

**State of Alaska
FY2006 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**Contribution to Department's Mission**

To defend and assert the State's ownership and rights to navigable and public waters and to trails established under federal Revised Statute (RS) 2477, thereby allowing access for economic development and use of the state's land and resources.

In FY06, DNR will continue to assert state ownership of navigable waters through the federal Recordable Disclaimer of Interest process. In FY06, DNR will also support the Attorney General's Office in litigation (Quiet Title) against the federal government to secure state ownership of three RS 2477 trails in Northern Alaska.

Core Services**NAVIGABILITY**

This component funds three closely related projects: 1) ongoing identification and assertions of navigable waters and public rights to navigable and public waters; 2) a one-and-a-half year project to catalog navigable waters as called for in SB 305; and 3) applications to the US Bureau of Land Management (BLM) for Recordable Disclaimers of Interest for navigable waters.

All three programs are part of the state's effort to identify and assert state ownership of navigable waters. 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. Quiet Title has been established for only 13 waterbodies statewide.

The on-going activities associated with the navigability program include: making navigability determinations for state conveyances and projects on state lands; providing information to the public and agencies regarding the location and public rights to navigable and public waters; researching and other work to support litigation asserting state ownership; maintaining and updating data bases, files and maps of state owned navigable waters; and reviewing federal plans to assure that state ownership of waterbodies and public use are protected.

In 2004, the legislature (through Senate Bill 305) directed and funded DNR to identify and prepare maps of waters already determined navigable by the state or federal government. This effort was intended to take one-and-a-half years and started mid FY05. DNR will continue this project in FY06.

In 2006, this component includes researching, preparing and filing applications with the Bureau of Land Management (BLM) for Recordable Disclaimers of Interest for navigable waters (see description below). This effort is partially funded through federal funds provide from the BLM.

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 16 rivers and 10 lakes in FY04. As of November 2004, the BLM had issued disclaimers for six rivers and two lakes, including Lake Iliamna, the largest lake in Alaska. DNR, working with the Department of Fish and Game (ADF&G) and the Attorney General's office, intends to file on 25-50 additional waterbodies in FY05. This effort is under funded through this budget component.

In FY06, DNR anticipates filling applications for Recordable Disclaimers on an additional 25 to 50 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 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.

Starting in FY05, the BLM has provided DNR with funding for research to support the state's applications. This funding was not anticipated when the FY05 budget was approved by the legislature, but is included in the FY06 budget.

RS2477

This component includes \$120,000 to continue research, mapping, and field work to support litigation with the federal government and \$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 FY06, DNR will continue to research into specific RS 2477s, will provide litigation support to the Attorney General's office, will maintain RS 2477 databases, and will respond to public and agency requests for information about RS 2477s.

RS 2477 trail management, including researching easement vacation requests, is funded through and will be done primarily as part of the Division's ROW and easement programs.

FY2006 Resources Allocated to Achieve Results		
FY2006 Component Budget: \$394,100	Personnel:	
	Full time	2
	Part time	0
	Total	2

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 16 rivers and 10 lakes in FY04. In October 2003, BLM issued the first ever of these Disclaimers to the state for the Black River in NE Alaska, and has subsequently issued disclaimers for three additional rivers and two lakes.

The department will continue pursuing 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. This ongoing management is not funded by this component and is inadequately funded in the other components.

RS 2477 Assertions. In FY05, DNR began research necessary to support the state's Quiet title assertion to establish state ownership of three RS 2477. The FY05 effort was funded through Section 62 of the FY04 CIP. To continue this effort in FY05, DNR is requesting an additional \$120,000 to support the Attorney General's office in this litigation and on other possible RS 2477 legal actions. DNR's existing RS 2477 appropriation (\$40,000) is not anywhere near sufficient to fund an actual assertion through the federal courts.

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 considered legislation that would significantly limit BLM's ability to issue RDIs for navigable waters. Secretary of Interior Norton has specifically rejected the state's request to apply the RDI process to RS 2477 routes in Alaska. Litigation could also limit the effectiveness of any efforts to work with the Department of Interior to make progress on navigable waters 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 FY2006

DNR is requesting additional funding to support RS 2477 litigation and authority to receive additional federal funds to support the navigability program in FY06. As a result of the increased funding for RS 2477, DNR and the Attorney General's office intend to advance litigation for three RS 2477 routes in the Coldfoot and Chandalar Lake area of northern Alaska. Regarding the navigability program, DNR anticipates filing additional applications for Recordable Disclaimers of Interest (RDI) for 25-50 additional waterbodies and to receive from BLM RDIs for 10-20 water bodies.

Major Component Accomplishments in 2004

RS 2477

1. Conducted extensive research on more than 20 RS 2477 routes to identify candidates for pursuing through Quiet Title against the federal government. Selected three routes in the Coldfoot and Chandalar Lake area for assertions in court through Quiet Title.
2. Researched several other RS 2477 routes where access issues and problems surfaced, including two routes in the McCarthy area of Wrangell-St.Elias National Park that were subject to court actions between the federal government and private individuals.
3. Reviewed all state and federal land conveyances for RS 2477 conflicts.
4. Reviewed requests for RS 2477 easement vacations to ensure viable alternative access is provided.

Navigability

1. Filed application with US BLM for a Recordable Disclaimer of Interest (RDI) for 16 rivers and 10 lakes in FY 04. As of November 2004, the BLM had issued disclaimers for six rivers and two lakes, including Lake Iliamna, the largest lake in Alaska.
2. Paid BLM processing costs for the initial RDI applications (over \$4000 per application).
3. Worked with BLM to develop a process for submitting and processing RDI applications. This is the first such process in the nation where the federal government and a state are resolving ownership of navigable waters through use of Recordable Disclaimers.
4. Issued navigability determinations for various bridge, road, and other development projects and made navigability determinations for state land conveyances to municipalities and private parties.
5. Reviewed and responded to BLM navigability determinations and proposed BLM land conveyances.
6. Assisted the Attorney General's Office in research related to administrative appeals and litigation regarding navigable waters
7. 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

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

All dollars shown in thousands

	FY2004 Actuals	FY2005 Management Plan	FY2006 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	95.8	293.4	201.9
72000 Travel	3.9	14.7	19.7
73000 Services	7.0	124.5	159.5
74000 Commodities	0.7	20.0	13.0
75000 Capital Outlay	0.0	0.0	0.0
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	107.4	452.6	394.1
Funding Sources:			
1004 General Fund Receipts	103.4	302.6	394.1
1007 Inter-Agency Receipts	4.0	150.0	0.0
Funding Totals	107.4	452.6	394.1

Estimated Revenue Collections

Description	Master Revenue Account	FY2004 Actuals	FY2005 Managem ent Plan	FY2006 Governor
Unrestricted Revenues				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
Restricted Revenues				
Interagency Receipts	51015	4.0	150.0	0.0
Restricted Total		4.0	150.0	0.0
Total Estimated Revenues		4.0	150.0	0.0

**Summary of Component Budget Changes
From FY2005 Management Plan to FY2006 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2005 Management Plan	302.6	0.0	150.0	452.6
Adjustments which will continue current level of service:				
-FY 05 Bargaining Unit Contract Terms: GGU	1.5	0.0	1.4	2.9
-FY06 Cost Increases for Bargaining Units and Non-Covered Employees	9.0	0.0	0.0	9.0
Proposed budget decreases:				
-Second Year Fiscal Note: Asserting State Title to Submerged Lands CH42 SLA2004 SB305	-39.0	0.0	0.0	-39.0
-Eliminate I/A Receipt Authority	0.0	0.0	-151.4	-151.4
Proposed budget increases:				
-Provide support to the Attorney General's Office on Navigable Waters and RS2477	120.0	0.0	0.0	120.0
FY2006 Governor	394.1	0.0	0.0	394.1

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

Authorized Positions		Personal Services Costs		
	<u>FY2005</u>	<u>FY2006</u>		
	<u>Management</u>	<u>Governor</u>		
	<u>Plan</u>			
Full-time	2	2	Annual Salaries	140,906
Part-time	0	0	COLA	2,298
Nonpermanent	3	2	Premium Pay	0
			Annual Benefits	70,447
			<i>Less 2.83% Vacancy Factor</i>	(6,051)
			Lump Sum Premium Pay	0
Totals	5	4	Total Personal Services	207,600

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Natural Resource Spec I	1	0	0	0	1
Natural Resource Spec II	1	0	0	0	1
Natural Resource Spec III	0	1	0	0	1
Natural Resource Tech I	1	0	0	0	1
Totals	3	1	0	0	4