



LAWS OF ALASKA

1966

Source:

CSHB 140 am by Senate

Chapter No.:

50

AN ACT

Providing a system for the appropriation and use of water; establishing a water resources board; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46 is amended by adding a new chapter to read:

CHAPTER 15. WATER USE ACT.

ARTICLE 1. ADMINISTRATION.

Sec. 46.15.010. DETERMINATION OF WATER RIGHTS. The Department of Natural Resources shall determine and adjudicate rights in the waters of the state, and in its appropriation and distribution.

Sec. 46.15.020. AUTHORITY AND DUTIES OF THE COMMISSIONER. (a) The commissioner shall exercise all those powers and do all those acts necessary to carry out the provisions and objectives of this chapter. The commissioner may

(1) enter into contractual agreements necessary to carry out the provisions of this chapter including agreements with federal, state and local agencies;

(2) apply for, accept, administer and expend

grants, gifts, and loans from the federal government and any other public or private sources for the purposes of this chapter, and adopt procedures and do acts not otherwise restricted by law which are necessary to qualify the state to receive grants, gifts and loans;

(3) establish a division of water in the Department of Natural Resources and assign to that division the responsibility for carrying out the provisions of this chapter.

(b) The commissioner shall

(1) adopt procedural and substantive regulations to carry out the provisions of this chapter, taking into consideration the responsibilities of the Department of Health and Welfare under AS 46.05.010 - 46.05.240 and the Department of Fish and Game under AS 16;

(2) keep a public record of all applications for permits and certificates and other documents filed in his office; and shall record all permits and certificates and amendments and orders affecting them and shall index them in accordance with the source of the water and the name of the applicant or appropriator;

(3) cooperate with, assist, advise and coordinate plans with the federal, state and local agencies in matters relating to the appropriation, use, conservation, quality, disposal or control of waters and activities related thereto;

(4) prescribe fees or service charges for any public service rendered.

ARTICLE 2. APPROPRIATION AND USE OF WATER.

Sec. 46.15.030. WATERS RESERVED TO THE PEOPLE.

BENEFICIAL USE. Wherever occurring in a natural state, the waters are reserved to the people for common use and are subject to appropriation and beneficial use as provided in this chapter.

Sec. 46.15.040. RIGHT TO APPROPRIATE. (a) A right to appropriate water can be acquired only as provided in this chapter. No right to the use of water either appropriated or unappropriated shall be acquired by adverse use or possession.

(b) A right to appropriate water shall be obtained by first making application to the commissioner for a permit to appropriate. The commissioner shall by regulation prescribe the form and contents of the application and the procedure for filing the application. If a permit is granted and the means of appropriation is constructed a certificate of appropriation may be obtained.

(c) All applications to the commissioner for a permit to appropriate water, filed subsequent to the effective date of this chapter, shall be considered as having been simultaneously filed with the Department of Fish and Game under AS 16 and the Department of Health and Welfare under AS 46.05.

Sec. 46.15.050. PRIORITY. Priority of appropriation gives prior right. Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of stream flow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire his water under the changed conditions.

Sec. 46.15.060. EXISTING RIGHTS. A water right

acquired by law before the effective date of this chapter or a beneficial use of water on the effective date of this chapter, or made within five years before the effective date, or made in conjunction with works under construction on the effective date, under a lawful common law or customary appropriation or use, is a lawful appropriation under this chapter. The appropriation is subject to applicable provisions of this chapter and rules and regulations adopted under this chapter.

Sec. 46.15.070. NOTICES, OBJECTIONS. (a) Upon receipt of an application, the commissioner shall prepare a notice containing the location and extent of the proposed appropriation, the name and address of the applicant and other information he considers pertinent. The notice shall state that within 15 days of publication or service of notice, persons may file with the director written objections, stating the name and address of the objector, and any facts tending to show that rights of the objector or the public interest would be adversely affected by the proposed appropriation.

(b) The commissioner shall publish the notice at the applicant's expense in one issue of a newspaper of general distribution in the area of the state in which the water is to be appropriated. The commissioner shall also have notice served personally or by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the division of lands may be affected by the proposed appropriation and may serve notice upon any governmental agency, political subdivision or person, provided, however, that notice shall be served upon the

Department of Fish and Game and the Department of Health and Welfare.

(c) Within 15 days of publication or service of notice, an interested person may file an objection. The commissioner may hold hearings upon giving due notice and shall grant, deny, or condition the application in whole or in part within 30 days of receipt of the last objection or at the conclusion of the hearing. Notice of the order or decision shall be served personally or mailed to any person who has filed an objection.

(d) If no objection is filed, the commissioner may proceed to make his determination upon the application.

(e) A person aggrieved by the action of the commissioner may appeal to the superior court.

(f) The commissioner may, by regulation, designate types of appropriations which are exempt from this section and provide simplified procedures for ruling on the applications.

Sec. 46.15.080. CRITERIA FOR ISSUANCE OF PERMIT. (a) The commissioner shall issue a permit if he finds that

(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 appropriation is in the public interest.

(b) In determining the public interest, the commissioner shall consider

- (1) the benefit to the applicant resulting from the proposed appropriation;
- (2) the effect of the economic activity resulting from the proposed appropriation;
- (3) the effect on fish and game resources and on public recreational opportunities;
- (4) the effect on public health;
- (5) 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;
- (6) harm to other persons resulting from the proposed appropriation;
- (7) the intent and ability of the applicant to complete the appropriation; and
- (8) the effect upon access to navigable or public waters.

Sec. 46.15.090. PREFERENCE IN GRANTING PERMITS. When there are competing applications for water from the same source, and the source is insufficient to supply all applicants, the commissioner shall give preference first to public water supply and then to the use which alone or in combination with other foreseeable uses will constitute the most beneficial use.

Sec. 46.15.100. TERMS OF PERMIT. The commissioner may issue a permit for less than the amount of water requested, but in no case may he issue a permit for more water than can be beneficially used for the purposes stated in the application. He may require modification of plans and specifications for the appropriation. He may issue a permit

subject to terms, conditions, restrictions, and limitations he considers necessary to protect the rights of others, and the public interest. However, the permit shall be subject to termination only as provided in this chapter.

Sec. 46.15.110. TIME FOR CONSTRUCTION AND COMPLETION. A permit may place a time limit for beginning construction and perfecting appropriation. Reasonable extensions of time shall be permitted for good cause shown.

Sec. 46.15.120. CERTIFICATES. Upon completion of construction of the works and commencement of use of water, the permit holder shall notify the commissioner that he has perfected his appropriation. If the commissioner determines that the appropriation has been perfected in substantial accordance with the permit, he shall issue the permit holder a certificate of appropriation. The certificate shall set out such information as the commissioner may prescribe by regulation.

Sec. 46.15.130. PRIORITY. (a) Priority of appropriation made under this chapter dates from the filing of an application with the commissioner.

(b) Priority of appropriation perfected before the effective date of this chapter shall be determined as provided in sec. 135 of this chapter.

Sec. 46.15.135. DETERMINATION OF EXISTING RIGHTS. (a) A claimant of an existing right under sec. 60 of this chapter shall file a declaration of appropriation with the commissioner as set out in this section. The declaration shall be considered correct until a certificate of appropriation is issued or denied. Priority of such right dates

from the day work was begun on the appropriation if due diligence was used in completing the work; otherwise, from the day water was applied for the beneficial use.

(b) The commissioner shall, as soon as practicable, determine the rights of persons owning existing appropriations. To accomplish this, the commissioner shall

(1) by order set a definite period for filing a declaration of appropriation within a specified area or from a specified source;

(2) publish notice of the order once a week for three weeks before the beginning of the period in a newspaper of general circulation in the affected area;

(3) give notice of the order by certified mail to any appropriator within the specified area or from the specified source who has requested mailed notice or of whom the commissioner can readily obtain knowledge including each owner of a recorded mining claim.

(c) The commissioner shall make such investigations as he considers necessary of rights asserted by declarations filed under this section and shall determine each existing appropriation and mail a summary of such determination to each person who has filed a declaration with respect to the specified area or source. Any person adversely affected by a determination may file with the commissioner a request for a hearing within 20 days of the date the notice is mailed. If a hearing is requested the commissioner shall send a notice of the time and place of the hearing to each person who has filed a declaration.

(d) If a hearing is not requested with respect to a

determination, or if, after the hearing, the commissioner finds the determination to have been correctly made, he shall immediately issue a certificate of appropriation. If the commissioner finds the determination to be incorrect, he shall correct it and either issue a certificate of appropriation or refuse the certificate according to his findings.

(e) A person aggrieved by the action of the commissioner may appeal to the superior court within 30 days of the date on which that action is final.

Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF APPROPRIATIONS. (a) The commissioner may declare an appropriation to be wholly or partially abandoned and revoke the certificate of appropriation if an appropriator, with intention to abandon, does not make beneficial use of all or a part of his appropriated water. An appropriation so forfeited and abandoned reverts to the state and the water becomes unappropriated water.

(b) The commissioner may declare an appropriation to be wholly or partially forfeited and shall revoke the certificate of appropriation if an appropriator voluntarily fails or neglects, without sufficient cause, to make use of all or a part of his appropriated water for a period of five successive years.

Sec. 46.15.150. PREFERRED USE. (a) An applicant who asserts and proves a preferred use shall be granted a permit and shall be granted preference over other appropriators. A preferred use of water is for a public water supply.

(b) To be entitled to a preference an applicant must show that his use will be prevented or substantially

interfered with by a prior appropriation; the use is a preferred use; the applicant agrees to compensate a permit or certificate holder of the prior appropriation for any damages sustained by the preferred use, and other information which the commissioner requires by regulation.

Sec. 46.15.160. TRANSFER AND CHANGE OF APPROPRIATIONS.

(a) The right to use water under an appropriation or permit shall be appurtenant to the land or place where it has been or is to be beneficially used, provided, that water supplied by one person to another person's property shall not be appurtenant to the property unless the parties so intend. An appurtenant water right shall pass with a conveyance of the land, or transfer, or by operation of law unless specifically exempted from the conveyance.

(b) With the permission of the commissioner, all or any part of an appropriation may be severed from the land to which it is appurtenant, may be sold, leased or transferred for other purposes or to other lands and be made appurtenant to other lands. A permit or certificate or a deed, lease, contract, assignment of permit or other instrument transferring an appropriation must be filed for record in the office of the commissioner and a certified copy of the instrument must be recorded in the recorder's office of the recording district in which the appropriation is located.

Sec. 46.15.170. EFFECT OF RECORDING. (a) A deed, lease, contract, assignment of permit or other instrument transferring an appropriation is void as against a subsequent innocent purchaser who in good faith paid a valuable consideration for the appropriation or any portion of it and

whose instrument is first filed and recorded under sec. 160 (b) of this chapter.

(b) A deed, lease, contract, assignment of permit or other instrument transferring an appropriation which is recorded under sec. 160(b) of this chapter is constructive notice of its contents to subsequent purchasers of the appropriation or any portion of it. An unrecorded instrument is valid between the parties to it and as against one who has actual notice of it.

Sec. 46.15.180. CRIMES. A person who constructs works for an appropriation, or diverts, impounds, withdraws or uses a significant amount of water from any source without a permit or certificate of appropriation; or a person who violates an order of the commissioner to cease and desist from preventing any water from moving to a person having a prior right to use the same; or who disobeys an order of the commissioner requiring him to take steps to cause the water to so move; or who fails or refuses to install meters, gauges or other measuring devices or control works; or who violates an order establishing corrective controls for an area or for a source of water, or who knowingly makes a false or misleading statement in a declaration of existing rights, is guilty of a misdemeanor. Crimes under this section are in addition to any other crimes provided by law.

Sec. 46.15.185. APPEALS. Appeals to the superior court under this chapter are subject to the provisions of the Administrative Procedure Act, AS 44.62.560 - 44.62.570.

ARTICLE 3. WATER RESOURCES BOARD.

Sec. 46.15.190. THE WATER RESOURCES BOARD. There is

created the Water Resources Board composed of seven members having a general knowledge of the use and requirements for use of the waters of the state and the conservation and protection thereof. The commissioner of natural resources shall act as the executive secretary of the board, and shall provide clerical staff for the board. Members of the board are appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session.

Sec. 46.15.200. TERM OF OFFICE. The term of office for members of the board is four years. The first members appointed serve as follows: two members serve for one year, three for two years and two for three years. If a vacancy occurs, the governor shall fill it by appointment for the unexpired term. The appointment shall be submitted to the legislature for confirmation at the next regular or special session.

Sec. 46.15.210. DUTIES OF THE BOARD. The board shall inform and advise the governor on all matters relating to the use and appropriation of water in the state, including, but not limited to: the effect and adequacy of all state laws and regulations governing the establishment of water rights, the multi-purpose uses of water, the prevention of pollution and the protection of fish and game, studies of the state's water supplies and plans for future requirements, development of water resources, participation of local governmental units in the management of water resources, lands which are or may be needed for dams, reservoirs, flood dams, flood ways, canals or ditches for the impoundment, storage, flow and control of waters.

Sec. 46.15.220. BOARD MEETINGS. The board shall hold one regular meeting annually at the state capital and one or more additional meetings at the time and place in the state the board selects for the transaction of business.

Sec. 46.15.230. PUBLIC MEETINGS. The board may hold and conduct public meetings at any time or any place in the state in order to obtain public opinion on a water use problem or proposal and it may, by majority vote of all members, formally or informally delivered, authorize one or more of its members to hold and conduct a public meeting.

Sec. 46.15.240. COMPENSATION OF BOARD MEMBERS. Each member of the board is entitled to travel expenses and per diem as authorized for state boards by AS 39.20.180 while traveling to or from, or in attendance at, regular or special meetings or conferences authorized by the board.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 46.15.250. ENFORCEMENT AUTHORITY. The following persons are peace officers of the state and they shall enforce this chapter:

- (1) a state employee authorized by the commissioner;
- (2) a police officer of the state.

Sec. 46.15.260. DEFINITIONS. In this chapter, unless the context otherwise requires,

- (1) "appropriate" means to divert, impound, or withdraw a quantity of water from a source of water for a beneficial use;
- (2) "appropriation" means the diversion, impounding or withdrawal of a quantity of water from a source of water.

water for a beneficial use;

(3) "beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, that is reasonable and consistent with the public interest, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining, power, public, sanitary, fish and wildlife, and recreational uses;

(4) "source of water" means a substantial quantity of water capable of being put to beneficial use;

(5) "water" means all water of the state, surface and subsurface, occurring in a natural state, except mineral and medicinal water;

(6) "commissioner" means the commissioner of natural resources;

(7) "director" means the director of the division of lands, Department of Natural Resources;

(8) "person" includes an individual, partnership, association, public or private corporation, state agency, political subdivision of the state, and the United States.

Sec. 46.15.270. SHORT TITLE. This chapter may be cited as the Alaska Water Use Act.

* Sec. 2. The following laws are repealed: AS 27.10.080 and AS 38.05.260.

* Sec. 3. This Act takes effect July 1, 1966.