

**Navigable Waters Assertions**

**FY2004 Request: \$188,700**  
**Reference No: 37765**

**AP/AL:** Appropriation**Project Type:** Planning**Category:** Natural Resources**Location:** Statewide**Contact:** Bob Loeffler**House District:** Statewide (HD 1-40)**Contact Phone:** (907)269-8625**Estimated Project Dates:** 07/01/2003 - 06/30/2007**Brief Summary and Statement of Need:**

This project would fund the State's assertion of ownership for navigable waters, including filing applications with the BLM for disclaimers of interest, research to make navigability determinations, identify navigable waters, and improve state - federal coordination on making navigability determinations and decisions. Most significantly, this CIP would fund the state's efforts to prepare and file applications with the US Bureau of Land Management for "Recordable Disclaimers of Interests" to clear state title to certain navigable waters.

<b>Funding:</b>	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	Total
Gen Fund	\$188,700	\$188,700	\$188,700	\$188,700			\$754,800
<b>Total:</b>	\$188,700	\$188,700	\$188,700	\$188,700	\$0	\$0	\$754,800

<input type="checkbox"/> State Match Required	<input type="checkbox"/> One-Time Project	<input checked="" type="checkbox"/> Phased Project	<input type="checkbox"/> On-Going
0% = Minimum State Match % Required		<input type="checkbox"/> Amendment	<input type="checkbox"/> Mental Health Bill

**Operating & Maintenance Costs:**

	<u>Amount</u>	<u>Staff</u>
Project Development:	0	0
Ongoing Operating:	0	0
One-Time Startup:	0	0
<b>Totals:</b>	<b>0</b>	<b>0</b>

**Additional Information / Prior Funding History:**

One position in DNR has been funded in recent years to support the state's navigability program. This position reviews BLM navigability determinations, reviews federal land transfers to ensure state owned navigable waters are excluded, responds to state agency and public inquiries concerning navigable waters, and maintains the state's navigability records. This position would assist in the Recordable Disclaimers project.

**Project Description/Justification:**

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 Under federal law, if waters are determined navigable, this automatically means (unless they were withdrawn before Statehood) that the state owns their beds.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. Only thirteen waterbodies in Alaska have navigability determinations that are endorsed by federal courts, out of thousands of rivers and streams and perhaps hundreds of thousands of lakes.

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 BLM to apply these criteria and to re-determine decisions made before these court decisions. Litigating each water body by filing Quiet Title Actions against the federal government would be too slow and costly.

In January 2003, the United States Department of Interior adopted a revised regulation that allows states to file requests for "Recordable Disclaimers of Interest" to resolve land title issues with the federal government. This regulation allows the

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Federal Government to disclaim ownership of state owned navigable waters. The state needs to seize this opportunity to resolve the issue of ownership of navigable waters. The first application was submitted by the state on February 14, 2003, for the Black River, a tributary of the Porcupine River in eastern Alaska. With this funding, applications could be filed for several hundred additional rivers within the next year. These would primarily be applications for rivers that BLM has determined navigable. In future years, the CIP would fund research that would identify hundreds of additional streams that are navigable and the state could file applications for recordable disclaimers.

This CIP will allow the state to research navigability determinations, identify navigable waters under criteria set by law, coordinate with other landowners on assertions, and work to improve state-federal coordination on making navigability determinations and decisions concerning title to submerged lands.

### **Why is this Project Needed Now:**

As noted above, the US Department of Interior adopted regulations in January 2003 that allows the state to file applications for Recordable Disclaimers for navigable waters. The Department of Interior has encouraged the state to submit applications to clear its land title to navigable waters. The state needs to seize this opportunity to help resolve this issue. DNR, ADFG, and Law are not funded to prepare recordable disclaimers, we have been able to temporarily re-assign some staff to make initial filings.

### **Specific Spending Detail:**

#### Line Item Expenditures –

Personal Services \$161,000  
Travel \$3,000  
Contractual Services \$15,700  
Supplies \$3,000  
Equipment \$6,000

#### Line Item Detail Description:

*Personal Services* – Staff would include a Natural Resource Manager I (project manager - \$64.0), 1 existing Natural Resource Specialist (NRS) II, 1 Natural Resource Technician (NRT) (\$42.0), and one Cartographer II (\$55.0) to perform mapping and web site services. The NRS II position is the one existing DNR staff assigned to the Navigability Program and is not included in this budget. An existing ADF&G position would provide additional support.

*Travel* – includes trips to Fairbanks and other communities for research

*Contractual Services* –includes office space rental, printing, mailings, etc.

*Supplies* –office supplies

*Equipment* –includes one time costs for computers and office furniture

### **Project Support:**

State residents, fish and wildlife users, resource industries (particularly mining, oil and gas, Alaska Outdoor Council)

### **Project Opposition:**

None known, project will be monitored very closely by Native Corporations, environmental groups, and private landowners.