

State of Alaska FY2003 Governor's Operating Budget

Department of Natural Resources RS 2477/Navigability Assertions and Litigation Support BRU/Component Budget Summary

BRU/Component: RS 2477/Navigability Assertions and Litigation Support

(There is only one component in this BRU. To reduce duplicate information, we did not print a separate BRU section.)

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Component Mission

To defend and assert the State's rights under RS2477 and navigable and public waters, thereby allowing access for economic development and use of the state's land and resources.

Component Services Provided

RS2477

This component provides the funding for ongoing activities associated with RS2477 research management and litigation. Since 1992, the Division of Mining, Land and Water has researched more than 1900 routes, identified approximately 649 routes as routes qualifying as RS2477s. Examples of tasks are:

1. Provide *litigation support* to Department of Law, including further research for select number of routes.
2. Continue to complete *quality control* on files:
 - Standardize casefile summaries and LAS input.
 - Compare file contents with casefile summaries to verify information is complete in files.
3. *Public Information:*
 - Respond to public or Web page inquiries received,
 - Maintain website with up-to-date information, and
 - Attend public meetings and speak to interested organizations.
4. *Record* RS2477 routes as they become surveyed, if they meet minimum standards established by DNR.
5. *Research* identified and potential RS2477s for easement vacation requests; prepare annual legislative report regarding research efforts, and give annual public notice of new routes identified in current fiscal year.

NAVIGABILITY

This component provides funding for on-going activities associated with the Navigability program that provides information to the public and agencies on the location and rights to navigable and public waters; does research and other work to support state litigation asserting state ownership; and reviews all federal decisions and plans to assure that state ownership and public use are protected. Examples of tasks are:

1. *Public/agency information:*
 - Respond to public and agency requests for navigability determinations or information.
 - Maintain/update database and web site that provides information on navigability status.
 - Develop and distribute maps and public informational brochures for specific waterbodies.
2. *Research* in support of on-going or new litigation, including litigation with both US Department of Interior and US Forest Service. Includes research into public use, historical use, and possibly hydrology of specific waterbodies. Research done in coordination with Departments of Law and Fish and Game.
3. *Review* all BLM administrative decisions and all federal land use plans and regulations that may affect state ownership or public use. Provide comments and file appeals as necessary.

Component Goals and Strategies

The Division of Mining, Land and Water has two primary responsibilities under this component:

1. RS 2477 Rights-of-way.
2. Navigability.

The goals of this component are:

- Assert and defend the state's rights under RS 2477 to protect public access to state land and resources.
- Assert and defend state ownership of and public rights to navigable and public waters. Includes support of
- litigation, review of all federal administrative actions affecting RS 2477s and navigable waters, and providing

agencies and the public with information on RS 2477s and navigable and public waters.

Key Component Issues for FY2002 – 2003

Easement management, including management of RS2477s, 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.

Major Component Accomplishments in 2001

RS 2477

1. Reviewed all land conveyances for RS2477 conflicts.
2. Assisted the Attorney General's Office in research related to RS2477 litigation and final settlement agreement for Harrison Creek-Portage Creek RST 8.
3. Responded to requests submitted by phone, e-mail, RS2477 Web site, letters, etc.
4. Prepared January 2001 annual legislative report showing 3 new trails researched and found to meet RS 2477 criteria. Made the information available to the public by newspaper and on the DNR RS 2477 website prior to the report to the legislature.
5. Updated mapped and tabular data. Made data available for public and agency use.
6. Reviewed requests for easement vacations to ensure viable alternative access is provided.

Navigability

1. Issued navigability determinations and reviewed navigability determinations prepared by ADF&G.
2. Responded to all BLM navigability decisions and reviewed BLM land conveyances.
3. Assisted the Attorney General's Office in research related to administrative appeals and litigation regarding navigable waters.
4. Provided information to agencies and the public on the navigability of waterbodies. Respond to requests submitted by phone, e-mail, navigability website, letters, etc.
5. Prepared public information brochures for three more waterbodies. Brochures provide the public with information about land ownership and public access to specific waterways where conflicts/problems have been occurring.
6. Updated mapped and tabular statewide navigability data. Made data available for public and agency use.

Statutory and Regulatory Authority

AS 19.30.400

AS 38.05

11 AAC 51

Key Performance Measures for FY2003

Measure:

RS 2477 case file summaries completed.

Benchmark Comparisons:

In FY00, the division completed 2 case file summaries and responded to requests for information and further research to the Department of Fish and Game.

Background and Strategies:

Continue to conduct research and respond to public requests as information becomes available. In FY02, expect to complete two RS 2477s for report to the legislature in January 2003.

Measure:

Number of actions taken for RS 2477 assertion/litigation support.

Benchmark Comparisons:

In FY00, the division responded to 3 litigation actions, including the proposed settlement for Harrison Creek-Portage Creek litigation between the State and the Federal government.

Background and Strategies:

Continue to provide litigation support as necessary and begin one new case in federal court.

Measure:

Number of actions taken for navigability assertion/litigation support.

Benchmark Comparisons:

In FY00, the division completed 70 actions in response to litigation, assertions, and review of federal actions.

Background and Strategies:

Continue to conduct research and respond to public requests as information becomes available. In FY02, expect to complete 75 actions.

RS 2477/Navigability Assertions and Litigation Support

Component Financial Summary

All dollars in thousands

	FY2001 Actuals	FY2002 Authorized	FY2003 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	0.0	0.0	325.7
72000 Travel	0.0	0.0	20.0
73000 Contractual	99.4	115.0	48.0
74000 Supplies	0.0	0.0	21.3
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	99.4	115.0	415.0
Funding Sources:			
1004 General Fund Receipts	99.4	115.0	415.0
Funding Totals	99.4	115.0	415.0

RS 2477/Navigability Assertions and Litigation Support

Proposed Changes in Levels of Service for FY2003

Easement Management

This increment request is in response to significant public demand for DNR action following passage of AS 19.30.400-.415. Conflicts among users and landowners of the more than 650 known RS 2477 rights-of-way is an increasing problem. Resolution is time-consuming. In addition, the law requires that DNR use great care in vacating an RS 2477 right-of-way. In practice, this often involves lengthy interviews with landowners, surveyors, and other interested parties to determine:

6. Whether an RS 2477 has been asserted or if not, whether evidence indicates that a public right exists;
7. How certain the physical location is and whether a survey needs to be performed (surveys require DNR review and approval); and
8. Whether the owners want a realignment of the right-of-way (on their own property) or to vacate the right-of-way altogether.

Personal Services and Position Adjustments

With the inclusion of an increment request in this component, a personal services budget is established directly in the component. Until FY03, money for personal services expenditures to implement RS2477 and Navigability programs funded in this component were provided on an RSA as interagency receipts to other components where the positions were budgeted. With the establishment of the personal services module in this component, one full-time position with the Navigability program is transferred from the Title Acquisition and Defense component. In addition, four other positions have a portion of their time split into this component to budget personal services costs directly for the RS2477 activities they perform.

Summary of Component Budget Changes

From FY2002 Authorized to FY2003 Governor

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2002 Authorized	115.0	0.0	0.0	115.0
Proposed budget increases:				
-RS2477 Easement Management	300.0	0.0	0.0	300.0
FY2003 Governor	415.0	0.0	0.0	415.0

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Personal Services Information

Authorized Positions		Personal Services Costs		
	<u>FY2002</u>	<u>FY2003</u>		
	<u>Authorized</u>	<u>Governor</u>		
Full-time	0	5	Annual Salaries	233,417
Part-time	0	0	COLA	5,091
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	90,167
			<i>Less 0.91% Vacancy Factor</i>	(2,975)
			Lump Sum Premium Pay	0
Totals	0	5	Total Personal Services	325,700

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Land Survey Asst II	1	0	0	0	1
Natural Resource Off II	3	1	0	0	4
Totals	4	1	0	0	5