

SB 26 BRIEFING POINTS REGARDING WATER

FOR THE SENATE FINANCE COMMITTEE • FEBRUARY 20, 2013

Hydrologic Units

Hydrologic Units are essentially large watershed boundaries. The USGS established and depicted the 6 Hydrologic Units of Alaska on the Hydrologic Unit Map created and published in 1987.

Significant Amount of Water

11 AAC 93.035. Requirement to apply for the use of a significant amount of water

(a) A significant amount of water is that amount of water for which an application for a water right or an application for a temporary water use authorization is required, as described in (b) of this section.

(b) A person shall file an application for a water right under 11 AAC 93.040 or for a temporary water use authorization under 11 AAC 93.220 before

(1) the consumptive use of more than 5,000 gallons of water from a single source in a single day;

(2) the regular daily or recurring consumptive use of more than 500 gpd from a single source for more than 10 days per calendar year;

(3) the non-consumptive use of more than 30,000 gpd (0.05 cubic feet per second) from a single source; or

(4) any water use that may adversely affect the water rights of other appropriators or the public interest.

(c) A person using less than the amount of water described in (b) of this section acquires no water right or priority unless an application is filed and a permit or certificate is issued under 11 AAC 93.035 - 11 AAC 93.140. The use of water without a permit or certificate is subject to appropriation by others, and the use of water without a water right is subject to curtailment in order to supply water to lawful appropriators of record or to protect the public interest.

Water Reservation

Water reservations do not prevent individuals from obtaining water rights or temporary water use authorizations. Water Reservations reserve a portion of water from flowing water or a lake that is necessary for:

- the protection of fish and wildlife habitat, migration, and propagation;
- recreation and park purposes;
- navigation and transportation purposes; or
- sanitary and water quality purposes.

The division can still authorize water rights or temporary water use authorizations if there is a surplus quantity of water in addition to the reservation. No water rights or temporary water use authorizations can be issued for quantities greater than the cumulative use of the surplus above the

water reservation. An issued water reservation would not have priority over an existing or later issued water right that has an earlier priority date than the priority date of the water reservation.

Water Right versus Temporary Water Use Authorizations

Water Rights are a right to the beneficial use of the state owned water determined by priority appropriation based on time of application. DMLW requires site control or land ownership before issuing a water right. The right attaches to the land and transfers with the ownership of the land. In essence it is permanent except where the water right is issued for a large project that at some point in time ends and site control is no longer in place and thus does not require the water right. Water right requires the development and use of the water.

Temporary Water Use Authorization is an approval for use of water. It is not a permanent right and does not attach to the land. It is revocable or can be modified and gives no priority of appropriation. The authorization is not issued for longer than 5 years.

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 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 SB 26 removes that the commissioner shall review water reservations every 10 years and instead that he may review the reservation at any point.*