

State of Alaska FY2010 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

Protect public access across rights-of-way initially established on federal land as per Revised Statute 2477 from the Mining Act of 1866

Core Services

- Identify routes that appear to qualify as public rights-of-way under Revised Statute 2477 from the Mining Act of 1866 (RS 2477)
- Defend public access on RS 2477 rights-of-way across non-state-owned land
- Defend and clarify title of submerged land under navigable water bodies
- Maintain and update databases, files, and maps of State-owned navigable waters
- Provide research and technical support for the Department of Law when resolving title defense issues through litigation
- Defend legal access to state lands

FY2010 Resources Allocated to Achieve Results

FY2010 Component Budget: \$348,000

Personnel:

Full time	1
Part time	0
Total	1

Key Component Challenges

Navigability

The issue of navigability (for title purposes) determines who owns and thereby manages the land under water bodies in Alaska. Under federal law, if waters are determined to be navigable at statehood, this generally means (unless they were withdrawn before Statehood) that the State owns the submerged lands and riverbeds. Navigability determinations have not been made on a significant amount of water bodies.

The State achieved a series of favorable court decisions on criteria for determining the navigability of Alaskan rivers. However, BLM has inconsistently applied these criteria when re-assessing determinations made before these court decisions. One of the most contentious issues exacerbated by inconsistent navigability determinations is BLM purporting to convey State owned submerged lands to certain Native Corporations. These state owned lands should have been excluded from ANCSA conveyances. Conflicts in the field are escalating in certain areas as some Native Corporations attempt to restrict public use of these rivers.

The department will continue pursuing additional applications for Recordable Disclaimers of Interest for navigable waters. The number of water bodies that the State will apply for will depend on several factors, including; 1) what information is available to support an application (if data is not readily available, fewer applications can be filed as staff will need to conduct more extensive field research for susceptibility to navigation); 2) the complexity of the water body, for example, preparing the map and legal description for the Yukon River and its tributaries will be time consuming due to the length of the river and number of tributaries; 3) the relative degree of cooperation the State receives from the Department of Interior and other affected federal agencies; 4) the level of controversy associated with the State's applications; 5) resolution of staffing retention issues within OHA or an outside contractor, and 6) demands on staff time to handle expedited Native conveyances. Controversy and delays can result from issues

raised by the public, upland landowners and federal agencies with upland ownership of lands surrounding the water bodies. This is especially true in Federal Conservation Units.

DNR, working with the Department of Fish and Game (ADF&G) and the Attorney General's office, intends to file 5 to 10 applications on many waterways in FY10, including numerous streams in the Kuskokwim Basin. These projected numbers have dropped from the previous fiscal year because of bottlenecks in completing the extensive research necessary for the applications. BLM and DNR are currently working on an improved process, which may result in more acres of disclaimed land. Additionally, BLM is currently working on a backlog of RDI applications, submitted by the State. It should also be noted, research of the upland ownership of a river, it is often determined that there is no federal ownership interest. Therefore, there is no ability to file for a disclaimer, as the BLM has already conveyed federal interest in the submerged lands or uplands.

Navigable Water Mapping

This effort was originally anticipated to take one-and-a-half years and started in mid FY05. DNR initially experienced ongoing difficulty with high turnover and recruitment of staff with the technical skills necessary to complete this project. However, in FY 08 significant progress was made on a database of hydrologic information, which is necessary for the publishing of a user friendly, interactive mapping web site. (see www.dnr.state.ak.us/mlw/nav/map/_disclaimer.htm)

Priority water bodies such as those with Notices of Quiet Title Action, water bodies that are adjudicated by the courts as navigable, and other priority water bodies that have current controversies surrounding them are now mapped. However, statewide there is 806,124 miles of rivers, of which 69,863 miles are mapped. Additionally, there are 29,916,431 acres of lakes, of which 5,062,285 are mapped. Where there are no determinations, hydrological and historical research is performed for each water body. This mapping effort is extensive and will continue to require updates and revisions as more RDIs and conveyances are completed.

RS 2477 Assertions

Since 1992 (when DNR received a CIP to research RS 2477s), the Division of Mining, Land and Water has researched more than 1900 routes, and identified approximately 649 routes as routes qualifying as RS2477s. DNR has reconstituted the review of trails that qualify for formal RS 2477 recognition by the legislature. However, to date, none of the 69 previously submitted nominations have been acted upon by the Legislature. Additionally, 12 previously codified RS 2477s have been found to not qualify. In FY10, DNR will continue to research specific RS 2477s, will maintain RS 2477 databases, and will respond to public and agency requests for information about RS 2477s.

As Native conveyances near completion, access corridors into isolated tracts of public lands and water will become more critical than ever. In some cases RS2477s have been identified but not recognized by either BLM or the Native Corporations. Because RS2477 assertions are very time consuming and expensive, and ultimately must be decided by the court, DNR is focusing its time on other ways to solidify the legal access without long legal battles. DNR will use ANCSA 17(b) easements and BLM ROW grants as alternatives when prudent rather than full quiet title actions.

Significant Changes in Results to be Delivered in FY2010

DNR published the navigability map website as promised in FY 2008. Additional attributes are being added in FY 09. In FY 10 ongoing value will be added to the map, as well as an interactive feature to enable citizens with first hand knowledge of the navigability of a river to provide that information to the State. As historical research is completed in river basins being researched for RDI applications, or hydrokinetic projects, or other determinations, the navigability status will be mapped on the web map.

Accelerated BLM 2009 Native Conveyances will also be an ever increasing focus as BLM quickens the pace on ANCSA conveyances.

Major Component Accomplishments in 2008

RS 2477/ 17(b)

1. In FY 06 the Department of Law filed Quiet Title for two routes from Coldfoot to Chandalar Lake. All settlement decree stipulations have been met in FY 08 and the case is closed
2. Researched RS 2477 rights of way for an easement application with BLM. Top candidates were eliminated by last minute priority selections by Doyon. Alternate candidates are being finalized for application.
3. Reviewed all state and federal land conveyances for RS 2477 and ANCSA Section 17(b) easement conflicts and assertions .
4. Reviewed requests for subdivision plats for RS 2477 easement conflicts to ensure viable alternative access is provided.
5. Researched historical trails with the intent to nominate to the Legislature for codification as RS 2477.

Navigability

1. Coordinated and assisted in historical navigability research on approximately 120 rivers in the Kuskokwim Basin for possible RDI application submission.
2. Issued navigability determinations for various bridge, road, and other development projects, and made navigability determinations for state land conveyances to Municipalities and private parties.
3. Reviewed and responded to BLM navigability determinations and proposed BLM land conveyances, to defend state sovereign submerged land from being erroneously conveyed.
4. Assisted the Attorney General's Office in research related to administrative appeals and litigation regarding navigable waters and 17(b) easements.
5. Provided information to the legislature, agencies and the public on the navigability of water bodies.
6. Responded to various requests submitted by phone, e-mail, navigability website and letters.
7. Challenged BLM navigability report on Chuitna River, thereby getting the BLM State Director to reconsider the Department's position.
8. Planned and conducted baseline field research on Kandik, Nation, Chuitna and Talachuitna River basins. Discovered a significant ancient archeological site, corroborating historical travel trade and commerce reports.
9. Conducted field research on Kotsina River to survey ordinary high water mark in association with Copper River access disputes and gravel extraction in the Kotsina River Delta.
10. Developed policy and litigation recommendations and prepared information packets for Interagency Navigability and Access Team (DNR, ADF&G and DOL)
11. Published a statewide navigability map on the Division's webpage.

Statutory and Regulatory Authority

AS 19.30.400
AS 38.04
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

	FY2008 Actuals	FY2009 Management Plan	FY2010 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	156.4	190.9	121.8
72000 Travel	14.0	22.7	16.7
73000 Services	103.7	373.5	202.5
74000 Commodities	19.6	7.0	7.0
75000 Capital Outlay	20.0	0.0	0.0
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	313.7	594.1	348.0
Funding Sources:			
1004 General Fund Receipts	243.8	519.9	272.3
1007 Inter-Agency Receipts	69.9	74.2	75.7
Funding Totals	313.7	594.1	348.0

Estimated Revenue Collections

Description	Master Revenue Account	FY2008 Actuals	FY2009 Management Plan	FY2010 Governor
Unrestricted Revenues				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
Restricted Revenues				
Interagency Receipts	51015	69.9	74.2	75.7
Restricted Total		69.9	74.2	75.7
Total Estimated Revenues		69.9	74.2	75.7

**Summary of Component Budget Changes
From FY2009 Management Plan to FY2010 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2009 Management Plan	519.9	0.0	74.2	594.1
Adjustments which will continue current level of service:				
-Reverse one-time item for Survey of High Priority RS2477 Trails	-100.0	0.0	0.0	-100.0
-Reverse one-time item for Land Transfer Acceleration Act Program	-150.0	0.0	0.0	-150.0
-FY2010 Wage and Health Insurance Increases for Bargaining Units with Existing Agreements	2.4	0.0	1.5	3.9
FY2010 Governor	272.3	0.0	75.7	348.0

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

Authorized Positions			Personal Services Costs	
	FY2009 Management Plan	FY2010 Governor		
Full-time	2	1	Annual Salaries	77,915
Part-time	0	0	COLA	3,143
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	43,604
			<i>Less 2.30% Vacancy Factor</i>	(2,862)
			Lump Sum Premium Pay	0
Totals	2	1	Total Personal Services	121,800

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Natural Resource Spec II	1	0	0	0	1
Totals	1	0	0	0	1