

CS FOR HOUSE BILL NO. 185(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 5/2/01

Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to fees for certain uses of state water and to the accounting and**
2 **appropriation of those fees; relating to authorizations for the temporary use of state**
3 **water; making other amendments to the Alaska Water Use Act; and providing for an**
4 **effective date."**

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding new sections
7 to read:

8 FINDINGS AND POLICY REGARDING STATE WATER USE FEES. (a) The
9 legislature finds that

10 (1) the implementation of a state water rights system by the Department of
11 Natural Resources cannot be accomplished without adequate financing;

12 (2) financing to implement the state water rights system has been insufficient,
13 which has resulted in

14 (A) delays in the processing of applications for grants of rights and

1 permits for use of state water and amendment of those rights and permits; and

2 (B) failure to complete other administrative duties relating to the state
3 water rights system;

4 (3) a long-term financing mechanism must be established to provide for
5 adequate financing and provide for a more predictable appropriation and staffing level at the
6 Department of Natural Resources from year to year; and

7 (4) the establishment of an appropriate system of application fees that reflect
8 the reasonable direct cost of providing the water management services would provide an
9 adequate method of financing Alaska's water management system.

10 (b) It is the policy of the state to authorize the Department of Natural Resources to
11 assess a reasonable fee for the services it provides in facilitating the use of state water; the fee
12 should reflect the reasonable direct cost of providing the service, but it is the policy of the
13 state that the fee not include

14 (1) the costs and salaries of administrative, support, or supervisory personnel
15 who are not directly engaged in providing the service;

16 (2) other budgeted overhead expenses, including rent and utilities;

17 (3) interagency charges that would not meet the requirements of AS 37.10.052
18 - 37.10.058 if those charges had been incurred or invoiced by the agency providing the
19 designated regulatory service;

20 (4) public consultation costs when the consultation is not required by law;

21 (5) costs related to an appeal of permit issuance by a person other than the
22 applicant for that permit;

23 (6) expenses that are not reasonably necessary to comply with the law under
24 which the service is provided; or

25 (7) travel expenses for inspecting businesses having not more than 20
26 employees.

27 (c) It is the policy of the state that the Department of Natural Resources not apply a
28 charge to the holder of a certificate of appropriation that is not specifically related to services
29 provided by the department, except that the department may continue to charge the annual
30 \$50 administrative service fee currently in use by the department in order to maintain the
31 water rights program for the benefit of Alaskans and current water rights holders.

1 (d) It is the policy of the state that the Department of Natural Resources minimize the
2 required costs, including application fees, on individuals and businesses withdrawing less than
3 a significant amount of water.

4 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 FINDINGS, POLICY, AND PURPOSE RELATING TO AUTHORIZATIONS FOR
7 CERTAIN TEMPORARY USES OF STATE WATER. (a) The legislature finds that

8 (1) many construction, development, commercial, and private activities
9 require an authorization for the temporary use of the state's water without the need to acquire
10 a permanent right to appropriate water;

11 (2) for many years, in appropriate circumstances, the Department of Natural
12 Resources has issued revocable permits for the temporary use of state water under its
13 authority implied under AS 46.15 but not expressly provided in AS 46.15; and

14 (3) the legislature validates and affirms that temporary permits authorizing the
15 temporary use of state water continue to be appropriate under AS 46.15.

16 (b) It is the policy of the state to expressly confirm in the Department of Natural
17 Resources the authority to issue authorizations for temporary use of water subject to
18 appropriate conditions and limitations set by the Department of Natural Resources.

19 (c) The purpose of the enactment of AS 46.15.155 in sec. 6 of this Act is to

20 (1) confirm the authority of the Department of Natural Resources to issue
21 authorizations for temporary use of water; and

22 (2) affirm the validity of existing temporary permits for the use of state water
23 issued before the effective date of this Act that may have been called into question by the
24 rationale used by the court in *Greenpeace v. Alaska Department of Natural Resources*, 3AN-
25 00-3415 Civil.

26 * **Sec. 3.** AS 37.10.058(2) is amended to read:

27 (2) "designated regulatory service" means a regulatory service
28 provided under the following regulatory programs:

29 (A) regulation of the disposal of waste into waters of the state
30 under AS 46.03.100;

31 (B) certification of federal permits or authorizations under 33

1 U.S.C. 1341 (sec. 401, Clean Water Act); [AND]

2 (C) a coastal management consistency determination relating to
3 a permit or authorization issued under a program listed in (A) or (B) of this
4 paragraph, if the determination is made by the agency issuing the permit or
5 authorization; **and**

6 **(D) any authorization for the use or appropriation of water**
7 **under AS 46.15.**

8 * **Sec. 4.** AS 46.15.020(b)(4) is amended to read:

9 (4) prescribe fees or service charges for any public service rendered
10 **consistent with AS 37.10.050 - 37.10.058, except that the department may charge**
11 **under regulations adopted by the department an annual \$50 administrative**
12 **service fee to maintain the water management program;**

13 * **Sec. 5.** AS 46.15.035(e)(2) is amended to read:

14 (2) "hydrologic unit" means a hydrologic subregion established by the
15 United States Department of the Interior, Geological Survey, on the "Hydrologic Unit
16 Map-1987, State of Alaska"; **"hydrologic unit" includes the water of an ocean that**
17 **is adjacent to a hydrologic subregion of the state.** [""]

18 * **Sec. 6.** AS 46.15 is amended by adding a new section to read:

19 **Sec. 46.15.155. Authorization for temporary use of water.** (a)
20 Notwithstanding any contrary provision of this chapter, the commissioner may
21 authorize the temporary use of a significant amount of water, as determined by the
22 department by regulation, for a period of time not to exceed five consecutive years, if
23 the water applied for has not been appropriated in accordance with this chapter. The
24 commissioner may extend an authorization under this section for one additional term
25 of five consecutive years.

26 (b) Notwithstanding any contrary provision of this chapter, an authorization
27 for a temporary use of less than a significant amount of water is not required under
28 this section unless the commissioner has determined by regulation that the use may
29 have an adverse effect on other water uses and that an authorization must be obtained
30 from the department.

31 (c) The issuance of an authorization for temporary use of water under this

1 section does not establish a right to appropriate water. The temporary use of water
2 under an authorization remains subject to appropriation under this chapter.

3 (d) Notwithstanding any contrary provision of this chapter, the commissioner
4 is not required to provide public notice under AS 46.15.133 of a proposed
5 authorization for temporary use of water; however, the commissioner shall request
6 comment on an application for temporary use of water from the Department of Fish
7 and Game and the Department of Environmental Conservation..

8 (e) The provisions of AS 46.15.080 do not apply to the issuance or extension
9 under this section of an authorization for temporary use of water.

10 (f) The commissioner may impose reasonable conditions or limitations on an
11 authorization for temporary use of water to protect the water rights of other persons or
12 to protect fish and wildlife habitat, public health, or other public interests.

13 (g) Upon approval by the department, an authorization under this section may
14 be transferred to another person under the same conditions and limitations under
15 which the authorization was issued.

16 (h) A person to whom an authorization for temporary use of water was issued
17 under this section may allow another person to use the authorization, consistent with
18 the conditions and limitations of the authorization.

19 (i) The commissioner may modify, suspend, or revoke an authorization issued
20 under this section if the commissioner determines it necessary to protect the water
21 rights of other persons or the public interest.

22 * **Sec. 7.** AS 46.15.180(a) is amended to read:

23 (a) A person may not

24 (1) construct works for an appropriation, or divert, impound, withdraw,
25 or use a significant amount of water from any source without a permit, [OR] certificate
26 of appropriation, **or authorization issued under this chapter;**

27 (2) violate an order of the commissioner to cease and desist from
28 preventing any water from moving to a person having a prior right to use it;

29 (3) disobey an order of the commissioner requiring the person to take
30 steps to cause the water to move to a person having a prior right to use it;

31 (4) fail or refuse to install meters, gauges, or other measuring devices

1 or control works;

2 (5) violate an order establishing corrective controls for an area or for a
3 source of water;

4 (6) knowingly make a false or misleading statement in a declaration of
5 existing right.

6 * **Sec. 8.** AS 46.15.180(a) is amended to read:

7 (a) A person may not

8 (1) construct works for an appropriation, or divert, impound, withdraw,
9 or use a significant amount of water from any source without a permit **or** [,] certificate
10 of appropriation [, OR AUTHORIZATION ISSUED UNDER THIS CHAPTER];

11 (2) violate an order of the commissioner to cease and desist from
12 preventing any water from moving to a person having a prior right to use it;

13 (3) disobey an order of the commissioner requiring the person to take
14 steps to cause the water to move to a person having a prior right to use it;

15 (4) fail or refuse to install meters, gauges, or other measuring devices
16 or control works;

17 (5) violate an order establishing corrective controls for an area or for a
18 source of water;

19 (6) knowingly make a false or misleading statement in a declaration of
20 existing right.

21 * **Sec. 9.** AS 46.15.155 is repealed.

22 * **Sec. 10.** Section 2 of this Act is repealed.

23 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 VALIDITY OF EXISTING TEMPORARY PERMITS ISSUED BEFORE THE
26 EFFECTIVE DATE OF THIS SECTION. (a) A temporary permit issued before the effective
27 date of this section by the Department of Natural Resources under AS 46.15 authorizing the
28 temporary use of water is valid and remains in effect, notwithstanding that public notice was
29 not provided under AS 46.15.133 or the criteria set out in AS 46.15.080 were not applied
30 before the temporary permit was issued.

31 (b) A temporary permit described in (a) of this section shall be considered to be an

1 authorization for temporary use of water under AS 46.15.155, enacted by sec. 6 of this Act, as
2 if AS 46.15.155 had been in effect at the time the temporary permit was issued. A temporary
3 permit described in this subsection is subject to the terms and conditions set out in the
4 temporary permit and is subject to the requirements of AS 46.15.155, enacted by sec. 6 of this
5 Act.

6 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 TRANSITION: REGULATIONS. (a) Under AS 44.62.125(b)(6), the regulations
9 attorney may change the term "temporary water use permit" in regulations of the Department
10 of Natural Resources concerning water use to "authorization for temporary use of water" as
11 consistent with this Act.

12 (b) To the extent that the regulations are not inconsistent with this Act, regulations
13 relating to water management adopted by the Department of Natural Resources under
14 AS 46.15 and in effect on the effective date of this section remain in effect until amended or
15 repealed and may be administered and enforced by the Department of Natural Resources.

16 * **Sec. 13.** Sections 1 - 3, 5 - 7, 11, and 12 of this Act take effect immediately under
17 AS 01.10.070(c).

18 * **Sec. 14.** Sections 4 and 8 - 10 of this Act take effect July 1, 2002.