

Division of  
Mining, Land & Water

# Mission

*Provide for the appropriate use and management of Alaska's state owned land and water, aiming toward maximum use consistent with the public interest.*





# Mission and Measures: End Results

- Acquire state land entitlement, defend and plan for use of state land.
- An adequate amount of state land is transferred into private ownership and to municipalities for settlement, recreation, development and other uses.
- Businesses, individuals and other entities obtain authorizations necessary for the environmentally sound use and development of state land, water and resources.
- All state land is unencumbered by unauthorized use, contamination, or waste that makes it unavailable for other public use and development.

# Overview

- Oversight of Federal Land Transfers
  - State Land Conveyances and Relinquishments
  - ANCSA Conveyances
  - Native Allotments
- Navigability / Recordable Disclaimer of Interest (RDI)

# Accomplishments for Land Transfer Oversight

- Reviewed 2.6 million acres for reducing the state's total over selected acreage
- Relinquished, or released to BLM to reject, 2 million low priority – low resource potential acres
- Reviewed over 2,190 BLM conveyance related documents
- Developed MOA for Relocation of Native Allotments (under review by BIA and BLM)
- Processed 64 Native Allotment Reconveyance Requests

# Over-selection Acreage Review

The state is over selected by approximately 14.8 million acres. Many of these acres are either unavailable for conveyance due to withdrawals or ANCSA selections. Some are selections that are on lands that have been conveyed out of federal ownership.

DMLW's objective has been to reduce the state's over selection acreage in order to be in compliance with federal law and to avoid BLM's possible rejection of potentially high value selections.

Since the beginning of FY2011:

- 2.6 million acres have been reviewed for relinquishment or rejection.
- 2 million acres relinquished or released for rejection
- Another 1.5 million acres are pending review this fiscal year

# Land Transfer Oversight

## Emerged Islands –

- July 11, 2008 – MOA between the State of Alaska and BLM to determine whether a land feature in a navigable body in Alaska existed on the date of Alaska statehood, January 3, 1959.
- Since 2008 - DNR has received 47 applications containing multiple islands - All but two have been processed
- Review BLM decisions that identify islands to ensure state lands are not being conveyed
- Currently loading these determined emerged islands into DMLW's land management system for tracking and future resource development purposes

# ANCSA Conveyance Oversight since FY 2011

- Reviewed 273 ANCSA Conveyance Decisions
- Reviewed 97 (17(b)) Easement Notices and Determinations
- Reviewed 37 Emerged Island Determination Decisions
- Reviewed 44 ANCSA Decisions rejecting State selection or rescinding State tentative approval



# NATIVE ALLOTMENTS

Aguilar and the Reconveyance Process

# Aguilar

- Lands claimed by an Alaska Native under the Alaska Native Allotment Act of May 17, 1906, that were conveyed by the Federal government to a third party, fall under the Aguilar Stipulated Procedures for Implementation of Order dated February 9, 1983.
- The Stipulations guide the Bureau of Land Management (BLM) in how to proceed in such cases.
- In most cases, the BLM must request voluntary reconveyance of claimed lands from that third party.

# The Reconveyance Process

- The BLM must determine the application valid and request voluntary reconveyance
- Agency review is the first stage of the State's best interest determination
- The Preliminary Decision, 30-day public notice and Final Finding & Decision process reveal and address any public concerns
- The Settlement and Release Agreement lists all reservations and "subject to(s)" of the reconveyance
- A Quitclaim Deed is issued after DOI Solicitor's Office Approval

# Progress / Challenges

- Since FY2012 we have processed 44% of the remaining Native Allotments on state lands (94 left to go)
- Settlement and Release Agreements are not signed.
- We must wait for BLM to perform their on the ground inspections before issuing the Final QCD to verify there are no trespasses or contaminants on the land.
- Many original applicants are deceased, and the lengthy probate process holds up processing. Sometimes an heir dies during the process, and everything must be stopped for another probate to be completed.

# Why is this Important to the State?

- It is important to maintain the oversight of Federal Land transfers so that actions by BLM with regard to fulfilling ANCSA land entitlement do not harm the state by conveying lands:
  - where the state already holds title
  - restricting access across corporation lands to other public lands
  - That state in-holdings do not develop as part of incomplete adjudication at BLM
- The state supports a final fulfillment of long standing Native Allotment issues by the federal government.





# Navigability / Recordable Disclaimer of Interest (RDI)

# Statewide Policy Issues

- Statehood entitlements
- Navigability  
Determination and  
Assertion
- RS 2477
- ANCSA 17(b) Easements



# Article VIII Sec 14 Access to Nav Waters



- Free access to the navigable or public waters of the State, as defined by the Legislature, shall not be denied any citizen of the United States or resident of the State, except that the Legislature may by general law regulate and limit such access for other beneficial uses or public purposes.



# What we Review ANCSA Conveyance Documents For

- Title to Submerged Lands
- ANCSA 17(b) easements
- RS 2477 documentation



# Defending Access to Public Lands



- Interagency Navigability & Access Team:
  - Department of Natural Resources
  - Department of Fish and Game
  - Department of Law



# Equal Footing Doctrine

- All states are admitted to the union on equal footing with the other states, including the 1953 Submerged Land Act, which granted the title to the submerged lands beneath Navigable waters



# Case Law

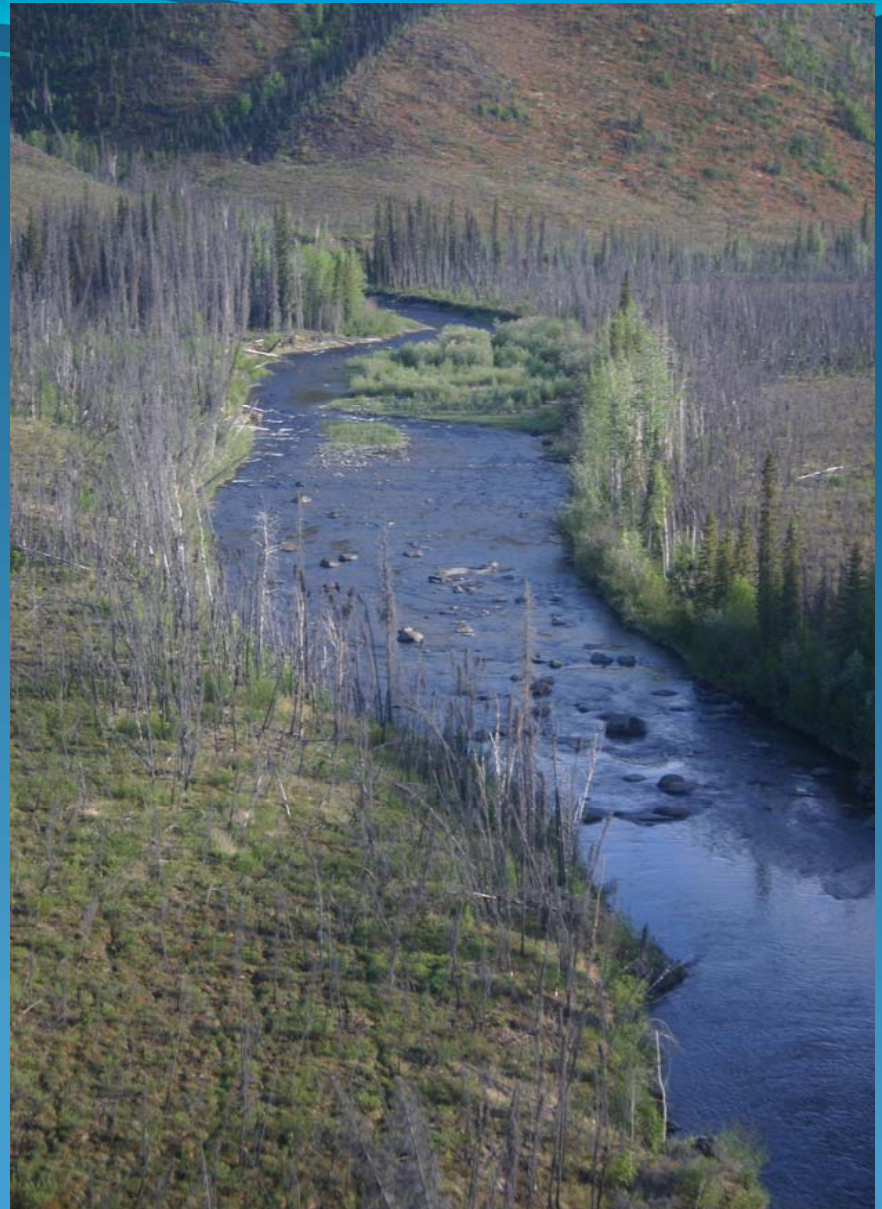
- Daniel Ball
- Utah (Salt Lake)
- Kandik/Nation
- Gulkana
- PPL Montana  
(susceptibility confirmed)





# Is it Navigable?

- Submerged lands
- Tidelands
- Shorelands
- Public Trust or title



# Title Navigability Considerations

- Determined at time of statehood
- Trade, travel and commerce
- Susceptible to trade, travel and commerce
- Not without difficulty





# Public Trust Protection on Waters

- Provides access and use of public waters
- Not dependent on land ownership
- Includes uses such as fishing, boating, recreation and transportation





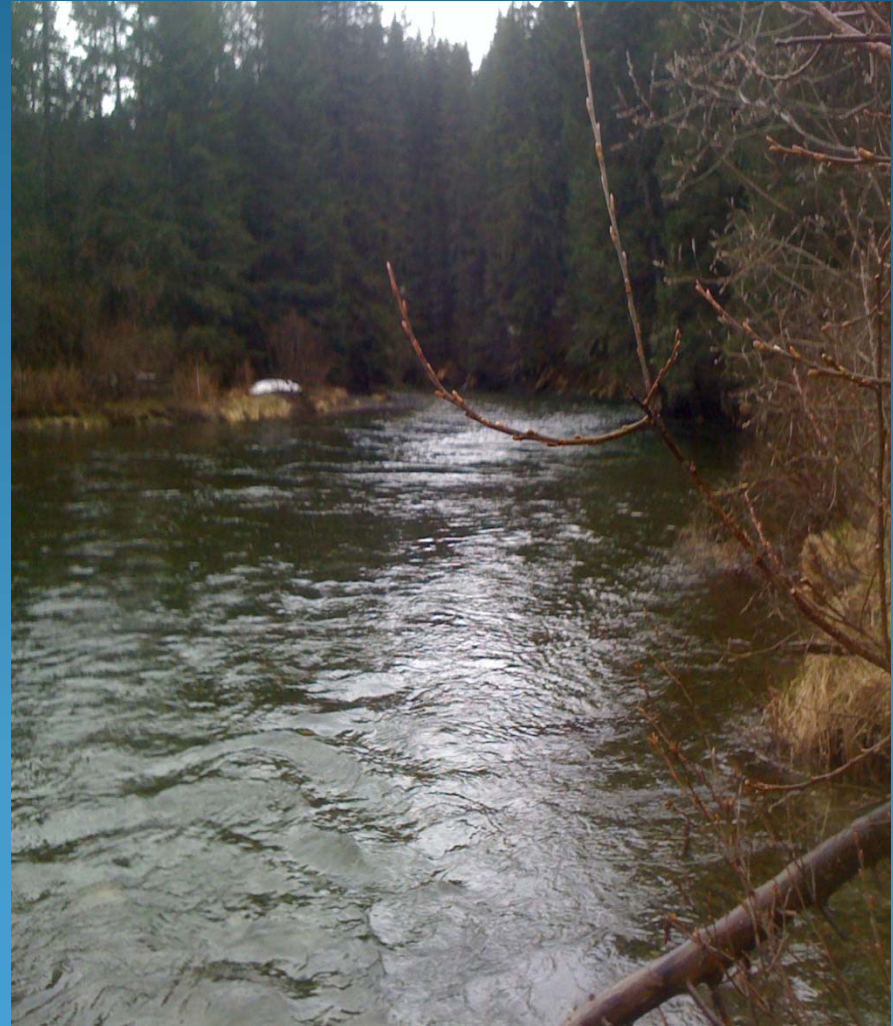
# Quiet Title Actions

- “Quiet” other claims to our title
- Expensive (Upwards of \$1M)
- Time consuming
- Uncertain outcome
- Necessary when no other option exists



# Recordable Disclaimers of Interest

- Cost effective (\$50K) alternative to filing a quiet title action
- Alaska has the only successful RDI process in the US
- 20 Recorded RDIs
- May be an alternative solution for RS 2477 litigation





# Current Issues / Litigation

- Mosquito Fork
- Kotsina River
- Fog Lake/Dream Creek
- Lemon Creek
- Skagway
- Sturgeon/Nation River



# Why is this Important to the State?

- The continuation of the Navigability/RDI program is essential to defend state ownership of the submerged land under navigable waters the state received at statehood.
- The RDI effectively removes cloud of title.
- Successful navigable water litigation is expected to result in clear state case law and an increased interest in resolving future navigability determination cases within the state.