

From: [Dick Mylius](#)
To: [Sen. Click Bishop](#); [Sen. Cathy Giessel](#); [Sen. Bill Wielechowski](#); [Sen. Scott Kawasaki](#); [Sen. James Kaufman](#); [Sen. Forrest Dunbar](#); [Sen. Matt Claman](#)
Cc: james.walker2@alaska.gov
Subject: Comments to Senate Resources Committee on SB 92 – Ownership of Submerged Land
Date: Wednesday, April 12, 2023 5:15:40 AM

Dear Senate Resource Committee Members:

I offer the following comments on Senate Bill 92 - State Ownership of Submerged Land.

Before offering my comments, I wish to emphasize that I support the excellent work done by the Department of Natural Resources Public Access and Defense Unit staff and support the state's aggressive approach to resolving issues related to state ownership of navigable waters. I worked extensively on these issues during my 29-year career at DNR, including helping to establish the PAAD Unit.

My concerns are:

1) On March 29 Senate Resources amended the definition of "Federal area" to explicitly remove "land that is privately owned."

The existing statute, AS 38.04.062 requires DNR to inventory, assert and manage navigable waters regardless of upland ownership.

Significant acres of non-federal lands exist within the boundaries of federal areas, often creating a checkerboard pattern of landownership.

If DNR skips over private lands when researching waterways, the assertions of navigability will be discontinuous instead of from headwaters to the mouth. Issues concerning the public about their access rights and use of state-owned waters adjacent to private lands will increase, similar to the recent litigation regarding the state-owned Kotsina River surrounded by private lands within the boundaries of a federal area. The exclusion of "privately owned" adds confusion as to whether DNR is even authorized to defend ownership of navigable waters that flow through private lands within the boundaries of "federal areas". The exclusion needs to be deleted from the Committee Substitute.

2) The legislation acknowledges the lists are incomplete and need to be expanded to add additional federal areas, plus will need to be revised due to new information or litigation. The bill requires DNR to annually report to the legislature any added and modified navigable waters within federally owned uplands, but there is no way to ensure the legislature acts on DNR's recommendations. If the Legislature fails to make future changes, DNR's administrative list and the legislative list will not be the same, resulting in confusions because the legislated list will be static while the DNR list is continually updated. In addition, the DNR maintained maps and list are more comprehensive as they include navigable water bodies that are outside federal areas. I suggest the list be removed from the bill and the legislation adopt DNR's administrative list and maps by reference.

During both House and Senate Committee hearings, the list was compared to the listing of state asserted RS 2477 Rights of Way. The RS 2477 list was intended to be dynamic. Initially DNR submitted an annual report to the Legislature recommending updates to the RS 2477 list in statute, but the Legislature never acted to make these updates. I am concerned the same scenario will play out when DNR recommends revisions to the navigable waters list.

Thank you for considering these comments.

Sincerely,

Dick Mylius



Anchorage, AK 99508

cc: Jim Walker, DNR PAAD Unit