

# MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING and WATER MANAGEMENT

TO: John Shively,  
Commissioner

DATE: March 15, 1995

TELEPHONE NO.: 762-2163

FROM: Jules V. Tieston, Director

SUBJECT: Impacts for deleting FY 96  
Navigability Project # 45

The Navigability Project # 45 funding for FY 96 is the focus for protecting the State's interests in assuring that the public trust for continued State ownership and management of submerged lands associated with inland rivers, streams and lakes. This project is responsible for the assembly of factual data and for technical support to the State in asserting its guaranteed ownership of an estimated 14 million acres of inland submerged lands granted by the Alaska Statehood Act. This technical support, in turn, is the basis to prevent unbridled Federal regulatory authorities being applied to State owned resources.

The following are the specific impacts from deleting the Navigability Project # 45 for FY 96.

- \* No technical support will be available to determine, assert, or defend the necessary navigability determinations on ownership of submerged lands associated with a particular water body. The absence of these determinations becomes the basis for the Federal asserting that Federal regulations control resource uses, transportation, and development of Alaska's economy. This is especially important as the claim of Federal regulation over State ownerships are subject to challenge in a more stringent manner than is possible when the Federal regulation applies only to Federal ownerships. This loss of technical ability places at risk millions of acres of inland submerged lands that were transferred to the State under the equal footing doctrine established by the U.S. Supreme Court and entitlements under the Statehood Act.
- \* No technical support will be available to the Attorney General for continuing litigation on the Kandik, Nation, and Black river that are presently in Federal court.
- \* No technical support to complete filing quiet title action in Federal court on all navigable waters associated with the Trans Alaska Pipeline System.
- \* Cooperative efforts will be suspended between the Department of the Interior and the State to develop a strategy that will significantly reduce the State and Federal litigation costs associated with water body action in Federal court.
- \* No technical support will be available to determine whether a water body associated with a transportation project such as a road realignment, bridge, or airport

extension, is or is not in State ownership will be unavailable.

\* No technical support will be available to determine the ownership of sand and gravel or other locatable minerals such as gold placers situated below ordinary high water.

\* No technical advise will be available to inform commercial guiding operations are using State or Federally owned lands and waters as a result of navigability and whether State or Federal regulation apply to their operations.

\* Follow up assertions will be suspended under the Katella decision for remaining State ownership of submerged lands in the Chugach National Forest .

\* No determinations will be made of State ownerships of submerged lands, including sand and gravel and oil gas, for with the new Exploration Licensing for large block leasing program.

\* No technical support will be available to consider the ramifications of the pending declaration of the Secretary of the Interior about Federal sovereignty over navigable waters for subsistence purposes and where the State's management of its fishery resources will apply.

\* No technical support to the Alaska Department of Fish and Game in the identification of ownership of inland submerged land in support of fish habitat protection programs.

cc: Marty Rutherford, Nico Bus, Gary Prokosch, Glenda Sharp