

Introduced: 2/15/63
Referred: Resources and
State Affairs

RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 73

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRD LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing a system for the appro-
7 priation and use of water; and providing for
8 an effective date."

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

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

11 CHAPTER 15. WATER USE ACT

12 ARTICLE I. ADMINISTRATION

13 Sec. 46.15.010. SUPERVISION AND CONTROL OF WATERS. The
14 Department of Natural Resources shall have general control
15 and supervision of the waters of the state and of the appro-
16 priation and distribution thereof.

17 Sec. 46.15.020. AUTHORITY AND DUTIES OF THE COMMISSIONER.
18 (a) The commissioner, upon recommendation of the director or
19 otherwise, may establish procedures and promulgate rules and
20 regulations necessary to carry out the provisions of this
21 chapter and may issue directives or orders to the director
22 to carry out specific functions and duties. All rules and
23 regulations promulgated by the commissioner shall be adopted
24 pursuant to the Administrative Procedure Act.

25 (b) The commissioner may enter into such contractual
26 agreements as he deems necessary to carry out the purposes
27 of this chapter, including agreements with federal and state
28 agencies.

29 (c) The commissioner shall have the authority to review

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1 any order or action of the director.

2 (d) The commissioner may exercise all those powers and
3 do all those acts necessary to carry out the provisions and
4 objectives of this chapter.

5 (e) The commissioner may locate and determine lands
6 which are or may be needed for dams, reservoirs, flood
7 plains, flood ways, canals, or ditches for the impoundment,
8 storage, flow and control of waters, and to request the
9 reservation of state and federal lands for these purposes.

10 (f) The commissioner may cooperate with, assist, advise
11 and coordinate plans with the federal government and its
12 officers and agencies and serve as the state liaison agency
13 with the federal government in matters relating to the
14 appropriation, use, conservation, quality, disposal or con-
15 trol of waters and activities related thereto.

16 (g) The commissioner may apply for, accept, administer
17 and expend grants, gifts and loans from the federal govern-
18 ment and any other public or private source for the purposes
19 of this chapter. He may adopt procedures and do acts not
20 otherwise restricted by law, which are necessary to qualify
21 or entitle the state for grants, gifts and loans from the
22 federal government and any other public or private source
23 for the purposes of this chapter.

24 Sec. 46.15.030. AUTHORITY AND DUTIES OF THE DIRECTOR.

25 (a) The director shall administer the provisions of this
26 chapter.

27 (b) The director may make surveys, investigations and
28 compilations of water resources in the state and their poten-
29 tial development and may cooperate for such purposes with

1 the federal government.

2 (c) The director shall prescribe fees or service
3 charges, with the consent of the commissioner, for any
4 public service rendered.

5 (d) The director shall account for all fees received
6 in the administration of this chapter.

7 (e) The director may delegate any of the administrative
8 duties, functions or powers imposed upon him by this chapter
9 to any responsible employee within the Department of Natural
10 Resources.

11 (f) The director shall keep a record of the date of
12 receipt of all applications for permits and other documents
13 filed in his office. The director shall record all permits
14 and certificates and amendments and orders affecting them
15 and shall index them in accordance with the source of the
16 water and the name of the applicant or appropriator. These
17 records shall be open for public inspection.

18 ARTICLE II. APPROPRIATION AND USE OF WATER

19 Sec. 46.15.040. WATERS RESERVED TO THE PEOPLE: BENEFICIAL
20 USE. (a) Wherever occurring in their natural state, the
21 waters are reserved to the people for common use and are
22 subject to appropriation and beneficial use as provided in
23 this chapter.

24 (b) Beneficial use shall be on the basis, measure and
25 limit to the use of water.

26 Sec. 46.15.050. RIGHT TO APPROPRIATE. (a) A right to
27 appropriate water can be acquired only as provided in this
28 chapter. No right to the use of water either appropriated
29 or unappropriated shall be acquired by adverse use or

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possession.

(b) A right to appropriate water shall be obtained by first making application to the commissioner for a permit to appropriate as provided in sec. 80 of this chapter. If such permit is obtained and the proposed means of appropriation is constructed then a certificate of appropriation may be obtained as provided in sec. 160 of this chapter.

Sec. 46.15.060. PRIORITY. Priority of appropriation gives prior right. Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of stream flow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire his water under the changed conditions.

Sec. 46.15.070. EXISTING RIGHTS. (a) Any beneficial use of water being made on the effective date of this chapter, or that has been made within five years before the effective date of this chapter, or that is made in conjunction with works under construction on the effective date, under a lawful common law or customary appropriation or use, is a lawful appropriation under this chapter. The appropriation is subject to the provisions of this chapter and to the rules and regulations adopted under this chapter.

(b) The locator of a mining claim, whose claim is dated after May 3, 1917, and before the effective date of this chapter, and who has included within the boundaries of his claim both banks of any river, creek, or stream is considered to have an existing appropriation for mining purposes of the

1 water necessary to mine his claim. The date of the mining
2 claim is the priority date. The appropriation is subject
3 to the provisions of this chapter and to rules and regula-
4 tions adopted under this chapter.

5 Sec. 46.15.080. APPLICATION FOR PERMIT TO APPROPRIATE.

6 (a) Any person intending to appropriate water shall apply
7 for a permit from the director and shall not commence the
8 construction of works for such appropriation nor divert
9 the water until the permit has been issued.

10 (b) An application for a permit to appropriate water or
11 to change an appropriation to a preferred use shall contain
12 such information as the commissioner may require by regula-
13 tion. The commissioner may prescribe and furnish forms for
14 applications to appropriate water and to change appropria-
15 tions to a preferred use.

16 Sec. 46.15.090. NOTICE, OBJECTIONS. (a) Upon receipt of
17 an application, other than an application exempted from the
18 provisions of this section by sec. 100 of this chapter, the
19 director shall prepare a notice containing the location and
20 extent of the proposed appropriation, the name and address
21 of the applicant and such other information as he deems
22 pertinent. The notice shall state that any person may within
23 15 days from date of publication or receipt of the notice
24 file with the director a written objection, which objection
25 shall state the name and address of the objector and any
26 facts tending to show that rights of the objector, or the
27 public interest, would be adversely affected by the proposed
28 appropriation.

29 (b) The director shall have the notice published at the

1 applicant's expense in one issue of a newspaper of general
2 distribution in the area of the state in which the water is
3 proposed to be appropriated. The director shall also have
4 the notice served personally or by certified mail upon any
5 appropriator of water or applicant for or holder of a permit
6 who, according to the records of the division of lands, may
7 be affected by the proposed appropriation. The director
8 may also serve the notice upon any state or federal agency
9 or officer, political subdivision, or private organization
10 which he considers to represent or be concerned with any
11 interest that may be involved.

12 (c) The director shall examine each objection filed,
13 and if he determines that a prima facie valid objection to
14 the issuance of a permit has been stated he shall prepare a
15 statement of issues and proceed under the Administrative
16 Procedure Act (AS 44.62).

17 (d) Any interested person may, within 15 days from date
18 of publication or service of the notice, file with the direc-
19 tor a statement of issues as provided in the Administrative
20 Procedure Act in lieu of a written objection.

21 (e) Any person who files written objection or a state-
22 ment of issues with the commissioner shall be given notice of
23 all further proceedings regarding the application in question.

24 (f) If no written objection or statement of issues is
25 filed with the director he may proceed to make a determina-
26 tion upon the application.

27 (g) In any case where no written objection or statement
28 of issues has been filed, but the director is of the opinion
29 that a permit should be denied or conditioned, he shall

1 draft a statement of issues and proceed under the Administra-
2 tive Procedure Act (AS 44.62).

3 Sec. 46.15.100. SIMPLIFIED PROCEDURE IN CERTAIN CASES.

4 (a) The commissioner may, by regulation, exempt from the
5 requirements of sec. 090 of this chapter, applications for
6 any of the following:

- 7 (1) appropriations for specified purposes;
8 (2) appropriations for less than specified
9 quantities of water;
10 (3) appropriations from specified sources;
11 (4) appropriations in specified areas;
12 (5) appropriations limited by one or more of the
13 above specifications.

14 These exemptions may be modified or abolished by
15 regulation.

16 (b) If the director determines that an application is
17 for an appropriation within an exempted class, he may immedi-
18 ately make a determination upon the application.

19 Sec. 46.15.110. CRITERIA FOR ISSUANCE OF PERMIT FOR
20 APPROPRIATION. (a) The director shall issue a permit for
21 appropriation if he finds that the proposed use set forth
22 in the application meets the following criteria:

- 23 (1) That rights of a prior appropriator will not
24 be unduly affected;
25 (2) That the proposed means of diversion or
26 construction are adequate;
27 (3) That the proposed use of water is beneficial;
28 and
29 (4) That the proposed appropriation is in the

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public interest.

(b) In determining the public interest, the director shall consider:

- (1) The benefits to the applicant resulting from the proposed appropriation;
- (2) The effect of the economic activity related to the proposed appropriation;
- (3) The effect on public fishing, hunting, and recreational opportunities;
- (4) The effect of loss of alternate uses of the water that would probably be made within a reasonable time if not precluded or hindered by the proposed appropriation;
- (5) The harm to other persons that would result from the proposed appropriation; and
- (6) The good faith, intent, and ability of the applicant to complete the appropriation.

Sec. 46.15.120. COORDINATION WITH COMMISSIONER OF FISH AND GAME. (a) Upon receipt of an application the director shall refer to the regulations adopted by the Department of Fish and Game pursuant to AS 16.05.870. If the proposed use concerns a river, lake or stream or a part thereof which has been specified by regulation as important for the spawning or migration of anadromous fish the director shall refer a copy of the application and supporting papers to the commissioner of fish and game with a notation that his recommended action will be required before the application is further considered.

(b) The director shall notify the applicant that his application has been referred to the commissioner of fish

1 and game for determination as to the possible damage to the
2 spawning or migration of anadromous fish and that the com-
3 missioner's recommended action is required prior to a grant-
4 ing of his application.

5 (c) The commissioner of fish and game shall within 10
6 days of the receipt of the application from the director
7 make a recommendation for approval, disapproval or condi-
8 tioning of the proposed use.

9 (d) If the commissioner of fish and game approves of the
10 proposed use the director may proceed to make determination
11 upon the application.

12 (e) If the commissioner of fish and game recommends
13 disapproval of the proposed use the director may request the
14 commissioner of fish and game for specific findings as to
15 the damage to the spawning or migration of anadromous fish
16 which would be caused by the proposed use. The findings
17 rendered by the commissioner of fish and game shall be prima
18 facie conclusive as to the issue of damage to the spawning
19 or migration of anadromous fish.

20 (f) If upon his consideration of the application and
21 the public interest the director determines that the benefits
22 from the proposed use override the benefits from the protec-
23 tion of spawning or migration of anadromous fish he may
24 draft a statement of his findings which would justify over-
25 riding the disapproval of the proposed use by the commis-
26 sioner of fish and game.

27 (g) The statement of findings shall be transmitted to
28 the commissioner of natural resources. The commissioner of
29 natural resources shall take whatever steps are necessary by

1 by consultation and conference with all interested parties
2 to work out a use which allows for the construction of the
3 proposed use and at the same time would protect the spawning
4 or migration of anadromous fish. If such concurrent use is
5 not possible and the commissioner of natural resources deems
6 the proposed use to be an overriding use of greater impor-
7 tance than the protection of the spawning or migration of
8 anadromous fish he may render a proposed decision granting
9 the proposed use. A copy of the proposed decision shall be
10 served upon the commissioner of fish and game.

11 (h) The commissioner of fish and game, within 10 days
12 of receipt of the proposed decision, may appeal the decision
13 of the commissioner of natural resources to the governor for
14 final determination. If the proposed decision is not
15 appealed within 10 days it becomes final.

16 (i) In any case where a proposed use is authorized under
17 the provisions of this section, the use itself, and the acts
18 of construction authorized in the permit shall not be
19 further limited by AS 16.05.870 or the regulation adopted
20 thereunder.

21 (j) Any final decision of the commissioner of natural
22 resources or the governor rendered under the provisions of
23 this section shall be certified back to the director and he
24 shall enter it as his decision on the application.

25 Sec. 46.15.130. COORDINATION WITH COMMISSIONER OF HEALTH
26 AND WELFARE. Upon receipt of an application the director
27 shall refer to the regulations adopted by the Department of
28 Health and Welfare pursuant to the Water Pollution Control
29 Act (AS 46.05). If the proposed use concerns water pollution

1 the director shall refer a copy of the application and sup-
2 porting papers to the commissioner of health and welfare
3 with a notation that his recommendation will be required
4 before the application is further considered. The applica-
5 tion shall thereafter be considered in the same manner as
6 provided for in sec. 120 of this chapter.

7 Sec. 46.15.140. PREFERENCE IN GRANTING PERMITS. When
8 there are competing applications for water from the same
9 source and the source of water is insufficient to supply
10 them both, or when an application is made that is inconsis-
11 tent with an alternative use of the water that would probably
12 be made within a reasonable time if the application were
13 denied, the director shall give preference first to public
14 water supply and then to the use which alone or in combina-
15 tion with other foreseeable uses will constitute the most
16 beneficial use.

17 Sec. 46.15.150. TERMS OF PERMIT. The director may issue
18 a permit for less than the amount of water requested, but in
19 no case may he issue a permit for more water than can be
20 beneficially used for the purposes stated in the application.
21 He may require modification of plans and specifications for
22 the appropriation. He may issue a permit subject to any
23 terms, conditions, restrictions, and limitations he considers
24 necessary to protect the rights of others, as necessary in
25 the public interest, provided, however, that the permit shall
26 be subject to termination only as provided in this chapter.

27 Sec. 46.15.160. TIME FOR CONSTRUCTION AND COMPLETION.
28 In a permit, the director shall state a time limit for the
29 beginning of construction work and a time limit for the

1 perfecting of an appropriation. The director shall, for
2 good cause shown by the applicant, allow reasonable exten-
3 sions of such time limits.

4 Sec. 46.15.170. CERTIFICATES. Upon the completion of
5 the construction of the works and the application of water
6 to the proposed beneficial use, the permit holder shall
7 notify the director that he has perfected his appropriation.
8 The director may then inspect the appropriation and, if he
9 determines that the appropriation has been perfected in
10 substantial accordance with the permit, he shall issue the
11 permit holder a certificate of appropriation. The certifi-
12 cate shall set forth such information as the commissioner
13 shall prescribe by regulation.

14 Sec. 46.15.180. PRIORITY. The priority of the appropri-
15 ation described in the certificate of appropriation dates
16 from the filing of the original application in the office of
17 the director.

18 Sec. 46.15.190. ABANDONMENT OF APPROPRIATIONS. (a) If an
19 appropriator, with the intention to abandon, does not make
20 beneficial use of all or a part of his appropriated water,
21 his right to the unused water is abandoned. If an appropria-
22 tor does not make beneficial use of all or part of any
23 appropriated water during five successive years, it is prima
24 facie evidence of his intent to abandon his right to the
25 unused water.

26 (b) The director may determine in conjunction with any
27 application for a permit to appropriate water whether another
28 appropriation has been abandoned.

29 (c) If an appropriator abandons all or a part of his

1 appropriation or the director revokes a permit or certifi-
2 cate, the unused water and the right to appropriate it
3 reverts to the people and the water becomes unappropriated
4 water.

5 Sec. 46.15.200. CHANGES TO PREFERRED USE. (a) A prefer-
6 red use of water is one for public water supply or one that
7 results in a greater use and development of the water and
8 makes a greater contribution to the public interest than
9 another use of the same water.

10 (b) To assert a preferred use an applicant for a permit
11 to appropriate water must file a petition with the director
12 that alleges facts which tend to show that (1) the proposed
13 use will be prevented or substantially interfered with by an
14 existing prior appropriation of water, (2) the proposed use
15 is a preferred use over the existing use, (3) the applicant
16 for the proposed preferred use is willing and able to justly
17 compensate the permit holder or certificate owner for the
18 prior appropriation and (4) such other information as the
19 director may by regulation require.

20 (c) An application asserting a preferred use shall be
21 treated in the same manner as an original application. Any
22 prior appropriator whose rights will be adversely affected
23 by the asserted preferred use must be given notice of all
24 proceedings upon the application for a preferred use.

25 Sec. 46.15.210. TRANSFER AND CHANGE OF APPROPRIATIONS.

26 (a) The right to use water pursuant to an appropriation or
27 permit shall be appurtenant to the land or place where it has
28 been or is to be beneficially used, provided, that water
29 supplied by one person to another person's mine or mining

1 claim shall not be appurtenant to said mine or claim unless
2 the parties so intend. An appurtenant water right shall
3 pass with a conveyance or transfer by operation of law of the
4 land unless specifically exempted from the conveyance.

5 (b) All or any part of an appropriation may, with the
6 permission of the director, be severed from the land to which
7 it is appurtenant and may be sold, leased or transferred for
8 other purposes or to other lands and be made appurtenant to
9 other lands. Any deed, lease, contract, assignment of permit
10 or other document transferring an appropriation must be filed
11 for record in the office of the director.

12 (c) The point of diversion, place of storage, place of
13 use, area of use, time of use or nature of the use of any
14 water right may, with the permission of the director and the
15 concurrence of any agency involved in the original applica-
16 tion, be changed; and an appropriator of underground water
17 may under the same conditions change the location of his well
18 to another point within the same aquifer.

19 Sec. 46.15.220. DETERMINATION OF EXISTING RIGHTS. (a)
20 Any claimant of an existing right pursuant to sec. 070 of
21 this chapter may file a declaration of appropriation with the
22 director at any time prior to the limitation date set by the
23 director pursuant to this section. An owner shall make a
24 declaration in the form and containing the information the
25 director by regulation prescribes, including the date work
26 was begun on the appropriation, the date the water was first
27 applied to a beneficial use, and a true copy of any notice
28 or claim upon which the right was initiated or is based.

29 (b) The director shall, as soon as practicable, deter-

1 mine the rights of persons owning existing appropriations.
2 To accomplish this, he shall (1) by order set a three-month
3 period within which each appropriator within a specified area
4 or from a specified source must file a declaration, (2)
5 publish notice of the order once a week for three weeks
6 before the beginning of the three-month period in a news-
7 paper of general circulation in the affected area, (3) give
8 notice of the order by registered or certified mail to any
9 appropriator within the specified area or from the specified
10 source who has requested mailed notice or of whom the
11 director can readily obtain knowledge.

12 (c) A declaration of appropriation filed with the
13 director shall be considered prima facie correct in all
14 proceedings until the director makes a determination of water
15 rights and issues certificates of appropriation.

16 (d) The director shall make the investigations he con-
17 siders necessary of the source of water involved, the works
18 by which the water is appropriated, and the use to which the
19 water is put. He shall, on the basis of the declaration and
20 all information obtained, make a preliminary determination
21 of each appropriation as to priority, amount of water, and
22 beneficial use. Priority dates from the day work was begun
23 on the appropriation if due diligence was used in completing
24 the works; otherwise, from the day water was applied to the
25 beneficial use. He shall prepare a summary of his determina-
26 tions and mail a copy to each person who has filed a declara-
27 tion in the proceeding. The director's preliminary determin-
28 ation is a statement of issues within the meaning of the
29 Administrative Procedure Act, (AS 44.62), and any person

1 adversely affected by a preliminary determination may request
2 a hearing on it. The director shall send notice of the hear-
3 ing to each person who has filed a declaration.

4 (e) The director shall, on the basis of the hearing or
5 on the basis of the preliminary determination if no hearing
6 is requested, determine each existing appropriation and
7 issue to the appropriator a certificate of appropriation.

8 (f) If an appropriator who does not file a declaration
9 as required under this section later asserts a right or
10 claim to the water, the director may determine the priority,
11 quantity, and purpose of the appropriation on the basis of
12 evidence available to him. He may, if rights of other per-
13 sons have intervened and other persons would be injured by
14 the late assertion of the appropriation, determine that the
15 appropriation does not exist, or that it bears a later date
16 than that of the persons or appropriators who would be
17 injured.

18 Sec. 46.15.230. REVOCATION OF PERMIT OR CERTIFICATE. If
19 the work or any extension thereof does not comply with the
20 completion time limit stated in the permit, or if the water
21 is not applied to a beneficial use as contemplated in the
22 permit or certificate, or if the plans and specifications
23 filed with the application are not followed, or if the condi-
24 tions of the permit or certificate are not being met, or if
25 the holder of a permit or the owner of a certificate has
26 violated any provision of this chapter or any regulation or
27 order issued under this chapter, the director may revoke the
28 permit or certificate. The Administrative Procedure Act
29 (AS 44.62) shall govern proceedings to revoke a permit or

1 certificate.

2 Sec. 46.15.240. APPEALS. Any applicant or person whose
3 rights are affected by any decision of the director may
4 appeal to the superior court of the judicial district in
5 which the water proposed to be appropriated is located, such
6 appeal to be in accordance with the Administrative Procedure
7 Act (AS 44.62).

8 Sec. 46.15.250. REGULATION AND CONTROL OF WORKS. If the
9 director ascertains that a person is preventing water from
10 moving to another person who has a prior right to use the
11 water, he may regulate any control of any ditch, canal, pump,
12 well, dam, or structure to secure the water to the person who
13 has the prior right to its use. The director may attach to
14 the control a written notice dated and signed, stating that
15 the control has been regulated by him. The notice is legal
16 notice to all interested persons.

17 Sec. 46.15.260. REGULATORY ORDERS. (a) If the director
18 ascertains that a person is preventing water from moving to
19 another person who has a prior right to use the water, the
20 director may order the preventing person to take whatever
21 steps are necessary to cause the water to move to the person
22 who has the prior right to use it.

23 (b) The director may by order or regulation establish
24 corrective controls for an area or source by which priority
25 of rights of appropriators from the source may be enforced by
26 apportionment, rotation, cessation, or reduction of with-
27 draws. He may by order or regulation approve any agree-
28 ment among appropriators in any area or from any source which
29 agreement provides for control of withdrawals, apportionment,

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rotation, or proration of the common supply.

Sec. 46.15.270. MEASURING DEVICES AND CONTROLS. The director may require an appropriator to install measuring devices. He may also require an appropriator to install efficient works for the control of the water and to construct or improve works to prevent the loss and waste of surface or ground water either above or below the surface of the land.

Sec. 46.15.280. REPORTS. The director may require an appropriator (1) to report the readings of measuring devices at reasonable intervals, (2) to file annual or seasonal reports of diversions in the form and containing the information which the director requires, and (3) to file a report from a well driller on the log of a well, the description of the well structures, and the capacity of the well.

Sec. 46.15.290. SUITS FOR ENFORCEMENT OF WATER RIGHTS. (a) Upon the request of the director, the attorney general shall bring suit in the name of the State of Alaska, in the proper superior court, to enjoin the unlawful appropriation, diversion, or use of the waters of the state, or the waste or loss thereof.

(b) In any suit involving appropriations of water the court may order a reference to the director for investigation of, and report upon, any or all of the physical facts involved and the director shall thereupon make such an investigation and report as ordered by the court. The report shall set forth such findings of facts as may be required by the court's order of reference and may contain such opinions upon the facts as the director deems proper in view of the issues submitted. Before filing his report, the director shall

1 serve, by personal service or certified mail, a copy of the
2 report upon the parties or their attorneys of record. With-
3 in thirty days from the date of service of the report, any
4 party may file objections with the director. After the
5 director has considered the objections, he shall file his
6 report, as referee, with the clerk of the court and serve
7 notice of the filing of the report to the parties or their
8 attorneys. The court shall review the report and any excep-
9 tions thereto filed with the clerk of the court within
10 thirty days after date of notice of filing of the report.
11 Except in its discretion or for good cause shown, the court
12 shall not consider any exception to the report unless it
13 appears that the excepting party presented the matter of the
14 exception to the director in the form of an objection. The
15 report shall be evidence of the physical facts found therein,
16 but the court shall hear such evidence as may be offered by
17 any party to rebut the report or the evidence. If such suit
18 is brought in a federal court, the director may accept a
19 reference of such suit as master or referee for the court.

20 Sec. 46.15.300. CRIMES. Any person who shall construct
21 works for an appropriation or divert, impound, withdraw or
22 use water from any source without an existing right, or per-
23 mit, or certificate of appropriation; or who shall knowingly
24 interfere with, open, close, adjust or regulate a headgate,
25 valve, switch, or other controlling works of any ditch,
26 canal, pump, pipe, well, dam or structure after the same has
27 been regulated by the director or his authorized agent; or
28 any person who shall violate any order of the director to
29 cease and desist from preventing any water from moving to a

1 person having a prior right to use the same; or who shall
2 disobey an order of the director requiring him to take steps
3 to cause the water to so move; or who shall fail or refuse
4 to install meters, gauges or other measuring devices or con-
5 trol works or structures required by the director; or who
6 shall violate any order establishing corrective controls for
7 an area or for a source of water; or who shall knowingly
8 make any false or misleading statement in a declaration of
9 existing rights, shall be guilty of a misdemeanor.

10 ARTICLE III. GENERAL PROVISIONS

11 Sec. 46.15.310. DEFINITIONS. In this chapter, unless
12 the context otherwise requires:

13 (a) "Appropriate" means to divert, impound, or withdraw
14 a quantity of water from a source of water for a beneficial
15 use.

16 (b) "Appropriation" means the diversion, impoundment or
17 withdrawal of a quantity of water from a source of water for
18 a beneficial use.

19 (c) "Beneficial use" means a use of water for the bene-
20 fit of the appropriator, other persons or the public, that
21 is reasonable and consistent with the public interest,
22 including, but not limited to, domestic, agricultural,
23 irrigation, industrial, mining, power, municipal, sanitary,
24 fish and wildlife, and recreational uses.

25 (1) "Fish, wildlife and recreational uses" include
26 but are not limited to the impoundment of water for fish
27 propagation, to provide fish and wildlife habitat and feeding
28 grounds, and to provide commercial fishing opportunities and
29 sport fishing, hunting, boating and other recreational

1 opportunities; the retention of minimum impoundments in
2 multipurpose dams to protect and preserve fish; and the
3 impoundment of water for release into a stream during periods
4 of low flow to augment flows to provide for migration, habi-
5 tat and spawning of commercial and sport fishes.

6 (2) "Municipal use" includes the use of water in
7 excess of actual consumer needs in order to maintain a cir-
8 culating or constantly flowing distribution system, and the
9 use of water to maintain constantly flowing sewers, where
10 climatic conditions require such uses.

11 (3) "Sanitary use" includes the impoundment of
12 water for release into a stream during periods of low flow
13 to augment flows for dilution and transportation of licensed
14 discharges of wastes or effluents from licensed disposal
15 systems.

16 (d) "Certificate" means a certificate of appropriation
17 of water issued by the director under the provisions of this
18 chapter.

19 (e) "Commissioner" means the commissioner of natural
20 resources.

21 (f) "Director" means the director of the division of
22 lands, Department of Natural Resources.

23 (g) "Permit" means a permit to appropriate water issued
24 by the director under the provisions of this chapter.

25 (h) "Source of water" means any substantial quantity of
26 water capable of being put to beneficial use.

27 (1) "Water" means all water of the state, surface and
28 subsurface, occurring in a natural state, except mineral and
29 medicinal water.

1 (j) "Well" means any artificial opening or excavation
2 in the ground, however made, from which underground water
3 flows under natural pressure or is artificially withdrawn.

4 Sec. 46.15.320. SHORT TITLE. This chapter may be cited
5 as the "Alaska Water Use Act."

6 * Sec. 2. AS 38.05.300 is amended to read:

7 Sec. 38.05.300. CLASSIFICATION OF LANDS AND WATERS.

8 The director shall make a preliminary classification for sur-
9 face use of all lands and the use of all surface and sub-
10 surface waters in areas where he considers it necessary and
11 proper for future development. The classification, together
12 with a land use plan, and a water use plan, shall be trans-
13 mitted to the commissioner for his approval, modification
14 or rejection. This section does not prevent reclassifica-
15 tion of lands where the public interest warrants reclassifi-
16 cation, nor does it preclude multiple purpose use of lands
17 whenever different uses are compatible. No state land,
18 water, or land and water area shall, except by act of the
19 state legislature, be (1) withdrawn from settlement, loca-
20 tion, sale or entry; (2) reserved for special use; or (3)
21 restricted from operation of the mining and mineral leasing
22 provisions of this chapter, if the area involved in with-
23 drawal, reservation, or restriction exceeds the aggregate
24 640 acres.

25 * Sec. 3. AS 38.05.315(b) is amended to read:

26 (b) Notwithstanding §§ 70-80, 95, and 100 of this chap-
27 ter the director, upon application filed by an applicant
28 eligible under (b)-(d) of this section, may, by negotiation
29 and without public auction in the manner prescribed in (b)-

1 (d) of this section, lease state land for a term of not more
2 than 55 years. Before leasing, the director shall prepare a
3 land use plan, a water use plan and a land classification to
4 insure that the proposed use is compatible with area utiliza-
5 tion. Before the land may be leased under (b)-(d) of this
6 section, it must be shown to the satisfaction of the director
7 that the land is to be used for an established or definitely
8 proposed project, and that the eligible applicant has the
9 financial ability to carry out the project. The commissioner
10 may establish limitations on the acreage which may be leased
11 under (b)-(d) of this section to an applicant.

12 * Sec. 4. AS 09.55.240 is amended to read:

13 Sec. 09.55.240. USES FOR WHICH AUTHORIZED; RIGHT-OF-WAY.

14 (a) The right of eminent domain may be exercised for the
15 following public uses:

16 (1) all public uses authorized by the government
17 of the United States;

18 (2) public buildings and grounds for the use of the
19 state and all other public uses authorized by the legislature
20 of the state;

21 (3) public buildings and grounds for the use of an
22 organized or unorganized borough, city, town, village, school
23 district, or other municipal division, whether incorporated
24 or unincorporated; canals, aqueducts, flumes, ditches, or
25 pipes conducting water, heat, or gas for the use of the
26 inhabitants of any organized or unorganized borough, city,
27 town, or other municipal division, whether incorporated or
28 unincorporated; raising the banks of streams, removing
29 obstructions from them and widening, deepening, or straight-

1 ening their channels; roads, streets, and alleys, and all
2 other public uses for the benefit of an organized or unorgan-
3 ized borough, city, town, or other municipal division whether
4 incorporated or unincorporated, or its inhabitants, which
5 may be authorized by the legislature;

6 (4) wharves, docks, piers, chutes, booms, ferries,
7 bridges of all kinds, private roads, plant and turnpike
8 roads, railroads, canals, ditches, flumes, aqueducts, and
9 pipes for public transportation, supplying mines and farming
10 neighborhoods with water, and draining and reclaiming lands,
11 and for floating logs and lumber on streams not navigable,
12 and sites for reservoirs necessary for collecting and stor-
13 ing water;

14 (5) roads, tunnels, ditches, flumes, pipes, and
15 dumping places for working mines; also outlets, natural or
16 otherwise, for the flow, deposit, or conduct of tailings or
17 refuse matter from mines; also an occupancy in common by the
18 owners or possessors of different mines of any place for the
19 flow, deposit, or conduct of tailings or refuse matter from
20 their several mines, and sites for reservoirs necessary for
21 collecting and storing water;

22 (6) private roads leading from highways to
23 residences, mines, or farms;

24 (7) telephone lines;

25 (8) telegraph lines;

26 (9) sewerage of an organized or unorganized
27 borough, city, town, village, or other municipal division,
28 whether incorporated or unincorporated, or any subdivision
29 of it, or of a settlement consisting of not less than 10

1 families, or of public buildings belonging to the state or
2 to a college or university;
3 (10) tramway lines;
4 (11) electric power lines;
5 (12) for the location of pipelines for gathering,
6 transmitting, transporting, storing, or delivering natural
7 or artificial gas or oil or any liquid or gaseous hydrocar-
8 bons, including but not limited to, pumping stations, termi-
9 nals, storage tanks, or reservoirs, and related installa-
10 tions.

11 (13) for the location of works necessary to the
12 application of water to a beneficial use, including but not
13 limited to ditches, flumes, canals, aqueducts, pipes, tun-
14 nels, pumping stations, storage tanks, reservoirs and dams.

15 (b) The use of water for mining, power, [AND] municipal
16 purposes and any other beneficial use and the use of pole
17 and tower lines for telephone and telegraph wires, for
18 aerial trams, and for the transmission of electric light and
19 electric power, by whomever utilized, are each declared to be
20 beneficial to the public and to be a public use within the
21 provisions of this article. Rights-of-way across private
22 property when they are necessary for the operation of the
23 mine or other project in connection with which it is intended
24 to be used may be condemned in the manner as for any other
25 condemnation. The right-of-way may extend only to a right-
26 of-way along, upon, and across the surface of the lands to
27 be condemned and to a strip of the land of sufficient width
28 to permit the construction on the land of a ditch, flume,
29 pipeline, canal, or other means of conveying water as is

1 adequate for the purposes intended, for the setting of poles
2 or the construction of towers upon which to string wires for
3 telephone and telegraph lines and lines for the transmission
4 of electric light or power for the operation of aerial trams,
5 and to permit maintaining the lines and keeping them in
6 repair.

7 * Sec. 5. AS 16.05.870(b) is amended to read:

8 (b) If a person or governmental agency desires to con-
9 struct a hydraulic project, or use, divert, obstruct, pol-
10 lute, or change the natural flow or bed of a specified
11 river, lake, or stream, or to use wheeled, tracked, or
12 excavating equipment or log-dragging equipment in the bed of
13 a specified river, lake, or stream, the person or govern-
14 mental agency shall notify the commissioner of the Department
15 of Natural Resources in compliance with AS 46.15.080 of this
16 intention before the beginning of the construction or use.
17 The notice of intended use will be referred to the commis-
18 sioner of the Department of Fish and Game in compliance with
19 AS 46.15.120.

20 * Sec. 6. AS 16.05.880 is amended to read:

21 Sec. 16.05.880. VIOLATION OF §§ 870--895 OF THIS
22 CHAPTER. If a person or governmental agency is convicted of
23 violating §§ 870--895 of this chapter or continues a use,
24 work or project without fully complying with §§ 870--895 of
25 this chapter, the use, work, or project is a public nuisance
26 and is subject to abatement. The cost of restoring a speci-
27 fied river, lake, or stream to its original condition shall
28 be borne by the violator and shall be in addition to the
29 penalty imposed by the court.

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* Sec. 7. The following laws are repealed:

AS 16.10.010 - 16.10.050; AS 27.10.080; and AS
38.05.260.

* Sec. 8. This Act takes effect July 1, 1963.