

SENATE BILL NO. 139

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/13/01

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to fees for certain uses of state water and 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) incompleteness of 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 fees for the use of state water would permit the
8 Department of Natural Resources to charge holders of state water rights and other permitted
9 or authorized users of state water for a portion of the costs associated with that department's
10 management of the state water rights system, based on their use of state water.

11 (b) It is the policy of the state to authorize the Department of Natural Resources to
12 assess a reasonable fee for use of state water to provide more adequate financing of the state
13 water rights program administered by that department.

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

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

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

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

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

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

29 (c) The purpose of the enactment of AS 46.15.155 in sec. 8 of this Act is to

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

1 (2) affirm the validity of existing temporary permits for the use of state water
 2 issued before the effective date of this Act that may have been called into question by the
 3 rationale used by the court in *Greenpeace, Inc. v. Alaska Department of Natural Resources*,
 4 3AN-00-345 Civil.

5 * **Sec. 3.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

6 (XX) state water resources income account (AS 46.15.025);

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

8 (b) The commissioner shall

9 (1) adopt procedural and substantive regulations to carry out the
 10 provisions of this chapter, taking into consideration the responsibilities of the
 11 Department of Environmental Conservation under AS 46.03 and the Department of
 12 Fish and Game under AS 16;

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

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

20 (4) prescribe fees or service charges for any public service rendered; **in**
 21 **this paragraph, "fees" includes fees for the use of state water under a certificate**
 22 **of appropriation, a permit, or other authorization under this chapter, based on**
 23 **the quantity of water certificated, permitted, authorized, or used;**

24 (5) before February 1 of each year, prepare a report describing the
 25 activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner
 26 shall notify the legislature that the report is available; the report must include

27 (A) information on the number of applications and
 28 appropriations for the removal of water from one hydrological unit to another
 29 that were requested and that were granted and on the amounts of water
 30 involved;

31 (B) information on the number and location of sales of water

1 conducted by the commissioner and on the volume of water sold;

2 (C) recommendations of the commissioner for changes in state
3 water law; and

4 (D) a description of state revenue and expenses related to
5 activities under AS 46.15.035 and 46.15.037.

6 * **Sec. 5.** AS 46.15 is amended by adding a new section to article 1 to read:

7 **Sec. 46.15.025. State water resources income account.** The state water
8 resources income account is created in the general fund. Under AS 37.05.146(b), fees
9 for the use of state water under a certificate of appropriation, permit, or other
10 authorization under this chapter shall be accounted for separately in the account and
11 appropriations from the account are not made from the unrestricted general fund. The
12 legislature may appropriate money from the account for expenditure by the
13 Department of Natural Resources for necessary costs in implementation of water
14 resources programs authorized under this chapter or for any other public purpose.

15 * **Sec. 6.** AS 46.15.035(a) is amended to read:

16 (a) **A significant amount of water, as determined by the department by**
17 **regulation,** [WATER] may not be removed from the hydrologic unit from which it
18 was appropriated to another hydrologic unit, inside or outside the state, without being
19 returned to the hydrologic unit from which it was appropriated nor may **a significant**
20 **amount of** water, **as determined by the department by regulation,** be appropriated
21 for removal from the hydrologic unit from which the appropriation is sought to
22 another hydrologic unit, inside or outside the state, without the water being returned
23 to the hydrologic unit from which it is to be appropriated, unless the commissioner

24 (1) finds that the water to be removed or appropriated for removal is
25 surplus to needs within the hydrologic unit from which the water is to be removed or
26 appropriated for removal, including fishing, mining, timber, oil and gas, agriculture,
27 domestic water supply, and other needs as determined by the commissioner;

28 (2) finds that the application for removal or appropriation for removal
29 meets the requirements of AS 46.15.080; and

30 (3) assesses a water conservation fee under (b) of this section.

31 * **Sec. 7.** AS 46.15.035(e)(2) is amended to read:

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

5 * **Sec. 8.** AS 46.15 is amended by adding a new section to read:

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

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

18 (c) The issuance of an authorization for temporary use of water under this
 19 section does not establish a right to appropriate water. The temporary use of water
 20 under an authorization remains subject to appropriation under this chapter.

21 (d) Notwithstanding any contrary provision of this chapter, the commissioner
 22 is not required to provide public notice under AS 46.15.133 of a proposed
 23 authorization for temporary use of water.

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

26 (f) The commissioner may impose reasonable conditions or limitations on an
 27 authorization for temporary use of water to protect the water rights of other persons or
 28 the public interest.

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

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

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

7 * **Sec. 9.** AS 46.15.180(a) is amended to read:

8 (a) A person may not

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

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

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

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

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

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

22 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
 23 read:

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

30 (b) A temporary permit described in (a) of this section shall be considered to be an
 31 authorization for temporary use of water under AS 46.15.155, enacted by sec. 8 of this Act, as

1 if AS 46.15.155 had been in effect at the time the temporary permit was issued. Such a
2 temporary permit is subject to the terms and conditions set out in the temporary permit and is
3 subject to the requirements of AS 46.15.155, enacted by sec. 8 of this Act.

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

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

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

14 * **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).