

State of Alaska FY2004 Governor's Operating Budget

Department of Natural Resources Director's Office/Mining, Land, & Water Component Budget Summary

Component: Director's Office/Mining, Land, & Water

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Component Mission

Encourage the settlement of state land and the development of state resources by making them available for maximum use consistent with the public interest. (Constitution; Article VIII, Sec 1).
(Differs from SLA 2002, CH124)

Component Services Provided

The primary service provided by this component is the effective management of Alaska's minerals, land and resource assets to produce revenues, create jobs, and to promote economic vitality. The Director's Office component provides the management and administrative oversight for the six other components within the Division of Mining, Land and Water. These are:

- Claims, Permits and Leases
- Land Sales and Municipal Entitlements
- Water Development
- Title Acquisition and Defense
- RS2477/ Navigability Assertions and Litigation Support
- Development Special Projects

The Division of Mining, Land and Water promotes the use of state minerals, land and resources and recognizes the public benefits derived from use and development. The Division has and will continue to streamline processes and maximize economic opportunity working with the public and private sectors to stimulate and promote sound development.

The Division has structured its budget to reflect the expectation that developing the state's land and resources should, in general, pay for itself. Functions that develop Alaska by authorizing or granting resources to the private sector are funded primarily on program receipts. That is, developing the land and resources of Alaska will pay for the cost of administration and provide some return to the school fund, permanent fund and the general fund. These development functions are primarily within the Division's first two components: Claims, Permits and Leases; and Land Sales and Municipal Entitlements. The Division also undertakes some functions that are basic responsibilities of the state for which there is no revenue source. These functions are mostly concentrated within Title Acquisition and Defense. This component secures Alaska's full land entitlement under the Statehood Act and defends access to state land and water where needed. The Water component is a partially regulatory component. It does not provide the revenue necessary to fund its function. The 2001 legislature provided a fee methodology for the water management part of the component to use in raising revenue for that function.

Revenue and Cost. Last year, the division brought in \$600,000 more than it cost to operate. Revenue was \$12.1 million in revenue (from all sources), and cost were \$11.5 million. The revenue is almost all generated by two components: Claims, Permits, and Leases; and Land Sales and Municipal Entitlements. The revenue from those two components more than carried the costs for the entire Division. This year, the Division expects to bring in \$14 million in Revenue, and cost approximately \$13.5 million.

This Director's Office has taken over the functions that were formerly performed by three separate Director's offices. Two of them, the Division of Water and Division of Mining merged in 1996. On July 1, 1999, DNR's Division of Land merged with its Division of Mining and Water Management to form the Division of Mining, Land and Water. As a result of consolidation, 2 director positions and a portion of three Director's Offices were eliminated.

The **Claims, Permits and Leases** component provides the authorizations necessary to develop Alaska's Land. There are few, if any, industries that use State land that do not require an authorization provided by this component. The component costs approximately \$7.5 million (including \$5.3 million of general fund and program receipt income).

However, the direct revenue collected by this component is expected to be almost \$9.6 million, \$2.6 million of which will go into the permanent fund. These revenues do not include all revenues generated by the development of state land, only the fees, rents, and royalties collected directly by this component. That is, the figures do not include oil and gas royalty, forestry stumpage fees, mining license tax, etc.

The **Land Sales and Municipal Entitlements** component provides land sales to individuals and transfers land to municipalities. The \$3.4 million expected in principal and interest from current and past land sales is greater than the \$2.7 million funded by the Land Disposal Income Fund in this component.

The **Title Acquisition and Defense** component acquires land and defend the state's interest in land. The outcomes of this component are basic mandates of any state in the Union. The component includes the work necessary to acquire land (including more than 103 million acres as the state's entitlement) from the federal government, and defend access to land through ANCSA 17(b) easements, RS2477 assertions, navigability determinations, etc.

The **Water Development** component includes administration of water rights, Alaska Hydrologic Survey and Dam Safety. It provides the water rights and hydrologic data necessary for development that appropriates and makes beneficial use of the state's water resources.

The remaining two components are small specialty components found in different BRU's that are continued from previous budget years. These are: **RS2477/ Navigability Assertions and Litigation Support and Development Special Projects.**

Component Goals and Strategies

The component goals and strategies of Division of Mining, Land and Water are outlined in each of the six components managed by the Director's Office. For additional detail on the outcome, measures, and outputs of the other components, contact DNR Admin Services Manager (Nico Bus 465-2406).

Key Component Issues for FY2003 – 2004

LAND ISSUES

HB 208. Aquatic Farms for Shellfish Program: The 2002 legislature passed HB 208, which directed and funded the Division, in cooperating with the Department of Fish and Game, and the Governor's Office, Division of Governmental Coordination, to develop a new method for authorizing aquatic farms. This new method is similar to the way in which the department conducts land disposals. In this case, the State will select 90 sites for lease by February 2004. Meeting the clear performance measures established in this bill is an important goal for the staff of the Claims, Leases, and Permits component.

Land Sales to Alaskans. The key issue for land sales for FY 04 is to identify and offer new areas for sale under the Subdivision and Remote Recreational Cabin programs and to resolve title problems and liens on several hundred previously offered, pre-surveyed-parcels that DNR intended to offer in FY 03.

Land Transfers to Municipalities under Municipal Entitlements. Over the last few years, Alaska has made a significant effort to finalize land ownership patterns: 1) DNR has made its final state selections and prioritized those selections in 1994; 2) The Mental Health Land Trust dispute has been settled; and 3) Native corporations are finally gaining title to their land. In addition, the state has resumed its land disposal program to transfer land to private individuals. DNR is now committed to resolving the one remaining piece: the resolution of municipal entitlements.

In FY 03, the legislature funded DNR's requested increment for a comprehensive, public process to determine what land should be reclassified and made available for borough ownership. The six boroughs targeted through this project are Aleutians East, Lake and Peninsula, Denali, Northwest Arctic, North Slope, and Yakutat. This project started in FY 03. DNR continues to process high priority parcels for other boroughs, including Kenai, and Matanuska-Susitna, and other municipalities.

Through this increment DNR expects to transfer management of 40,000 acres to these boroughs beginning in FY 04 and up to 60,000 acres in FY 05 and subsequent years. This funding will allow DNR to complete in a decade, what would have been a 50 year backlog in municipal entitlements.

Easement Management including management of RS 2477s, is becoming an increasingly significant issue with the public. The Division is seeing an increase in requests to assert RS 2477s and other easements or rights-of-way, define exact locations for previously asserted easements, and to vacate those previously asserted. The staff time required to resolve these issues is large, ever-increasing and under-funded.

Permit/Lease Processing. In many cases, it takes too long for the Division to process leases or permits. This is in part because of the procedures required and in part because there is not enough staff to do the work required. Some complicated leases take 2-3 years for processing (including survey, appraisal, etc.) That length of time is too long for most businesses to plan for. If we are truly going to be responsive to the needs of commerce and industry in a way that protects public resources, and appropriately involves the public, the Division must improve the cycle time required for authorizations and on-the-ground management. The revenue-based budget approach described above is a method of continuously looking to improve the quality of our service. Methods to increase efficiency and improve the quality of the Division's land management include making better use of technology through such techniques as allowing online applications and payment, and through streamlining procedures and processes using the online information.

WATER ISSUES

There are four fundamental issues facing the Department. All are related to the legislative discussion surrounding HB 185, Water Fees-Temporary Water Use, which the legislature passed in 2001.

- 1. Performance Measures for Current Applications.** The legislature established clear performance measures for water rights: a typical new water right should be adjudicated within 60 days and a typical new temporary water use authorization within 20 days. The water management unit achieved these measures in FY02. A very important issue for the component is to be able to maintain those measures in FY03 and future fiscal years.
- 2. Performance Measures for the Water Rights Backlog.** A second performance measure of HB 185 was to eliminate the water rights backlog within 5 years. The Division is looking at methods to achieve this measure.
- 3. Performance Measures for Funding.** HB 185 provided a fee methodology for the program. The accompanying fiscal note anticipated that the program would raise fees and that the new revenue would support the program. The fiscal note provided general funds for two years for a transition to the new fee structure. This year the program expects to promulgate regulations that will raise the fees to provide the necessary revenue to fund the water rights and temporary water use program.
- 4. Proposed Instream Flow Funding Increment.** The legislation and discussion concerning HB 185 provided a funding methodology and performance measures for water rights and temporary water use authorizations. It did not provide either for instream flow. The division is proposing an FY 04 increment in Interagency Receipts to allow it to accept funds from other agencies, primarily the Department of Fish and Game, so that agencies proposing instream flow applications can fund their adjudication. The IA revenue will provide funding to support a single position dedicated to instream flow adjudication.

MINING ISSUES

Large Mine Issues. Under state law, DNR is the coordinating agency for large mine projects. DNR coordinates the permitting activities for all the State agencies, including ADF&G, ADEC, ADOT, and DOL and provides a more efficient, thorough and timely review of these major actions. For FY 03, the Department must complete the permitting for the Pogo Mine Project and continue with its review of new permitting issues at the Red Dog Mine, Greens Creek Mine, and the Proposed Kensington Mine.

STATE'S RIGHTS AND TITLE ISSUES

Navigability. The issue of navigability determines who owns and manages the land under waterbodies in Alaska. Under federal law, if waters are determined navigable, this automatically means (unless they were withdrawn before Statehood) that the state owns their beds. However, there have never been determinations on whether or not most waterbodies were navigable at statehood. Out of thousands of rivers and streams and an estimated 1 million lakes, only thirteen waterbodies in Alaska have had navigability determinations that have been endorsed by federal courts. The state has achieved a series of favorable court decisions on criteria for determining Alaskan rivers to be navigable. However,

progress has stalled in getting the US Bureau of Land Management to apply these criteria and to re-determine decisions made before these court decisions. Litigating each water body is too slow and costly.

The 2002 legislature established a Navigable Waters Commissions for Alaska in SB 219. Companion legislation or federal initiatives without the legislation are now being considered to that effect is now working its way through Congress. An FY 04 CIP would fund the department to resolve navigability issues. This appears to be a one-time opportunity to solve a great portion of this lingering, difficult issue.

The School Trust Lands valuation and litigation is part of the Title Defense Project. The charge of a Breach of Trust is part of a larger litigation issue concerning funding of rural schools (*Kasayulie v. State of Alaska* Case No. 3AN-97-3782 CIV.) However, Judge Reese has ruled on the plaintiffs' Motion for Partial Summary Judgment on Breach of the School Lands Trust, Judge Reese found two breaches of trust occurred in 1978 (1) the redesignation of school lands to general state land, and (2) the failure to value school lands. This case is still in litigation. Resolution requires significant staff work, in a manner acceptable to the court.

The Review of Sec. 17(b) of ANCSA involves the identification and reservation in conveyance documents to Native corporations for easements to the United States for access across ANCSA private land to public lands and public waters. There are two potential issues:

(A) Management of 17(b) Easements. The federal Interior Department is pressuring the State to assume management of reserved easements providing access to State lands and public waters. Management means identifying the location of the easement on the ground; signing the easement to identify it to the public explaining the allowable uses to the public; trash removal; maintaining the easement as to brushing, fixing mud spots, maintaining bridges, etc.; and resolving trespass. The State's position is that the easements are reserved by the United States and it is their responsibility to manage these easements. However, the State recognizes that the number of access disputes the public is experiencing related to this project have been steadily increasing. The department is currently working with the Bureau of Land Management's state office to craft a comprehensive easement management program prototype.

(B) Termination of 17(b) Easements. In Departmental regulations 43 CFR 26.50.4-7(a)(13) if an easement has not been used for the purpose for which it has been reserved, the BLM Director shall terminate the easement effective December 18, 2001, unless it provides access to isolated tracts of public lands or public waters. The implementation of this regulation has no statutory basis. We believe this implementation will have a serious affect on public access in Alaska. Several years ago DNR initiated action to influence the implementation. We expect to continue this work in FY 04.

Major Component Accomplishments in 2002

This section provides a summary of the major FY02 accomplishments of the Division of Mining, Land and Water.

Revenues to Alaska. Last year, the division brought in \$600,000 more than it cost to operate. Revenue was \$12.1 million in revenue (from all sources), and cost were \$11.5 million. The revenue is almost all generated by two components: Claims, Permits, and Leases; and Land Sales and Municipal Entitlements. The revenue from those to components more than carried the costs for the entire Division. This year, the Division expects to bring in \$14.3 million in Revenue, and cost approximately \$13.9 million. Of the revenues, the Claims, Leases and Permits component is expected to bring in \$9.8 million, of which \$1.9 million will go to the permanent fund. The Land Disposal program will bring in another \$3.6 million. None of these revenues include revenues dependent on the Division's actions if those revenues are not directly collected by the Division; that is, they do not include oil and gas royalty, forestry stumpage fees, mining license tax, etc. In FY02 the Division contributed \$1.5 million to the permanent fund.

Land Sales to Individual Alaskans. In FY02, DNR offered 2,418 subdivision lots for sale through two sealed bid auctions, nearly a ten-fold increase from the previous year. In FY03, DNR offered an additional 2,000 parcels through sealed bid auction in fall 02 and is preparing another 500 parcels for sale through a sealed bid auction to be held in late FY03. As of October 21, 2002, 2,035 parcels remained available for sale "over-the-counter".

In FY02, DNR offered land for the first time under the Remote Recreation Cabin Program, a new stake-it-yourself program. 295 parcels were offered under this program in FY01, with 687 applications received. In FY02, 255 parcels were offered with 776 applications received.

Interest in state land sales has been greater than expected, resulting in the state receiving more revenue than was projected. Total FY02 revenue from state land sales (excluding agricultural sales) was \$3.1 million, which is greater than

the \$2.1 million cost for the component. The forecast revenue for FY04 is \$3.1 million.

Land Transfers to Municipalities under Municipal Entitlements. In FY 02, DNR approved municipal entitlement selections totaling 15,979 acres for the following municipalities: Denali Borough, Dillingham, Kenai Peninsula Borough and Matanuska-Susitna Borough. DNR issued patents to Anchorage, Dillingham, Kenai Peninsula Borough, and Matanuska-Susitna Borough. In FY 02, DNR processed tidelands selections for four municipalities, totaling 116 acres.

Land Planning for Disposal and Development. In the first half of FY03 DNR completed and adopted the Northern Southeast Area Plan, of the approximately 673,000 upland acres of state owned land in the planning area, over 644,000 acres of uplands were designated for development uses and available for municipal selection, and 10,000 acres for new land disposals. The plan also establishes land use designations and classifications for 2.5 million acres of tidelands. In the first half of FY03, DNR completed the Upper Yukon Area Plan. This plan encompasses 4.2 million acres of state land. This plan designates over 100,000 acres as potential settlement areas. Also in the first half of FY03 DNR completed revision of the Haines State Forest Plan. The plan allows timber harvest on 42,000 acres of state land. DNR also completed land use plans for the Wood Tikchik State Park (1.5 million acres of state land) and Chilkat Bald Eagle Preserve (49,000 acres). These park plans will guide commercial recreational use of these two state park units.

Acquire Secure Denali Highway Block Lands and Other Actions to Secure Clear Title. One of the priority areas for conveyance was the approximately 235,000 acres of the Denali Highway Block area near Paxon. The state has received TA for the final part of this area in January 2003. In total, over FY02, the state acquired, 252,451 additional acres allowed under statehood entitlements, an additional 116,216 acres of other state lands bringing our total ownership acreage to over 91 million acres of uplands. In addition, the section reviewed hundreds of BLM conveyance, 17(b) easement, and other decisions to ensure that statehood rights were protected.

Title Review. The Division also completed significant and unusual title review actions in FY02 including:

- a review of 3,200 square miles of the Trans-Alaska Pipeline (necessary for TAPS renewal);
- review of 2,800 square miles of the highway route proposed for the Gasline; and review of the approximately 25,000 acres for the expanded land disposal program.

Mining. In its role as coordinator for permitting and review of large mine projects, in FY02 the Division completed the following:

- Worked with EPA on the *Pogo Mine Project* to prepare for the FY 03 release of the federal EIS and permits;
- Approved an expansion of the *True North Mine Project* and successfully defended its previous-year permits from legal challenge;
- Worked toward completion of review of the *Green's Creek Environmental Review* that, in FY03 resulted in a approved reclamation plan and \$24.4 million bond.
- Also completed important permitting work on: *Fort Knox Mine Project, Red Dog Mine, Kensington Mine, Illinois Creek Mine, and Donlin Creek Mine.*

Water Management. The first half of last year, the Division's existing 3.5-person staff concentrated on ensuring temporary water use authorizations were processed (the north slope authorizations were routinely challenged), and hiring and training new staff authorized through the legislative discussion surrounding HB 185.

Processing Temporary Water Use Authorizations. In FY02, staff processed 116 temporary water use permits without litigation. The lack of litigation is a significant change and increased the reliability of the permits for the applicants. In FY 01, there was significant challenge to almost all temporary water use authorizations on the North Slope. DNR was taken to court in a number of different cases, which absorbed much staff time and energy. In FY 02, the same situation appeared to be developing; we received many objections and challenges as the staff prepared to process permits. To ensure that the authorizations appropriate protected the environment and could be relied upon by the applicant, staff went to unusual lengths to ensure that the permit record showed that staff had gone above and beyond procedures requirements for issuing the permit and reflected documentation that showed the environment would be protected. For the first time in a few years, there was no litigation over the authorizations. This is in part due to the new statute enacted by HB 185, and in part due to the concentration of effort by staff on these permits.

Processing Water Rights. Staff processed 168 water rights and received 97 new ones. For the first time in years, staff processed more water rights that it received and made headway on the backlog. Almost all of this progress occurred in the last half of FY02.

Because of the unusual amount of effort on temporary water use permits, and because it takes time to hire and train new staff, staff was only able to process 14 water rights during the first half of FY02. By January, most of the new staff was in place and trained. Over the last half of FY02, staff processed 154 water rights. By the end of the fiscal year, staff was

able to meet the performance objective of having a typical water right processed within 60 days of application. In the first quarter of FY03, staff processed 89 water rights. This rate far exceeds that of previous years and meets the performance measures established in discussion with the legislature.

Statutory and Regulatory Authority

AS 27; AS 29; AS 38; AS 41; AS 46; 11AAC;

Director's Office/Mining, Land, & Water
Component Financial Summary

All dollars in thousands

	FY2002 Actuals	FY2003 Authorized	FY2004 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	350.9	403.3	404.9
72000 Travel	29.8	17.7	17.7
73000 Contractual	61.0	40.0	40.0
74000 Supplies	4.4	18.8	18.8
75000 Equipment	0.0	0.0	0.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	446.1	479.8	481.4
Funding Sources:			
1004 General Fund Receipts	369.2	380.0	380.9
1007 Inter-Agency Receipts	76.9	99.8	100.5
Funding Totals	446.1	479.8	481.4

Director's Office/Mining, Land, & Water

Proposed Changes in Levels of Service for FY2004

Oil and Gas Bonus Bids and Lease Rentals:

The Division manages surface activities outside lease boundaries, and participates on surface activities within the lease boundary. In addition, the Division provides title reports to the Division of Oil and Gas for all oil and gas lease sales. The increment request one additional Natural Resource Specialist II to supplement the existing program. The increment would be funded by Interagency Receipts.

The NRS II is within the Title Acquisition and Defense component. It will eliminate the backlog of title report requests for oil and gas lease sales. After the Division of Oil and Gas holds a lease sale, the lease is not actually conveyed nor money accepted until a Title Report is completed. The Division has concentrated staff on this task to minimize the backlog, but the cost is other work required of the Realty Services Section is not getting done. For example, title work before other agencies acquire school sites, sport-fishing sites, etc, is not being reviewed in a timely manner — much to the frustration of those organizations.

Summary of Component Budget Changes

From FY2003 Authorized to FY2004 Governor

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2003 Authorized	380.0	0.0	99.8	479.8
Adjustments which will continue current level of service:				
- \$75 per Month Health Insurance Increase for Non-covered Staff	0.9	0.0	0.7	1.6
FY2004 Governor	380.9	0.0	100.5	481.4

Director's Office/Mining, Land, & Water

Personal Services Information

	Authorized Positions		Personal Services Costs	
	<u>FY2003</u> <u>Authorized</u>	<u>FY2004</u> <u>Governor</u>		
Full-time	6	6	Annual Salaries	309,881
Part-time	0	0	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	103,264
			<i>Less 2.00% Vacancy Factor</i>	(8,245)
			Lump Sum Premium Pay	0
Totals	6	6	Total Personal Services	404,900

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Administrative Assistant	1	0	0	0	1
Administrative Manager II	1	0	0	0	1
Division Director	1	0	0	0	1
Large Mine Project Manager	1	0	0	0	1
Natural Resource Mgr IV	1	0	0	0	1
Secretary	1	0	0	0	1
Totals	6	0	0	0	6