

**SB**

**219**

HFIN

FILE

# ALASKA STATE LEGISLATURE

## CONFLICTS CONCERNING TITLE TO SUBMERGED LANDS IN ALASKA

By: Ron Somerville, Resource Consultant  
and  
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Updated: 05/09/02

### Statehood Entitlement – Submerged Lands

Alaska became a state in 1959 and under the Equal Footing Doctrine and the Submerged Lands Act inherited title to almost 60+ million acres of submerged lands. Unfortunately, since statehood, only thirteen (13) rivers have been determined to be navigable by the federal courts. Considering the fact that Alaska contains 22,000+ potentially navigable rivers and well over 1,000,000 lakes that could qualify as navigable, it could take several life-times and billions of litigation dollars before Alaska realizes its entitlement, if at all. In addition, the passage of time weakens the state's ability to provide the factual determinations necessary to prove in a federal court that a waterbody was navigable at the time of statehood.

### Issues of State Ownership of Submerged Lands

Alaska faces two types of legal hurdles in establishing its entitlement to submerged lands. Its most critical problem is how to establish, in an efficient and timely manner, that the state's rivers and lakes are navigable. Alaska's second hurdle is to establish that the United States did not defeat the state's title to submerged lands within the federal reservations. The state's attempts to resolve these issues are thwarted by the extremely narrow interpretation the United States gives to the Quiet Title Act and by the lack of a non-judicial process to determine title.

### The Basis of the State's Claim of Title to Submerged Lands

Alaska owns the submerged lands underlying navigable waters and marine waters seaward three miles by virtue of the equal footing doctrine and the Submerged Lands Act of 1953. The equal footing doctrine dictates that new states enter the Union with all of the powers of sovereignty and jurisdiction that pertain to the original states. When a state enters the Union, it takes title to the lands underlying navigable waters and between mean high and mean low tide as a matter of constitutional right, subject only to the paramount federal power to control the waters for navigation in interstate and foreign commerce. The Submerged Lands Act conveys lands under marine waters and also includes lands underlying inland navigable waters to confirm their automatic passage under the equal footing doctrine.

For purposes of title to submerged lands, waters are navigable when they are used or susceptible of being used in their natural and ordinary condition as highways for commerce over which trade and travel may be conducted. Unfortunately, only a handful of waterways have been adjudged navigable

since Alaska's statehood, because of the unwillingness of the United States to settle navigability issues outside litigation, and because of the jurisdictional difficulties of litigation navigability against the United States.

Despite the equal footing doctrine and the Submerged Lands Act, the United States claims title to most or all of the state's submerged lands within the 25% of Alaska that the federal government had reserved before statehood. This issue is governed by *Utah Division of Lands v. United States*, 482 U.S. 193 (1987). Commonly referred to as the "Utah Lake" case. In Utah Lake, the court held that in order to establish that it retained title to submerged land within a reservation, the United States must establish (1) that Congress clearly intended to include submerged lands in the withdrawal, and (2) that Congress affirmatively intended to defeat the future state's title to submerged lands. In Utah Lake, the court found that the United States did not establish congress' intent to include the lake bed in the reservation, despite the fact that the purpose of the reservation was to preserve the lake for a reservoir.

### Navigable Waters Jurisdictional Issues

Some federal agencies have issued regulations governing activities on navigable waters flowing through federal lands. The extent of their authority to do so is unclear. In some instances the agency may have Commerce Clause authority (e.g. promulgating regulations to implement environmental laws) but the more difficult question is the scope of an agency's authority whose mandates are not directly related to water, but are tied to land management, such as the National Forest Service, National Park Service, National Fish and Wildlife Service and Bureau of Land Management. The Court of Appeals for the Eighth Circuit has held that some agencies may regulate non-public lands under the Property Clause if the activities could negatively affect the purpose of the federal reservation. In Alaska, the more common scenario is an agency restricting public access on navigable waters within a reservation, such as requiring restrictive permits to conduct commercial activities on a waterway.

### Navigability Criteria Conflicts

Where title to submerged lands is at stake, the dispositive issue is usually the navigability of the waters that overlie them. The United States Bureau of Land Management (BLM) makes navigability determinations infrequently, only for lakes less than 50 acres and rivers less than three chains (198 feet) wide, and only when it is conveying the adjacent uplands. When waterways are larger than these measurements BLM conveys the adjacent and non-submerged land without navigability determinations. Even when BLM finds a smaller waterway non-navigable, however, it maintains that the determination is relevant only to the amount of acreage it is conveying and does not reflect a federal position on title.

The greatest hurdle to overcome in the State's efforts to identify and manage navigable waters has been the long-standing differences of opinion between the State of Alaska and the United States regarding the application of the test for determining title navigability. Navigability is a question of fact, not a simple legal formula. Variations in waterbody use that result from different physical characteristics and transportation methods and needs must be taken into account. There are many legal precedents for determining navigability in other states based upon the particular facts presented in those cases.

The physical characteristics and uses of a waterbody used by the State for asserting navigability "criteria", are based upon legal principles that have been established by the federal courts. These criteria are applied to rivers, lakes, and streams throughout the State and take into account Alaska's geography, economy, customary modes of water-based transportation, and the particular physical characteristics of the waterbody under consideration.

To resolve these navigability criteria disputes, the State has actively pursued a limited number of court cases challenging particular findings of non-navigability by the federal government. Some of the important cases are:

**Gulkana River.** In this case, both in the U.S. District Court and on appeal to the U.S. Court of Appeals, the federal courts rejected the federal government's restrictive interpretation of the phrase "highway of commerce" in the title navigability test. The federal district court stated that to demonstrate navigability, it is only necessary to show that the waterbody is physically capable of "the most basic form of commercial use: the transportation of people or goods." Because the Gulkana River can be used for the transportation of people or goods, the Gulkana River was found navigable. The court of appeals found that the modern use of the Gulkana River for guided hunting, fishing, and sightseeing trips is a commercial use and, since the physical characteristics of the river have not significantly changed since 1959, provides conclusive evidence that the river was susceptible of commercial use at statehood. The court also found that modern inflatable rafts can be used to establish navigability. In 1990, the U.S. Supreme Court denied the request to review and overturn the decision and, thus, the Gulkana River precedent is now binding on all future navigability determinations in Alaska.

**Kandik and Nation Rivers.** In this administrative appeal, the State and Doyon Limited successfully established that the use or susceptibility of use of a river or stream by an 18-24 foot wooden riverboat capable of carrying at least 1,000 pounds of gear or supplies is sufficient to establish navigability. Based upon the use of these types of boats for the transportation of goods and supplies by trappers, as well as extensive historic and contemporary canoe use, the agency Board found the Kandik and Nation rivers navigable.

**Alagnak River, Nonvianuk River, Kukaklek Lake and Nonvianuk Lake.** In this federal district court case, the Alagnak River, Nonvianuk River, Kukaklek Lake and Nonvianuk Lake were all found navigable. Their primary transportation use is for commercially guided hunting, fishing, and sightseeing and for government research and management. They also serve as a means of access for local residents to their homes and to the surrounding areas for subsistence hunting and fishing.

### Difficulties Quieting Title to Submerged Lands

The State must file a Quiet Title Action in federal court to definitively resolve a dispute with the federal government regarding ownership of a navigable water body. The federal government has made it very difficult to quiet title. The Quiet Title Act provides that the United States may be named as a party defendant in a civil action "to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S. C. § 2409a(a). The United States has adopted a very narrow view

of the term "claims and interest," asserting that the federal court has no jurisdiction to hear quiet title actions against it unless the federal government actively and expressly asserts an interest in the lands. In the context of the submerged lands, this will occur only in rare circumstances.

While the Ninth Circuit Court of Appeals has decided that a federal non-navigability decision is a sufficient federal claim of interest to give the court jurisdiction under the Quiet Title Act, for these few waterways the State still may be unable to get a judgment, for the following reason. The State receives notice of a non-navigability determination when BLM issues a conveyance decision. Both because the State must give 180 days notice under the Quiet Title Act before filing a complaint, and because a preliminary injunction to prevent the conveyance is unavailable under the Quiet Title Act, the United States will likely convey the lands to a third party before the State can do anything to prevent it, and the State could arguably lose its cause of action against the United States.

Therefore, the State rarely has a viable cause of action to quiet title to submerged lands. The United States is in virtually the same position it was before the Quiet Title Act was passed: it controls when and how a court resolves title disputes. The exception to this general rule will be title disputes based on the issue of whether the United States defeated the State's right to submerged lands before statehood, where the United States has expressly taken a position.

The final legal determination of whether a water-body is navigable is a complex process requiring factual determinations that a waterway had been effectively used for commerce prior to statehood. In the States' litigation to quiet title to the Black, Kandik, and Nation Rivers in northeast Alaska, a panel for the Ninth Circuit Court of Appeals noted in January, 2000:

"There is also a serious policy concern in favor of allowing resolution of disputes based on the United States' inchoate claim to everything in Alaska but what it has disclaimed. Eventually, all the witnesses will be dead, reducing the reliability of litigation. Someone who used one of these rivers in 1959 at age 20 is now 60. The population in the area was so sparse at all relevant times – probably no more than a couple of hundred people who might have used the three rivers during the relevant time, most too young to have relevant knowledge or too old to have survived the forty years since statehood – that a few deaths by old age can remove most or all the knowledgeable witnesses. Also, a state entitled as of 1959 to all the incidents of ownership in its rivers, yet still deprived of clear title forty years later, is effectively deprived of what it is entitled to under the equal footing doctrine."

In addition, the process has become incomprehensibly complicated and expensive. A case in point is the quiet title action by the State to resolve submerged lands ownership under the Black, Kandik and Nation rivers in northeast Alaska. These three rivers clearly meet the criteria established by the federal courts for determining navigability in Alaska. Despite the fact that no one contested the State's claim that these three rivers met the federal courts criteria for determining navigability, this case took nine years and upwards of a million of state and federal dollars to litigate, eventually resulting in the State winning two of the three cases and achieving no solution on the third.

### Solutions Through Federal Legislation

- A. Changes to the Quiet Title Act.** The precise issue in dispute between the state and the United States is what should require the United States to "claim an interest" so as to trigger jurisdiction under the Quiet Title Act. A provision in the Quiet Title Act that defines this phrase broadly enough to permit the state to quiet title to its submerged lands would resolve the issue. This would require a definition that makes the existence of a legal cloud on title sufficient to constitute a federal claim of interest, so that the United States' refusal to take a position as to navigability for title purposes of waters on federal lands would give the state a cause of action in federal court.
- B. Joint State/Federal Navigable Waters Commission.** In 1971, Congress and the State of Alaska respectively created a Joint Federal/State Land Use Planning Commission for Alaska to assist in the massive land-use planning process following passage of the Alaska Native Claims Settlement Act. State legislation (SB 219 and HB 266) have been introduced by Senate President Halford in the Senate and House Speaker Brian Porter in the House to create a similar State/Federal Commission for the purpose of expediting navigability determinations and providing recommendations for ways to improve the process of making water use and navigability decisions in Alaska. Specific recommendations of the Commission concerning navigability or non-navigability may require ratification by Congress and the State Legislature.

### Examples of Navigability Complexities & Additional Information

Appendix A is a copy of the State of Alaska's August 27, 1992 notice to Secretary of the Interior, Manuel Lujan, Jr. of its intent to quiet title to submerged lands described under 194 specific water-bodies in Alaska. Similarly, Appendix B contains a copy of the official notice to Secretary of the Interior Bruce Babbitt of the State's intent to quiet title to submerged lands described under an additional 9 water-bodies.

Most of the water-bodies listed in Appendix A and Appendix B have been recognized by the Bureau of Land Management as being navigable for land conveyance purposes but have maintained that this assertion is not for title purposes. Clearly, some relief by the Courts or Congress is necessary if the state is ever to receive its statehood entitlement.

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB 219  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DNR  
Title Establishing Joint Federal and State BRU Commissioner's Office  
Navigable Waters Commission for Alaska Component Commissioner's Office  
Sponsor House Resources  
Requester House Resources Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	200.0					
<b>TOTAL OPERATING</b>	<b>200.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other-CIP Receipts-1061	200.0					
<b>TOTAL</b>	<b>200.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Legislative Finance Division Phone 465-3795  
Division \_\_\_\_\_ Date/Time 4/2/02 8:36 AM  
Approved by: \_\_\_\_\_ Date 4/2/2002  
Agency \_\_\_\_\_

107th CONGRESS

2d Session

H. R. 4587

To establish the Joint Federal and State Navigable Waters Commission for Alaska.

**IN THE HOUSE OF REPRESENTATIVES**

**APRIL 24, 2002**

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Resources

**A BILL**

To establish the Joint Federal and State Navigable Waters Commission for Alaska.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Joint Federal and State Navigable Waters Commission for Alaska'.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS- The Congress finds the following:

- (1) The efficient and orderly development of the State of Alaska will be better achieved if the Federal Government joins the State of Alaska in a carefully coordinated approach to identify ownership and jurisdictional interests in land and waters.
- (2) Alaska has abundant water resources that are invaluable to State residents and all citizens of the United States.
- (3) Because of the massive number of navigable waterways and other bodies of water in the State of Alaska, the task of resolving submerged land ownership and navigable water determinations has been very slow, counter-productive from an orderly resource management standpoint, and costly as the State, private landowners, and the Federal Government attempt to initiate long-range planning processes.

(b) PURPOSES- The purposes of this Act are the following:

- (1) Expedite the process of quieting legitimate title to the submerged lands in the State of Alaska.
- (2) Facilitate determinations for purposes of the Submerged Lands Act (43 U.S.C. 1301 et seq.), to the extent possible, which bodies of water in Alaska are navigable waters and which such bodies of water are not navigable waters.
- (3) Recommend to the State of Alaska and the Federal Government--
  - (A) ways to improve the process of making water use and navigability decisions; and
  - (B) ways to fairly and expeditiously quiet title to the State's submerged lands.

### **SEC. 3. ESTABLISHMENT.**

There is established a commission to be known as the 'Joint Federal and State Navigable Waters Commission for Alaska' (in this Act referred to as the 'Commission').

### **SEC. 4. DUTIES OF THE COMMISSION.**

The Commission shall--

- (1) make recommendations to the Secretary of the Interior and the State of Alaska regarding determination of bodies of water in the State that are navigable waters for purposes of the Submerged Lands Act (43 U.S.C. 1301 et seq.);
- (2) establish a process for employing established standards to facilitate making such recommendations and determinations;
- (3) develop procedures for involving private landowners, including Alaska Native corporations and the general public, in that process;
- (4) for purposes of making such recommendations, undertake a process to identify navigable waters in Alaska pursuant to established standards and criteria; and
- (5) make recommendations to improve coordination and consultation between the government of the State of Alaska and the Federal Government regarding navigability determinations and decisions concerning title to submerged lands.

### **SEC. 5. MEMBERSHIP.**

(a) NUMBER AND APPOINTMENT-

(1) **IN GENERAL**- The Commission shall be composed of 10 members, of which 5 shall be Federal members appointed under subsection (b) and 5 shall be State members appointed under subsection (c).

(2) **APPOINTMENT DEADLINE**- Initial appointments under this section shall be made not later than 60 days after the date of enactment of this Act.

(b) **FEDERAL MEMBERS**- The 5 Federal members shall consist of--

(1) 1 member appointed by the President of the United States;

(2) 1 member appointed by each of the three members of the Congress who represent the State of Alaska; and

(3) 1 member appointed by the Secretary of the Interior.

(c) **STATE MEMBERS**- The 5 State members shall consist of--

(1) the Governor of the State of Alaska or the Governor's designee;

(2) 2 members appointed by the Governor of the State of Alaska, of whom 1 shall be an Alaska Native (as that term is defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.));

(3) 1 member appointed by the President of the Alaska Senate; and

(4) 1 member appointed by the Speaker of the Alaska House of Representatives.

Each of State members shall serve at the pleasure of the appointing authority for that member.

(d) **INELIGIBILITY FOR APPOINTMENT**- Members of Congress shall be ineligible for appointment to the Commission.

(e) **CO-CHAIRS**- The member appointed by the President of the United States and the Governor or Governor's designee shall serve as co-chairs of the Commission.

(f) **INITIAL MEETING**- The initial meeting of the Commission shall be called by the co-chairs.

(g) **TERM OF APPOINTMENT**-

(1) **IN GENERAL**- Subject to paragraph (2), members of the Commission shall be appointed for the life of the Commission.

(2) **EARLY TERMINATION OF APPOINTMENT**- (A) Membership of a member of the Commission shall terminate if the member is--

(i) an individual who is an officer or employee of a government body and who ceases to serve as such an officer or employee; or

(ii) an individual who is not an officer or employee of a government and who becomes an officer or employee of a government.

(B) Termination of an individual's membership pursuant to subparagraph (A)(i) or (ii) shall take effect on the expiration of the 90-day period beginning on the date such member ceases to be such an officer or employee of such government, or becomes an officer or employee of a government, respectively.

(h) QUORUM- 3 Federal members and 3 State members of the Commission shall constitute a quorum, but a lesser number may conduct meetings. All decisions of the Commission shall require concurrence by at least 3 State members and 3 Federal members of the Commission.

(i) VACANCY- A vacancy in the membership of the commission--

(1) shall not affect the powers of the Commission to meet or conduct business, subject to subsection (h); and

(2) shall be filled in the same manner in which the original appointment was made, by the same appointing authority.

## **SEC. 6. COMPENSATION OF THE COMMISSION.**

(a) PAY FOR FEDERAL MEMBERS OF THE COMMISSION-

(1) NONGOVERNMENT EMPLOYEES- Each Federal member of the Commission who is not otherwise an officer or employee of the Federal Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.

(2) GOVERNMENT EMPLOYEES- A member of the Commission who is an officer or employee of either the government of the State of Alaska or the Federal Government shall serve without additional pay or benefits for service as a member of the Commission.

(b) TRAVEL EXPENSES- Federal members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code. State members of the Commission are entitled to per diem and travel expenses as authorized under pertinent laws of the State of Alaska.

## **SEC. 7. POWERS OF THE COMMISSION.**

(a) HEARINGS AND MEETINGS- The Commission or, on the authorization of the Commission, any subcommittee or member of the Commission may, for the purposes

of carrying out its duties, hold hearings, take testimony, receive evidence, print or otherwise reproduce and distribute all or part of commission proceedings and reports, and sit and act at those times and places as the Commission, subcommittee, or members consider desirable.

(b) **INFORMATION FOR THE COMMISSION-** The Commission may obtain directly from any executive agency (as defined in section 105 of title 5 of the United States Code) or court information necessary to enable it to carry out its duties under this Act. On the request of either co-chair of the Commission, and consistent with applicable law, the head of an executive agency or of a Federal court shall provide such information to the Commission.

(c) **POWERS OF MEMBERS AND AGENTS-** Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(d) **VOLUNTEER SERVICES-** The Commission may accept volunteer services for the purpose of aiding or facilitating the work of the Commission.

(e) **MAILS-** The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) **ADMINISTRATIVE SUPPORT SERVICES-** Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act.

(g) **CONTRACT AUTHORITY-** To the extent or in the amounts provided in advance in appropriation Acts, the Commission may contract with and compensate government and private agencies or persons for property or services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

## **SEC. 8. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.**

(a) **STAFF-** Subject to rules prescribed by the Commission, the co-chairs may appoint and fix the pay of personnel as they consider appropriate.

(b) **APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS-** The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for GS-15 of the General Schedule.

(c) **EXPERTS AND CONSULTANTS-** Subject to rules prescribed by the Commission, the co-chairs may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to

exceed the daily equivalent of the maximum annual rate of basic pay for GS-15 of the General Schedule.

(d) **STAFF OF FEDERAL AGENCIES-** Upon request of the co-chairs, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

#### **SEC. 9. RELATIONSHIP TO OTHER LAW.**

The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the Commission.

#### **SEC. 10. REPORTS.**

(a) **ANNUAL REPORT-** Not later than January 31 of each year, the Commission shall submit to the President of the United States, the Congress, the Governor of the State of Alaska, and the legislature of the State of Alaska a written report describing its activities during the preceding year.

(b) **FINAL REPORT-** The Commission shall submit a final comprehensive report to the officials and entities referred to in subsection (a) at least 10 days before the date the Commission terminates.

#### **SEC. 11. TERMINATION OF THE COMMISSION.**

The Commission is terminated 2 years after the date of completion of appointment of all members of the Commission.



Official Business

**Alaska State Legislature**  
**President of the Senate**

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**SPONSOR STATEMENT**

**SENATE BILL NO. 219**

**ESTABLISHING A STATE NAVIGABLE WATERS COMMISSION FOR ALASKA**

Senate Bill No. 219 is designed to highlight a major long-term crisis facing the state and to provide a public forum to discuss possible solutions. This legislation promotes the establishment of a State Navigable Waters Commission for Alaska. A joint Commission would become a reality if Congress provides the same authorization in federal law. The State Commission would continue to fulfill its mission, however, even if Congress does not authorize a joint Commission.

This Commission is patterned after the Joint Federal-State Land Use Planning Commission for Alaska created in federal law within the Alaska Native Claims Settlement Act (1971). Corresponding state legislation was created in Chapter 40 early in 1972.

The purpose of this Commission is not as broad as the mission given to the Land Use Planning Commission. The Navigable Waters Commission is designed specifically to address the major water related problem facing the state – particularly the determination of navigability and the resolution of title to submerged lands within the state.

At statehood in 1959, Alaska – like all new states under the Submerged Lands Act – received title to all submerged lands underlying state navigable waters and marine waters out to three miles. Thus the issue of navigability is critical for the state to quiet title to its rightful interest in those lands.

Since statehood, the federal government has been slow to concede any navigability determinations, and therefore, Alaska has received valid title to very little submerged land. In some cases, the federal government has utilized every possible legal tactic under the Quiet Title Act to impede the state's assertion of ownership. A case in point is the quiet title action by the state of Alaska to resolve submerged lands ownership under the Black, Kandig and Nation Rivers in northeast Alaska. These three Rivers clearly meet the criteria established by the federal courts for determining navigability in Alaska.

Despite the fact that no one contested the state's claim that these streams met the federal courts criteria for determining navigability, this case took nine years and millions of state and federal dollars to litigate, eventually resulting in the state winning two of the three cases and achieving no solution on the third. Alaska contains over 22,000 potentially

navigable rivers and well over 1,000,000 lakes that could qualify as navigable. If, however, the federal government continues to oppose every assertion of title to submerged lands by the state, final determinations of this magnitude will never be resolved in anyone's favor.

It is estimated that the state's submerged lands ownership encompasses over 60+ million acres. Unfortunately, since Alaska entered the Union, only thirteen (13) rivers have been determined to be navigable by the courts. While the Bureau of Land Management is responsible for making navigability determinations for the purpose of calculating acreage entitlements; their determinations cannot be used to clarify title. The ultimate decision of title navigability rests with the federal courts or Congress.

The schizophrenic approach taken by the government agencies in addressing navigability assertions and submerged land title since statehood has resulted in millions of acres of clouded private land titles and a process ultimately designed to fail. Preliminary discussions with the new federal administration have indicated that the time may be right to pursue innovative solutions. A more proactive stance on the part of the state could be the right stimulus at the right time.

The primary purposes of this legislation are to spotlight this dilemma facing the state, to emphasize the importance of proceeding expeditiously with resolving navigability claims, to provide a public forum for discussion and to entice Congress and the federal agencies to participate in a fair and open process. If successful, the Commission could save virtually billions of dollars in litigation costs and significantly reduce jurisdictional and title conflicts.



# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 219  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DNR  
 Title Establishing Joint Federal and State BRU Commissioner's Office  
Navigable Waters Commission for Alaska Component Commissioner's Office  
 Sponsor House Resources  
 Requester House Resources Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

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Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	200.0					
<b>TOTAL OPERATING</b>	<b>200.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other-CIP Receipts-1061	200.0					
<b>TOTAL</b>	<b>200.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Legislative Finance Division Phone 465-3795  
 Division \_\_\_\_\_ Date/Time 4/2/02 8:36 AM  
 Approved by: \_\_\_\_\_ Date 4/2/2002  
 Agency \_\_\_\_\_