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IN THE SENATE

BY RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 256

IN THE LEGISLATURE OF THE STATE OF ALASKA

SECOND LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing a system for the appropriation and use of water; providing for water pollution and quality control, conservation of public waters, drainage and flood control, and a means of creating water conservancy service areas; repealing certain acts in conflict therewith; and providing for an effective date."

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

ARTICLE I

ORGANIZATION, ADMINISTRATION AND COORDINATION

Section 101. DECLARATION OF POLICY. It is the purpose of this Article to effectuate and implement the policy of the State of Alaska to encourage the development of its water resources reserved to the people for common use; to make water available for maximum use consistent with the public interest; to utilize, develop and conserve the water for the maximum benefit of the people; to administer and preserve the water for the use, enjoyment and welfare of the people by providing for coordination by state departments and officials of policies, actions, orders, regulations, plans and programs relating to the appropriation, use, quality, conservation, disposal and control of the water of the state.

Sec. 102. DEFINITIONS. As used in this Act: (a) "Water

1 of the State" means all rivers, streams, lakes, ponds, marshes,
2 water courses, waterways, wells, springs, irrigation systems,
3 drainage systems, reservoirs, bays, sounds, creeks, estuaries,
4 inlets, straits, passages, canals, the Pacific Ocean, Gulf of
5 Alaska, Bering Sea and Arctic Ocean, and all other bodies or
6 accumulations of water, surface and underground, natural or
7 artificial, public or private, inland or coastal, fresh or salt,
8 which are contained within, border on, or flow through the ter-
9 ritorial limits of the State of Alaska, or are within its juris-
10 diction or otherwise subject to its power.

11 (b) "Person" includes any individual, partnership, associa-
12 tion, public or private corporation, city or other municipality,
13 borough, service area, state governmental agency, institution or
14 subdivision, the State of Alaska and the United States.

15 Sec. 103. WATER RESOURCES POLICY COUNCIL. There is hereby
16 established a Water Resources Policy Council, which shall consist
17 of the Commissioners of the Departments of Natural Resources,
18 Fish and Game, Health and Welfare, and Public Works, and the Dir-
19 ector of the State Division of Planning.

20 Sec. 104. DEPARTMENT OF NATURAL RESOURCES; DIVISION OF
21 WATERS. (a) There is hereby created and established in the De-
22 partment of Natural Resources a Division of Waters, under the
23 control and supervision of the Commissioner of Natural Resources.
24 The commissioner shall appoint a director who shall be executive
25 officer of the Division of Waters and who shall serve at the
26 pleasure of the commissioner. Administrative powers and other
27 delegated duties, as prescribed by law or regulation, shall be
28 vested in the director. The commissioner shall have the authority
29 to review any order or action of the director. The commissioner,

1 upon recommendation of the director or otherwise, may establish
2 reasonable procedures and make and promulgate reasonable rules
3 and regulations necessary to carry out the functions and duties
4 of the division and department under this Act, and may, whenever
5 necessary, issue directives or orders to the director to carry
6 out specific functions and duties. All rules and regulations
7 promulgated by the commissioner shall be adopted pursuant to
8 the Administrative Procedure Act.

9 (b) The Director of the Division of Waters shall be the
10 secretary of the Water Resources Policy Council. He shall be
11 the coordinator for the council to correlate and integrate the
12 work and functions of the departments represented on the council.

13 Sec. 105. COORDINATION; MULTIPLE PERMITS. (a) Whenever
14 a proposed appropriation of water, discharge of waste, use,
15 drainage or disturbance of public water or its bed, or any
16 combination thereof, requires a permit, license or approval from
17 more than one department, or is likely to affect the water in-
18 volved in a manner that is of concern to or under the jurisdic-
19 tion of more than one department, a single application may be
20 made to the Director of the Division of Waters, who shall direct
21 it to the proper department and shall notify all other depart-
22 ments concerned. He shall arrange for the exchange between
23 departments of information and data, the furnishing by one
24 department to another of copies of papers, maps and plans, and
25 for joint or successive hearings, joint orders, or orders condi-
26 tioned upon action of other departments, in order to expedite
27 and simplify interdepartmental action.

28 (b) Any state agency, department, division or official,
29 or any municipality, borough or service area having an interest

1 in any application, regulation, proceeding or action before
2 any department or division under the provisions of this Act
3 may appear before the department or division in which the matter
4 is pending, and give relevant information, evidence, advice and
5 argument.

6 Sec. 106. COUNCIL REVIEW OF WATER POLICY. (a) The Water
7 Resources Policy Council shall review any action or proceeding
8 of the Department of Natural Resources, the Department of Fish
9 and Game, the Department of Health and Welfare, or any other
10 department or division of the state, involving the granting or
11 refusal of any permit, license, approval, or involving any rule,
12 regulation, order or other administrative action, when such
13 action or proceeding involves or affects the appropriation, use,
14 quality, conservation, disposal or control of water of the state,
15 under the authority of this Act, at the request of any other
16 department which has granted or refused a license or permit or
17 approval on the same or a related water use project, or when
18 the proceeding or action is likely to affect the water involved
19 in a manner that is of concern to or under the jurisdiction of
20 such other department, or at the request of any person who is
21 a party to or aggrieved by such a proceeding or action, and the
22 proceeding or action to be reviewed involves a determination of
23 the water policy of the state, the resolving of apparent incon-
24 sistencies between different provisions of law, the resolving
25 of conflicts in policies, regulations, or actions of different
26 departments, agencies or officials, the proper application of
27 the water policy of the state to the facts, or the proper exer-
28 cise of administrative discretion.

29 (b) When a request for a review is filed with the council,

1 the council shall investigate, consult, confer, request and
2 inspect records, information and data, and hold hearings, to
3 the extent it may deem necessary or appropriate. The procedures,
4 decisions, recommendations or other actions of the council shall
5 not be subject to the Administrative Procedure Act, nor be sub-
6 ject to judicial review. When any person has a right of appeal
7 to the superior court from a proceeding or action subject to
8 review by the council, the appeal shall be stayed, and the time
9 for perfecting and filing appeals shall not run, during the
10 pendency of a proceeding for review by the council. It shall
11 not be necessary for any person to request a review by the
12 council in order to perfect an appeal.

13 (c) The council shall make an advisory report of its find-
14 ings, conclusions and recommendations, which may include concur-
15 ring and dissenting views of some of its members, and shall
16 recommend the proper action to be taken by the department whose
17 action is under review.

18 (d) Any person, official, department or agency that is
19 aggrieved by or dissatisfied with the report and recommendations
20 of the council may request instructions from the governor, who
21 shall review the report of the council and direct the proper
22 action to be taken.

23 Sec. 107. PLANNING; COOPERATION WITH FEDERAL GOVERNMENT.

24 (a) The Water Resources Policy Council shall perform the follow-
25 ing specific planning functions:

26 (1) Prepare and maintain coordinated plans for the
27 development of the state's water and associated resources and
28 water related activities, including therein a description of
29 the development objectives and a statement of the recommended

1 means of achieving these objectives, including the encouragement
2 of private individual and corporate activities.

3 (2) Assemble and correlate information relating to
4 water supply, power development, irrigation, watersheds, water
5 use, future possibilities of water use and prospective demands
6 for all purposes served through or affected by water resources
7 development.

8 (3) Assemble and correlate state, local and federal
9 laws, regulations, plans, programs and policies affecting the
10 use, disposal, pollution, control or conservation of water,
11 river basin development, flood prevention, parks, reservations,
12 forests, wildlife refuges, drainage and sanitary systems, waste
13 disposal, water works, watershed protection and development,
14 soil conservation, power facilities and area and municipal water
15 supply needs, and recommend suitable legislation or other action
16 to the legislature, the Congress of the United States, or any
17 city, municipality or borough, or to responsible state, local
18 or federal executive departments or agencies.

19 (4) Incorporate and integrate into its plans, to the
20 extent deemed desirable, plans, programs, reports, research and
21 studies of state agencies and departments.

22 (5) Designate appropriate lands for consideration for
23 development as parks, parkways, recreation areas and areas of
24 natural beauty.

25 (6) Cooperate with federal, state, regional, inter-
26 state and local public and private agencies in the making of
27 plans for drainage, flood control, use, conservation, allocation
28 and distribution of existing water supplies and the development
29 of new water resource projects.

1 (7) Locate and make available information on indus-
2 trial sites, agricultural, commercial and residential areas,
3 together with recommendations for protecting or preserving such
4 sites and areas and solving problems related to the use, dispo-
5 sal, quality control or conservation of water in or in connection
6 with such areas.

7 (8) Enter into contracts or arrangements for the
8 performance of research by the University of Alaska, any other
9 department or agency of the state, any other appropriate insti-
10 tute of higher learning or private institution or person, and
11 to provide reasonable compensation for such research.

12 (9) Locate and determine lands which are or may be
13 needed for dams, reservoirs, flood plains, floodways, canals
14 or ditches for the impoundment, storage, flow and control of
15 waters, and request the reservation of state and federal lands
16 for these purposes.

17 (b) The council shall encourage, assist and advise regional,
18 borough, and city and municipal agencies, officials or bodies
19 responsible for planning in relation to water aspects of their
20 programs, and coordinate local water resources activities, pro-
21 grams, and plans, including, but not limited to, the following:

22 (1) Serve as a clearing house, for the benefit of
23 local governments, of information relating to their water
24 problems and the state and federal services available to assist
25 in the solution of those problems.

26 (2) Refer local units of government to the appropriate
27 department and agencies of the state and federal government for
28 advice, assistance and available services in connection with
29 particular problems.

1 (3) Encourage cooperative effort among local units
2 of government in the solution of their common water problems,
3 particularly in metropolitan and rapidly growing areas.

4 (4) Consult with and cooperate with local units of
5 government, and officers, organizations, groups and individuals
6 representing them.

7 (c) The council shall cooperate with, assist, advise and
8 coordinate plans with the federal government and its officers
9 and agencies, and serve as the state liaison agency with the
10 federal government in matters relating to the appropriation,
11 use, conservation, quality, disposal or control of water and
12 activities related thereto, and perform the following functions
13 among others:

14 (1) Advise and assist the governor in the preparation
15 of the views and recommendations of the State of Alaska on any
16 project, plan or program relating to the appropriation, use,
17 conservation, quality, disposal or control of water located in
18 or affecting the State of Alaska, or on any federal permit or
19 license for any such project.

20 (2) Advise and assist representatives of the State
21 of Alaska on any river basin or regional commission, interagency
22 committee, or any other joint federal-state commission, agency
23 or committee that may hereafter be established, prepare and
24 submit reports to any federal officer, agency or council, in
25 such form and containing such information as such agency, offi-
26 cer or council may from time to time reasonably require to carry
27 out its functions.

28 (3) Advise and assist the Alaska International Develop-
29 ment Commission and any future interstate, regional or interna-

1 tional agency to which the State of Alaska may become a party.

2 (d) The council is authorized to apply for, accept, ad-
3 minister and expend grants, gifts and loans from the federal
4 government and any other public or private source for the pur-
5 poses of this Act, to contract with reference thereto, and to
6 enter into other contracts necessary or appropriate to carry
7 out the purposes of this section, and to adopt such procedures
8 and do all things not inconsistent with the express provisions
9 of this Act that may be required to qualify or entitle the
10 council or the State of Alaska for such grants, gifts or loans.

11 Sec. 108. COUNCIL CHAIRMAN; STAFF. (a) The chairman of
12 the Water Resources Policy Council shall be, during the first
13 year of its existence, the Commissioner of the Department of
14 Natural Resources, during the second year the Commissioner of
15 the Department of Health and Welfare, during the third year the
16 Commissioner of the Department of Fish and Game, and thereafter
17 the chairmanship shall rotate annually in the same order among
18 these three department heads.

19 (b) The council shall to the greatest extent practicable,
20 and with the consent of the commissioners of the departments,
21 utilize the services, personnel, staff, data, records, and
22 facilities of the Departments of Natural Resources, Health and
23 Welfare, and Fish and Game, and such other departments, agencies,
24 boards, councils or commissions as may be appropriate, in carry-
25 ing out its functions under this Act.

26 (c) The duties and functions of the Department of Natural
27 Resources under Sec. 2, Ch. 158, SLA 1959, and of the Department
28 of Health and Welfare under Secs. 303 and 304 of this Act,
29 relating to plans, programs, reports, research, studies and

1 other activites having a relation to the duties and functions
2 of the council under this Article shall be performed under the
3 direction of the council and with the view of assisting the
4 council in the performance of such duties and functions.

5 Sec. 109. RULES AND REGULATIONS OF COUNCIL. The council
6 shall, pursuant to the Administrative Procedure Act, adopt,
7 amend or repeal regulations providing for procedures on review,
8 procedures for performing its functions of planning, coordinating
9 plans, and cooperating and coordinating with the federal govern-
10 ment; procedures for coordination and cooperation between depart-
11 ments in proceedings within the Department of Natural Resources,
12 the Department of Health and Welfare, and the Department of
13 Fish and Game, involving the appropriation, use, quality, con-
14 servation, disposal or control of water, designating the per-
15 sons, officials, divisions or agencies within departments who
16 shall receive notices pursuant to this Act, and such other rules
17 and regulations as may be necessary, desirable or appropriate
18 to the functions and powers granted by the provisions of this
19 Act.

20 Sec. 110. POWERS PROHIBITED TO CITIES AND BOROUGHES. No
21 city or borough of any class, whether home rule or not, may
22 exercise any regulation over matters of water appropriation or
23 protection of waters for fish and game as provided in this Act
24 regardless of whether or not the subject water is located in or
25 passes through the boundaries of the borough or city. No city
26 or borough of any class, whether home rule or not, may exercise
27 any control or regulation over matters of water pollution or
28 other duties assigned to the Department of Health and Welfare
29 by this Act if such control or regulation is inconsistent with

1 the provisions of this Act or the regulations adopted to
2 implement it.

3 ARTICLE II

4 APPROPRIATION AND USE OF WATER

5 Sec. 201. DECLARATION OF POLICY; GENERAL PROVISIONS. (a)

6 It is the purpose of this Article to effectuate and implement
7 the policy of the State of Alaska to encourage the development
8 of its resources by making them available for maximum use con-
9 sistent with the public interest, and to provide for the utiliza-
10 tion, development, and conservation of the waters of the state
11 for the maximum benefit of its people so that waters can be
12 utilized, developed, and maintained on the sustained yield
13 principle, subject to preferences among beneficial uses and to
14 the general reservation of fish and wildlife.

15 (b) A right to water or to the use of water can be acquired
16 only by appropriation for a beneficial use. No appropriation or
17 right to appropriate or right to use appropriated water shall be
18 hereafter initiated or acquired except in compliance with the
19 provisions of this Article. No right to the use of water either
20 appropriated or unappropriated shall be acquired by adverse use
21 or possession.

22 (c) Priority of appropriation of water shall give prior
23 right, provided that priority of appropriation shall not include
24 the right to means of diversion or withdrawal or other means of
25 use, nor the right to prevent changes in the condition of water
26 occurrence, such as the increase or decrease of stream flow, or
27 the lowering of a water table, artesian pressure, or of water
28 level, by later appropriators, so long as the prior appropriator
29 can reasonably acquire his water under the changed conditions.

1 Sec. 202. DEFINITIONS. As used in this Article: (a)

2 "Water" means all water of the state, surface and subsurface,
3 occurring in a natural state, except mineral and medicinal waters.

4 (b) "Source of water" means any substantial quantity of
5 water capable of being put to beneficial use, provided, an appro-
6 priation of water from any stream or other source of water does
7 not confer upon the appropriator the right to prevent or interfere
8 with soil conservation practices above the point of diversion
9 in the watershed in which such stream or other source originates,
10 which practices do not themselves constitute an appropriation
11 for which a permit is required.

12 (c) "Appropriation" means a right to divert, impound, with-
13 draw and use a specific quantity of water from a source of water
14 for a beneficial use if that quantity is available free from
15 claims of prior appropriators.

16 (d) "Beneficial use" means a use of water for the benefit
17 of the appropriator, other persons or the public, that is reason-
18 able and consistent with the public interest, including, but not
19 limited to, domestic, agricultural, irrigation, industrial,
20 mining, power, municipal, sanitary, fish and wildlife, and re-
21 creational uses.

22 (e) "Municipal uses" include the use of water in excess of
23 actual consumer needs in order to maintain a circulating or
24 constantly flowing distribution system, and the use of water to
25 maintain constantly flowing sewers, where climatic conditions
26 require such uses.

27 (f) "Sanitary uses" include the impoundment of water for
28 release into a stream during periods of low flow to augment flows
29 for dilution and transportation of licensed discharges of wastes

1 or effluents from licensed disposal systems.

2 (g) "Fish, wildlife and recreation uses" include but are
3 not limited to the impoundment of water for fish propagation,
4 to provide fish and wildlife habitat and feeding grounds, and
5 to provide commercial fishing opportunities and sport fishing,
6 hunting, boating and other recreational opportunities; the
7 retention of minimum impoundments in multipurpose dams to protect
8 and preserve fish; the impoundment of water for release into a
9 stream during periods of low flow to augment flows to provide
10 for migration, habitat and spawning of commercial and sport
11 fishes.

12 (h) "Well" means any artificial opening or excavation in
13 the ground however made from which underground water flows under
14 natural pressure or is artificially withdrawn.

15 (i) "Director" means the Director of the Division of Waters
16 of the Department of Natural Resources.

17 Sec. 203. APPLICATION FOR PERMIT TO APPROPRIATE. Any per-
18 son intending to appropriate water shall apply for a permit from
19 the Director of the Division of Waters and shall not commence
20 the construction of work for such appropriation nor divert the
21 water until the permit has been issued.

22 Sec. 204. EXEMPTED USES, EXEMPTED AREAS. (a) The director
23 shall divide the state into water control areas by regulations
24 adopted pursuant to the Administrative Procedure Act. Such regu-
25 lations may provide that (1) appropriations for specified pur-
26 poses, (2) appropriations for less than specified quantities of
27 water, (3) appropriations from specified sources, (4) appropria-
28 tions in specified areas, or (5) appropriatcns limited by one
29 or more of the above specifications, shall be exempted from the

1 requirements of this Article relating to inspection, notice, or
2 hearing. Such areas and such exemptions may be modified or
3 abolished by regulation from time to time.

4 (b) If the application is for an exempted appropriation,
5 and if the director determines from the application that the
6 proposed use is beneficial and comes within the terms of the
7 exemption, he shall forthwith approve the application and issue
8 the permit.

9 Sec. 205. CONTENTS OF APPLICATION. (a) An application
10 for a permit to appropriate water shall contain the name and
11 address of the applicant, the source of the proposed water
12 supply, the nature of the proposed use, the amount of water
13 proposed to be diverted, impounded or withdrawn, including the
14 maximum rate at which water is to be diverted or used and the
15 total annual quantity to be diverted, used or stored, the loca-
16 tion and description of the proposed works, the name and address
17 of the owner, if other than the applicant, of land on which the
18 proposed works are to be located, the location and description
19 of the place of use, an estimate of the time required to begin
20 construction, to complete construction, and to apply the water
21 to the proposed beneficial use, and such other information as
22 the director may require. If the proposed appropriation is for
23 mining purposes, the application shall state the nature and
24 location of the mine or mines to be served and the method of
25 supplying and utilizing the water. If for municipal water sup-
26 ply, it shall state the present population to be served and the
27 estimated future requirements of the city, borough, or area.
28 If for domestic purposes, it shall state the number of households
29 and the approximate number of people to be served. If for storage

1 in a reservoir, it shall state the height of the dam, the capacity
2 of the reservoir, the plan for filling, refilling and operating
3 the reservoir, and the use to be made of the impounded waters. If
4 for power purposes, it shall state the nature of the works by
5 which the power is to be developed, the head and amount of water
6 to be utilized and the use to which the power is to be applied.
7 If for irrigation use, it shall state the acreage and the descrip-
8 tion of the land to be irrigated. If the proposed appropriation
9 is of ground water, the application shall state the location of
10 the well, the depth to the water table if known, and a description
11 of the proposed well and pumping equipment.

12 (b) The director may prescribe and furnish forms for applica-
13 tions to appropriate water, and simplified forms for applications
14 for exempted uses.

15 Sec. 206. MAPS, DATA AND SUPPLEMENTAL INFORMATION. (a) The
16 application shall be accompanied by such maps, plans, drawings,
17 specifications and data relating to the source of the proposed
18 appropriation and to all proposed dams, dikes, reservoirs, canals,
19 ditches, pipelines, pumps, wells, power houses and other works,
20 facilities or structures for diverting, storing, conveying or
21 using the water, as may be required by regulation or order of
22 the director, in such form as may be prescribed by the director.

23 (b) The director may by order require that the application
24 or the maps, plans, drawings and data be corrected or supplemented
25 within a reasonable time to be stated in the order.

26 Sec. 207. INSPECTIONS. Upon receipt of an application, the
27 director may make, or cause to be made by his duly authorized re-
28 presentative, such inspection as the director shall deem necessary,
29 of the proposed works, the source of the water, and other uses or

1 demands for water in the area, to determine whether there is a
2 substantial possibility that the rights of other persons or the
3 public interest will be adversely affected or impaired by the
4 proposed appropriation.

5 Sec. 208. NOTICE. Upon the receipt of an application,
6 other than an application for an exempted appropriation, the
7 director shall prepare a notice containing the facts pertinent
8 to the application and shall cause it to be published at the
9 applicant's expense in one issue of a newspaper of general dis-
10 tribution in the area of the state in which the water is proposed
11 to be diverted or used. The director shall also cause the notice
12 to be served personally or by registered or certified mail upon
13 any appropriator of water or applicant for or holder of a permit
14 who, in the opinion of the director, may be affected by the
15 proposed appropriation and upon any state or federal agency or
16 officer, political subdivision or private organization which may
17 be deemed by him to represent or be concerned with any public
18 interest that may be involved.

19 Sec. 209. OBJECTIONS. The notice shall state that any
20 person, official, or agency may, within 15 days from the date
21 of publication or receipt of the notice, file with the director
22 an objection to the application. The objection must state the
23 name and address of the objector and facts tending to show
24 that there are no unappropriated waters in the proposed source,
25 that the proposed means of diversion or construction are inade-
26 quate, that the property and rights of the objector would be
27 destroyed, damaged or impaired in value by the proposed appropria-
28 tion, that loss or harm to the public would result from loss of
29 or harm to fish, wildlife or recreational values caused by the

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1 proposed appropriation, or that other specified harm to the
2 public interest would be caused by the proposed appropriation.

3 Sec. 210. HEARINGS. (a) The director shall examine any
4 objection that may be filed and if he determines that it states
5 a prima facie valid objection or defense to the issuance of the
6 application he shall fix a time and place for a hearing and file
7 a statement of issues and serve a notice of the hearing and
8 proceed as required by Ch. 2 of the Administrative Procedure Act.

9 (b) If no valid objection is filed against the application
10 the director may grant the application and issue the permit on
11 the basis of the information contained in the application or
12 obtained from the inspection or reconnaissance, if any.

13 (c) No permit shall be denied without giving the applicant
14 an opportunity to be heard. If no objection is filed against the
15 application, but the director is of the opinion that the applica-
16 tion should be denied, or desires further information, he shall
17 prepare and file a statement of issues and serve it upon the
18 applicant in the manner provided in Ch. 2 of the Administrative
19 Procedure Act. The statement of issues shall be accompanied by
20 a notice that the applicant may file a request for a hearing
21 thereon and that the application will be denied unless such
22 hearing be requested.

23 Sec. 211. APPROVAL OF APPLICATION; PERMIT; PUBLIC INTEREST.

24 (a) The application shall be approved and the permit issued only
25 if the director shall find (1) that there are unappropriated
26 waters in the proposed source of supply, (2) that the proposed
27 means of diversion or construction are adequate, (3) that the
28 proposed use of water is beneficial, and (4) that the proposed
29 appropriation and use of the water is in the public interest.

1 (b) In determining the public interest the director shall
2 consider: (1) the values to the applicant resulting directly
3 from the proposed use of the water, (2) the benefits to the state
4 and to the locality resulting indirectly from the economic activi-
5 ty that will result from the proposed appropriation and use of
6 the water, (3) the benefits, if any, resulting to the public from
7 improvement of or increased opportunities for fishing, hunting
8 and recreation, (4) the loss of the benefits of alternate uses
9 of the water, if any, that would probably be made within a reason-
10 able time if not precluded or hindered by the proposed use of the
11 water, (5) the loss of, harm to, or impairment in value of the
12 property and rights of other persons that would result from the
13 proposed appropriation and the use of the water, (6) the loss
14 and harm to the public that would result from loss of, harm to
15 or impairment of fish, wildlife and recreational values, (7) the
16 good faith, intent and ability of the applicant to successfully
17 complete the appropriation and to carry on the proposed develop-
18 ment.

19 Sec. 212. TERMS OF PERMIT. Upon approving the application
20 the director shall issue a permit authorizing the applicant to
21 proceed with the construction of the proposed works and to pro-
22 ceed with all steps necessary for the application of the water
23 to the beneficial use and to otherwise perfect his proposed
24 appropriation. The director may issue the permit for less than
25 the amount of water requested and in any case shall issue the
26 permit for no more water than can be applied to the beneficial
27 use for the purposes stated in the application. He may require
28 modification of plans and specifications for the works or equip-
29 ment for storing, diverting or using the water. He may issue

1 the permit subject to such terms, conditions, restrictions and
2 limitations as he deems necessary for the protection of others
3 and of the public interest. Such terms may include, but shall
4 not be limited to, requirements that the holder of the permit
5 comply with Sec. 30, Ch. 94, SLA 1959; that an approval of the
6 appropriation and of the related works be obtained from the
7 Commissioner of Fish and Game as required by Sec. 404 of this
8 Act; that a license be obtained from the Department of Health
9 and Welfare pursuant to Sec. 304 of this Act; that minimum flows
10 be released from reservoirs or that minimum flows be left in
11 streams to protect and preserve the habitat, migration and spawn-
12 ing of commercial and sport fish or to dilute, transport and
13 treat licensed discharges of sewage and industrial wastes; that
14 minimum impoundments be retained in reservoirs to preserve fish
15 life; that water levels of reservoirs be maintained and regulated
16 to protect riparian property values and recreational opportuni-
17 ties; or that damages or compensation be paid for injury or
18 destruction to the property and rights of others.

19 Sec. 213. DENIAL OF PERMIT. If the permit is denied the
20 director shall notify the applicant of the denial and of the
21 disapproval of the application. He shall make specific findings
22 and state specific grounds for denying, conditioning, restricting
23 or limiting the permit. The director may notify the applicant
24 that if the application is modified in certain respects to
25 eliminate the grounds of objection and to conform to the public
26 interest a permit will be granted. If the permit is refused
27 because of a conflict with existing rights or because of threaten-
28 ed harm to or impairment in value of the property and rights of
29 other persons, and the applicant acquires the same by purchase or

1 condemnation, or pays or gives security to pay all damages, the
2 director may thereupon issue said permit.

3 Sec. 214. PREFERENCES IN GRANTING PERMITS. When there are
4 competing applications for water from the same source, and the
5 source of water is insufficient to supply them both, or where
6 an application is made that is inconsistent with an alternative
7 use of the water that would probably be made within a reasonable
8 time if the application were denied, preference in granting the
9 permit or in denying an application in favor of a later use shall
10 be given first to public water supply, then to whichever use
11 which alone or in combination with other foreseeable uses will
12 constitute the maximum beneficial use.

13 Sec. 215. TIME FOR CONSTRUCTION AND COMPLETION. The permit
14 shall state a time limit for the beginning of construction work
15 and shall limit the time for the perfecting of an appropriation
16 to a reasonable period within which the proposed works can be
17 completed by the exercise of reasonable diligence. The director
18 shall, for good cause shown by the applicant, allow reasonable
19 extensions of such time limits.

20 Sec. 216. CERTIFICATES. Upon the completion of the con-
21 struction of the works and the application of water to the pro-
22 posed beneficial use within the time allowed the holder of the
23 permit shall notify the director that he has perfected his
24 appropriation. The director, or his duly authorized representa-
25 tive, shall then examine and inspect the appropriation, and if
26 it is determined that the diversion works have been completed
27 and the appropriation has been perfected in substantial accord-
28 ance with the permit the director shall issue a certificate of
29 appropriation to the holder of the permit.

1 Sec. 217. PRIORITY. The priority of such appropriation
2 shall date from the filing of the original application in the
3 office of the director.

4 Sec. 218. REVOCATION OF PERMIT. If the work is not com-
5 menced, prosecuted and completed within the time stated in the
6 permit, or any extension thereof, or if the water is not applied
7 to beneficial use as contemplated in the permit, or if the plans
8 and specifications filed with the application are not followed,
9 or if the conditions of the permit are not being met, the
10 director may, pursuant to Ch. 2 of the Administrative Procedure
11 Act, file and serve an accusation requiring the applicant to
12 show cause why the permit should not be revoked.

13 Sec. 219. EXISTING RIGHTS. (a) Any beneficial use of
14 water being made on the effective date of this Act, or that has
15 been made within five years prior thereto, or that shall be
16 made in conjunction with works under construction on said date,
17 pursuant to a lawful common law or customary appropriation or
18 use, is hereby confirmed as a lawful appropriation under this
19 Act, and such appropriation is hereby made subject to the provi-
20 sions of this Article and to rules and regulations adopted pur-
21 suant to this Act.

22 (b) The locator of any mining claim, whose claim is dated
23 after May 3, 1917, the effective date of Sec. 47-3-35, ACLA 1949,
24 and prior to the effective date of this Act, and who has included
25 within the boundaries of such claim both banks of any river,
26 creek or stream, shall be deemed to have an existing appropriation
27 for mining purposes of so much water as the director may determine
28 is necessary for the use of the locator in mining his said claim
29 with a priority date as of the date of the mining claim. Such

1 appropriation is hereby made subject to the provisions of this
2 Article and to rules and regulations adopted pursuant to this Act.

3 Sec. 220. DETERMINATION OF EXISTING RIGHTS. (a) Any owner
4 of an existing right may file a declaration of his appropriation
5 with the Director of the Division of Waters at any time. The
6 declaration shall be under oath, be stated on personal knowledge
7 or on bona fide information and belief, and shall be in such
8 form and contain such information as the director may by regula-
9 tion prescribe, including such information as is contained in an
10 application for a permit to appropriate, the date work was begun
11 on the appropriation, the date the water was first applied to a
12 beneficial use, and a true copy of any notice or claim upon which
13 the right was initiated or is based.

14 (b) The director shall, as soon as practicable, proceed to
15 determine the vested rights of persons owning existing appropri-
16 ations. He shall by order require all appropriators within a
17 specified area or from a specified source to file a declaration
18 within three months after the effective date of the order.
19 Notice of the order requiring filing of declarations shall be
20 given by publication once a week for three weeks prior to its
21 effective date in a newspaper of general distribution in the
22 affected area. The director shall also cause notice of the order
23 to be given by registered or certified mail to any person required
24 to file of whom the director has or could readily obtain knowledge
25 or who has requested mailed notice to be given when the director
26 adopts an order requiring the filing of declarations.

27 (c) The declaration thus supplied shall be deemed prima
28 facie correct in all proceedings until the director has made a
29 determination of water rights and issued certificates of

1 appropriation.

2 (d) The director shall make, or cause to be made by his
3 duly authorized representative, such inspections, surveys, re-
4 connaissance, and investigations as he shall deem necessary of
5 the source of water involved, the works by which the water is
6 appropriated, and the use to which the water is put. He shall,
7 on the basis of the declaration and all information obtained,
8 make a preliminary determination of each appropriation as to
9 priority, amount of water, and beneficial use for which the
10 appropriation is made. Priority shall date from the day work
11 was begun on the appropriation if due diligence was used in
12 completing the works; otherwise from the date of application of
13 the water to beneficial use. He shall prepare a summary of such
14 determinations of all appropriations in the area or from the
15 source involved, and shall mail a copy to each person who has
16 filed a declaration in the proceeding. Such preliminary deter-
17 mination shall be deemed a statement of issues within the meaning
18 of Ch. 2 of the Administrative Procedure Act, and any person
19 adversely affected by the determination of or by the refusal to
20 determine any water appropriation may request a hearing thereon.
21 Notice of hearing shall be sent to all persons who have filed
22 declarations.

23 (e) The director shall, on the basis of the hearing, or
24 on the basis of the preliminary determination if no hearing was
25 requested, determine each existing appropriation and issue to
26 the appropriator a certificate of appropriation.

27 (f) If no declaration is filed by an appropriator as re-
28 quired under this section, and the appropriator shall later
29 assert any right or claim to the water, the director, in his

1 discretion, may conclusively determine the priority, quantity,
2 and purpose of the appropriation on the basis of any evidence
3 available to him. He may, if the rights of other persons or
4 appropriators have intervened, and other persons or appropriators
5 would be injured by the late assertion of such appropriation,
6 determine that such appropriation does not exist, or that it
7 bears a later date than that of the persons or appropriators
8 who would be injured.

9 Sec. 221. RECORDS. The director shall keep a record of
10 the date of receipt of all applications, declarations, petitions
11 and other documents filed in his office. Permits, declarations
12 and certificates and amendments and orders affecting them shall
13 be recorded and indexed in accordance with the source of the
14 water and the name of the applicant, owner or appropriator. The
15 files and records of the director shall be open for public
16 inspection.

17 Sec. 222. ENFORCEMENT OF PRIORITIES. The director shall
18 enforce and administer this Article and shall control, regulate
19 and distribute the water resources of the state among the persons
20 entitled to the same in accordance with the rights of priority
21 of appropriation as preserved by or acquired under this Article.

22 Sec. 223. REGULATION AND CONTROL OF WORKS. If the director
23 shall ascertain by any means deemed sufficient by him, that any
24 person is preventing by diversion, obstruction or otherwise, any
25 waters of this state from moving to a person having a prior right
26 to use the same, the director, or his authorized agent, may
27 open, close, adjust, or regulate the headgates, valves, switches,
28 or other control of any ditch, canal, pump, pipe, well, dam or
29 structure as may be necessary to secure such water to the person
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1 having the prior right to its use, and the director or his
2 authorized agent, may attach to the headgate, valve, switch, or
3 other control, a written notice properly dated and signed, set-
4 ting forth the fact that the headgate, valve, switch, or control
5 has been properly regulated by him, which notice shall be legal
6 notice to all persons interested in the diversion and distribu-
7 tion of the water.

8 Sec. 224. REGULATORY ORDERS. (a) If the director shall
9 ascertain by any means deemed sufficient by him, that any person
10 is preventing by diverting, obstructing or otherwise, any waters
11 of this state from moving to any person having a prior right to
12 use the same, the director may order the person so found to be
13 interfering with the water to cease and desist from so doing,
14 and to take such steps as may be necessary to cause the water
15 to move to the person having the prior right to use the same.

16 (b) The director may by order establish corrective controls
17 for any area or source by which priority of rights of appro-
18 priators from that source may be enforced by apportionment,
19 rotation, cessation or reduction of withdrawals. He may by
20 order approve any agreement among the appropriators in any area
21 or from any source providing for control of withdrawals, appor-
22 tionment, rotation or proration of the common supply that is
23 consistent with the intent, purposes and requirements of this
24 Article and that is not detrimental to the public interest or
25 to the rights of other persons not parties to the agreement.

26 Sec. 225. MEASURING DEVICES AND CONTROLS. The director
27 shall have authority to require any water user to install weirs,
28 flumes, meters, gauges, or other measuring devices. He may also
29 require any appropriator to install efficient works for the control

1 and regulation of the water and to construct or improve works
2 to prevent the loss and waste of surface or ground waters either
3 above or below the surface of the land.

4 Sec. 226. REPORTS. The director shall have authority to
5 require any appropriator to report the readings of weirs, flumes,
6 meters, gauges or other measuring devices at reasonable intervals,
7 to file annual or seasonal reports of diversions in such form and
8 containing such information as he may require, and to require
9 such reports from well drillers as to the log of a well, the
10 description of the well structures, and the capacity of the well
11 as he shall deem necessary or desirable.

12 Sec. 227. FIELD OFFICES AND WATER MASTERS. The Commissioner
13 of Natural Resources may establish field offices of the Division
14 of Waters within the state to secure the best protection to all
15 appropriators of water and the economical and efficient super-
16 vision of the waters of the state. The director may appoint a
17 water master for each field office so established, who shall be
18 his agent in supervising the distribution of waters within the
19 area served by such field office according to the rights and
20 priorities of all parties concerned, and who shall perform such
21 other duties as the director may require.

22 Sec. 228. SUITS FOR ENFORCEMENT OF WATER RIGHTS. (a) Upon
23 the request of the director the attorney general shall bring suit
24 in the name of the State of Alaska in the proper superior court,
25 to enjoin the unlawful appropriation, diversion, or use of the
26 waters of the state or the waste or loss thereof.

27 (b) In any suit involving appropriations of water the court
28 may order a reference to the director for investigation of and
29 report upon any or all of the physical facts involved and the

1 director shall thereupon make such an investigation and report
2 as ordered by the court. The report shall set forth such find-
3 ings of facts as may be required by the court's order of reference
4 and may contain such opinions upon the facts as the director deems
5 proper in view of the issues submitted. Before filing his report,
6 the director shall mail a copy of the report to the parties or
7 their attorneys of record. Within 30 days from the date of the
8 mailing of the copy of the report, any party may file objections
9 with the director. After the director has considered the objec-
10 tions, he shall file his report as referee with the clerk of the
11 court and give notice of the filing of the report to the parties
12 or their attorneys. The court shall review the report upon
13 exceptions thereto filed with the clerk of the court within 30
14 days after date of notice of filing of the report. Except in
15 its discretion or for good cause shown, the court shall not con-
16 sider any exception to the report unless it appears that the
17 excepting party presented the matter of the exception to the
18 director in the form of an objection. The report shall be evi-
19 dence of the physical facts found therein, but the court shall
20 hear such evidence as may be offered by any party to rebut the
21 report or the evidence. If such suit is brought in a federal
22 court, the director may accept a reference of such suit as master
23 or referee for the court.

24 Sec. 229. EMINENT DOMAIN. The beneficial use of water is
25 hereby declared to be a public use, and any person may exercise
26 the right of eminent domain to acquire any property or rights
27 when essential for the storage or transportation of water for,
28 or the application of water to any beneficial use, including the
29 right to enlarge existing structures employed for an appropriation

1 and to use the same in common with the former owner, making just
2 compensation for property taken or for resultant damages to other
3 property rights.

4 Sec. 230. ENTRY ON LAND. (a) Any person may enter upon
5 any land or cause the same to be entered by his surveyors and
6 engineers for the purpose of selecting and locating suitable
7 points of diversion, sites and routes for reservoirs, canals,
8 pipelines and other water works, subject to responsibility for
9 any damage done to such property in making such surveys.

10 (b) Any employee of the state or of the United States may
11 enter upon any land for the purpose of making hydrologic and
12 hydrographic surveys and examinations, subject to responsibility
13 for any damage done to such property in making such surveys.

14 Sec. 231. TRANSFERS AND CHANGES OF APPROPRIATIONS. (a)
15 The right to use water pursuant to an appropriation or permit
16 shall be appurtenant to the land or place where it has been or
17 is to be beneficially used, provided, that water supplied by
18 one person to another person's mine or mining claim shall not be
19 appurtenant to said mine or claim unless the parties so intend.
20 An appurtenant water right shall pass with a conveyance or
21 transfer by operation of law of the land unless specifically
22 exempted from the conveyance.

23 (b) All or any part of an appropriation may, with the
24 permission of the director, be severed from the land to which
25 it is appurtenant and may be sold, leased or transferred for
26 other purposes or to other lands and be made appurtenant to other
27 lands. Any deed, lease, contract, assignment of permit or other
28 document transferring an appropriation must be filed for record
29 in the office of the director.

1 (c) The point of diversion, place of storage, place of use,
2 area of use, time of use or nature of the use of any water right
3 may, with the permission of the director and the concurrence of
4 any agency involved in the original application, be changed, and
5 an appropriator of underground water may change the location of
6 his well to another point within the same aquifer.

7 Sec. 232. PROCEDURE FOR CHANGES. (a) Any person owning a
8 water right or to whom a water right has been sold, leased or
9 transferred, who desires to change the point of diversion, place
10 of storage, place of use, nature of use, or location of a well,
11 shall file an application for permission to make such change with
12 the director, provided, the change of location of pumps or ditches
13 within the boundary of a mining claim or group of claims for
14 which the water was appropriated shall not be deemed to be a
15 change in point of diversion where the original permit or certi-
16 ficate of appropriation so authorizes. The application shall
17 contain the name and address of the petitioner, a description
18 of the water right in terms of the permit, certificate or decla-
19 ration on file in the office of the director, the nature of the
20 proposed change and such maps and other information as the
21 director may require.

22 (b) Upon the receipt of the application the director shall
23 make or cause to be made by his authorized representative such
24 inspection, if any, as he shall deem necessary, of the proposed
25 change to determine whether there is a substantial possibility
26 that the rights of other persons or the public interest will be
27 adversely affected or impaired by the proposed change, and shall
28 notify any agency involved in the original application.

29 (c) The director may, if he determines from the information
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1 contained in the application or obtained from the inspection,
2 if any, that damage to the rights of other persons or to the
3 public interest is unlikely, issue a temporary permit to make
4 the proposed change. If any person claiming to be injured by
5 such change files an objection thereto within one year after
6 the date the change was actually made the director shall, pur-
7 suant to Ch. 2 of the Administrative Procedure Act, file an
8 accusation directing the owner of the appropriation to show
9 cause why the permit to make the change should not be revoked.
10 He may, if it appears necessary to protect the rights of the
11 parties temporarily suspend the order permitting the change.
12 After notice and hearing the director may confirm, modify or
13 rescind the order granting the permit. If no such objection
14 is filed within one year the change shall become permanent and
15 the director shall issue an amended permit or certificate to
16 represent the water right as changed.

17 (d) The director may, if he is uncertain as to whether
18 there is likelihood of damage to the rights of other persons
19 or to the public interest, and shall at the request of the ap-
20 plicant, proceed to give notice, receive objections and hold
21 hearings as required in the case of applications for an original
22 appropriation. The application shall be granted and the change
23 allowed unless an objector shall prove that injury will occur
24 to a valid and existing water right and if it is found that
25 the proposed change will not be detrimental to the public in-
26 terest, and that the appropriation proposed to be changed has
27 not been abandoned or forfeited by a failure to use the water
28 for beneficial purposes during five successive years. A change
29 may be granted in part or subjected to conditions including the

1 payment of damages to an injured person in order to avoid injury
2 to private property or the public interest. The director shall
3 issue an amended permit or certificate to represent the water
4 right as changed.

5 Sec. 233. CHANGES TO PREFERRED USE. A preferred use of
6 water is one for public water supply or one that will result in
7 a fuller utilization and development of the water of the state
8 and make a greater contribution to the general welfare and the
9 public interest than another use of the same water. Whenever
10 an applicant for a permit to appropriate water shall file a
11 petition with the director alleging facts showing that the pro-
12 posed use will be prevented or substantially interfered with by
13 an existing prior appropriation of water, that the proposed use
14 is a preferred use over the existing use as above defined, and
15 that the applicant for the proposed preferred use is willing
16 and able to furnish just and reasonable compensation, as deter-
17 mined by the director, to the holder of the permit or certificate
18 for the prior appropriation, the director shall file and serve
19 an accusation requiring the owner or holder to show cause why
20 the certificate or permit should not be recalled, and proceed
21 pursuant to Ch. 2 of the Administrative Procedure Act. If the
22 director shall find that the allegations of the petition are
23 true, he shall recall the permit or certificate, and revoke or
24 cancel the same, or reissue the same to the applicant for the
25 preferred use.

26 Sec. 234. ABANDONMENT, FORFEITURE AND REVERSION OF APPRO-
27 PRIATIONS. (a) An appropriation is abandoned in whole or in
28 part when the owner thereof ceases to use all or a part of the
29 same with the intention of abandoning and relinquishing his

1 claim to the water. If no beneficial use of water is made pur-
2 suant to an appropriation during five successive years the fail-
3 ure to use the water during said period shall be prima facie
4 evidence of an intent to relinquish and abandon.

5 (b) Whenever a person owning an appropriation voluntarily
6 fails or neglects without sufficient cause to apply all or a
7 part of the water to beneficial use for a period of five succes-
8 sive years, the appropriation shall be wholly or partially
9 forfeited.

10 (c) Whenever a person entitled to the use of the water of
11 the state voluntarily fails, without sufficient cause, to bene-
12 ficially use all or any part of his appropriation for a period
13 of five successive years, such unused water and the right to
14 appropriate the same shall revert to the state and the water
15 affected thereby shall become unappropriated water.

16 Sec. 235. PROCEDURE ON ABANDONMENT, FORFEITURE OR REVERSION.
17 When the director is informed that an appropriator has or may
18 have abandoned or forfeited all or a part of his appropriation
19 or that the water for the same has reverted to the state, or
20 when another appropriator shall claim that he has been or will
21 be injured by the resumption of the use of a wholly or partly
22 abandoned, forfeited or reverted appropriation, the director
23 shall file and serve an accusation requiring the appropriator
24 to show cause why the appropriation should not be declared
25 abandoned, forfeited or reverted, and the permit, certificate
26 or declaration of appropriation be canceled, and proceed pur-
27 suant to Ch. 2 of the Administrative Procedure Act.

28 Sec. 236. APPEALS. (a) Any person aggrieved by an order
29 of the director granting, denying, conditioning, restricting or
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1 limiting a permit to appropriate, revoking a permit, determining
2 or refusing to determine an existing appropriation, abandoning,
3 forfeiting, or declaring an appropriation reverted, after an ac-
4 cusation or statement of issues has been filed pursuant to
5 Secs. 4 and 5 of Ch. 2 of the Administrative Procedure Act, and
6 after notice and hearing shall be entitled to judicial review
7 of such order pursuant to Ch. 2 of the Administrative Procedure
8 Act.

9 (b) Any person aggrieved by an order granting or denying
10 a certificate of appropriation, extending or refusing to extend
11 the time for the beginning or completion of construction of
12 works for an appropriation, regulating or controlling diversion
13 works, granting or denying an order for corrective controls,
14 granting or denying an order to cease and desist from interfering
15 with an appropriation, requiring the installation of measuring
16 devices, control works and structures, requiring the filing of
17 reports, permitting, denying, or conditioning a change in the
18 point of diversion, place of storage, place of use, nature of
19 use, or location of a well, may demand a hearing. The director
20 shall thereupon issue an accusation or a statement of issues,
21 whichever he shall deem appropriate, and further proceedings
22 and judicial review shall be had pursuant to Ch. 2 of the Ad-
23 ministrative Procedure Act.

24 Sec. 237. CRIMES. Any person who shall construct works
25 for an appropriation or divert, impound, withdraw or use water
26 from any source without an existing right, or permit, or certifi-
27 cate of appropriation, or who shall knowingly interfere with,
28 open, close, adjust or regulate a headgate, valve, switch, or
29 other controlling works of any ditch, canal, pump, pipe, well,

1 dam or structure after the same has been regulated by the direc-
2 tor or his authorized agent, or any person who shall violate
3 any order of the director to cease and desist from preventing
4 any water from moving to a person having a prior right to use
5 the same, or who shall disobey an order of the director requiring
6 him to take steps to cause the water to so move, or who shall
7 fail or refuse to install meters, gauges or other measuring
8 devices or control works or structures required by the director,
9 or who shall violate any order establishing corrective controls
10 for an area or for a source of water, or who shall knowingly
11 make any false or misleading statement in a declaration of
12 existing rights, shall be guilty of a misdemeanor.

13 Sec. 238. CANCELLATION OR SUSPENSION OF PERMITS OR CERTI-
14 FICATES. Whenever the director shall have reason to believe
15 that the holder of a permit or the owner of a certificate of
16 appropriation is wilfully violating or has wilfully violated
17 any terms, conditions, restrictions or limitations of his permit
18 or certificate, or any provision of this Act, or any rule,
19 regulation or order issued pursuant to this Act, the director
20 may file and serve an accusation pursuant to Ch. 2 of the Ad-
21 ministrative Procedure Act, requiring the owner or holder to
22 show cause why the permit or certificate should not be canceled.
23 Whenever, after such service and hearing, the director finds
24 that such wilful violation has occurred, he may cancel or suspend
25 the permit or the certificate or impose conditions on the future
26 use thereof to prevent further such violations.

27 Sec. 239. POWERS AND DUTIES OF THE DIRECTOR. The director
28 shall:

29 (1) Have general charge and supervision of the Division

1 of Waters and exercise the powers specifically delegated to him.
2 He may employ and fix the compensation of such assistants and
3 employees as are necessary for the operations of the division.
4 He shall be the certifying officer of the division with the
5 consent of the commissioner, and may approve all lawful vouchers
6 for the disbursement of monies appropriated to the division.

7 (2) Execute all laws, rules, regulations and orders
8 as are properly promulgated by the commissioner.

9 (3) Prescribe procedures, forms and requirements for
10 applications, permits, certificates and proceedings under this
11 Act.

12 (4) Where authorized by this Act, adopt, amend, repeal
13 and promulgate such reasonable rules and regulations as may be
14 necessary or desirable for the discharge of his duties and for
15 the achievement of the purposes of this Act.

16 (5) Maintain such records as the commissioner may
17 deem necessary, administer oaths, and do all things incidental
18 to the authority imposed.

19 (6) Delegate any of the administrative duties, func-
20 tions or powers imposed upon him to any responsible employee
21 within the division.

22 Sec. 240. COLLECTION OF HYDROLOGIC DATA. The director
23 shall:

24 (1) Collect, record, evaluate and distribute data
25 on the quantity and location of all waters of the state, and
26 as agent for and under the direction of the Department of Health
27 and Welfare, of the quality of such waters.

28 (2) Publish or have published data on the waters of
29 the state.

1 (3) Require the filing with the Division of Waters
2 of the results and findings of all surveys of water quality,
3 quantity and location, including water well drilling logs,
4 pumping tests, flow measurements, type of aquifer, tidal cur-
5 rents and physical characteristics and volume determinations.

6 (4) Accept and expend funds for the purposes of this
7 section and enter into agreements with individuals, public or
8 private agencies, communities, private industry, other state
9 agencies and agencies of the federal government.

10 ARTICLE III

11 WATER POLLUTION AND QUALITY CONTROL

12 Sec. 301. DECLARATION OF POLICY. It is the purpose of
13 this Article to effectuate and implement the policy of the State
14 of Alaska to develop its water resources reserved to the people
15 for common use by making them available for maximum use consis-
16 tent with the public interest and conserving them for the maximum
17 benefit of its people and to provide for the promotion and pro-
18 tection of public health. Recognizing that the pollution of the
19 waters of the state is inconsistent with this policy in that
20 such pollution endangers public health, safety, and welfare,
21 creates public nuisances, impairs domestic, agricultural, irriga-
22 tion, industrial, recreational and other legitimate beneficial
23 uses of water, is harmful to wildlife, fish and other aquatic
24 life, and damages and depletes the vital water resources of the
25 state, it is therefore declared to be the public policy of this
26 state to provide for the prevention, control, and abatement of
27 existing or new pollution of all such waters in order to con-
28 serve the same and protect, maintain and improve the quality
29 thereof for the uses and purposes aforesaid, and to cooperate

1 with the federal government in furtherance of these objectives.

2 Sec. 302. DEFINITIONS. As used in this Article:

3 (1) "Pollution" means such contamination or other
4 alteration of the physical, chemical, radioactive or biological
5 properties of any water of the state, or such discharge of any
6 liquid, gaseous, solid substance or radioactive material into
7 any waters of the state as will or is likely to create a nuisance
8 or render such waters actually or potentially harmful or detri-
9 mental or injurious to public health, safety or welfare, or to
10 domestic, commercial, industrial, agricultural, irrigation,
11 recreational, or other legitimate beneficial uses, or to live-
12 stock, wild animals, birds, fish or other aquatic life.

13 (2) "Wastes" means sewage, industrial waste, and all
14 other liquid, gaseous, solid or radioactive substances which may
15 pollute or tend to pollute any waters of the state.

16 (3) "Sewerage System" means pipelines or conduits,
17 pumping stations and force mains, and all other constructions,
18 devices, appurtenances and facilities used for collecting or
19 conducting wastes to a point of ultimate disposal.

20 (4) "Treatment Works" means any plant, disposal
21 field, lagoon, dam, pumping station, constructed drainage ditch
22 or surface water intercepting ditch, incinerator, area devoted
23 to sanitary land fills, or other works used for the purpose of
24 treating, stabilizing, holding or disposing of wastes so as to
25 prevent or reduce pollution therefrom.

26 (5) "Disposal System" means a system for disposing
27 of wastes and includes sewerage systems, treatment works, out-
28 lets, and other facilities for discharging or disposing of wastes
29 or effluents or other substances produced or resulting therefrom,

1 or that will result in such discharge or disposition.

2 (6) "Person" includes, in addition to the persons
8 enumerated in Sec. 102(b) of this Act, any officer or governing
4 or managing body of a municipality, governmental subdivision or
5 public or private corporation.

6 (7) "Commissioner" means the Commissioner of Health
7 and Welfare.

8 Sec. 303. WATER POLLUTION ADVISORY COMMITTEE. (a) The
9 commissioner shall establish a Water Pollution Advisory Committee
10 which shall (1) investigate and study water pollution control
11 problems; (2) make recommendations to the commissioner and to
12 the Water Resources Policy Council on major policies, programs
13 and projects; (3) promote action on the general pollution con-
14 trol program and on particular problems and projects through
15 contacts among the groups or interests concerned through public
16 education and through other efforts as may be appropriate and
17 feasible. All reports and recommendations of the committee shall
18 be advisory only and shall not be binding on the commissioner or
19 the council.

20 (b) The committee shall consist of at least seven and no
21 more than fifteen members, but the exact number within those
22 limits shall be at the discretion of the commissioner. The com-
23 missioner shall appoint committee members for three year terms,
24 except that the initial appointments of the members of the first
25 committee, or of members added to the committee, may be for a
26 period of from one to three years in order to provide for stagger-
27 ed terms and continuity of membership. No committee member shall
28 be appointed for more than two consecutive terms. The commission-
29 er may from time to time add to the membership of the committee,

1 or may reduce the size of the committee by expressly declining
2 to make an appointment to fill a vacancy within the limits
3 established by this section. The commissioner may make appoint-
4 ments to fill a vacancy for an unexpired term in the same manner
5 as he makes the original appointment.

6 (c) The committee shall meet regularly once each year at
7 a time and place to be determined by the commissioner and shall
8 hold special meetings at the call of its chairman, the commis-
9 sioner, or five members of the committee. The committee shall
10 elect a chairman each year and may elect other officers as it
11 may deem necessary. The commissioner shall reimburse the com-
12 mittee members for their reasonable and necessary traveling and
13 other expenses incurred in attending meetings.

14 Sec. 304. POWERS AND DUTIES OF THE COMMISSIONER. (a) Ad-
15 ministration and enforcement; coordination with other agencies.
16 The commissioner shall administer and enforce the provisions of
17 this Article, and so far as practicable, all other laws relating
18 to the prevention, control or abatement of water pollution; pro-
19 vided that this Article shall not abridge or abrogate any power
20 or duty of any other public officer or agency in respect thereof
21 unless expressly so provided or unless the express provisions
22 of this Article so require on account of a direct conflict. The
23 activities of all such public officers and agencies relating to
24 the prevention, control or abatement of water pollution shall,
25 so far as practicable, and subject to the provisions of Article
26 I of this Act, be coordinated under the direction of the commis-
27 sioner. The commissioner shall have the further powers pre-
28 scribed in this section, and it shall be his duty to exercise
29 them whenever and so far as necessary and practicable to prevent,

1 control or abate pollution and effectuate the purposes of this
2 Article.

3 (b) Programs. The commissioner may develop comprehensive
4 programs for the prevention, control, and abatement of existing
5 or new pollution of the waters of the state.

6 (c) Cooperation. The commissioner may advise, consult
7 and cooperate with other agencies of the state, the federal
8 government, other states and interstate agencies and with affect-
9 ed governmental subdivisions, groups, industries and others con-
10 cerned in furtherance of the purposes of this Article.

11 (d) Loans, grants, gifts. The commissioner may accept and
12 administer loans, grants and gifts from the federal government
13 and other sources, public or private, for the purposes of this
14 Article.

15 (e) Studies. The commissioner may encourage, participate
16 in or conduct studies, investigations, research and demonstra-
17 tions and may collect and disseminate information relating to
18 water pollution and the causes, prevention, control and abatement
19 thereof, and collect, record and evaluate data on water quality
20 in the state.

21 (f) Standards; classification. The commissioner may by
22 regulation adopted pursuant to the Administrative Procedure Act
23 adopt, promulgate, modify or rescind standards of quality for
24 the waters of the state and for wastes and other effluents or
25 substances discharged or deposited therein and may classify such
26 waters according to their best uses in the interests of the pub-
27 lic under such conditions as the commissioner may prescribe for
28 the prevention, control and abatement of pollution.

29 (g) Regulations. The commissioner may adopt, promulgate,
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1 amend or rescind regulations implementing or effectuating the
2 provisions of this Article in accordance with the provisions of
3 the Administrative Procedure Act. Such regulations shall have
4 the force of law and may be enforced as such.

5 (h) Orders. The commissioner may issue, modify or revoke
6 orders for the following purposes when deemed necessary to pre-
7 vent, control or abate pollution: (1) prohibiting or directing
8 the abatement of discharges of wastes into the waters of the
9 state; and (2) requiring the construction or installation of
10 new disposal systems or any parts thereof, or the improvement,
11 alteration or enlargement of existing disposal systems or any
12 parts thereof, or the adoption of other remedial measures to
13 prevent, control or abate pollution.

14 (i) Plans. The commissioner may require the submission
15 of and may review plans, specifications or other data relative
16 to disposal systems or other facilities or any parts thereof
17 for which licenses may be required by this Article.

18 (j) Licenses. The commissioner may issue, continue in
19 effect, modify, revoke or deny, under such conditions as he may
20 prescribe to prevent, control or abate pollution, licenses for
21 the discharge of waste or effluents or other substances produced
22 or resulting therefrom into any waters of the state, or for
23 placing such wastes, effluents or substances where they will
24 affect any such waters or for the construction, installation,
25 improvement, alteration, enlargement, operation or use of dispo-
26 sal systems or any parts thereof, or buildings, plants, establish-
27 ments, works or other facilities or any parts thereof, the opera-
28 tion or use of which will result in discharging any such wastes,
29 effluents or substances where they will affect any such waters

1 or the operation or use of which will affect the physical,
2 chemical, radioactive or biological properties of any such waters.

3 (k) Existing discharges and disposal systems. Any permit
4 issued under Ch. 117, SLA 1949, shall be deemed to be a license
5 issued under this Article. Any person lawfully discharging any
6 wastes or lawfully operating any disposal system without a permit
7 at the time this Act takes effect may procure a temporary operat-
8 ing license for the continuance of such discharge or operation
9 by applying in writing to the commissioner, stating the location
10 of the discharge or disposal system, the water of the state in-
11 volved, a description of the operation or system and a description
12 of the type and quantity of the discharge or effluent. Such tem-
13 porary licenses shall extend only until the commissioner shall
14 by order require the licensee to file a complete application for
15 a regular license under Sec. 306 of this Article and until such
16 application has been finally acted upon. All licenses resulting
17 from existing permits or issued under the authority of this sub-
18 section shall be subject to the authority of the commissioner to
19 modify or revoke such licenses as in the case of other licenses
20 issued under this Article.

21 (l) Consultation. The commissioner may enlist the aid of
22 representatives of local, state and federal governmental agencies
23 and units charged with matters relating to fisheries, mines,
24 agriculture, forest, water resources, conservation, recreation,
25 public health and other fields related to water usage as well
26 as representatives of private industry which may be affected by
27 water usage.

28 (m) Incidental powers. The commissioner may exercise all
29 incidental powers necessary to effectuate the purposes of this

1 Article.

2 Sec. 305. ENFORCEMENT. (a) Duties of persons affected.
3 It is the duty of every person affected to comply with all the
4 provisions of this Article and with the provisions of all regu-
5 lations, orders or licenses adopted or issued by the commissioner
6 thereunder.

7 (b) Prohibition of pollution. Except as otherwise herein-
8 after provided, it is unlawful for any person to cause pollution
9 of any waters of the state or to discharge or place or cause to
10 be discharged or placed any wastes where they will or are likely
11 to cause pollution of any such waters. The discharge or placing
12 of any wastes in accordance with a valid and existing license
13 issued by the commissioner shall not be deemed a violation of
14 this subsection, but this provision shall not affect any other
15 provision of law relating to waters or the pollution or contami-
16 nation thereof.

17 (c) Public nuisance; remedies. Any violation of Subsec. (b)
18 of this section is a public nuisance and may, in addition to
19 other penalties prescribed by law, be enjoined and abated under
20 any lawful procedure available for so dealing with such nuisances.

21 (d) Plans and licenses. It is unlawful for any person to
22 do any of the following without submitting to the commissioner
23 such plans, specifications and other data relating thereto as
24 he may require and without first securing from the commissioner
25 a license therefor as provided by this Article: (1) to commence,
26 carry on or complete the construction, installation, improvement,
27 alteration or enlargement of any disposal system or any part
28 thereof or any building, plant, establishment works or other
29 facilities or any part thereof, the operation or use of which

1 would result or would be likely to result in the pollution of
2 any waters of the state or in the discharge of any wastes or any
3 effluents or other substances produced or resulting therefrom
4 into any such waters or in placing any such wastes, effluents
5 or substances where they would affect or be likely to affect
6 such waters, or the operation or use of which building, plant,
7 establishment, works or other facilities, or any part thereof
8 would affect or be likely to affect the physical, chemical or
9 biological properties of any such waters; (2) to operate or use
10 any of the foregoing or any part thereof; (3) to alter or increase
11 the volume, strength or composition of any wastes or any effluents
12 or other substances produced or resulting therefrom which are
13 discharged into any waters of the state or are placed where they
14 will affect or be likely to affect any such waters under an
15 existing license, or to alter or increase the output or effect
16 of any operation or process affecting the physical, chemical,
17 radioactive or biological properties of any such waters which
18 is carried on under an existing license, which alteration or
19 increase exceeds or conflicts with the conditions or specifica-
20 tions of such license or any part thereof.

21 Sec. 306. PROCEDURE. (a) Licenses. When an application
22 for a license is filed with the commissioner, he may, on the basis
23 of the application and plans, specifications or other data sub-
24 mitted therewith and on the basis of such other information and
25 data on file in his department or that he may acquire by such
26 consultation with other departments as he may deem necessary and
27 such investigation, survey or reconnaissance as he may deem neces-
28 sary, find that the proposed acts or facilities will not result
29 in pollution of the waters of the state and will not violate any

1 standards of quality for the waters of the state or for wastes
2 and other effluents or substances discharged or deposited there-
3 in and issue such license on the basis of such findings.

4 No license shall be denied without giving the applicant an
5 opportunity to be heard. If the commissioner is unable to make
6 findings on the basis of the information available, or is of the
7 opinion that the application should be denied, or desires further
8 information, he shall prepare and file a statement of issues and
9 serve it upon the applicant in the manner provided in Ch. 2 of
10 the Administrative Procedure Act. The statement of issues shall
11 be accompanied by notice that the applicant may file a request
12 for a hearing thereon and that the application will be denied
13 unless such hearing be requested. If the applicant requests a
14 hearing the commissioner shall cause notice thereof to be served
15 personally or by registered or certified mail upon any person who
16 in his opinion may be affected by the proposed acts or apparatus,
17 and upon any state or federal agency or officer, political sub-
18 division or private organization which may be deemed by him to
19 represent or be concerned with any public interest that may be
20 involved.

21 (b) Orders. Whenever the commissioner believes that there
22 has been a violation of any of the provisions of this Act or of
23 any regulation or order of the commissioner, he may file an
24 accusation against the alleged violator or violators, pursuant to
25 Ch. 2 of the Administrative Procedure Act, specifying the cause
26 of his complaint and requiring that the matters complained of be
27 corrected unless a written request for hearing is made.

28 (c) Emergency orders. Whenever the commissioner finds that
29 an emergency exists requiring immediate action to protect the

1 public health or welfare, he may without notice or hearing issue
2 an order reciting the existence of such emergency and requiring
3 that such action be taken as he deems necessary to meet the
4 emergency. Such order shall be effective immediately. Any person
5 to whom such order is directed shall comply therewith immediately.
6 If he shall request a hearing, the commissioner shall proceed, as
7 soon as possible, to hold and conduct a hearing in accordance
8 with Ch. 2 of the Administrative Procedure Act, provided that the
9 order of the commissioner shall constitute the accusation, state-
10 ment of issues and statement to respondent that no notice of
11 defense is required, and the hearing shall be held as soon as
12 possible in order to avoid hardship to such person.

13 (d) Review. Any person aggrieved by an order of the com-
14 missioner granting, denying, conditioning, restricting or limit-
15 ing a license or by an order issued for the prevention, control,
16 or abatement of pollution after notice and hearing, shall be
17 entitled to judicial review of such order pursuant to Ch. 2 of
18 the Administrative Procedure Act, and may request a review by
19 the Water Resources Policy Council.

20 Sec. 307. INSPECTIONS AND INVESTIGATIONS; MAINTENANCE OF
21 RECORDS; REPORTS. The commissioner or his duly authorized re-
22 presentative shall have the power to enter at reasonable times
23 upon any private or public property for the purpose of inspecting
24 and investigating conditions relating to pollution or the possible
25 pollution of any waters of the state.

26 Any authorized representative of the commissioner may examine
27 any records or memoranda pertaining to the operation of disposal
28 systems. The commissioner may require the maintenance of records
29 relating to the operation of disposal systems and treatment works.

1 Copies of such records must be submitted to the commissioner on
2 request, and the commissioner may by regulation require annual
3 or seasonal reports of operations of disposal systems and the
4 quantities and qualities of wastes or effluents discharged or
5 deposited in any waters of the state, and such other information
6 as he may need to carry out the provisions of this Article.

7 Sec. 308. CRIMES; INJUNCTIONS; OTHER REMEDIES. (a) Any
8 person who violates any of the provisions of, or who fails to
9 perform any duty imposed by this Article, or who violates or
10 fails to comply with any regulation, order or determination of
11 the commissioner promulgated pursuant to this Article shall be
12 guilty of a misdemeanor. Each day upon which such violation or
13 failure occurs shall constitute a separate offense.

14 (b) The provisions of this Article may be enforced by
15 mandamus, mandatory injunction, injunction or other appropriate
16 remedy. It shall be the duty of the attorney general upon the
17 request of the commissioner to bring any action required for
18 such enforcement against any person violating or failing to
19 comply with any of the provisions of this Article, or violating
20 or failing to comply with any order, regulation, or determination
21 of the commissioner. In any action brought pursuant to this
22 section, any finding of the commissioner after hearing or due
23 notice shall be prima facie evidence of the fact or facts found
24 therein.

25 Sec. 309. CONFLICTING LAWS. This Article shall not be
26 construed as repealing any laws of the state relating to the
27 pollution of waters or any conservation laws other than those
28 expressly repealed by this Act, but shall be held and construed
29 as auxiliary and supplementary thereto, except to the extent that

1 the same are in direct conflict therewith.

2 Sec. 310. EXISTING RIGHTS AND REMEDIES PRESERVED. It is
3 the purpose of this Article to provide additional and cumulative
4 remedies to prevent, abate and control the pollution of the
5 waters of the state. Nothing herein contained shall be construed
6 to abridge or alter rights of action or remedies in equity or
7 under the common law or statutory law, criminal or civil, nor
8 shall any provision of this Article or any act done by virtue
9 thereof, be construed as estopping the state or any municipality
10 or person, as riparian owners, appropriators or otherwise, in
11 their exercise of their rights in equity or under the common
12 law or statutory law to suppress nuisances or to abate pollution.

13 Sec. 311. EXEMPT ACTIVITIES. The following activities
14 shall not be deemed a violation of any provision of this Article:

15 (1) The mining or excavation of gravel or other earth
16 materials by hydraulic methods and the disposal of the waste
17 water and other waste materials resulting therefrom within the
18 same watershed;

19 (2) The washing of gravel for the purpose of removing
20 undesirable materials therefrom and the disposal of the waste
21 water and other waste materials resulting therefrom within the
22 same watershed;

23 (3) The washing of gravel or other earth materials
24 for the purpose of recovering any precious metals contained
25 therein and the disposal of the waste water and other waste
26 materials resulting therefrom within the same watershed.

27 ARTICLE IV

28 CONSERVATION OF PUBLIC WATERS

29 Sec. 401. DECLARATION OF POLICY. It is the purpose of this

1 Article to effectuate and implement the policy of the state that
2 wherever occurring in their natural state, wildlife and waters
3 are reserved to the people for common use; to reserve from the
4 public domain waters of natural beauty and recreational value
5 and provide for their administration and preservation for the
6 use, enjoyment and welfare of the people; to subject appropria-
7 tions of water to preferences and to the general reservation of
8 fish and wildlife; to define the navigable or public waters of
9 the state; to reserve access to water resources, and to regulate
10 and limit such access for beneficial uses or public purposes.

11 Sec. 402. DEFINITIONS. As used in this Article: (a)
12 "Navigable waters" means any water of the state forming any river,
13 stream, lake, pond, slough, bayou, marsh, bay, sound, estuary,
14 inlet, strait, passage, canal, sea or ocean within the territorial
15 limits of the state or otherwise subject to its power, that is
16 navigable in fact for any purpose whatsoever, including, but not
17 limited to, waters suitable for or that can be made suitable for
18 commercial navigation, floating of logs, landing and takeoff of
19 aircraft, or floating any boat, skiff, or canoe for hunting,
20 fishing, or recreational purposes, provided that this definition
21 is not intended to affect the determination of the ownership of
22 the beds of navigable waters.

23 (b) "Public waters" means navigable waters and all waters
24 on the surface or underground that are capable of substantial
25 public use and all waters that are suitable for fish and wildlife
26 habitat, migration and spawning. The public character of water
27 shall not be affected by the existence of private ownership of
28 the underlying, overlying or surrounding land, or by the fact
29 that the water was not navigable in fact or susceptible of being

1 used as a highway for commerce at the time this state was ad-
2 mitted to the Union. This section is not intended to affect
3 determination of the ownership of the beds of lakes or streams.

4 Sec. 403. RESERVATION OF WATERS. (a) The Department of
5 Fish and Game may request the Director of the Division of Waters
6 to reserve any public waters from appropriation and use so as to
7 maintain a minimum flow or level of water therein throughout the
8 year or at such periods as the director shall designate, in
9 order to provide for the protection of commercial and sport
10 fishes and their habitat, migrations and spawning, and to provide
11 commercial fishing opportunities and sport fishing, hunting,
12 boating and other recreational opportunities.

13 (b) The Department of Health and Welfare and any municipal-
14 ity, city or borough may request the Director of the Division of
15 Waters to reserve any public waters from appropriation and use
16 so as to maintain a minimum flow or level of water therein through-
17 out the year or at such periods as the director shall designate,
18 in order to preserve and provide for present and future uses of
19 the stream for the transportation, dilution and treatment of
20 licensed discharges of sewage and wastes.

21 (c) The Division of Tourism and Economic Development may
22 request the Director of the Division of Waters to reserve any
23 public waters from appropriation and use so as to maintain a
24 minimum flow or level of water therein, or so as to prevent
25 fluctuations of the flow or level therein throughout the year
26 or at such periods as the director shall designate in order to
27 preserve and provide areas of great scenic beauty, waters for
28 commercial and recreational boating, and recreational values for
29 parks and public recreation sites, facilities and areas.

1 (d) Upon receipt of such request the director shall draft
2 a proposed regulation embodying and implementing the requested
3 reservation of water and shall proceed to give notice and hold
4 hearings in accordance with the Administrative Procedure Act.
5 If he shall find that the proposed reservation will be in the
6 public interest because it will result in greater public benefits
7 than the benefits accruing from foreseeable future appropriations
8 of the water, he shall adopt and file such regulation. The re-
9 gulation shall be subject to judicial review and legislative
10 review as provided in the Administrative Procedure Act, and any
11 person aggrieved by such regulation or by the failure to adopt
12 such regulation may request a review by the Water Resources
13 Policy Council.

14 (e) After the adoption of a regulation reserving waters for
15 such purposes, the director may reject an application and refuse
16 a permit for the appropriation of the water so reserved, or may
17 issue the permit subject to such conditions as will preserve and
18 effectuate the reservation.

19 Sec. 404. PROTECTION OF PUBLIC WATERS. (a) No person
20 shall do any act of damage to or disturbance of any public waters,
21 or the bed thereof, that results in harm to commercial or sport
22 fish or wildlife, their habitat, migration or breeding, without
23 first obtaining the approval of the Commissioner of Fish and
24 Game. Such acts of damage or disturbance include but are not
25 limited to, diverting, changing the course of or blocking a chan-
26 nel of public waters; damming or obstructing the flow of public
27 waters; raising or lowering the level of public waters; using,
28 except for the purpose of crossing a river or stream at an estab-
29 lished crossing, any wheeled, tracked or excavating equipment or

1 log dragging equipment in the bed of public waters; building
2 dikes or log storage dumps in public waters; building roads
3 along or bridges or culverts over public waters; digging, ex-
4 tracting, mining or washing any gravel or other substance from
5 the bed or banks of public waters; felling trees or timber into
6 public waters, dumping or depositing any limbs, foliage, brush,
7 stumps, sawdust, planer shavings or similar rubbish therein;
8 dumping or depositing silt, dirt, mud or tailings into public
9 waters, or causing or permitting the same to flow into public
10 waters; dumping, depositing or discharging into public waters
11 any substance likely to render such waters harmful or detrimental
12 or injurious to wild animals, birds, fish or other aquatic life,
13 or causing or permitting the same to flow into public waters.

14 (b) Any person desiring to do any act defined in Subsec.(a)
15 of this section shall notify the Commissioner of Fish and Game
16 in writing of such intention prior to the doing of such act or
17 the commencement of construction that will result in such act,
18 stating the stream or other public water involved, the nature
19 and location of the proposed acts, and the applicant's return
20 address. The commissioner shall acknowledge receipt of such
21 notice by return mail. If the commissioner so determines, he
22 shall, in said letter of acknowledgment, require such person to
23 submit to him full plans and specifications of the proposed con-
24 struction or work, complete plans or specifications for the
25 proper protection of fish and game in connection therewith, or
26 in connection with such acts, and the approximate date when
27 such construction or work or act is to commence. If such acts
28 of damage or disturbance are intended to be in connection with
29 the construction of works for an appropriation of water or with

1 the diversion and use of the water pursuant to an appropriation,
2 copies of the application for permit to appropriate and the maps,
3 plans, drawings, specifications and data accompanying the same
4 may be submitted to the commissioner, and his approval may be
5 endorsed upon such permit. If such acts of damage or disturbance
6 are in connection with a proposed disposal system or discharge of
7 wastes or effluent into a stream, requiring a license from the
8 Department of Health and Welfare, copies of the application,
9 plans, specifications and data submitted to the Department of
10 Health and Welfare may be submitted to the commissioner, and
11 his approval may be endorsed upon such license.

12 (c) The commissioner may approve the construction of works
13 or the performance of the proposed acts if he finds that they
14 are in the public interest and that no harm to commercial or
15 sport fish will result, or that such harm is unavoidable and is
16 outweighed by the benefits that will result from the proposed
17 works or acts. He may issue his approval subject to such terms,
18 conditions, restrictions and limitations as he deems necessary
19 for the protection of fish and wildlife and of the public in-
20 terest. Such conditions may include requirements for the cons-
21 truction of works or the conduct of operations for the protection
22 of fish or for compensation to the state for the loss resulting
23 from such works or acts.

24 (d) Any person aggrieved by an order of the commissioner
25 refusing to approve the intended acts or construction of works,
26 or by the issuance of an approval subject to conditions, restric-
27 tions or limitations, may demand a hearing. The commissioner
28 shall thereupon issue a statement of issues and further proceed-
29 ings and judicial review thereof shall be had pursuant to Ch. 2

1 of the Administrative Procedure Act.

2 (e) In case of an emergency arising from weather or stream-
3 flow conditions, the commissioner or his authorized representative
4 may issue oral approval to any person for removing any obstruc-
5 tions or for repairing existing structures without the necessity
6 of submitting written application or plans or specifications.

7 (f) The commissioner may, by regulation adopted pursuant
8 to the Administrative Procedure Act, grant blanket approval to
9 perform specified acts, acts in specified areas, acts in speci-
10 fied or classified waters, or acts performed in a specified
11 manner or in accordance with specified standards, and exempt
12 any person performing such approved acts from the requirements
13 of Subsecs. (b), (c) and (d) of this section.

14 Sec. 405. RESERVATION OF ACCESS TO PUBLIC WATERS. (a) The
15 Department of Fish and Game, the Division of Waters, or the Divi-
16 sion of Tourism and Economic Development may request the Division
17 of Lands of the Department of Natural Resources to classify
18 state lands near to or touching public or navigable waters as
19 public recreational lands in order to reserve them from homestead,
20 lease, sale or contract of sale, location or acquisition of min-
21 ing claims, leases or prospecting sites and to provide access
22 to such waters for purposes of navigation, boat landings, float
23 plane or amphibious plane landings, fishing, hunting, boating,
24 swimming, the enjoyment of scenic beauty and other recreational
25 uses.

26 (b) The Department of Fish and Game, the Division of Waters
27 or the Division of Tourism and Economic Development may request
28 the Division of Lands of the Department of Natural Resources to
29 reserve from any homestead, lease, sale or contract of sale, or

1 mining claim, lease or prospecting site of state land an easement
2 or right-of-way across said land in order to provide access to
3 navigable or public waters for purposes of navigation, boat land-
4 ings, float plane or amphibious plane landings, fishing, hunting,
5 boating, swimming, the enjoyment of scenic beauty and other re-
6 creational uses.

7 (c) If the Division of Lands shall not grant a request
8 submitted under Subsecs. (a) and (b) of this section the decision
9 may be submitted to the Water Resources Policy Council for review.
10 Pending such review, no homestead, lease, sale, contract of sale,
11 mining claim, lease or prospecting site of the affected lands
12 shall be made or granted.

13 Sec. 406. ACQUISITIONS OF ACCESS; CONDEMNATION. The De-
14 partment of Fish and Game or the Division of Tourism and Economic
15 Development may acquire by gift, devise, lease, purchase, or
16 condemnation, lands or rights in lands adjacent to navigable or
17 public waters to which the public has no access or where the
18 access is inadequate, and such lands, easements and rights-of-way
19 as may be required to connect such areas with public highways,
20 to provide parking or camping areas and access to such water for
21 purposes of navigation, boat landings, float plane or amphibious
22 plane landings, fishing, hunting, boating, swimming, the enjoy-
23 ment of scenic beauty and other recreational uses.

24 Sec. 407. CONDEMNATION OF APPROPRIATIONS. The State of
25 Alaska, acting through the Commissioner of Fish and Game, may
26 condemn any valid appropriation of water whenever it shall be
27 found to be no longer in the public interest because it inter-
28 feres with or damages fish, wildlife or recreational uses of
29 the water or is needed for the enhancement of fish, wildlife or

1 recreational values and opportunities.

2 Sec. 408. ESTABLISHMENT OF LAKE AND RESERVOIR LEVELS. (a)

3 At the request of the Department of Fish and Game, the Division
4 of Tourism and Economic Development or of any riparian owner or
5 on his own motion, the Director of the Division of Waters may
6 by regulation fix and determine the maximum level, minimum level,
7 and manner of control of the outflow of any lake, pond, reservoir
8 or pool in order to protect, preserve and improve the waters
9 for the use, enjoyment and welfare of the people, to provide
10 for flood control, the protection of riparian property, the
11 protection of riparian property values, the maintenance of fish
12 and wildlife habitat and the preservation of natural beauty, or
13 to improve navigation.

14 (b) If the director determines that such levels should be
15 fixed and determined, he shall draft a proposed regulation set-
16 ting the maximum and minimum levels of the water and establishing
17 the method of control of the outflow and shall proceed to give
18 notice and hold hearings in accordance with the Administrative
19 Procedure Act, giving mailed and published notice of such pro-
20 posed regulations to any riparian owner affected thereby and to
21 any appropriator of water affected thereby. If he shall there-
22 after adopt and file such regulations, the regulations shall
23 be subject to judicial review and legislative review as provided
24 in the Administrative Procedure Act, and in addition, any person
25 aggrieved by such regulation or by the failure to adopt such
26 regulation may request a review by the Water Resources Policy
27 Council. The regulation, when final, shall be filed with the
28 recorder of the recording district in which the land affected
29 thereby is located.

1 (c) From and after the adoption of such a regulation set-
2 ting such level and determining the manner of controlling the
3 outflow, the director may reject an application and refuse a
4 permit for the appropriation of the water so regulated, or may
5 issue the permit subject to such conditions as will preserve
6 and effectuate the regulation.

7 (d) The director may erect benchmarks designating the
8 levels so fixed and gauges for determining levels, and install,
9 erect and operate structures for the control of such levels.
10 He may issue orders requiring the owners and operators of dams
11 to regulate and control the outflow of the water and maintain
12 the levels so established. He may install, erect and operate
13 structures for the control of such waters or may cooperate with
14 cities, boroughs and water conservancy service areas in the pre-
15 paration of plans for and in the supervision of construction of
16 structures built at local expense, and may issue orders forbid-
17 ding any person to interfere with any dam or control structure.

18 (e) For the purposes of this section, the State of Alaska
19 may acquire by gift, devise, lease, purchase or condemnation any
20 dam, damsite, land, flowage rights, or other property rights.

21 Sec. 409. CRIMES. Any person who shall divert or use
22 public waters reserved from appropriation, do any act of damage
23 to or disturbance of public water or its bed that results in
24 harm to commercial or sport fish or wildlife, their habitat,
25 migration or breeding, without first obtaining the approval of
26 the Commissioner of Fish and Game, or who shall violate any
27 regulation or order of the Director of the Division of Waters
28 setting maximum and minimum levels of water and controlling the
29 outflow thereof, shall be guilty of a misdemeanor.

1 State of Alaska to encourage the settlement of land, provide
2 for the utilization, development and conservation of land re-
3 sources for the maximum benefit of the people, and to provide
4 for facilities, improvements and services to assure greater
5 utilization, development, reclamation and settlement of lands.

6 (b) The drainage of any public or private lands in this
7 state for the improvement of the soil, the development, reclama-
8 tion and settlement of the land or the improvement of the land
9 for any beneficial public or private use, is hereby declared to
10 be a public purpose.

11 (c) It is the purpose of this Article to protect the lives
12 and property of the people of the state from loss or damage by
13 floods and flood waters; to prevent and limit floods by works
14 regulated, supervised and coordinated in design, construction
15 and operation according to sound engineering practices so as to
16 best control and minimize the extent of floods and reduce the
17 height and violence thereof.

18 (d) It is the purpose of this Article to protect the lives
19 and property of the people of the state from the hazards of use
20 and occupancy of the flood plains of lakes and flood plains and
21 floodways of rivers and streams and to preserve these areas,
22 along with other contiguous lands, for the storage, use and con-
23 trol of the waters of the state and to reduce the financial
24 burden imposed upon individuals and governmental units by the
25 flooding and overflow of lands.

26 Sec. 502. DEFINITIONS. As used in this Article: (a)
27 "Surface water" means water other than flood waters flowing over
28 the ground in a diffused state, or standing on the surface in
29 bogs, marshes, swamps, flats, muskeg, puddles, or ponds, or water

1 found or contained in the upper levels of the ground so as to
2 interfere with the use of the surface for agriculture or for any
3 other beneficial purpose.

4 (b) "Flood waters" are waters that have escaped from the
5 banks of a stream, lake or river and flow or stand over adjacent
6 land.

7 (c) "Agricultural land" means land outside of cities, town-
8 sites or subdivisions platted for residential, commercial or
9 industrial use whose plats and plans have been approved by a
10 platting board or by the Alaska State Housing Authority.

11 (d) "Drain" includes ditches, canals, open and closed
12 drains, tiles and conduits, under or on the surface of the ground.

13 (e) "Flood plain" means the area of land adjoining a river,
14 stream or lake that has been or may hereafter be covered by flood
15 water.

16 (f) "Floodway" means the channel of a river or stream and
17 that portion of a flood plain reasonably necessary to the car-
18 riage and discharging of flood waters.

19 Sec. 503. DRAINAGE. (a) Private drainage. The owner of
20 any land may drain the same in the general course of natural
21 drainage by constructing, straightening or enlarging drains, or
22 altering the contour or grade of the land, and discharging sur-
23 face water collected therein or thereon into any natural water
24 course or into any natural depression whereby the surface water
25 will be carried into some natural water course; or into a drain,
26 gutter or storm sewer on a public highway with permission of the
27 Commissioner of Public Works; or into a street, gutter or storm
28 sewer with the permission of the city or borough in which it is
29 located; and when such drainage is wholly upon the owner's land,
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1 he shall not be liable therefor to any person for the increase
2 or acceleration of flow in such depression, water course or drain
3 across neighboring lands, unless such increase or acceleration
4 of flow of surface water causes substantial injury to neighboring
5 or downstream lands or to public uses of public waters as defined
6 by Sec. 402.

7 (b) Dikes and fills. The owner of any land may improve or
8 protect his land by filling the same, altering the contour or
9 grade of his land, or by constructing dikes, walls, embankments,
10 or levees to prevent surface water from flowing onto his land,
11 provided, that no substantial injury is caused to adjoining lands,
12 streets or highways.

13 (c) Agreements, voluntary associations. Three or more
14 owners of agricultural land which may be improved by a common
15 drain or system of drains may, by agreement made in accordance
16 with this subsection, construct, maintain and keep in repair such
17 drain or drainage system. Such agreement shall provide that each
18 landowner who is a party to it, his heirs, devisees, successors
19 or assigns, shall pay such costs, expenses, fees, debts and
20 damages arising out of the construction and maintenance as shall
21 be assessed against such owner in the proportion the drainable
22 acreage owned by him bears to the aggregate drained acreage, or
23 in some other proportion mutually agreed upon and specified.
24 Assessments under the agreement shall be liens on the designated
25 lands in the hands of the owner, his heirs, devisees, successors
26 or assigns. The agreement may further provide for the formation
27 of an association in which the landowners signing the agreement,
28 their heirs, devisees, successors and assigns, shall be members,
29 and which may have an identifying name such as the _____

1 Drainage Association. Such association may act in a representa-
2 tive capacity for any or all of the landowners, their heirs,
3 devisees, successors or assigns, in order to carry out the pur-
4 poses of the agreement and may enter into contracts and sue and
5 be sued in the common name, act pursuant to Subsecs. (a), (b)
6 and (e) of this section, pay all costs, expenses, fees and damages
7 as provided by the agreement, sue to collect assessments, and
8 do such other things as may be necessary to carry on and conduct
9 the affairs of the association. The association shall have no
10 power to issue bonds or other evidences of indebtedness or to
11 borrow money. The agreement may provide that the association
12 may adopt by-laws to fix the time and place of meetings, provide
13 for the number of members to constitute a quorum, for the elec-
14 tion of officers, the manner of notification of liability for
15 assessments, and such other matters as may be deemed necessary,
16 not inconsistent with the agreement and with this Article. When
17 such agreement describes the land of each party and is signed
18 and acknowledged in the manner required for the recording of
19 deeds to real property, it shall be recorded and the agreement
20 shall be personally binding upon each owner, shall be binding
21 upon the land in the hands of the owner, his heirs, devisees,
22 successors and assigns, and shall constitute a covenant running
23 with the land of each. When the ownership of a tract designated
24 in the agreement is thereafter divided, the assessments there-
25 under shall be apportioned against the land as divided in propor-
26 tion the divided part bears to the whole ownership. A certified
27 copy of such agreement and the by-laws of the association, if
28 any, shall be filed in the office of the Director of the Division
29 of Waters of the Department of Natural Resources. No such

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1 association shall be formed in an area within a water conservancy
2 service area formed under the provisions of Article VI of this
3 Act for lands that could be served by drains of such service
4 area. The existence of such an association shall not prevent
5 the inclusion of the aggregate drained acreage within a water
6 conservancy service area hereinafter created, in which event
7 the association shall be deemed dissolved. The association may
8 be dissolved voluntarily by a vote of three-fourths of its mem-
9 bers. The dissolution of such an association shall not affect
10 the liability of the association or of its members for any
11 valid claim arising out of the drainage project or the activities
12 of the association.

13 (d) Easements. When a ditch, drain, dike or levee is, or
14 has been constructed by mutual license, consent or agreement,
15 either separately or jointly, by the owners of adjoining land
16 so as to make a continuous line across the lands of such owners,
17 or when the owner of adjoining land is permitted to connect a
18 ditch, drain, dike or levee with another already so constructed,
19 or when the owner of lower land connects a ditch or drain to a
20 ditch or drain constructed by the owner or owners of upper land,
21 or when the owner of land protected by a dike or levee has
22 contributed to the cost of the construction, enlargement or
23 reconstruction of a dike or levee upon other land, such ditch,
24 drain, dike or levee shall be deemed to be for the mutual benefit
25 of all lands connected to or protected by it. The mutual license,
26 consent or agreement required in this section need not be in
27 writing but may be established by parole or inferred from the
28 acquiescence of the parties. When a ditch, drain, dike or levee
29 is privately constructed through or on a tract of land and the

1 ownership of such tract is thereafter divided, such ditch,
2 drain, dike or levee shall thereupon be deemed to be for the
3 mutual benefit of all the portions of the original tract con-
4 nected to or protected by it. Ditches, drains, dikes and levees
5 for the mutual benefit of the lands connected or protected shall
6 constitute perpetual easements on such lands and shall not be
7 filled, obstructed, breached or impaired in any way without the
8 consent of the owners of all such lands. The owner of any land
9 connected to or protected by such a ditch, drain, dike or levee
10 may, at his own expense, go upon the lands upon which it is
11 situated and repair the same, and he shall not be liable for
12 damage to lands or crops unless he is negligent in performing
13 the work.

14 (e) Condemnation. Whenever it shall be necessary for the
15 owner or owners of agricultural land which may be drained by a
16 private, joint or mutual ditch or drain or protected by a pri-
17 vate, joint or mutual dike or levee, to extend the ditch, drain,
18 dike or levee across the lands of other persons in order to
19 provide necessary protection or a proper outlet into a natural
20 drainway or water course or to connect a drain to a drain on
21 the lands of other persons, and the owner of, or other party
22 interested in the land across which such extension is necessary
23 refuses to consent to the extension across his land, the person
24 or persons desiring to construct the works may file suit in
25 eminent domain pursuant to Secs. 57-7-1 to 57-7-23, ACLA 1949,
26 as amended. If on the trial of the case it is found that the
27 proposed ditch, drain, dike or levee will be of ample capacity,
28 is necessary to the protection or drainage of the land of the
29 plaintiff and will empty into a natural water course or drainway,

1 an artificial drain along a public highway with the consent of
2 the Commissioner of Public Works, or any other outlet which the
3 plaintiff has the right to use, then the finding or verdict
4 shall be for the plaintiff. If the property taken is for an
5 open drain or ditch, dike or levee, damages shall be the value
6 of the fee of the land actually taken and for resultant damages
7 to other property rights. If the proposed drain is a covered
8 drain or the enlargement of an existing drain the defendant shall
9 be allowed such actual damages as will be sustained by entering
10 upon the land and constructing or enlarging the drain and there-
11 after keeping the same in repair and for resultant damages to
12 other property rights.

13 Sec. 504. FLOOD CONTROL. All levees, dikes, ditches,
14 canals, dams, sluices, revetments, reservoirs, holding basins,
15 floodways, bank protection, channel improvements or any other
16 works of any nature for flood control which are hereinafter
17 established and constructed, shall be coordinated in design,
18 construction and operation, according to sound and accepted
19 engineering practices so as to effect the best flood control
20 obtainable throughout the state. No person shall construct or
21 install any works of any nature for flood control unless and
22 until the proposed works and the plans and specifications there-
23 of are approved by the Director of the Division of Waters. The
24 interested persons shall file a written application with the
25 director therefor, and the director shall consider all pertinent
26 facts relating to the proposed works which will affect flood
27 control in the state and shall determine whether the proposed
28 works will be safe, adequate and consistent with any plan for
29 flood control of the Water Resources Policy Council, and shall

1 enter an order approving or disapproving the application, plans
2 and specifications. The director shall give notice and hold
3 hearings as provided in Secs. 208, 209 and 210 of this Act. In
4 the event of disapproval of an application the order shall set
5 forth the objectionable features so that the proposed works and
6 the plans and specifications therefor may be corrected or ad-
7 justed to obtain the approval of the director.

8 Sec. 505. FLOOD PLAIN, FLOODWAY AND RESERVOIR SITE ZONING.

9 (a) Reservations and restrictions of lands. Whenever the Water
10 Resources Policy Council, acting pursuant to Subsecs. (b) and
11 (c) of this section, shall designate lands bordering upon or
12 near to public or navigable waters as a floodway or as a re-
13 stricted flood plain, dam site, reservoir site or ditch right-
14 of-way, upon which it may be unreasonable or uneconomical to
15 permit improvements, buildings and facilities, and any state or
16 selected federal lands are included within such designation, the
17 Division of Lands of the Department of Natural Resources shall
18 reserve from any homestead, sale or contract of sale, mining
19 claim, lease or prospecting site, all such lands or, with the
20 approval of the Division of Waters of the Department of Natural
21 Resources, make or permit any homestead, sale or contract of
22 sale, mining claim, lease or prospecting site of such lands
23 subject to such conditions, reservations, or restrictive cove-
24 nants as to type of land use or type of structure that may be
25 erected as will carry out the policy of this Article.

26 (b) Floodway control. The Water Resources Policy Council
27 may by regulation adopted pursuant to the Administrative Proce-
28 dure Act, designate lands as established floodways and may alter,
29 change or revoke and terminate the same. In the regulation

1 establishing a floodway, the council shall fix the length there-
2 of and the width or the landside limits thereof so as to include
3 portions of the flood plains adjoining the channel, which with
4 the channel may be reasonably required to efficiently carry
5 and discharge the flood waters or flood flow of such river or
6 stream. Such regulation shall be filed with the recorder of
7 the recording district in which the floodway or any part thereof
8 is located. It shall be unlawful to erect, use or maintain in
9 or on any floodway a permanent abode or place of residence, or to
10 erect, make, use or maintain any structure, obstruction, deposit,
11 or excavation in or on any floodway, or to suffer or permit any
12 structure, obstruction, deposit or excavation to be erected,
13 made, used or maintained in or on any floodway which will
14 adversely affect the efficiency of or unduly restrict the capa-
15 city of the floodway or which by virtue of its nature, design,
16 method of construction, state of maintenance or physical condition
17 will constitute an unreasonable hazard to the safety of life or
18 property. Any person desiring to erect, make, use or maintain,
19 or to suffer or permit, a structure, obstruction, deposit or
20 excavation to be erected, made, used or maintained in or on an
21 established floodway or in or on land that is or may be a flood-
22 way and it is uncertain as to whether it is a floodway, whether
23 the floodway will be adversely affected or restricted, or whether
24 the structure, obstruction, deposit or excavation will constitute
25 an unreasonable hazard, shall request approval of the same from
26 the Director of the Division of Waters, and shall not commence
27 construction prior to receiving such approval. The director
28 may require plans, specifications and data and shall issue an
29 order approving the application if such structure, obstruction,

1 deposit or excavation will not adversely affect the efficiency
2 of or will not unduly restrict the capacity of the floodway or
3 will not constitute an unreasonable hazard to the safety of life
4 or property. The approval may be subject to such conditions or
5 restrictions as may be deemed necessary for the purposes of
6 this Article. The director shall give notice, hold hearings as
7 provided in Secs. 208, 209 and 210 of this Act. Any person
8 aggrieved by a decision of the director granting, refusing,
9 conditioning or restricting approval may appeal in accordance
10 with Ch. 2 of the Administrative Procedure Act, or may request
11 a review by the Water Resources Policy Council. During the
12 pendency of such an appeal or review the director shall withhold
13 issuance of the approval.

14 (c) Flood plains and reservoir sites. The Water Resources
15 Policy Council may, by regulation adopted pursuant to the Ad-
16 ministrative Procedure Act, designate land as a restricted flood
17 plain, dam site or reservoir site and alter, change or revoke
18 and terminate the same. In the regulation establishing the
19 restricted flood plain or reservoir site, the council shall
20 determine and describe the area of land that has been or may
21 hereafter be covered by flood water or impounded water upon which
22 it may be unreasonable or uneconomical to permit improvements,
23 buildings and facilities. No department or agency of the state,
24 municipality, borough, service area or any other division of the
25 state, or public corporation, shall construct or cause to be
26 constructed, roads, bridges, canals, buildings, piers, docks,
27 power or telephone lines, pipelines, landing fields, or any
28 other facility, on any designated flood plain or reservoir site
29 without first securing the written permit of the Division of

1 Waters of the Department of Natural Resources. Any person ag-
2 grieved by a decision of the Division of Waters may request a
3 review by the Water Resources Policy Council. During the pen-
4 dency of such review the Division of Waters shall withhold the
5 issuance of the permit.

6 (d) Standards. In passing upon matters presented to them
7 under this section the Division of Waters of the Department of
8 Natural Resources and the Water Resources Policy Council shall
9 consider: (1) the danger to life and property by water which
10 may be backed up or diverted by a proposed use, (2) the danger
11 that the constructed facilities will be swept downstream to the
12 injury of others, (3) the availability of alternate locations,
13 (4) construction of works or alteration of plans so as to lessen
14 danger, (5) the permanence of the proposed use, (6) anticipated
15 development in the foreseeable future of the area which may be
16 affected by the use, (7) the extent to which impoundments,
17 diversions and reservoir development will alter flood plain
18 dangers, and (8) other factors that will carry out the purposes
19 of this section.

20 (e) Civil enforcement. Any structure, obstruction, depo-
21 sit, excavation or facility that may be hereafter made, placed
22 or erected on or in any floodway or flood plain in violation of
23 the provisions of this section or which adversely affects flood
24 control or the safety of life or property is hereby declared to
25 be a public nuisance and subject to abatement as such. Upon
26 the request of the Director of the Division of Waters, the
27 attorney general shall bring suit in the name of the State of
28 Alaska, in the proper superior court, to enjoin the use, con-
29 struction or maintenance of such nuisance. The court may require

1 the removal of any works or structures operated or maintained
2 in violation of this section and the restoring of the land to
3 its natural condition, or the cost of such removal and restora-
4 tion may be recovered by the state.

5 (f) Crimes. Any person who shall use, erect, make or
6 maintain any structure, obstruction, deposit or excavation in
7 an established floodway without the approval of the Director of
8 the Division of Waters, or violate any regulation or order of
9 the Director of the Division of Waters or the Water Resources
10 Policy Council under this section shall be guilty of a mis-
11 demeanor.

12 (g) Condemnation. The director shall have the power to
13 remove or eliminate any structure, obstruction, deposit or
14 excavation in any floodway which adversely affects the effi-
15 ciency of or unduly restricts the capacity of the floodway or
16 which constitutes an unreasonable hazard to the safety of life
17 or property by an action in condemnation and in assessing the
18 damages in such action, the commissioners and the court shall
19 take into consideration whether the structure, obstruction,
20 deposit or excavation is lawfully in or on the floodway.

21 ARTICLE VI

22 WATER CONSERVANCY SERVICE AREAS

23 Sec. 601. ESTABLISHMENT OF SERVICE AREAS IN THE UNORGANIZED
24 BOROUGH. Ch. 146, SLA 1961, is hereby amended by adding to Ar-
25 ticle I thereof the following sections:

26 Sec. 1.04. PETITION. In the unorganized borough a
27 service area may be established by filing a petition with
28 the Local Affairs Agency, in the form prescribed by the
29 Agency, which shall include the following:

- 1 N (1) the name of the proposed service area;
2 E (2) the boundaries of the proposed service area,
3 W fixed in accordance with standards appropriate to the ser-
4 vice to be rendered;
5 (3) the proposed composition and apportionment
6 M of the Supervisory Board of the service area, which shall
7 A consist of not less than three nor more than five members,
8 T which shall include at least one member from any city in-
9 T cluded within the boundaries of the service area, the term
10 E of office of each member, and if desired, provisions for
11 R staggered terms;
12 (4) the services to be rendered;
13 (5) maps, documents and other information which
14 may be required by the Local Affairs Agency to show that
15 the proposed service area meets any standards set by the
16 legislature for establishment;
17 (6) the signature and resident address of 25% of
18 N the qualified voters in each city to be included in the ser-
19 E vice area and 25% of the qualified voters in the area outside
20 W cities who voted in person in the last general election.

21 Sec. 1.05. REVIEW BY LOCAL AFFAIRS AGENCY. Upon re-
22 ceipt of a petition, the Local Affairs Agency shall immediat-
23 ely proceed with a review of it to determine (1) if the peti-
24 M tion is substantially in the proper form, and (2) if the pe-
25 A tition is signed by the required number of qualified voters.

26 T Sec. 1.06. RETURN OF PETITION. If the Local Affairs
27 T Agency determines that the petition is not substantially in
28 E the proper form or lacks the minimum number of qualified
29 R voters signing the petition, the agency shall not accept

1 N the petition but may return it for correction or completion.

2 E Sec. 1.07. INVESTIGATION. a. If the Local Affairs
3 W Agency determines that the petition is substantially in the
4 proper form and contains the required number of qualified
5 voters' signatures, the agency shall conduct an investiga-
6 M tion to determine whether the proposed establishment of the
7 A service area and the proposed composition and apportionment
8 T of the Supervisory Board meet the standards prescribed by
9 T the legislature for the class of service area to be estab-
10 E lished.

11 R b. The Local Affairs Agency may combine petitions for
12 establishment from the same general area whether all or part
13 of the same area is included in the petitions. Petitions
14 shall be investigated in the order deemed advisable by the
15 Local Affairs Agency, and not necessarily in the order
16 received.

17 Sec. 1.08. REPORT TO LOCAL BOUNDARY COMMISSION. The
18 N Local Affairs Agency shall report the findings of its in-
19 E vestigation to the Local Boundary Commission together with
20 W any recommendations it may have regarding the establishment
21 of the proposed service area and the composition and appor-
22 tionment of the Supervisory Board.

23 Sec. 1.09. HEARING BY LOCAL BOUNDARY COMMISSION. The
24 M Local Boundary Commission shall hold at least one hearing
25 A in the area to be established for the purpose of hearing
26 T public comment on the proposal for the establishment of the
27 T service area, the composition and apportionment of the
28 E Supervisory Board, and the location of service area boundar-
29 R ies.

1 N Sec. 1.10. DETERMINATION BY LOCAL BOUNDARY COMMISSION.
2 E After considering the findings of the Local Affairs Agency
3 W and the comments at the public hearing, the Local Boundary
4 Commission shall determine if the petition is to be accepted.
5 If the commission determines that the proposed service area
6 M fails to meet the standards for establishment or the com-
7 A position and apportionment of the Supervisory Board presc-
8 T ribed by Sec. 1.04 of this Act, the commission shall reject
9 T the petition. If the commission determines that the pro-
10 E posed service area meets the standards for establishment
11 R and the composition and apportionment of the Supervisory
12 Board, the commission shall accept the petition. If the
13 Local Boundary Commission determines that the proposed
14 service area would meet the standards if changes were made
15 in the boundaries of the service area or in the composition
16 and apportionment of the Supervisory Board, the commission
17 may change the boundaries of the proposed service area or
18 N the composition and apportionment of the Supervisory Board
19 E and accept the petition. Any person aggrieved by any de-
20 W termination of the commission may appeal to the superior
21 court in the manner and within the scope of review provided
22 by Secs. 24 and 25, Ch. 2, of the Administrative Procedure
23 Act.

24 M Sec. 1.11. ELECTION. If the Local Boundary Commission
25 A accepts the petition, it shall immediately proceed to notify
26 T the Secretary of State of its action and shall furnish him
27 T with such information on the proposed incorporation as he
28 E requires. The Secretary of State shall proceed, and an
29 R election shall be held within the proposed service area in

1 N the manner provided in Sec. 2.12 of this Act, to determine
2 E the question of whether the qualified voters of the proposed
3 W area desire to establish a service area, and if so, to
4 elect members of the Supervisory Board.

5 Sec. 1.12. DECLARATION OF ESTABLISHMENT. If the
6 M Secretary of State shall certify that a majority of votes
7 A cast on the question are for establishment, he shall declare
8 T that the area is established as a service area.

9 T Sec. 1.13. REGULAR AND SPECIAL ELECTIONS. Election
10 E of members of the Supervisory Board of a service area at
11 R regular or special elections shall be held in the manner
12 provided for election of members of the assembly of an
13 organized borough under Secs. 6.01 to 6.10 of this Act.

14 Sec. 1.14. OFFICERS. The Supervisory Board of a
15 service area shall elect a chairman, secretary, and trea-
16 surer. The treasurer shall give reasonable bond as re-
17 quired by the board, the premium to be paid by the service
18 N area.

19 E Sec. 1.15. ADDITIONAL FUNCTIONS AND SERVICES. No
20 W service area shall be established which includes land or
21 territory within the boundaries of an existing service area
22 if the services can be performed by the existing service
23 area. If it is desired to add functions or powers to an
24 M existing service area the procedure established in Secs.
25 A 3.73 to 3.80 of this Act, providing for the addition of
26 T powers of second class boroughs shall be followed, and all
27 T references therein to a second class borough shall for the
28 E purposes of this section be deemed to refer to a service
29 R area.

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Sec. 1.16. DISSOLUTION. A service area in the un-organized borough may be dissolved in the manner provided for the dissolution of an organized borough by Secs. 7.41 to 7.52 of this Act, and all references therein to an organized borough shall for the purpose of this section be deemed to refer to a service area.

Sec. 602. WATER CONSERVANCY SERVICE AREAS. (a) Functions.

A water conservancy service area may be established to perform any or all of the following functions:

- (1) Control or alleviation of damage by flood waters;
- (2) Improvement of stream channels;
- (3) Reclaiming or filling wet and overflowed land;
- (4) Providing water supply for irrigation;
- (5) Regulating the flow of streams and conserving the waters thereof;
- (6) Diverting or changing water courses in whole or in part;
- (7) Providing water supply for domestic, industrial, recreational and other public use;
- (8) Production of hydroelectric power;
- (9) Constructing, repairing, improving, relocating, modifying, consolidating and abandoning, in whole or in part, drainage systems;
- (10) Providing assistance for preventive and remedial measures for the control or alleviation of land and soil erosion, siltation of water courses or bodies of water, and watershed improvement.

(b) Territory. The territory embraced within a water conservancy service area shall be appropriate to the function or

1 functions to be undertaken and shall be as nearly contiguous as
2 may be consistent with such purposes and functions. When feasi-
3 ble it shall include all land within an affected watershed, sub-
4 watershed or drainage basin, or all land from which the water
5 from natural or artificial channels finds its outlets through
6 a main stream or channel, or all land improved or protected by
7 the works of the service area. It need not include vacant and
8 unappropriated national forest lands, public lands of the United
9 States or lands of the state unless the Director of the Division
10 of Lands of the Department of Natural Resources consents to such
11 inclusion, selects any such national forest lands or public
12 lands and agrees to pay all taxes and special assessments which
13 shall be levied and assessed against such property for water
14 conservancy service area purposes. In case of such agreement
15 the Director of the Division of Lands shall take into account
16 all taxes and assessments so paid in fixing the price of the
17 land for sale or contract. No city shall be included within a
18 service area unless its council consents to inclusion.

19 (c) Powers. A water conservancy service area shall have
20 the power to:

21 (1) Prepare, adopt, and from time to time alter an
22 overall development plan for the water resources of the area or
23 an overall plan for projects and improvements within the service
24 area for reclamation, drainage, erosion control, flood control,
25 irrigation, industrial, municipal or recreational water supply,
26 power supply, recreation facilities, and improvement of lands,
27 soils, waters, forests, and wildlife habitat. No plan or portion
28 of a plan shall provide a water supply for a city or flood con-
29 trol protection for lands within the boundaries of a city unless

1 the city has consented to be included within the service area.
2 Such plans may include recommendations to the Water Resources
3 Policy Council, the Division of Waters and to cities and boroughs
4 for the establishment and boundaries of floodways and flood plains
5 and the regulation and zoning thereof.

6 (2) Make necessary surveys or utilize other reliable
7 surveys and data and develop projects to carry out the plans
8 and accomplish the purposes for which the service area is
9 established.

10 (3) Cooperate or contract with the state, any state
11 agency, organized borough, other service area, city, or federal
12 agency or private or public corporation to accomplish the pur-
13 poses for which the service area is established.

14 (4) Construct, clean, repair, alter, abandon, con-
15 solidate, reclaim or change the course or terminus of any public
16 ditch, drain, sewer, river, water course, natural or artificial,
17 within the service area.

18 (5) Acquire, operate, construct and maintain dams,
19 dikes, levees, reservoirs, penstocks, powerhouses and appurtenant
20 works.

21 (6) Regulate, conserve and control the use of water
22 within the service area.

23 (7) Acquire by gift, lease, purchase, or the right of
24 eminent domain necessary real and personal property, and sell,
25 lease, mortgage, encumber or otherwise dispose of any property
26 owned by the service area, including water and water rights,
27 upon such terms and conditions as the Supervisory Board may
28 determine.

29 (8) Contract for or purchase such insurance as the
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1 Supervisory Board deems necessary for the protection of the
2 service area.

3 (9) Establish and maintain devices for acquiring and
4 recording hydrological data.

5 (10) Enter into such contracts as the Supervisory
6 Board considers desirable to carry out the functions of the
7 service area, including but without limitation, contracts for
8 construction of works and for the lease, sale or supply of water
9 and water rights and electric power.

10 (11) Enter upon lands within or without the service
11 area to make surveys and investigations to accomplish the pur-
12 poses of the service area. The service area shall be liable for
13 actual damages resulting therefrom.

14 (12) Take over all drainage association drains and
15 works within the service area and maintain, repair and improve
16 the same and incorporate the same into the works of the service
17 area.

18 (13) Transfer without cost to the federal government
19 such land, easements, or rights-of-way as will be needed in con-
20 nection with works of improvement installed with federal assist-
21 ance; make such agreement and arrangement with the federal govern-
22 ment as may be necessary to comply with Public Law 566, 83rd
23 Congress, 2nd Session (16 U.S.C. Sections 1001 to 1008, as
24 amended); and enter into any other contract or other arrangement
25 with the United States government, or any department thereof,
26 with persons, railroads, or other corporations, with public cor-
27 porations, the State of Alaska or any state agency, with soil
28 conservation districts or subdistricts, for cooperation or
29 assistance in constructing, maintaining and operating the works

1 of the service area, or for the control of the waters thereof,
2 or for making surveys and investigations or reports in relation
3 thereto.

4 (14) Sue and be sued.

5 (15) Employ a manager and other employees and con-
6 tract for professional services as may be necessary or appro-
7 priate to carry out the functions of the service area.

8 Sec. 603. FINANCING OF WATER CONSERVANCY SERVICE AREAS IN
9 THE UNORGANIZED BOROUGH. a. Upon the establishment of a water
10 conservancy service area in the unorganized borough, the Super-
11 visory Board shall elect a treasurer who shall be ex-officio
12 assessor of the service area. The assessor shall proceed in
13 accordance with Ch. 174, SLA 1957, to assess all real and per-
14 sonal property within the service area. The Supervisory Board
15 shall prepare an estimate of a preliminary fund necessary to
16 pay the costs of organization, surveys, plans and other prelimi-
17 nary current expense and shall file the same with the legislature
18 accompanied by such supporting data as the legislature may re-
19 quire, and may prepare and file a proposal for the issuance of
20 warrants in an amount not to exceed \$25,000, for the purpose of
21 paying such costs, and shall certify the rate of taxation
22 necessary to be raised which may be pledged for the purpose of
23 paying such costs and warrants. The legislature, acting as the
24 assembly for the unorganized borough, may approve, revise, or
25 reject the estimate and proposal and may levy a general property
26 tax on all taxable property within the service area and fix the
27 rate thereof to produce such sum as will be sufficient to estab-
28 lish such fund and pay such costs and warrants.

29 b. Subject to the approval of the legislature as herein
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1 provided, a water conservancy service area established in the
2 unorganized borough shall have power, subject to the limitations
3 of this section, to borrow money and incur indebtedness for the
4 purpose of performing any of its functions and powers or redeem-
5 ing its warrants, and may issue general obligation bonds or
6 revenue bonds of the service area as provided by Ch. 167, SLA
7 1959. Upon the completion of plans for any work, structures,
8 improvements or facilities for which the board deems it necessary
9 to incur a bonded indebtedness, the proposal to incur such
10 indebtedness shall be first submitted to the qualified electors
11 of the service area as provided by Ch. 167, SLA 1959, provided,
12 that any bonds payable in whole or in part from special assess-
13 ments on real property shall also be ratified by a majority of
14 the owners of the private lands to be assessed, and if ratified,
15 such proposal shall be thereafter submitted to the legislature
16 for approval. The proposal shall include recommendations for
17 the proportion of the costs of construction, operation and main-
18 tenance of the project and works to be paid by special assess-
19 ments, charges or general property taxes, and recommendations
20 for the pledge of all or any part of revenue from charges,
21 special assessments and general property taxes for the payment
22 of the principal and interest on the bonds of the service area
23 as the same become due. The legislature may approve the proposal
24 and may levy a special assessment upon all real property within
25 the service area to the full extent of benefits that will accrue
26 from the construction, operation and maintenance of the works
27 and facilities, or so much thereof as may be necessary together
28 with all taxes, charges and revenues available for the purpose,
29 to pay the principal and interest of the bonded indebtedness of

1 the service area.

2 c. On or before January 1st of each year, the Supervisory
3 Board shall file with the legislature an estimate accompanied
4 by such supporting data as the legislature may require, of the
5 cost of operation and maintenance of the works and facilities
6 and current expense of the service area, and of the income from
7 charges for the supply of water or electricity, for the use of
8 facilities of the service area, or for the operation and mainten-
9 ance of works and shall certify the amount of general property
10 tax that will be necessary after a reasonable allowance for
11 delinquency, together with all special assessments and all
12 charges, revenues and surplus available for the purpose to pay
13 the interest and principal of the bonded indebtedness of the
14 service area, costs of operation and maintenance of the works
15 and facilities and current expense. The legislature, acting
16 as the assembly for the unorganized borough, may approve or
17 revise the estimate and may levy a general property tax on all
18 taxable property within the area and fix the rate thereof so as
19 to produce such sum as will, together with all charges, revenues,
20 assessments and surplus available for the purpose be sufficient
21 to pay the interest and principal of the bonded indebtedness of
22 the service area, costs of operation and maintenance of works
23 and facilities and current expense.

24 d. All collections of general property taxes and assessments
25 shall be made at the same time and in the manner provided in
26 Ch. 174, SLA 1957. All collections of assessments shall be ap-
27 portioned to and levied on each tract of real property in the
28 proportion that the benefits appraised bear to the debts secured
29 by total assessments, and not in excess of actual benefits. The

1 Supervisory Board shall make a list of all property benefited,
2 the amount of the benefit determined, and the amount of assess-
3 ments to be collected. The board shall mail a notice of the
4 benefits so determined and the amount of the assessment to be
5 collected to the last known address of each owner whose property
6 will be subject to assessment. The notice shall state the time
7 and place for a hearing where objections to the appraisal and
8 determination of benefits and apportionment of assessments shall
9 be heard, which shall be at least two weeks after the mailing of
10 the notice. At the time the notices are mailed, the Supervisory
11 Board shall give notice of such meeting by publication in a
12 newspaper of general circulation in the area. At the time and
13 place appointed the board shall hear all complaints and objec-
14 tions relative to such benefits and assessments and shall correct
15 or confirm the same. Should any owner believe that the appraisal
16 and determination of benefits or the amount of assessments
17 apportioned to his property has not been fairly or equitably
18 made he may appeal to the superior court of the district wherein
19 the service area is situated.

20 Sec. 604. Ch. 146, SLA 1961, is amended by adding to
21 Article III a new section to read:

22 N Sec. 3.36 WATER CONSERVANCY SERVICE AREAS AND FUNC-
23 E TIONS. Any organized borough of the first class and any
24 W organized borough of the second class which has such powers
25 specified in the petition or added as provided by this Act
26 may exercise, as areawide powers, any of the powers or
27 M functions of a water conservancy service area or may pur-
28 A suant to Sec. 3.05 of this Act, establish water conservancy
29 T service areas within the borough.
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1 Sec. 605. POWERS OF FIRST CLASS CITIES. Subsection Third,
2 Sec. 16-1-35, ACLA 1949, is amended to read:

3 Third: To provide for the location, construction and
4 maintenance of the necessary streets, alleys, crossings,
5 sidewalks, sewers, wharves, aqueducts, dikes and water
6 courses, to widen, straighten, strengthen or change the
7 channels for streams and water courses, and to perform any
8 or all of the functions or powers of water conservancy
9 service areas.

10 Sec. 606. Subsection Third, Sec. 16-2-5, ACLA 1949, is
11 amended to read:

12 Third: To provide for necessary street improvements,
13 fire protection, water supply, light, wharfage, sewerage,
14 protection of public health, [AND] expense of assessment
15 and collection of taxes, and to exercise any or all of the
16 powers and functions of water conservancy service areas.

17 Sec. 607. Sec. 6(2), Ch. 150, SLA 1957, is amended to
18 read:

19 (2) To provide for necessary water supply, electricity,
20 sewerage, [AND] fire protection, and to exercise any or all
21 of the powers and functions of water conservancy service
22 areas.

23 Sec. 608. COMPLIANCE WITH LAWS RELATING TO USE AND CONTROL
24 OF WATER. Any water conservancy service area or borough or city
25 exercising any of the powers and functions of a water conser-
26 vancy service area shall submit its plans to the Water Resources
27 Policy Council for approval as to practicality, safety, economic
28 soundness and conformity with plans of the council, and shall
29 not proceed with construction until such approval has been

1 obtained. Any such service area, borough or city shall comply
2 with all requirements of Articles II, IV and V of this Act, and
3 with Sec. 30 of Ch. 94, SLA 1959.

4 ARTICLE VII

5 FORMAL PROVISIONS

6 Sec. 701. SEVERABILITY. If any provision or clause of
7 this Act or application thereof to any person or circumstances
8 is held invalid, such invalidity shall not affect other provisions
9 or applications of the Act which can be given effect without the
10 invalid provision or application, and to this end the provisions
11 of this Act are declared to be severable.

12 Sec. 702. REPEALER. The following Acts are hereby
13 repealed:

14 Secs. 39-2-31 and 39-2-32, ACLA 1949 as amended by Sec. 12,
15 Ch. 117, SLA 1949.

16 Secs. 39-2-33, 39-2-34 and 39-2-35, ACLA 1949.

17 Secs. 1 through 11, Ch. 117, SLA 1949.

18 Sec. 47-3-35, ACLA 1949.

19 Ch. 155, SLA 1957.

20 Sec. 31, Ch. 94, SLA 1959.

21 Sec. 703. EFFECTIVE DATE. This Act takes effect July 1,
22 1962.

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