

**State of Alaska**  
**FY2005 Governor's Operating Budget**

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

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**Component: RS 2477/Navigability Assertions and Litigation Support****Contribution to Department's Mission**

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

In FY 05, DNR will expand its effort to assert navigable waters through the federal Recordable Disclaimer of Interest process. If RS 2477 assertions are pursued through the courts, DNR (and the Attorney General's office) will require additional appropriations to support this effort.

**Core Services****NAVIGABILITY**

This component funds on-going activities associated with the navigability program, including making navigability determinations for state conveyances and projects on state lands; providing information to the public and agencies regarding on the location and public rights to navigable and public waters; does research and other work to support state litigation asserting state ownership; maintains and updates data base, files and maps of state owned navigable waters; and reviews federal decisions and plans to assure that state ownership of waterbodies and public use are protected. In 2005, this component will also include preparing and filing applications with the BLM for Recordable Disclaimers of Interest for navigable waters (see description below).

The state owns the bed of most navigable waters in Alaska. However, there is no easy method to determine what water bodies are navigable and therefore owned by the state, and there is no easy method to settle title disputes concerning navigable waters. Until 2003, the only method to resolve this question was for the state to file Quiet Title action in the courts, usually against the federal government. As a result, the legally certified title has only been acquired on 13 waterbodies statewide.

**Recordable Disclaimers of Interest.** In January 2003, the Department of Interior adopted new regulations that allow BLM to issue Recordable Disclaimers of Interest for navigable waters. The state must submit applications to the BLM. The state applied for such determinations on 14 rivers and 8 lakes in 2003. The department, working with support from the Department of Fish and Game (ADF&G) and the Attorney General's office, intends to file on 25-50 additional waterbodies in FY 04. This effort is under funded through this budget component.

In FY 05, DNR anticipates filling applications for Recordable Disclaimers on an additional 25 to 75 waterbodies. To prepare these applications, DNR will be required to conduct extensive research into the historical use, hydrology, and land status of each waterbody. Maps and a legal description must be prepared for each waterbody. Finally, once an application is submitted to the Department of Interior, DNR and ADFG staff must respond to requests for additional information from BLM and respond to numerous public inquiries about the applications. DNR must also pay for BLM's processing costs and publish and pay for public notices.

The number of waterbodies that the state will apply for will depend on several factors, including: 1) what information is found to be available to support future applications, if data is not readily available fewer applications will be filed as staff will need to conduct more research; 2) the complexity of the waterbody, for example, preparing the map and legal description for the Yukon River will be time consuming due to the length of the river; 3) the relative degree of cooperation the state receives from the Department of Interior; and 4) the level of controversy associated with the state's applications.

**RS2477**

This component includes \$40,000 to fund DNR's ongoing activities associated with RS2477 research, management and litigation. Since 1992 (when DNR received a CIP to research RS 2477s), the Division of Mining, Land and Water has researched more than 1900 routes, identified approximately 649 routes as routes qualifying as RS2477s. In FY 05, DNR will continue to research into specific RS 2477s, will provide litigation support to the Attorney General's office, will maintain RS 2477 databases, will respond to public and agency requests for information about RS 2477s, research

easement vacation requests, and provide public information on RS 2477s.

RS 2477 trail management will be done primarily as part of the Division's ROW and easement programs. If RS 2477 assertions are pursued through the courts, DNR (and the Attorney General's office) will require additional appropriations to support this effort.

<b>FY2005 Resources Allocated to Achieve Results</b>		
<b>FY2005 Component Budget: \$266,300</b>	<b>Personnel:</b>	
	Full time	1
	Part time	0
	<b>Total</b>	<b>1</b>

### Key Component Challenges

**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 navigability determinations that have been endorsed by federal courts, out of thousands of rivers and streams and 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 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.

Until 2003, the only method to resolve ownership of waterbodies was through Quiet Title action in the courts, usually against the federal government. In 2003, the Department of Interior adopted new regulations that allow BLM to issue Recordable Disclaimers of Interest for navigable waters. The state applied for such determinations on 14 rivers and 8 lakes in 2003. In October 2003, BLM issued the first ever of these Disclaimers to the state for the Black River in NE Alaska.

The department intends to pursue additional applications for Recordable Disclaimers of Interest for navigable waters.

**RS 2477 Management.** The RS 2477 program in general is an ever-increasing and inadequately funded workload. Conflicts among users and landowners of the more than 650 known RS 2477 rights of way absorb staff time to resolve. In addition, the law requires that DNR use great care in vacating an RS 2477 right of way (including most section line easements). In practice, this often involves lengthy interviews with landowners, surveyors, and other interested parties to determine whether evidence indicates that a public right exists, how certain the physical location is, whether a survey needs to be performed, and whether the owners need a realignment of the right-of-way (on their property) or to vacate the easement altogether. The vast majority of state time resolves problems for individual landowners, but has little ultimate effect on providing access for the development of state resources.

**RS 2477 Assertions.** DNR is not currently funded adequately to assert RS 2477 claims with the federal government. The FY 04 appropriation to RS 2477 (\$40,000) is not anywhere near sufficient to fund an actual assertion through the federal courts, which would require a budget of over \$100,000 to DNR for research, survey, mapping, and other documentation of the route and at least \$500,000 to the Attorney General's office. The legislature may fund assertions of RS 2477 through specific appropriations or through funding from Section 62 of the CIP described below.

**Potential Legal Impediments to Navigable Waters and RS 2477 Assertions.** RS 2477 and Recordable Disclaimers of Interest (RDI) are contentious issues at the national political level. As noted above, the state intends to use the RDI process to assert ownership of navigable waters and RS 2477. In late 2003 the US Congress is considering, but is not expected to pass, legislation that would significantly limit BLM's ability to issue RDIs for navigable waters or RS 2477 in

Alaska. Nationally, various interest groups are threatening the Department of Interior with lawsuits that could, at least temporarily, limit the effectiveness of RDI applications, particularly for RS 2477s. As noted above, BLM recently issued the state a RDI for the Black River, and certain groups may appeal that decision. Litigation could also limit the effectiveness of any efforts to work with the Department of Interior to make progress on either of these issues. Any of these factors could result in the need to redirect the state's efforts on these issues.

## Significant Changes in Results to be Delivered in FY2005

The navigability and RS 2477 program funded by the operating budget will not be significantly changed, except that the Navigability staff position funded under this program will also participate in the Recordable Disclaimers project described below.

In FY 04 and 05, the legislature provided funding through Legislative Budget and Audit (LB&A) for DNR to increase assertions of state ownership of navigable waters and RS 2477. This special appropriation from the legislature is in Section 62(b) of Ch. 82, SLA 2003. This LB&A funding is for agreements with DNR and ADF&G to increase assertions of navigable waters and RS 2477 through the federal Recordable Disclaimer of Interest process or federal courts, rather than management, public information, or making navigability determinations.

## Major Component Accomplishments in 2003

### RS 2477

1. Worked with the Attorney General's Office, the Governor's Office and the Department of Fish and Game to develop a draft of an MOU with the Department of Interior to process applications for 14 RS 2477s. The Governor submitted the Draft MOU to the Secretary of Interior in July, where it is under consideration
2. Extensively researched the McCarthy-Green Butte RS 2477 in Wrangell-St. Elias National Park in response to a controversy regarding use of this trail. Conducted public meeting on this issue in McCarthy.
3. Reviewed all land conveyances for RS2477 conflicts.
4. Updated mapped and tabular data on RS 2477. Made revised data available for public and agency use.
5. Reviewed requests for easement vacations to ensure viable alternative access is provided.

### Navigability

1. Filed application with US BLM for a Recordable Disclaimer of Interest (RDI) on the Black River (in NE Alaska). This was the first application filed in the nation under revised federal regulations that allowed states to file for Recordable Disclaimers on navigable waters and RS 2477 trails. The RDI for most of what the state applied for was issued in October 2003.
2. Prepared RDI applications for an additional 10 rivers and 8 lakes, all but one of these was filed with BLM in July 2003.
3. Issued navigability determinations for various bridge, road, and other development projects and made navigability determinations for state land conveyances to municipalities and private parties.
4. Reviewed and responded to BLM navigability determinations and proposed BLM land conveyances.
5. Assisted the Attorney General's Office in research related to administrative appeals and litigation regarding navigable waters
6. Provided information to agencies and the public on the navigability of waterbodies. Responded to requests submitted by phone, e-mail, navigability website, letters, etc.

## Statutory and Regulatory Authority

AS 19.30.400  
AS 38.05  
11 AAC 51

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

*All dollars shown in thousands*

	FY2003 Actuals	FY2004 Authorized	FY2005 Governor
<b>Non-Formula Program:</b>			
<b>Component Expenditures:</b>			
71000 Personal Services	92.3	93.3	243.3
72000 Travel	1.1	10.0	10.0
73000 Contractual	16.7	8.0	8.0
74000 Supplies	1.1	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>111.2</b>	<b>116.3</b>	<b>266.3</b>
<b>Funding Sources:</b>			
1004 General Fund Receipts	111.2	116.3	116.3
1007 Inter-Agency Receipts	0.0	0.0	150.0
<b>Funding Totals</b>	<b>111.2</b>	<b>116.3</b>	<b>266.3</b>

**Estimated Revenue Collections**

Description	Master Revenue Account	FY2003 Actuals	FY2004 Authorized	FY2005 Governor
<b>Unrestricted Revenues</b>				
None.		0.0	0.0	0.0
<b>Unrestricted Total</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>Restricted Revenues</b>				
Interagency Receipts	51015	0.0	0.0	150.0
<b>Restricted Total</b>		<b>0.0</b>	<b>0.0</b>	<b>150.0</b>
<b>Total Estimated Revenues</b>		<b>0.0</b>	<b>0.0</b>	<b>150.0</b>

**Summary of Component Budget Changes  
From FY2004 Authorized to FY2005 Governor**

*All dollars shown in thousands*

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
<b>FY2004 Authorized</b>	<b>116.3</b>	<b>0.0</b>	<b>0.0</b>	<b>116.3</b>
<b>Proposed budget increases:</b>				
-Navigable Waters and RS2477	0.0	0.0	150.0	150.0
Trails and Easements with LB&A				
<b>FY2005 Governor</b>	<b>116.3</b>	<b>0.0</b>	<b>150.0</b>	<b>266.3</b>

**RS 2477/Navigability Assertions and Litigation Support  
Personal Services Information**

<b>Authorized Positions</b>		<b>Personal Services Costs</b>		
	<b>FY2004 Authorized</b>	<b>FY2005 Governor</b>		
Full-time	1	1	Annual Salaries	177,182
Part-time	0	0	Premium Pay	1,694
Nonpermanent	0	3	Annual Benefits	67,149
			<i>Less 1.11% Vacancy Factor</i>	<i>(2,725)</i>
			Lump Sum Premium Pay	0
<b>Totals</b>	<b>1</b>	<b>4</b>	<b>Total Personal Services</b>	<b>243,300</b>

**Position Classification Summary**

<b>Job Class Title</b>	<b>Anchorage</b>	<b>Fairbanks</b>	<b>Juneau</b>	<b>Others</b>	<b>Total</b>
Natural Resource Mgr I	1	0	0	0	1
Natural Resource Spec I	2	0	0	0	2
Natural Resource Spec II	1	0	0	0	1
<b>Totals</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>