



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of Natural Resources**

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Senator Cathy Giessel  
State Capital, Room 427  
Juneau, AK 99801

Honorable Senator Giessel,

You received two questions from Senator Olson for which you requested a written response. The following is that response. Please let me know if there are any further questions.

- 1. In Sec 7 (page 8, line 17), what is the definition of "individual"? For example, could an "individual" mean an oil and gas company? What are the circumstances or conditions surrounding granting a preference right in this section?**

**Response:** There is no formal definition of "individual" in this statute, but an individual typically means a natural person in the Alaska statutes. DNR would interpret that this provision would mean the individual that obtained the lease from the state which was issued competitively under AS 38.05.070.

The preference right under Section 7 only applies to leases issued competitively under AS 38.05.070. AS 38.05.070 is a statute governing land leases. It does not cover oil and gas leasing or mining leasing, or coal leasing.

Furthermore, as the bill states, the additional circumstances are that you must have to have this preference right option are the following:

- a. The lease must have been in existence for at least 10 years before the municipal entitlement selection.
- b. A municipality must select the land on which the lease is situated for the purposes of fulfilling their municipal entitlement under AS 29.65.
- c. The lessee has 120 days from notification of the municipal entitlement land selection to decide whether they want to use the preference right to purchase.
- d. The lessee must prove that they have used the land for bona fide business purpose for at least 10 years, that the business produced not less than 25 percent of their total income for the 10 preceding years, and they have constructed a building allowed by the lease terms of not less than 500 square feet in size.
- e. The director would determine if the purchase of the land would interfere with public use by residents of the area and determine if conditions can be created to mitigate those adverse effects.

- f. A written finding is created to approve the preference right unless there some interference of public use that cannot be mitigated or avoided.
- g. And the conveyance is limited to only 5 acres at appraised fair market value of the unimproved land.

**2. *In Sec 42 (page 23, line 18), why is it necessary to allow the commissioner to determine when and in what order to process water reservation applications?***

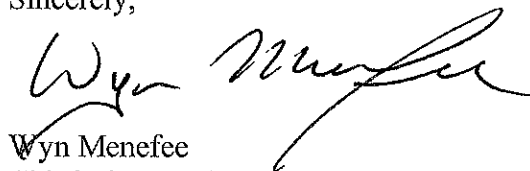
**Response:** Section 42 clarifies existing practice and understanding of the Water Use Act, AS 46.15. There are more reservation applications than can be processed in any given year, and the number of applications are expected to increase. Many of the applications for water reservations are in areas where there is little risk that the stated purpose for the reservation will be harmed in any foreseeable future.

As an example, the USFWS has 200 applications for water reservations that cross or are wholly in a national wildlife refuge, primarily to protect fish habitat. In those that are wholly in a national wildlife refuge, there is a relatively small potential for harm to the fish habitat from others using the water since the USFWS does not generally allow any other uses of the water. If we had to process reservations strictly by the order received, we would have to process those applications before addressing any other applications that have a higher risk of competing uses or need.

If there is a competing use for a water supply that is insufficient to supply all applicants, we are required under AS 46.15.090 to adjudicate the competing and foreseeable uses to determine what will constitute the most beneficial use before granting any water rights. If the commissioner did not have the flexibility to determine what order to process an application, we would not be able to fulfill AS 46.15.090. The order in which an application is processed does not affect priority of appropriation once granted.

Each year DNR actively works with ADFG to prioritize the water reservation applications to address the highest priority applications. DNR considers the order in which applications were filed, existing or potential water use conflicts, importance of the resource at risk, the availability and adequacy of the existing hydrologic data, and ADFG recommendations when setting these priorities. ADFG recommendations are considered because the vast majority of the reservations are applied for the purpose of protecting fish and wildlife habitat.

Sincerely,



Wyn Menefee  
Chief of Operations  
Division of Mining, Land and Water  
Department of Natural Resources