

**State of Alaska**  
**FY2004 Governor's Operating Budget**

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

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

**Contact: Nancy Welch, Deputy Director**

**Tel:** (907) 269-8501 **Fax:** (907) 269-8904 **E-mail:** nancywe@dnr.state.ak.us

### 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 FY2003 – 2004

**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.

**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. Only thirteen waterbodies in Alaska have had navigability determinations that have been endorsed by federal courts, out of thousands of rivers and streams and an estimated 1 million 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 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. The legislation expects the federal government to also join to make it a joint state-federal commission. Companion legislation to that effect is now working its way through Congress. An FY 04 CIP would fund the department to staff the commission to resolve navigability issues. This appears to be a one-time opportunity to solve a lingering, difficult issue for many waterbodies in the state.

## Major Component Accomplishments in 2002

### 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. Updated mapped and tabular data. Made data available for public and agency use.
4. 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

**RS 2477/Navigability Assertions and Litigation Support  
Component Financial Summary**

*All dollars in thousands*

	<b>FY2002 Actuals</b>	<b>FY2003 Authorized</b>	<b>FY2004 Governor</b>
<b>Non-Formula Program:</b>			
<b>Component Expenditures:</b>			
71000 Personal Services	0.0	92.0	92.0
72000 Travel	0.0	10.0	10.0
73000 Contractual	111.7	8.0	8.0
74000 Supplies	0.0	5.0	5.0
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
<b>Expenditure Totals</b>	<b>111.7</b>	<b>115.0</b>	<b>115.0</b>
<b>Funding Sources:</b>			
1004 General Fund Receipts	111.7	115.0	115.0
<b>Funding Totals</b>	<b>111.7</b>	<b>115.0</b>	<b>115.0</b>

**RS 2477/Navigability Assertions and Litigation Support**  
**Proposed Changes in Levels of Service for FY2004**

No service changes anticipated.

**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>
<b>FY2003 Authorized</b>	115.0	0.0	0.0	115.0
<b>FY2004 Governor</b>	115.0	0.0	0.0	115.0

**RS 2477/Navigability Assertions and Litigation Support**

**Personal Services Information**

	Authorized Positions		Personal Services Costs	
	<u>FY2003</u> <u>Authorized</u>	<u>FY2004</u> <u>Governor</u>		
Full-time	1	1	Annual Salaries	68,165
Part-time	0	0	Premium Pay	1,694
Nonpermanent	0	0	Annual Benefits	24,583
			<i>Less 2.59% Vacancy Factor</i>	(2,442)
			Lump Sum Premium Pay	0
<b>Totals</b>	<b>1</b>	<b>1</b>	<b>Total Personal Services</b>	<b>92,000</b>

**Position Classification Summary**

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Natural Resource Spec II	1	0	0	0	1
<b>Totals</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>