

2/14/11

OVERVIEW:

DEPARTMENT

OF LAW

<TARGET><BILL></BILL><SUBJECT>2-14-11 OVERVIEW
DEPARTMENT OF LAW</SUBJECT><COMM>SJUD27</COMM></TARGET>



Department of Law

Photo by Sheena Scott, Department of Law Webmaster ©



Civil Division Overview
for the Joint Senate-House Judiciary
Committees of the 27th Alaska Legislature
Attorney General Designee John J. Burns

1

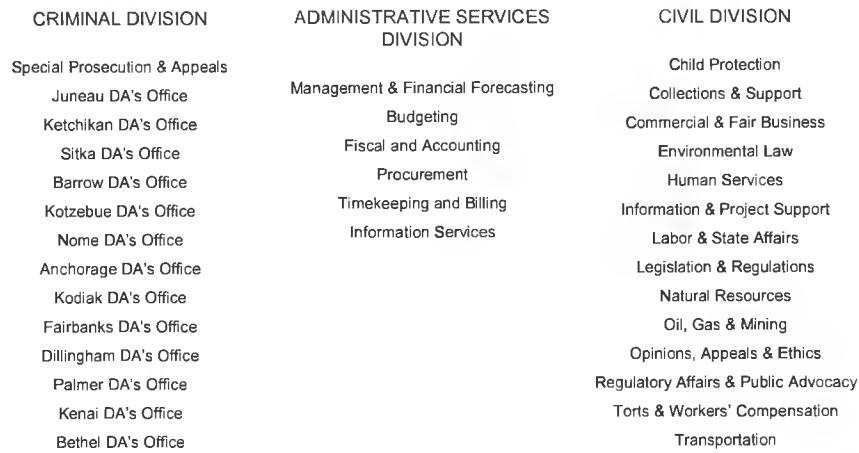


MISSION

The mission of the Alaska Department of Law is to prosecute crime and provide legal services to state government for the protection and benefit of Alaska's citizens.

2

DEPARTMENT OF LAW ORGANIZATIONAL CHART



3

Core Services

- I. Protecting the Safety and Financial Well Being of Alaskans
- II. Fostering Conditions for Responsible Development of Our Natural Resources
- III. Protecting the Fiscal Integrity of the State
- IV. Promoting Good Governance

4

Key Statistics

Attorneys	FY12	FY11	Change
Civil	163	162	1*
Criminal	122	121	1**
Administrative Services	1	1	0
Total	286	284	2

Support Staff	FY12	FY11	Change
Civil	140	139	1
Criminal	118	118	0
Administrative Services	21	21	0
Total	279	278	1

Department offices: *Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Kenai, Ketchikan, Kodiak, **Kotzebue, Nome, Palmer, and Sitka

5

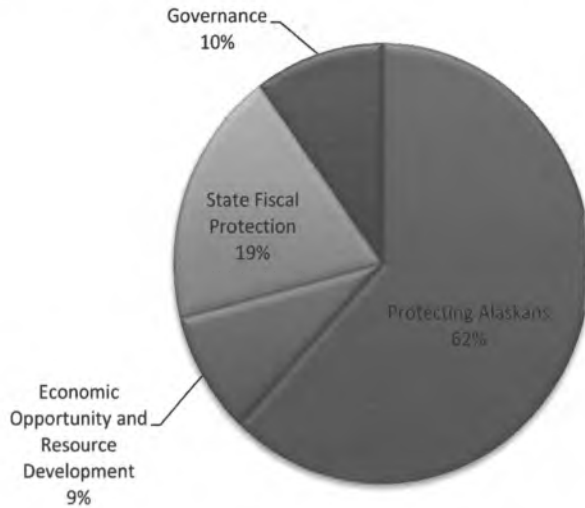
FY 12 Budget Request by Core Service

(In Millions)

Priority Programs	UGF Funds	DGF Funds	Other Funds	Federal Funds	Total Funds	Percentage of Total Funds
Protecting Alaskans	39.1	2.0	10.6	1.5	53.2	62.0%
Economic Opportunity and Resource Development	4.2	-0-	3.2	.1	7.5	8.7%
State Fiscal Protection	8.1	.7	7.6	-0-	16.4	19.2%
Governance	4.4	-0-	4.2	-0-	8.6	10.1%
Department Totals	55.8	2.7	25.6	1.6	85.7	100%

6

Core Services



7

FY 10 Return on Investment

(Millions)

	Awards & Collections	Costs (FY 10 Authorized)	Benefit to Cost Ratio
Return on Total Department Budget	\$576.0	\$85.4	6.75
Return on the Civil Division Budget	\$576.0	\$48.9	11.77

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8

Criminal Division

- Carries out core function of Protecting Alaskans
 - **13 District Attorney's Offices** - Ketchikan to Kodiak to Kenai to Kotzebue, Barrow to Bethel, Anchorage, Dillingham, Palmer, Fairbanks, Nome and Sitka
 - **Office of Special Prosecutions** – Cold cases; Medicaid, welfare, PFD and insurance and workers' compensation fraud; cybercrimes; fish and game crimes; environmental crimes; alcohol interdiction; criminal non-payment of child support; violations of state tax law
 - **Appeals**
 - **Rural Prosecution Unit** – assists rural offices when work load demands outstrip available prosecutor resources

9

I. Protecting Alaskans Criminal Division

- *State v. Lepping*
 - Fish and Game prosecutor Andrew Peterson tried and convicted Wasilla guide Keith Lepping on 23 counts of fishing and hunting violations including bear baiting
 - Lepping jailed for almost a year, forfeited a C-206 and Super Cub, fined \$85,500, lost his guide and transporter licenses
- *State v. Torian*
 - Cold case prosecutor Paul Miovas charged former Anchorage resident with murder in 2000 stabbing death of Genevieve Tetpon
 - One of a series of alleged murders involving Alaska Native women in 1999 and 2000

10

Prosecutors in Statewide Offices



11



How the Civil Division
Supports the Department
of Law's Four Core
Missions

12

Assistant AG's in Statewide Offices



13

I. Protecting Alaskans Civil Division



- Child Protection (23 attorneys)
- Commercial and Fair Business (18 attorneys)
- Human Services (9 attorneys)
- Regulatory Affairs and Public Advocacy (3 attorneys)
- Environmental (10 attorneys)
- Labor and State Affairs (19 attorneys)

14

I. Protecting Alaskans
Child Protection Section

- Child Protection attorneys represent the Office of Children's Services when the welfare of a child is at risk
 - 3,000 Child in Need of Aid cases yearly
 - 2,000 cases ongoing at any time
 - Child protection attorney case load is 113 per attorney—exceeding the recommended national average of 100 cases

15

I. Protecting Alaskans
Child Protection Section

- Prevailed in **all eleven recent Alaska Supreme Court appeals** of superior court orders terminating parental rights, thereby freeing children for adoption by safe families



16

**I. Protecting Alaskans
Commercial and Fair Business Section**

- Consumer Protection Unit suits or settlements
 - Publishers Clearing House, DIRECTV, Dannon Yogurt, “Average Wholesale Price” Drug litigation
 - Local auto dealer making illegal advertisements about “guaranteed trade in allowances”
 - Juneau jewelers falsely advertising “40-75% off” sales



17

**I. Protecting Alaskans
Commercial and Fair Business Section**

- 2010 Department of Law Fuel Price study
 - Why are rural fuel costs so high?
 - Small volumes
 - Remote locations
 - Difficult weather
 - No evidence of price-fixing
 - ISER concurred in separate Western Alaska report



Rural Alaska fuel storage tanks

18

I. Protecting Alaskans

Human Services Section, Labor and State Affairs Section
Commercial and Fair Business Section

- *Patient Protection and Affordable Care Act (PPACA)*
 - Litigating constitutionality with 25 other states
- Ongoing advice to DHSS and Divisions of Insurance and Retirement and Benefits on how PPACA—if constitutional -- will affect Alaska
 - AlaskaCare, the state health care plan
 - Insurance exchange
 - Medicaid expansion



19

I. Protecting Alaskans Human Services Section

- Defending State DHSS in lawsuits for program payments
 - Medicaid
 - Foster care
 - Public assistance
- Representing DHSS in facilities licensing investigations and enforcement actions
 - Hospitals
 - Nursing homes
 - Assisted living facilities
 - Child Care centers
 - Foster homes
- Representing DHSS in Medicaid overpayments
 - Independent auditor said provider service charges excessive
 - Potential recoupment \$1.9 million+

20

**I. Protecting Alaskans
Environmental Section**

■ *State v. BP Exploration
Alaska (BPXA)*

- Suit to recover civil assessments and revenue losses from the 2006 Prudhoe Bay pipeline shutdown due to corrosion



Leak and spill



Sludge buildup prevented corrosion detection equipment from working

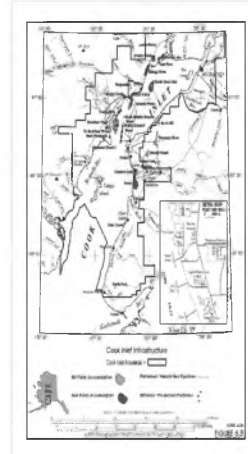
**I. Protecting Alaskans
Environmental Section**

- *Cruise Ship Initiative*
- HB 134 regulating wastewater discharges allows cruise ship owners and operators until 2016 to fully comply with new water quality standards
 - State defending lawsuit challenging DEC's new permit



I. Protecting Alaskans
Regulatory Affairs and Public Advocacy Section

- RAPA advocates public interests in regulated utility matters before the Regulatory Commission of Alaska (RCA)
 - *Cook Inlet Natural Gas Storage Alaska (CINGSA)*
 - RCA's decision approving underground gas storage facility issued January 31, 2011



23

I. Protecting Alaskans
Regulatory Affairs and Public Advocacy Section

- *Enstar* Billing Error Refunds
 - RCA ordered Enstar to pay \$5.7 in refunds
 - RAPA monitoring to assure refunds paid to eligible customers



24

I. Protecting Alaskans Civil and Criminal Division

- Played a key role in developing the 10-year Sexual Assault/Domestic Violence Initiative
- Collaborating with agencies and non-profits to support the Initiative
- Coordinated PSA's for the "Choose Respect" campaign
- Sponsored pro-bono summits



25

II. Fostering Responsible Development



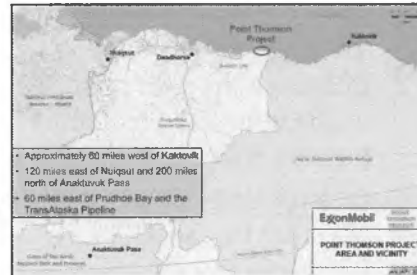
- Oil Gas and Mining (14 attorneys)
- Transportation and Public Facilities (8 attorneys)
- Environmental (10 attorneys)
- Natural Resources (13 attorneys)

26

II. Fostering Responsible Development Oil Gas and Mining Section

■ *Point Thomson litigation*

- Continuing to pursue resolution with ExxonMobil



27

II. Fostering Responsible Development Transportation and Public Facilities Section

- Advising DOTPF and defending state on building projects
 - Goose Creek Prison
 - Alaska Marine Highway System HQ and Ketchikan dry dock expansion
 - Juneau Access Road
 - Knik Arm Crossing
 - In-state gas pipeline and propane projects

28

II. Fostering Responsible Development Environmental Section

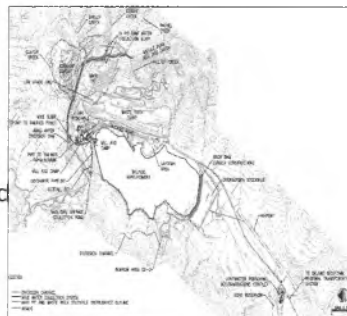
- Joined Couer Alaska and defended Army Corps of Engineers Clean Water Act permit authorizing disposal of mine tailings
- Prevailed in the United States Supreme Court, allowing **Kensington Mine** to open
- **Mine opening created and preserved hundreds of jobs**



29

II. Fostering Responsible Development Environmental Section

- Red Dog Mine
 - EPA withdrew key components of water pollution discharge permit
 - Assisted DEC in promulgating new regulations
 - Incorporated into a revised Clean Water Act permit
 - Mine operations continued
 - Jobs preserved

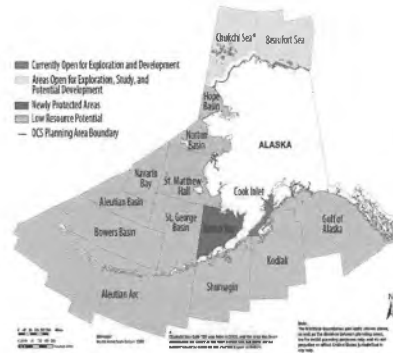


30

II. Fostering Responsible Development Oil Gas and Mining Section

■ Defended Outer Continental Shelf (OCS) leases in court challenges

- Opposed a challenge to Interior's grant of Lease 193 to lessees
 - Court clarified that injunction on Lease Sale 193 pending further Interior review did not enjoin seismic testing
- Defended Interior's approval of Shell's Beaufort and Chukchi Sea OCS exploration plans in lawsuits in federal courts
- Filed an amicus brief in support of Interior's approval of OCS 5-year plan



April 6, 2010 Department of Interior
Outer Continental Shelf Strategy

31

II. Fostering Responsible Development Oil Gas and Mining Section

- Challenged Interior's purported imposition of a "moratorium" on development in Alaska OCS
 - In *Alaska v. Salazar*, based on Interior's unequivocal denial of a "moratorium," clarity achieved



32

II. Fostering Responsible Development Natural Resources Section

■ Tongass Timber

- State partners with U.S. Forest Service in management of Tongass National Forest
- State intervenes to defend timber sales where appropriate
 - Supported "Tongass Exemption" to USFS "Roadless Rule"
 - Supported Forest Service authorization of Logjam sale



33

II. Fostering Responsible Development Natural Resources Section

- **Endangered Species Act
Developing Comprehensive
Strategy**
 - Challenging unwarranted listings
 - Challenging unwarranted critical habitat designations
- Listings and designations can affect shipping, transportation, oil and gas development, mining, commercial, sport and subsistence fishing and hunting



34

II. Fostering Responsible Development Natural Resources Section

□ Endangered Species Act

□ Listing petitions

- Polar bears
- Beluga whales in Cook Inlet
- Steller sea lions
- Humpback whales
- Pacific walrus
- Seals (ringed and bearded)
- SE Alaska Pacific herring



□ Critical Habitat Designations

- Polar bear
- Cook Inlet Beluga whale

35

II. Fostering Responsible Development Natural Resources Section

□ Endangered Species Act

□ Pending Lawsuits and appeals

- Polar bear
- Beluga whales
- Steller sea lions
- Humpback whales
- Ribbon seal



36

II. Fostering Responsible Development Natural Resources Section

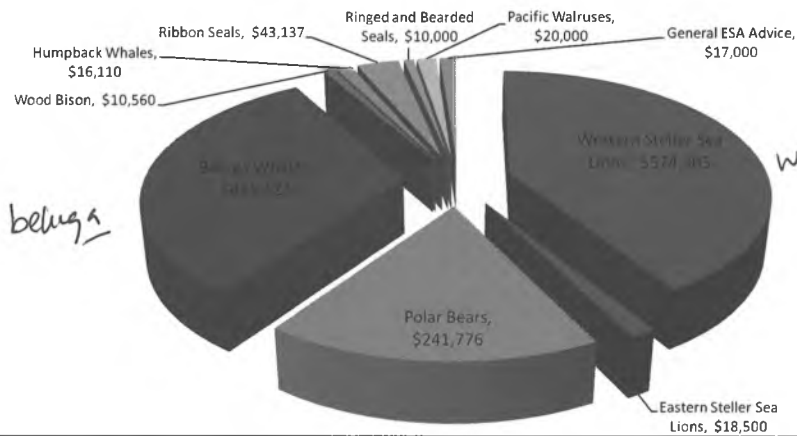
□ Endangered Species Act

- Threatened lawsuits
 - State's notice of intent to sue to challenge 187,000 square miles of critical habitat designation for polar bear



37

ESA FY11 Budget Expenditures (\$1,396,875)



38

II. Fostering Responsible Development Oil Gas and Mining Section

- Assisting DNR and DEC in requesting prompt federal review of challenges to petroleum exploration in the **National Petroleum Reserve-Alaska (NPR-A)**
 - Clean Water Act wetlands fill permit for CD-5 project



39

II. Fostering Responsible Development Natural Resources Section

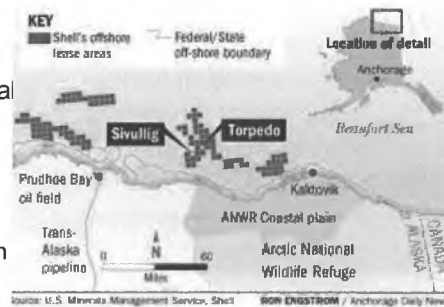
- Advising DNR on response to BLM Wilderness and "Wild Lands" designations
 - Interior Secretary Salazar ordered the evaluation of **72 million+ acres of federal land in Alaska for wilderness characteristics, potentially** allowing federal government to create de-facto wilderness in Alaska without congressional oversight
 - Affects permitting and right of way determinations
 - Changes the multiple use mandate otherwise applicable to BLM lands
- U.S. Fish and Wildlife Service revisions to the Arctic National Wildlife Refuge (ANWR) Comprehensive Conservation Plan, evaluating wilderness
 - Dept. of Law provided legal advice to Governor who wrote President Obama urging him to respect ANILCA



40

II. Fostering Responsible Development Environmental Section

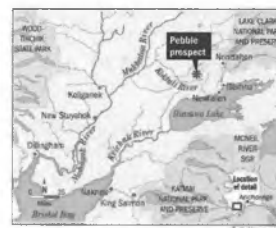
- Assisting DEC's request for prompt EPA action on Shell's Clean Air Act permit application after Environmental Appeals Board (EAB) remanded application for further work
 - EAB questioned EPA's analysis of impacts of nitrogen dioxide emissions from drill ships
 - Shell now postponing plans to drill exploratory wells this summer



41

II. Fostering Responsible Development Environmental and Natural Resources Sections

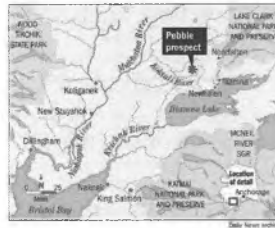
- Clean Water Act 404(c)
 - EPA by MOA with Corps of Engineers may invoke 404(c) to veto some Corps permit decisions
 - EPA usually exercises veto authority sparingly (only 13 times since 1972)
 - Southwest Alaskans asking EPA to invoke 404(c) process before companies at Pebble prospect apply for development permits on state mining claims
 - Assisting DEC and DNR in evaluating response to EPA's agreement to review



42

II. Fostering Responsible Development Environmental Section

- *Nunamta Aulukestai v. State*: Defending the State in a suit alleging constitutional violations in statutes and regulations that authorize temporary land and water use permits for mineral exploration at the Pebble project



43

II. Fostering Responsible Development Natural Resources Section

- Defending Alaska's Fisheries Management
 - *In Upper Cook Inlet Drift Association v. Locke*, state intervened (with U.S.) in lawsuit where UCIDA wanted to preempt state management of salmon fisheries in Cook Inlet (state waters)
 - UCIDA and U.S. settlement requires UCIDA to submit allocation proposals to state Board of Fisheries
- ADF&G request exclusive management



44

III. Protecting Fiscal Integrity



- Collections and Support (8 attorneys)
- Oil Gas and Mining (14 attorneys)
- Labor and State Affairs (19 attorneys)
- Torts and Workers' Compensation (15 attorneys)

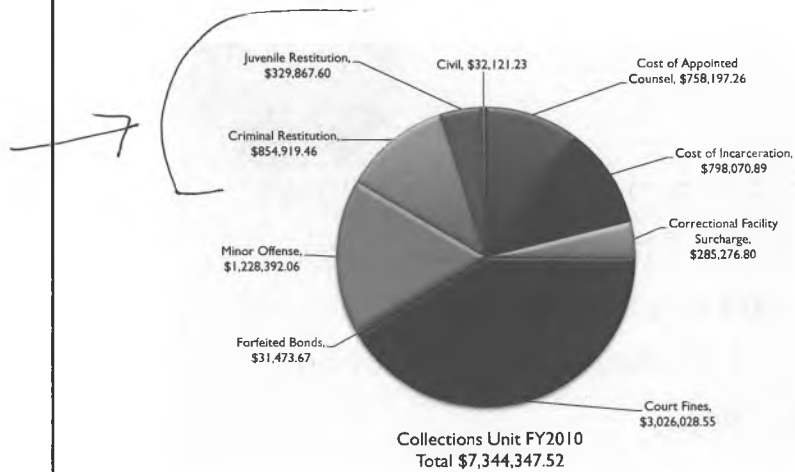
45

III. Protecting Fiscal Integrity Collections and Support Section

- Collects criminal fines and surcharges owed the State and restitution owed to 3rd parties
 - Collected \$7.3 million in FY 10, of which \$1.1 million was for victim restitution

46

Collections and Support Recoveries FY 10



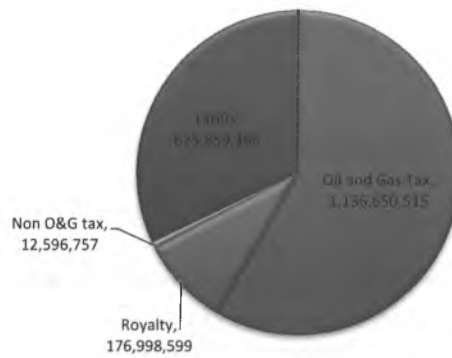
47

III. Protecting Fiscal Integrity Oil Gas & Mining Section

- Oil and Gas Royalties and Taxes - Summary
 - State operating revenues come from oil and gas corporate income taxes, production taxes, property taxes and royalties on Alaska North Slope crude oil
- Collected nearly \$82 million in additional taxes and royalties in *calendar* year 2010
- Collected \$95.9 million in FY 11 through February 8, 2011

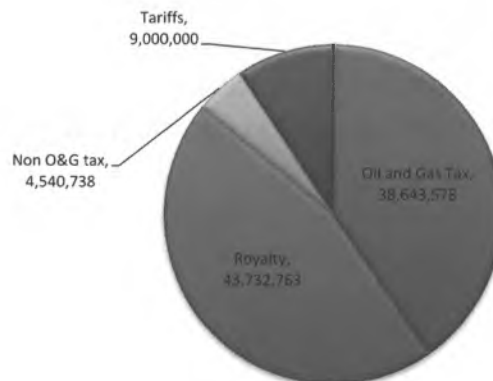
48

**Oil, Gas and Mining
Decisions and Settlements
FY00-FY10 (\$1.95 billion)**



49

**Oil, Gas and Mining
Decisions and Settlements
FY11 Though February 8, 2011
(\$95.9 million)**



50

III. Protecting Fiscal Integrity Oil Gas and Mining Section

■ TAPS Tariff Litigation

- State protested TAPS tariff rates for 2005 and following years before the Federal Energy Regulatory Commission (FERC) and Regulatory Commission of Alaska (RCA)
- TAPS Strategic Reconfiguration case concurrently before FERC and the RCA
 - State challenge to TAPS' Owners inclusion of hundreds of millions of dollars in imprudently incurred capital project expenditures in the tariffs.
 - Eight-week hearing before the FERC and RCA scheduled for November 2011

51

III. Protecting Fiscal Integrity Oil Gas and Mining Section

■ TAPS Property Tax Litigation

- Represented Dept of Revenue in Superior court trial on 2006 TAPS property tax valuation
- Court said State Assessment Review Board (SARB) methodology correct
- Outcome increased property tax revenues for affected municipalities and state
 - TAPS Owners appealed
 - assessment too high
 - Municipalities also appealed
 - assessment too low

52

**III. Protecting Fiscal Integrity
Oil Gas and Mining Section**

- **More TAPS Property Tax litigation**
 - Representing Dept of Revenue in Superior Court appeals from SARB's 2007-2009 TAPS property tax assessments
 - Eight-week trial in September 2011

53

**III. Protecting Fiscal Integrity
Commercial and Fair Business and Labor and State
Affairs Sections**

- **Cruise Ship Initiative Passenger Tax**
 - Cruise ship initiative made income from cruise ship water activities subject to Alaska Net Income Tax and imposed a gambling tax and a "head" tax of \$46
 - Cruise industry sued state over the "head tax"
 - Defended Dept of Revenue and assisted in negotiating a settlement
 - Legislature passed new law reducing the tax rate to \$34.50
 - Preserves payment of about \$34 million per year to defray costs of services and facilities to accommodate passenger visits

54

III. Protecting Fiscal Integrity Labor and State Affairs Section

- State lawsuit against Mercer, actuary for state pension plans (PERS) and (TERS)
 - Lawsuit settled
 - Mercer paid \$500 million

55

III. Protecting Fiscal Integrity Natural Resources Section

- *Carlson v. State*
 - 26 year old lawsuit by non-resident fishermen
 - They sought refunds of commercial fishing permit fees
 - Nonresident fees used to be 3x higher than resident fees
 - Court ruled against state
 - Judgment is \$12 million in principal
 - \$82.3 million total
 - Much of it due to 11% prejudgment interest compounded quarterly
 - plus attorney's fees
 - Case on appeal to Supreme Court
 - Successful outcome could be worth \$60 million in savings

56

III. Protecting Fiscal Integrity Transportation Section

- State suing the boat builder and the manufacturer of the state's two fast ferries (*M/V Fairweather* and *M/V Chenega*) for engine defects
- Engine defects have cost the state hundreds of thousands of dollars in repairs
- *M/V Fairweather* still out of service

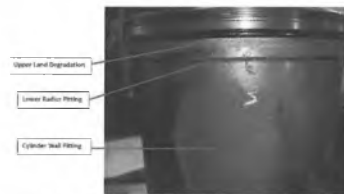


Figure 1. Fairweather Engine MEX1. 3 O-ring piston, head, radial and wall degradation.

57

III. Protecting Fiscal Integrity Tort and Workers' Compensation Defense Section

- In 2010, Department successfully defended over 200 tort claims with **no adverse judgments** against the state

58

IV. Promoting Good Governance

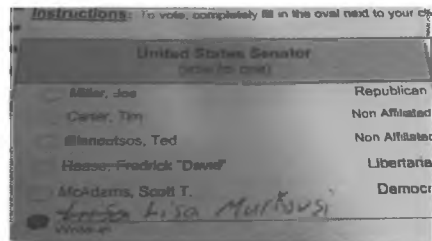
- Natural Resources (13 attorneys)
- Opinions, Appeals and Ethics (11 attorneys)
- Labor and State Affairs (19 attorneys)



59

IV. Promoting Good Governance Labor and State Affairs Section

- Defended Federal Elections (November 2010) lawsuits
 - Write-in candidate's name lawsuit
 - Miller public records lawsuit
 - Miller federal lawsuit (part 1)
 - Miller state lawsuit
 - Miller federal lawsuit (part 2)
 - Other lawsuits
 - Voting Rights Act lawsuit
 - Fairbanks suit filed 1/10/11 (state moved to dismiss as untimely)
 - Law advised and defended Division of Elections



60

IV. Promoting Good Governance Labor and State Affairs Section

- *Nick v. State*
 - Defended and settled elections lawsuit in Western Alaska
 - Enhancements to language assistance for Yup'ik speaking voters will be available at elections in Bethel area



61

IV. Promoting Good Governance Opinions, Appeals and Ethics, Labor and State Affairs Sections

- Defending the Initiative Process
 - *Planned Parenthood v. Campbell*
 - State defended lawsuit to overturn certification of ballot initiative to require parental notification of minor daughter's abortion
 - Alaska Supreme Court ruled initiative should appear on the ballot
 - Alaska voters enacted parental notification law by initiative in 2010
 - Constitutionality of that law now being challenged in *Planned Parenthood v. State*
 - *Natural Right to Life (10NRTL)*
 - Department opined initiative should not be certified because proposal "clearly unconstitutional" under federal and state law

62

IV. Promoting Good Governance Opinions, Appeals and Ethics Section

- *Executive Branch Ethics Act* advice and enforcement
 - Adopted new regulations, including standards governing state reimbursement of attorneys fees incurred by state officers exonerated in an ethics complaint proceeding
 - Similar to Rep. Gruenberg's HB 14 authorizing state reimbursement only after exoneration
 - Ethics training for senior managers and boards
 - Advisory opinions and investigations
-

63

IV. Promoting Good Governance Opinions, Appeals and Ethics Section

- **Public Records Requests**
 - 26,500 pages of former Governor Palin's emails
 - Legal review to be completed by 3/31/11
 - Governor's Office review to be completed by 5/31/11
 - In 2010, Department of Law
 - Addressed 43 separate voluminous public records requests directed to Law
 - Provided privilege reviews for records requests to other state agencies
-

64

CHALLENGES AND OPPORTUNITIES

WHAT'S AHEAD FY 12 AND BEYOND



65

- ❑ **Continue to Advance Core Services**
- ❑ **State-Federal Relations**
 - Areas where state and federal cooperation is working well
 - Areas where a core state interest requires federal challenge



66

General Examples where State-Federal Cooperation is Working Well

- Department of Environmental Conservation's (DEC) air permitting program
- DEC assumption of National Pollutant Discharge Elimination System (NPDES) permit program under the federal Clean Water Act
- Cleanups at federal facilities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and other federal and state laws

67

Specific Examples of State Cooperation with Federal Programs

- Defended Army Corps of Engineers Clean Water Act permit authorizing disposal of mine tailings, allowing Kensington Mine to open
- Worked with EPA to incorporate revised DEC regulations into Red Dog Mine Clean Water Act permit
- Intervened on side of U.S. in *Point Hope v. Salazar* and *Center for Biological Diversity v. U.S.*
 - Outer Continental Shelf cases
 - challenging the OCS 5-year plan
 - challenging to OCS Lease Sale 193 (Chukchi Sea)
 - Challenging Shell's Beaufort and Chukchi Sea OCS exploration plans
- Supported U.S. Forest Service authorization of Logjam timber sale

68

Areas Where a Core State Interest Requires Challenge Because of Federal Overreach

- **Endangered Species Act**
 - U.S. Fish and Wildlife Service
 - Species listings
 - Critical habitat designations
- **Clean Water Act**
 - Environmental Protection Agency
 - Wetlands fill permit 404(c) elevated scrutiny
 - CD-5
 - Tanana River Bridge
 - Pre-permit scrutiny
 - Pebble prospect
- **Clean Air Act**
 - Environmental Protection Agency
 - Offshore oil and gas exploration
 - Shell Beaufort Sea drilling plans
- **Wilderness and "Wild Lands" designations**
 - Bureau of Land Management
 - Designations could tighten permit requirements
- **Patient Protection and Affordable Care Act**
 - Constitutionality

69



Challenges and Opportunities

- **Support--as legally appropriate--responsible resource development**
 - **Develop a comprehensive long term development strategy**
 - **Endangered Species Act**
 - Unwarranted listings
 - Unwarranted designations of critical habitat
 - **Outer Continental Shelf exploration**
 - Challenges when warranted
 - **Clean Air and Water Acts**
 - Challenges when warranted

70

Challenges and Opportunities

- Develop a 5-year **interdepartmental** plan
- Coordinate and cooperate
 - Legislative and executive branches of state government
 - All executive agencies
 - Department of Natural Resources
 - Department of Environmental Conservation
 - Department of Commerce Community and Economic Development
 - Department of Law
 - Department of Fish and Game

71

Challenges and Opportunities

- Cooperate and coordinate with stakeholders **outside and inside** state government
 - Municipalities
 - Boroughs
 - Native corporations and tribes
 - Other states
 - Washington and Oregon joined to de-list the Stellar sea lions
 - Allies like National Association of Attorneys General and Association of Fish and Wildlife Agencies

72

- Thank you

Attorney General Designee
John J. Burns



73

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