

## **Division of Mining, Land and Water Current Water Authorization Process**

### ***Temporary Water Use Authorization***

- Someone applies for a Temporary Water Use Authorization for a specific significant amount of water and location of draw.
- No public notice is required.
- DMLW requests comments from DEC and ADFG as required, and frequently from other government agencies that may have jurisdictional involvement in the proposed project.
- DMLW insures that the TWUA will not impact prior appropriators.
- DMLW will place reasonable conditions or limitations to protect other water rights, fish and wildlife habitat, human health, or other public interests.
- The TWUA does not establish a right to appropriate water and the water under a TWUA remains subject to appropriation.
- TWUA issued for period of time required not to exceed 5 years. *Section 42 of SB 26/HB 77 seeks to clarify this provision to allow DMLW to issue a new TWUA for a period of 5 years for the same project.*
- DMLW may modify, suspend, or revoke a TWUA at any point.

### ***Water Right***

- Someone applies for a water right with specific quantity and location specified.
- DMLW evaluates and makes a finding on the four main criteria under AS 46.15.080 before issuing a permit to begin using the water.
  1. Rights of a prior appropriator will not be unduly affected;
  2. The proposed means of diversion or construction are adequate;
  3. The proposed use of water is beneficial; and
  4. The proposed use is in the public interest (considering the following points).
    - The benefit to the applicant resulting from the appropriation
    - The effect of the economic activity resulting from the appropriation
    - The effect on fish and game resources and on public recreational opportunities
    - The effect on public health
    - The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation
    - Harm to other persons resulting from the proposed appropriation
    - The intent and ability of the applicant to complete the appropriation
    - The effect on access to navigable or public water
- The permit holder then has from two years to ten years (not including extensions) to complete the construction of the works and commencement of use of water in accordance with the permit and notify the department of the use.

- Once beneficial use has commenced, the DMLW then issues a water right certificate that perfects the water right. This can include conditions prescribed by regulation or to protect prior rights of other persons and the public interest.
- Public notice of this process is governed by AS 46.15.133.

### ***Water Reservation***

- An application is received under AS 46.15.145 for the reservation of water to maintain a specified instream flow or level of water at a specified point or specified part of a stream or body of water throughout the year or for a specific time of year.
- Proceed with public notice in accordance with AS 46.15.133
- Decide to issue reservation if
  1. The rights of prior appropriators will not be affected
  2. The applicant has demonstrated the need exists for the reservation
  3. There is unappropriated water in the body of water sufficient for the reservation
  4. The proposed reservation is in the public interest
- There usually is at least three to five years of water data collection required to evaluate the application
- There is a need to demonstrate the existence of the resource that the reservation is seeking to protect and the amount of water required to support that resource.
- DMLW is required to review each reservation once each 10 years to determine whether the purpose described in the reservation still apply to the reservation. The reservation can be modified or revoked if part or all of the purpose no longer apply to the reservation. *Section 41 of SB26/HB77 and removes that the commissioner shall review water reservations every 10 years and instead that he may review the reservation at any point.*