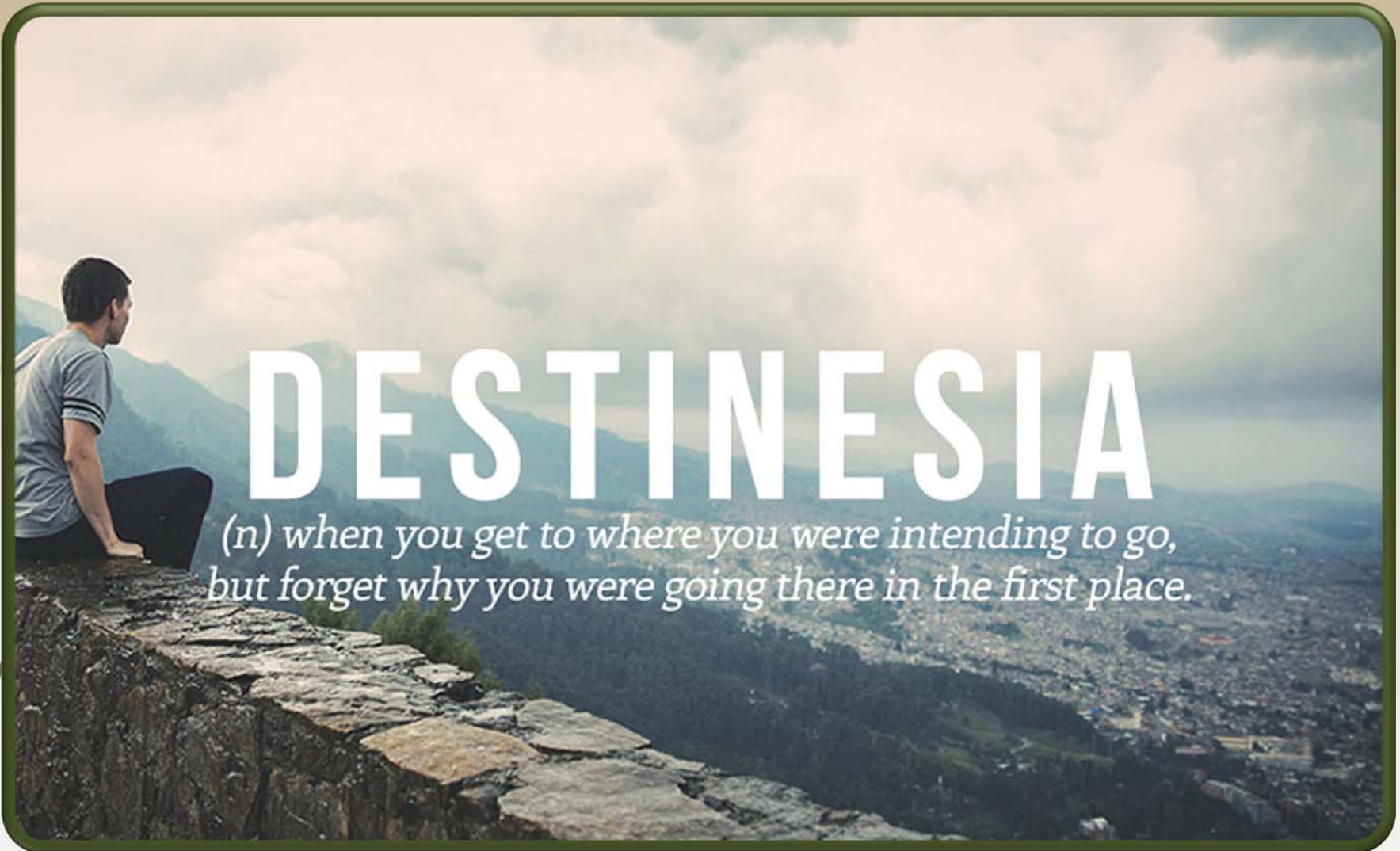


# Mining, Access & Highways



Pilgrim Hot Springs – North of Nome

# Mining, Access & Highways

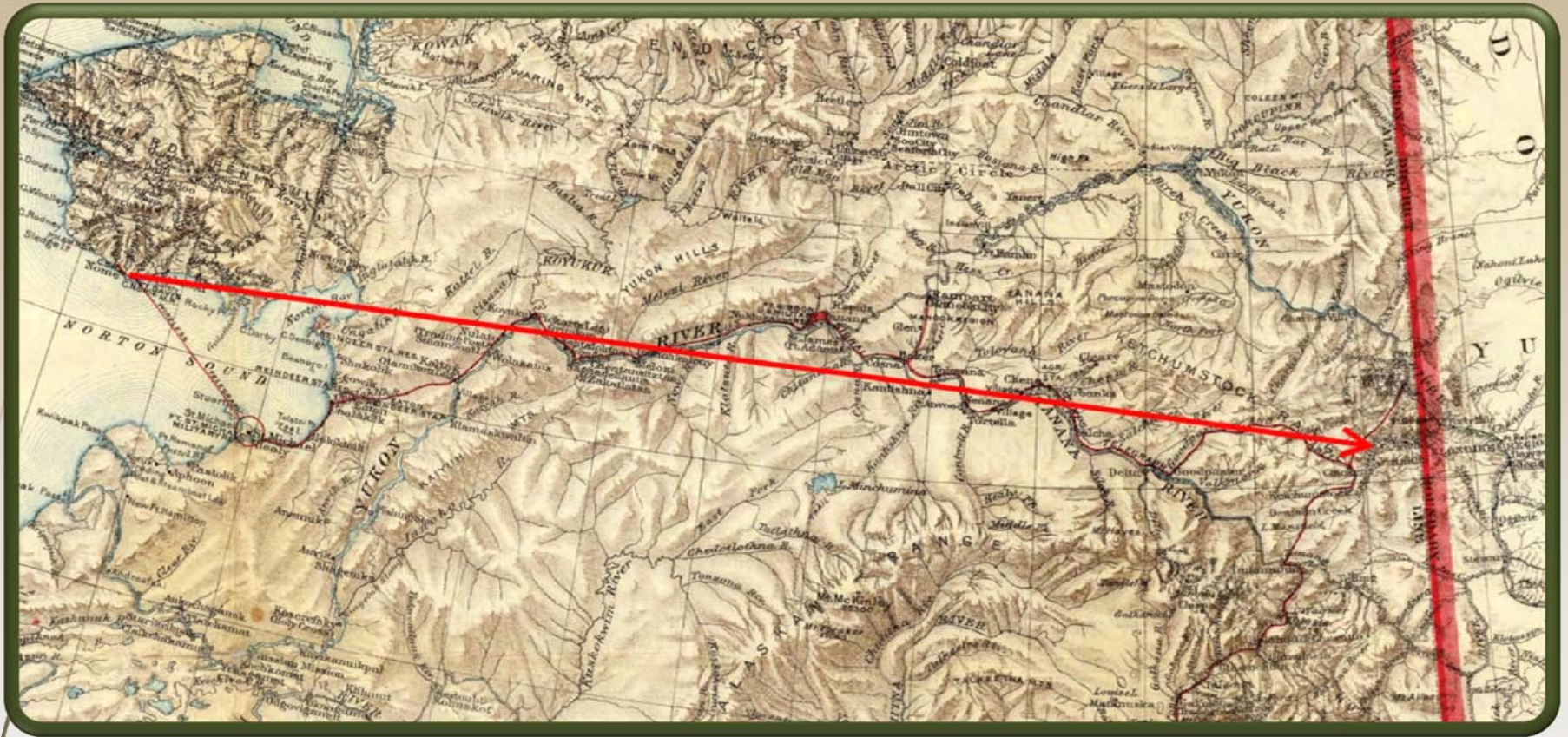


**DESTINESIA**

*(n) when you get to where you were intending to go,  
but forget why you were going there in the first place.*



# Mining, Access & Highways



Next: 700+ Miles & Slightly Southeast...  
Nome to Jack Wade  
Map: GLO Alaska 1906



# Mining, Access & Highways

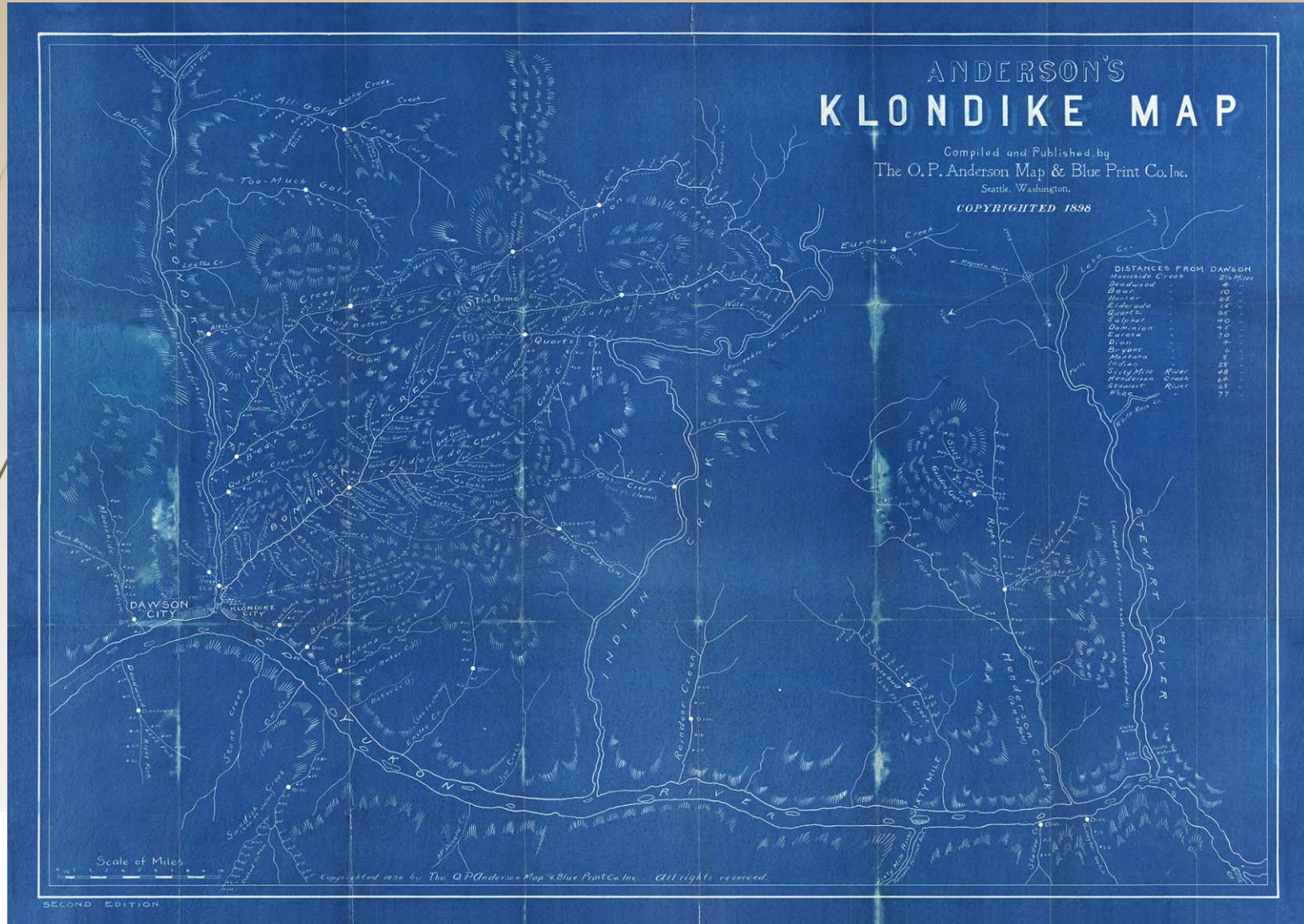


Milepost 87-88 Taylor Highway



# Mining, Access & Highways

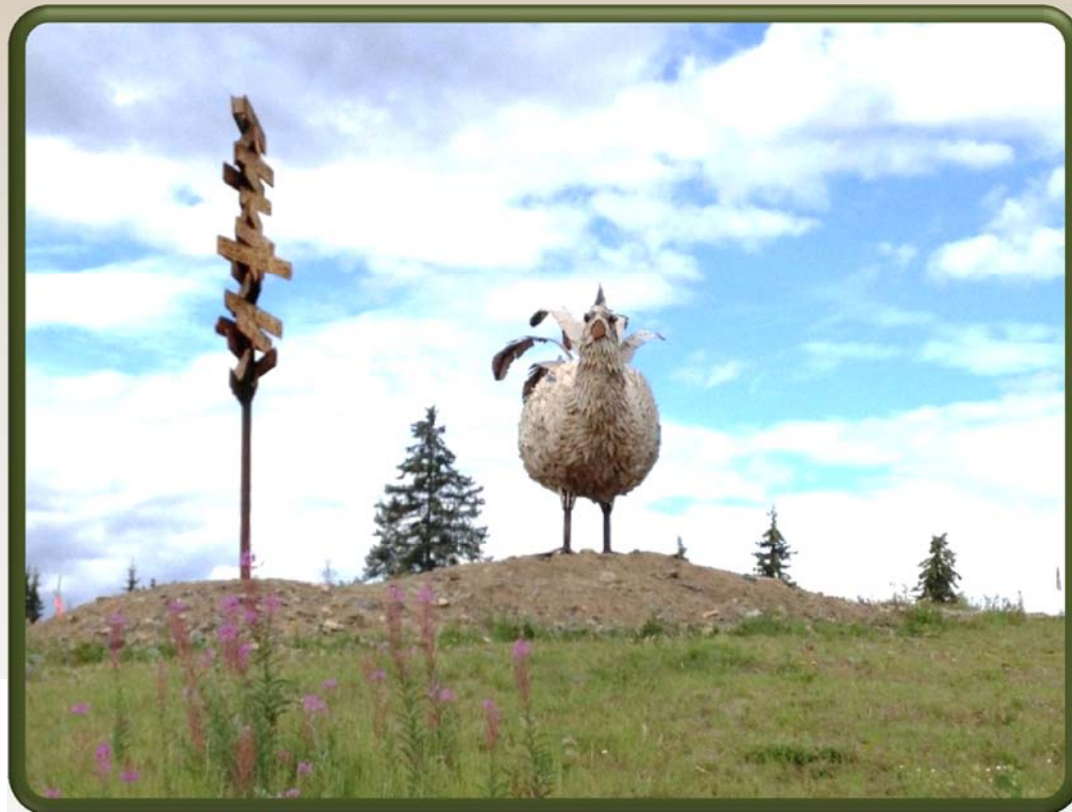
## Taylor Highway – Alaska Highway to Canada





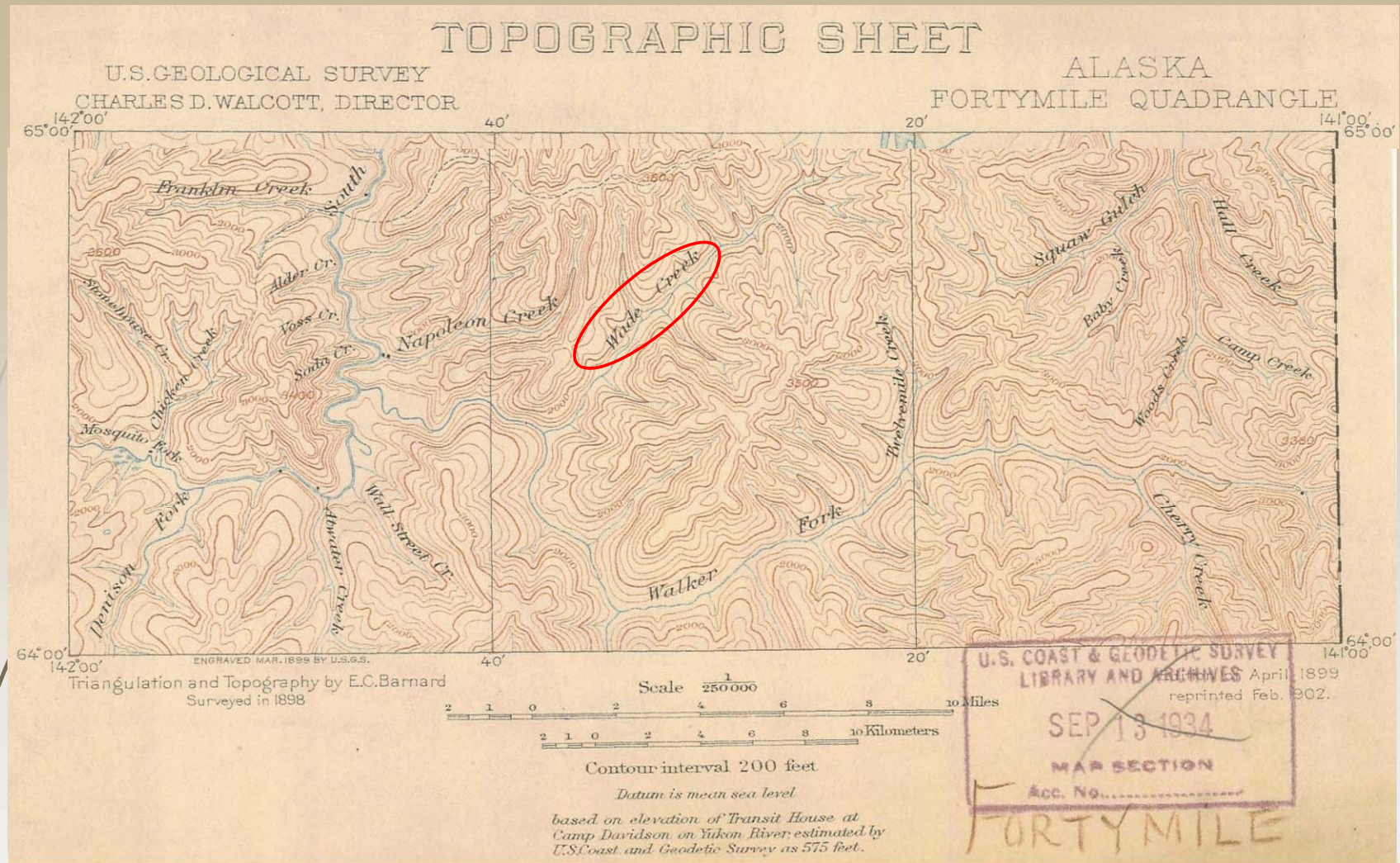
# Mining, Access & Highways

- 1898 Klondike Gold Rush – Bonanza Creek
- 1996 DOT&PF NR Survey Crews to Taylor Highway: upgrade for 100 year anniversary
- Chicken to Canadian Border





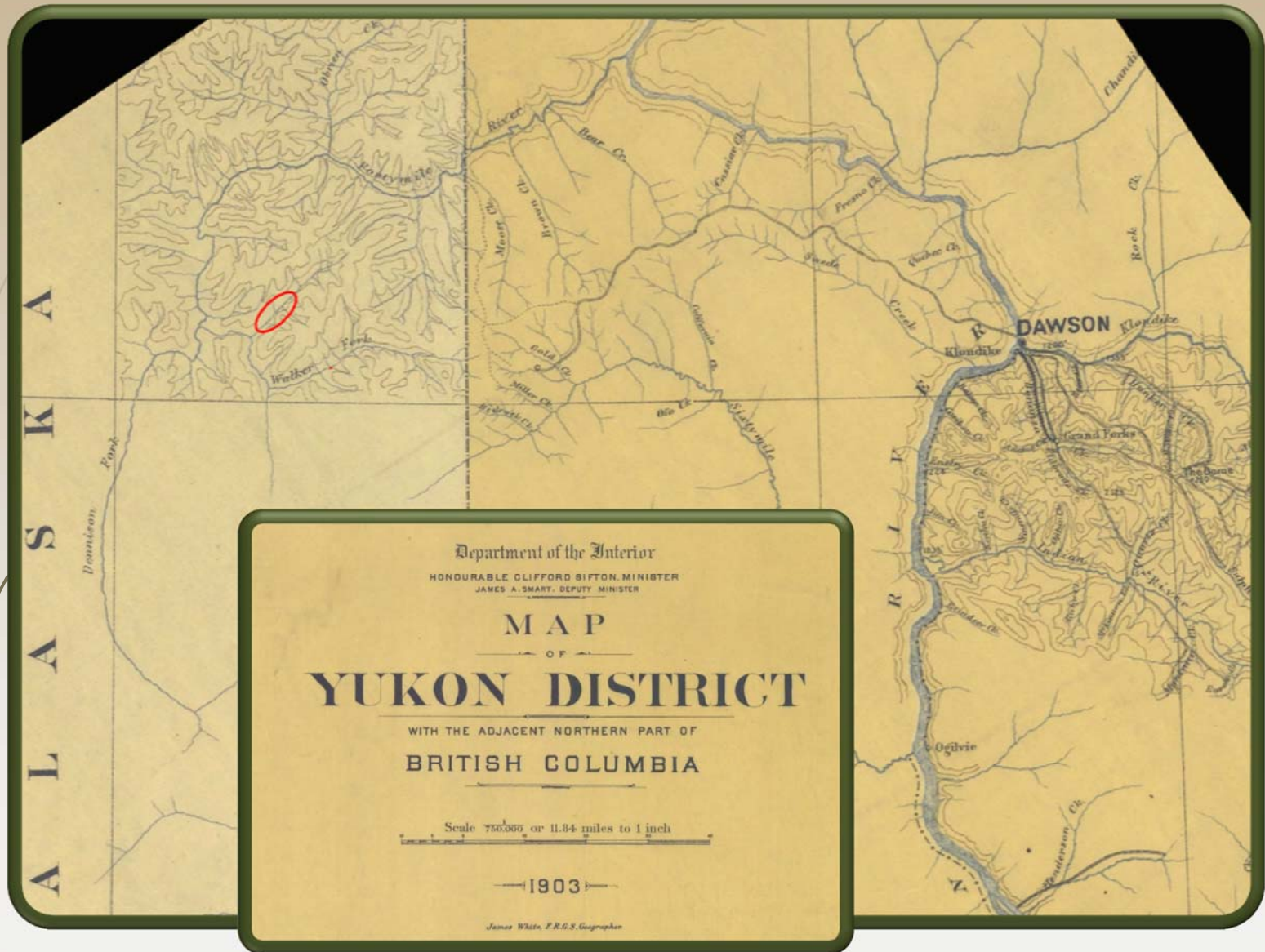
# Mining, Access & Highways



1898 USGS Survey – Forty Mile Quadrangle  
Forty Mile Claims some of Alaska's Oldest



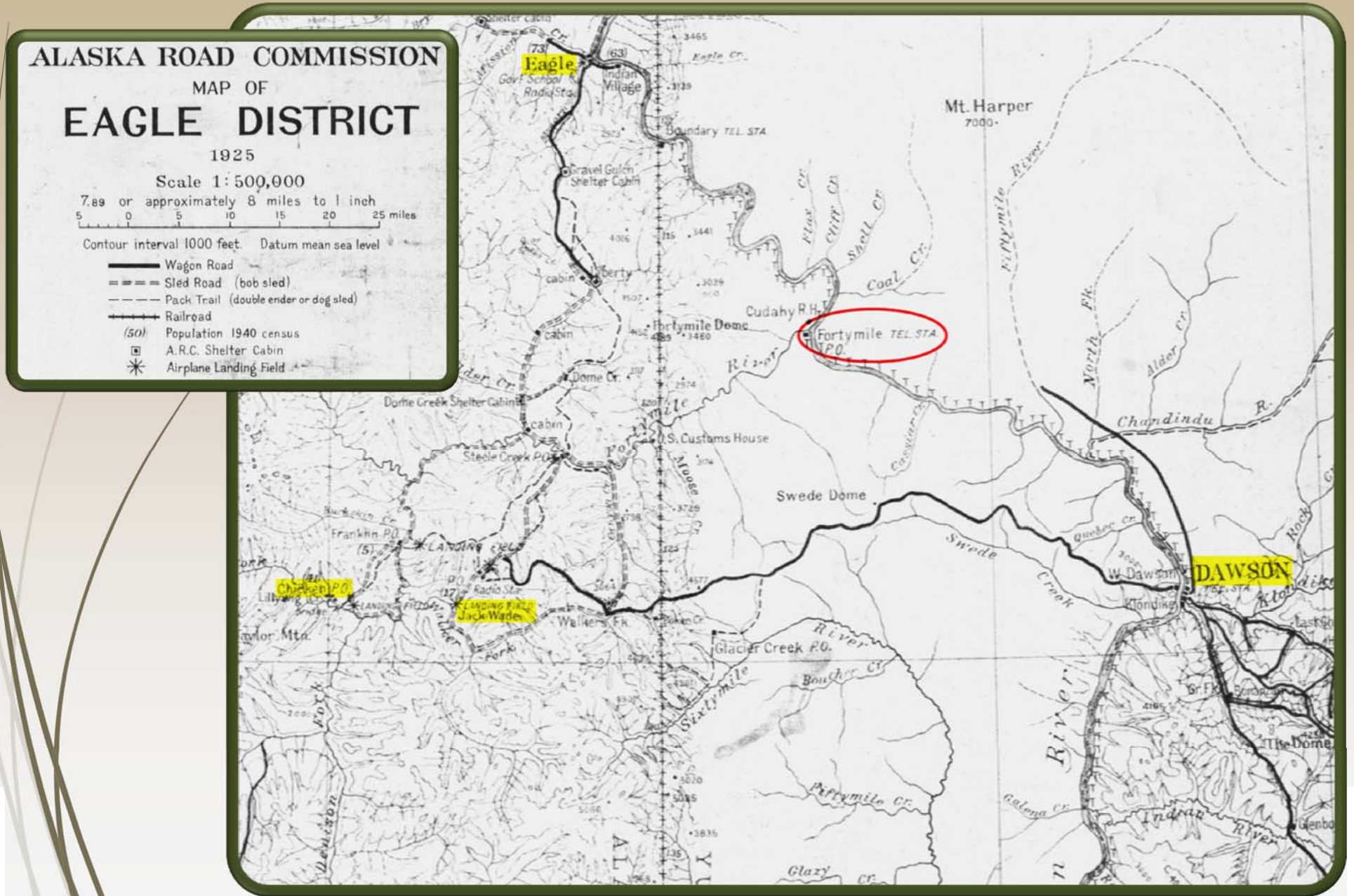
# Mining, Access & Highways



1903 – Canadian Map Adjoining 40 Mile



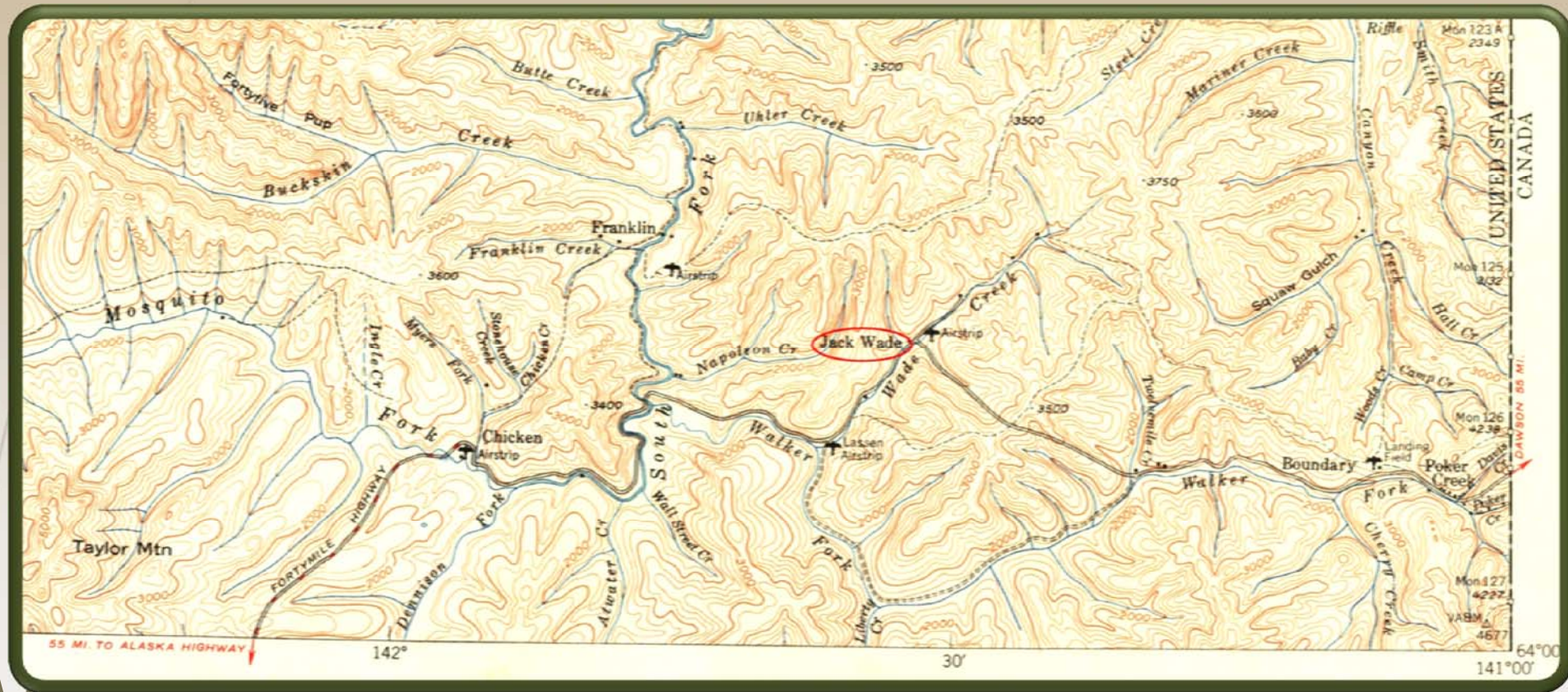
# Mining, Access & Highways





# Mining, Access & Highways

## Taylor Highway – Alaska Highway to Canada

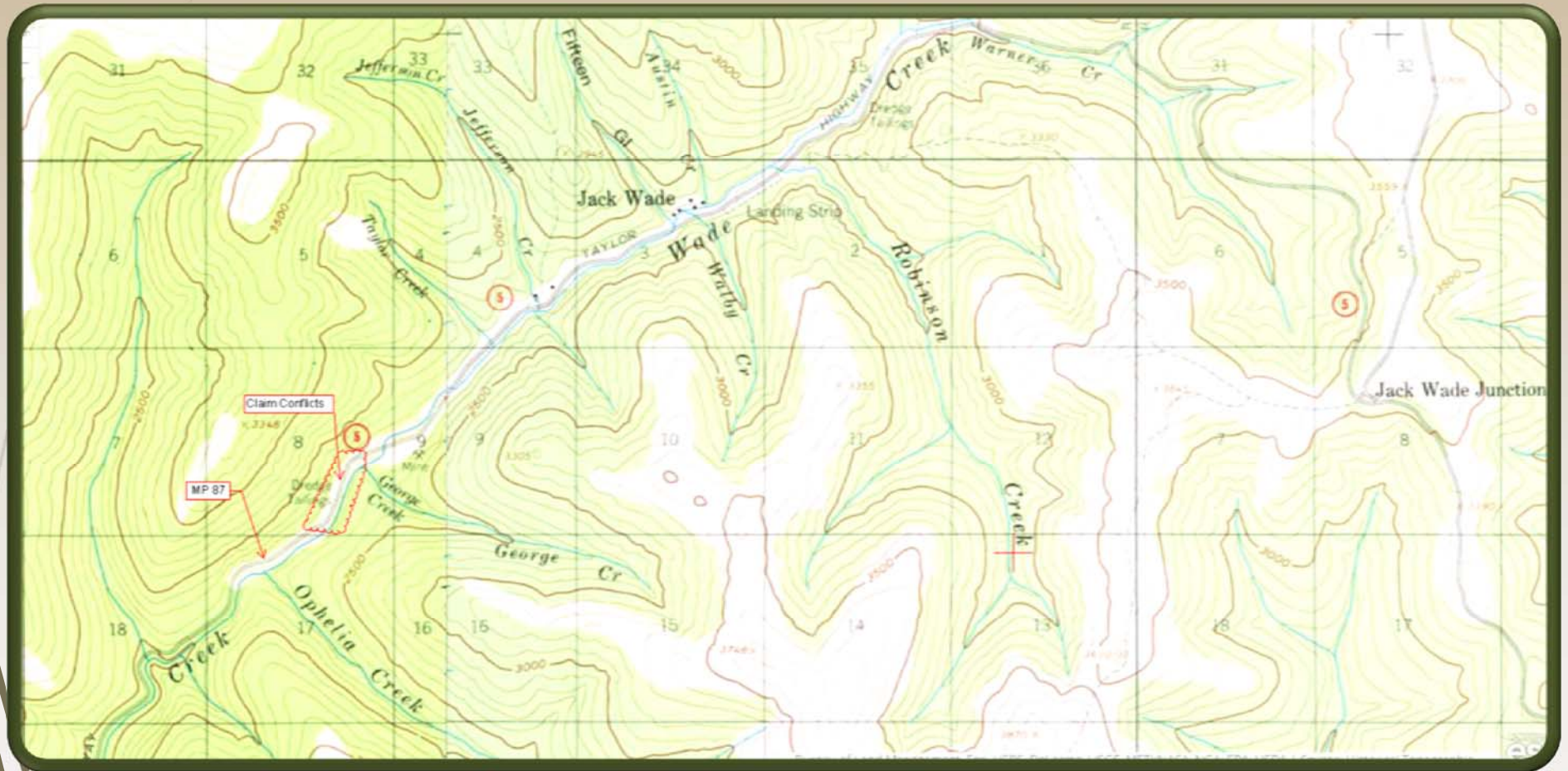


Eagle, Alaska Quadrangle - 1951



# Mining, Access & Highways

Taylor Highway – Alaska Highway to Canada



USGS 1956 Eagle A-1 & Eagle A-2

# Mining, Access & Highways

## Construction of the Taylor Highway

- Alaska Highway: 1942 – 1943
- “Fortymile Road” construction 1946 – 1953
- By End of 1948
  - 35 miles surfaced
  - Another 37 miles graded
  - A further 51 miles stripped of vegetation
- 1949: Heavy rain & erosion “ARC engineers rerouted the road around the south side of Lost Chicken Hill, up the South Fork, and up Walker Fork and Wade Creek to a ridge top junction with the old wagon road to Dawson” (ARC 1951 Annual Report)





# Mining, Access & Highways



Who has the right of way?



# Mining, Access & Highways

## Taylor Highway – Right of Way

[Public Land Order 601]

ALASKA

RESERVING PUBLIC LANDS FOR HIGHWAY  
PURPOSES

OSCAR L. CHAPMAN,  
*Under Secretary of the Interior.*

AUGUST 10, 1949.

[F. R. Doc. 49-6642; Filed, Aug. 15, 1949;  
8:46 a. m.]

- Valid claims prior to 8/10/49 could prevent application of PLO 601...
- Date of construction vs. Date of PLO 601...
- Possible RS-2477 assertion prior to PLO 601...

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway, 150 feet on each side of the center line of all other through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads, in accordance with the following classifications, are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for highway purposes:

### THROUGH ROADS

Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Tok Cut-Off.

### FEEDER ROADS

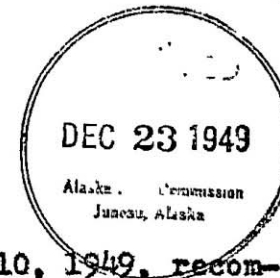
Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Potter-Indian Road, Edgerton Cut-Off, Tok Eagle Road, Ruby-Long-Poorman Road, Nome-Solomon Road, Kenal Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard Road, Circle Hot Springs Road.

# Mining, Access & Highways

## Taylor Highway – Proposed Construction

December 20, 1949

Alaska Road Commission  
Juneau, Alaska



Gentlemen:

In compliance with your request of November 10, 1949, recommendations for maintenance work in the Fairbanks District for the coming year are being limited to \$660,000.00. It is being assumed that the

### New Work

40 Mile Project Route 65M. It was noted today that this project carries the name of Tanana River-Chicken, at which time it was also realized that we are at present working considerably beyond Chicken. It is therefore

construction as completed west by the crew from Lassen Field. The crew at Lassen to also work up Jack Wade Creek as far as possible and at as early a date as possible a crew move on up Jack Wade Creek and establish camp at or near Upper Wade Field. The other crew then moving on ahead at as early a



# Mining, Access & Highways

## Taylor Highway – Construction



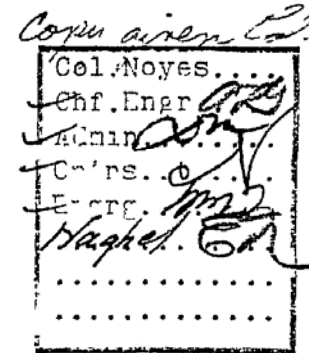
UNITED STATES  
DEPARTMENT OF THE INTERIOR  
ALASKA ROAD COMMISSION  
Fairbanks District  
Fairbanks, Alaska.

May 9, 1950

Alaska Road Commission,  
Juneau, Alaska.

Gentlemen:

Following is the Situation Report for the Fairbanks  
District for the month of April, 1950:



### Route 65M    Alaska Highway-Eagle

Freighting of supplies and equipment to the South Fork and Lassen, for use during the summer season was completed. A camp for use by construction crews was erected at Lassen. Crews at this camp will work back towards the South Fork and up Jack Wade Creek.

fact, some of them are already out on the job. Frank Morris and a part of his party are working on Jack Wade Creek staking for construction and in a few days they will start on locating a line from Jack Wade Creek to the Yukon Territory Boundary. Templeton, who was with

# Mining, Access & Highways

## Taylor Highway – Construction

DESCRIPTION AND STATEMENT OF WORK ACCOMPLISHED

November 1, 1949 to October 31, 1950

FAIRBANKS DISTRICT

### Route 65M Forty Mile Road

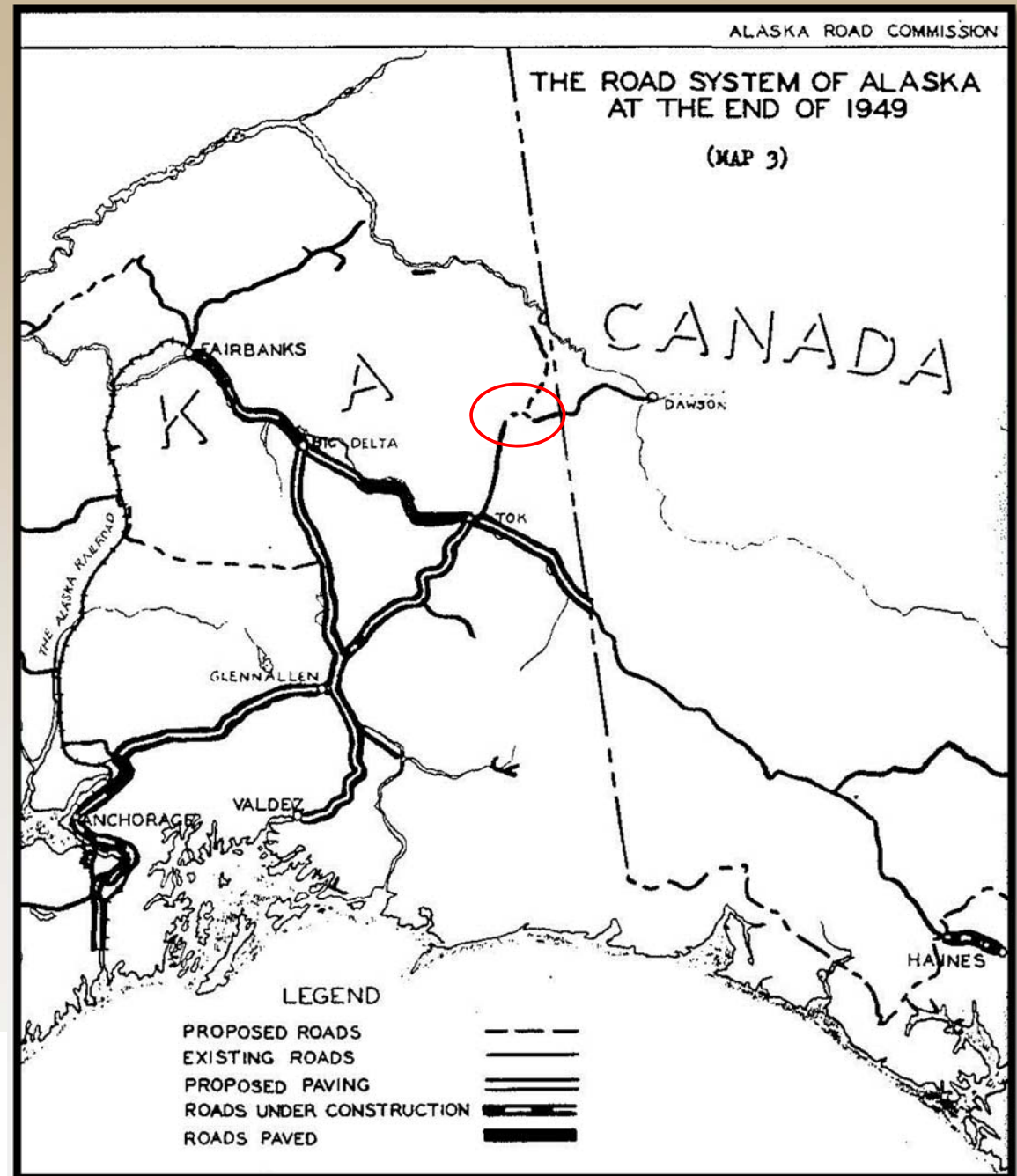
Work on this route during the past year consisted of winter and summer maintenance on portion previously constructed and construction work from Chicken on towards Eagle. Maintenance work was performed by small crews located at various times at Tok, West Fork and South Fork. Construction work was performed by crews located at West Fork, South Fork, Lassen Field and Upper Jack Wade.

Construction work consisted of clearing, grubbing/stripping, grade/grader/dozer/scrapper, installing culverts, bridge construction and surfacing with gravel. Progress on this work throughout the season was very good, except on the section between the South Fork of the 40-Mile River and Lassen. This section, approximately six miles in length was on steep side hill most of which was on the dark side of the hill and frozen. Various methods of punching a grade over this section were used. A passable road was secured through to the head of Jack Wade where this route connects with Route 11M, Route 11M was regraded as stated above.



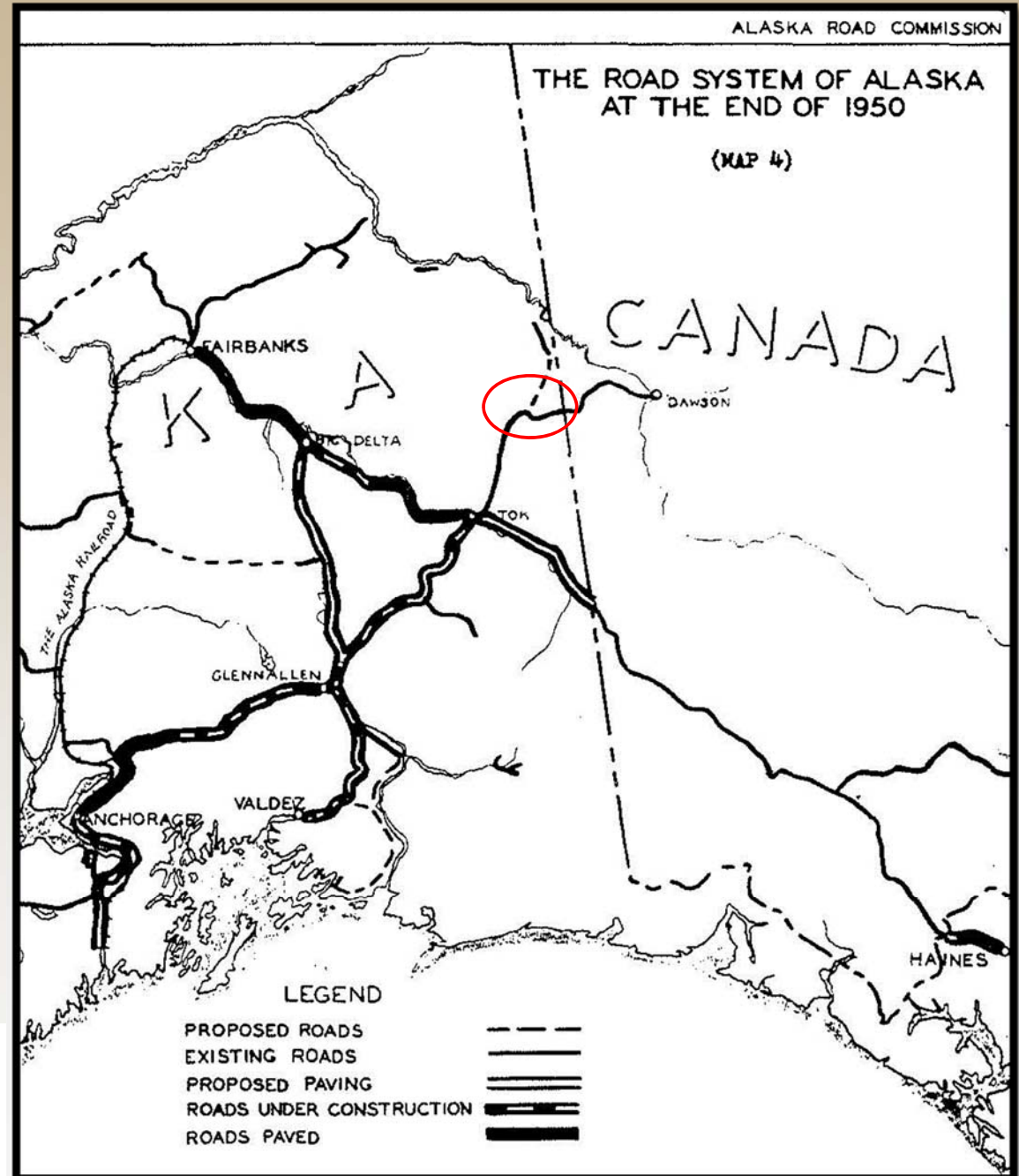
# Mining, Access & Highways

Taylor Highway  
Road in vicinity  
of Jack Wade  
still "proposed"  
at the end of  
1949



# Mining, Access & Highways

Taylor Highway  
Road in vicinity  
of Jack Wade  
is "existing" at  
the end of 1950





# Mining, Access & Highways

## Taylor Highway – Construction

February 6, 1951

A.R.C. ORDER NO. 40

SUBJECT: Numbering System for Alaska Roads

A.R.C. Order No. 34, dated September 15, 1950 is hereby revoked in its entirety, and is superseded by the provisions of this order.

### 1. Purpose

A new numbering system is hereby prescribed to replace the old system of "Route Numbers" for roads in Alaska. The new system is intended to accomplish the following purposes:

#### FEEDER ROADS

<u>New Number</u>	<u>Old Number</u>	<u>Description</u>	<u>Miles</u>
121	6A	Edgerton Cutoff, Willow - Chitina	39.0
231	65L	Northway Junction - Air Field	6.0
312	0.5 7.1 6.3 35IA, 35L, 35J	Glenn Highway - Community Center - Palmer- Matanuska - Wasilla Junction	13.9
313	0.3 11.7 35IA 35H	Glenn North to Palmer - Finger Lake - Wasilla	12.0
314	7.5 11.3 14.8 35B 35E 35F	Glenn Highway - Fishhook Junction - Wasilla - Knik	33.6
321	65G	Slana - Nabesna	44.0
331	112.3 25.0 65M 11A	Tetlin Junction - Eagle	137.3
511	55C	Sterling Highway, Forest Boundary-Homer	119.3

# Mining, Access & Highways

## Taylor Highway – Construction



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
ALASKA ROAD COMMISSION

Fairbanks District,  
Fairbanks, Alaska.

December 3, 1951

Mr. Wm. J. Niemi  
Chief Engineer  
Alaska Road Commission  
Juneau, Alaska

Dear Mr. Niemi:

Annual Report

The annual report of the operations of the Fairbanks District relative to the maintenance and construction of roads within this District would be incomplete without a brief resume' of the situation as it existed at Fairbanks in December, 1950.

Taylor Highway – Route 331 – 158 miles

Winter maintenance of this road commenced in February and was used for the utility of the Alaska Road Commission in hauling the Forty Mile River Bridge steel to its site. During the summer, a program of fixing the worst spot throughout the route of this newly constructed highway was under way.

*Supervisor*

Chf. Engr.	.....
Admin.	<i>W.M.</i>
Opns.	<i>R.D.S.</i>
Engrg.	<i>H.B.S.</i>
Acc't.	.....
Pers.	.....
Supply	.....

*5*

*Please return a copy to file rgh.*



# Mining, Access & Highways

## Taylor Highway – Right of Way Title

QUIT CLAIM DEED  
U.S. DEPARTMENT OF COMMERCE  
to  
STATE OF ALASKA  
"OMNIBUS ACT" June 30, 1959

Federal-aid Secondary Class "A" Routes -11-

FAS Route No.	Description	Highway District No.	Constructed Mileage
785	From FAF Route 62 at Tetlin Junction approximately 80 miles west of Alaska-Canada Border; thence northeasterly to the Yukon River at Eagle	20	161.0

Assuming no "prior existing rights", highway ROW would exist by end of 1950 construction or staking in May of 1950.

# Mining, Access & Highways



MP 87-88 Claims - 2 Miles SW of Jack Wade  
SE 1/4 of Section 8, T27N, R20E, CRM



# Mining, Access & Highways



BLM SDMS Overlay/Google Earth

# Mining, Access & Highways

Jack Wade, Alaska  
- number 2, 1949



## An Agreement

Relative to the construction of a highway by The Alaska Road Commission through the property known as Jack Wade Creek owned or leased by The Wade Creek Dredging Company the following is an agreement reached by Mr. Kenneth F. Goodson, representing The Alaska Road Commission and Mr. Leonard J. Stampa, representing The Wade Creek Dredging Company.

The Wade Creek Dredging Company agrees to allow The Alaska Road Commission right of way for the construction of the proposed highway through the property known as Jack Wade Creek owned or leased by The Wade Creek Dredging Company by and under the terms of this agreement. The right of way shall be of sufficient width to maintain a finished road, bed of twenty four (24) feet.

Frank Morris

Witness

Carl B. Essman

Witness

By - L. J. Stampa

The Wade Creek Dredging Company

By Kenneth F. Goodson

The Alaska Road Commission



# Mining, Access & Highways

Jack Wade Creek  
Notice of Location

No 6 I the undersigned hereby locate and claim for placer mining purposes commencing at a stake and notice marked No 6 and running up stream (1320) Thirteen Hundred and Twenty feet to a stake with (660) Six Hundred and sixty feet wide that I make and locate the same by virtue of the U S of A placer mining laws that a record of this claim will be found on file in the office of the recorder of Twelve mile Cañon placer mining District This claim shall be known as No 6 above lower Discovery on Jack Wade Creek Located Aug 29<sup>th</sup> 1898

54327

J. H. Austin  
Locator

Filed Aug 29<sup>th</sup> 1898 R. W. Kinison  
Recorder

Jack Wade 1898 Location Notice

# Mining, Access & Highways

## Jack Wade Creek Location Notices:

- Based on No. 6 & 7 Above Lower Discovery Location Notice it is assumed that most area claims were located near this time.
- 8/13/40 Affidavit of ownership or leasehold interest in block of claims along Jack Wade Creek by Wade Creek Dredging Co.
- Wade Creek Dredging Co. filed final Affidavit of Labor on 6/20/51.
- George Robinson filed Affidavits of Annual Labor from 3/25/53 to 10/19/88.



# Mining, Access & Highways

- Section 314 FLPMA: The owner of an unpatented mining claim located prior to 10/21/76 shall file the original location notice within 3 years.
- 7/3/79 Robinson submits FLPMA filing.
- 7/23/86 BLM voids mining claims as a result of Robinson's failure to file original location notices as required by FLPMA.
- 9/29/86 Robinson affidavit states that he purchased claims in 1952 and that he has never found the original location notices. Robinson could not provide the names of prior owners or a copy of the deed.

# Mining, Access & Highways

- 10/7/86 Robinson appeals BLM decision.
- *“Where a search of the local records does not reveal the original filing, but does show that there is reason to believe a recording may have been made, the secondary evidence will be accepted.”*
- *“Where the above described documents cannot be produced, a right by occupancy will be accepted.”* (Preceding from “Organic Act Directive No. 79-7 issued by BLM on November 24, 1978)
- Robinson died on 7/17/89 and the estate continued filing Affidavits of Labor.



# Mining, Access & Highways

- 7/31/87 The BLM decision to void the claims was vacated.



Chicken Dredge

# Mining, Access & Highways

Which came first:  
Highway ROW or Mining Claim interest?

~

Did the mining claim interest commence  
with the 1898 Location Notice or  
Robinson's 1953 Location Notice?

~

1898 would beat any PLO and most any  
evidence of an RS-2477 ROW...

~

PLO 601 and construction evidence would  
beat a 1953 Location Notice...



# Mining, Access & Highways

## What does the law say?

1905: *Cascaden v. Dunbar* – “As a general rule, an oral agreement to convey a mining claim or of an interest therein, or to charge or encumber it, is void. It must be conveyed by deed.”

~

1938: *Nygaard v. Dickinson* (9<sup>th</sup> Circuit) – “A mining claim is real property, though it is possessory in character and no written instrument is necessary to create it, so that written instrument is necessary to convey interest therein.”

# Mining, Access & Highways

1977: IBLA 77-375 Alaska Placer Co. (33 IBLA 187) – *“Where there is a break in the chain of title, a valid claim location can be shown by secondary evidence and even occupation. Using 30 USC 38 “This statute requires that a mineral patent applicant provide evidence of having possessed and worked the claims for the period of time equal to that prescribed by the statute of limitation for mining claims in the State or Territory where the claims are sited.” (AS 9.10.030 Adverse Possession)*



# Mining, Access & Highways

1985: IBLA 84-111 Hugh B. Fate, Jr. (86 IBLA 215) – A mining claimant may assert a prior location date. *“However, to do so, he must show that he is the owner of the claim through a regular chain of title. An unsupported allegation that the previous owner “gave” him the claim 24 years ago will not suffice. The United States has the right to invoke the statute of frauds in order to clear title to the public lands.”*

# Mining, Access & Highways

1986: IBLA 85-398 Estate of Van Dolah (94 IBLA 121) – *“In order for BLM to determine whether or not the placer mining claims were located at a time where the lands were open to location and entry under the Federal mining laws, the claimant must present further evidence that the claims relate back to the original dates of location by submitting evidence that he has title to the claims without gaps in ownership from the original dates of location or submit evidence of possessory right under 30 U.S.C Sec. 38.”*



# Mining, Access & Highways

- Robinson had no evidence (vesting deed) that would allow his rights to relate back to the original 1898 Location Notice or any other prior to PLO 601 and the construction of the Taylor Highway.
- Robinson's claims were valid based on his occupation and filing of continuous Affidavits of Labor since 1953, but they were not superior to the highway ROW.
- Secretarial Order No. 2665 converted the PLO 601 highway withdrawal to a highway easement in October of 1951. Did Robinson have a right to mine the road?

# Mining, Access & Highways

- Yes, but any mining activities would be subject to the controls established by DOT&PF to protect public safety and the ability of the travelling public to pass.
- These controls may include:
  - Traffic Control.
  - Detour to DOT&PF specifications.
  - Performance Bonding and liability insurance.
  - Reconstruction to DOT&PF standards.
- For a narrow band of mining ground, these requirements may be cost prohibitive.





R O W

The image features three hand-drawn characters: a capital 'R', a capital 'O', and a capital 'W'. The 'R' and 'W' are drawn with thick black outlines and a bright cyan glow. The 'O' is a heart shape, filled with pink horizontal lines and outlined in black. The background is a light beige gradient with a white horizontal band at the bottom. On the left side, there are several thin, dark brown lines representing grass or reeds.

The End