

Original Sponsor: Rules
Committee by Request of
the Governor

Offered: 2/3/64
Referred: Resources

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 73

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRD LEGISLATURE - SECOND 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 1. ADMINISTRATION

13 Sec. 46.15.010. DETERMINATION OF WATER RIGHTS. The
14 Department of Natural Resources shall determine and adjudicate
15 rights in the waters of the state and the appropriation and
16 distribution thereof subject to maintenance of minimum stand-
17 ards of quality and flow necessary for the protection of
18 health and welfare and to the general reservation of fish
19 and game. The Department of Fish and Game shall continue
20 its water programs for the protection of fish and wildlife
21 and the Department of Health and Welfare shall continue its
22 water programs for the protection of health and welfare.
23 Determination of common use of waters of the state shall be
24 based upon consideration of past, present, future and con-
25 current uses in all allotments of waters of the state.

26 Sec. 46.15.020. AUTHORITY AND DUTIES OF THE COMMISSION-
27 ER. (a) The commissioner shall adopt procedural and sub-
28 stantive regulations to carry out the provisions of this
29 chapter.

1 (b) The commissioner may enter into such contractual
2 agreements as he deems necessary to carry out the purposes
3 of this chapter, including agreements with federal and state
4 agencies.

5 (c) The commissioner may exercise all those powers and
6 do all those acts necessary to carry out the provisions and
7 objectives of this chapter.

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

13 (e) The commissioner may cooperate with, assist,
14 advise and coordinate plans with the federal government and
15 with other state agencies in matters relating to the appro-
16 priation, use, conservation, quality, disposal or control of
17 waters and activities related thereto.

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

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

27 (a) The director shall administer the provisions of this
28 chapter.

29 (b) The director may make surveys, investigations and

1 compilations of water resources in the state and their poten-
2 tial development.

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

6 (d) The director shall keep a record of the date of
7 receipt of all applications for permits and other documents
8 filed in his office. The director shall record all permits
9 and certificates and amendments and orders affecting them
10 and shall index them in accordance with the source of the
11 water and the name of the applicant or appropriator. These
12 records shall be open for public inspection.

13 ARTICLE II. APPROPRIATION AND USE OF WATER

14 Sec. 46.15.040. WATERS RESERVED TO THE PEOPLE: BENE-
15 FICIAL USE. Wherever occurring in their natural state, the
16 waters are reserved to the people for common use and are
17 subject to appropriation and beneficial use as provided in
18 this chapter.

19 Sec. 46.15.050. RIGHT TO APPROPRIATE. (a) A right to
20 appropriate water can be acquired only as provided in this
21 chapter. No right to the use of water either appropriated
22 or unappropriated shall be acquired by adverse use or
23 possession.

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

1 Sec. 46.15.060. PRIORITY. Priority of appropriation
2 gives prior right. Priority of appropriation does not
3 include the right to prevent changes in the condition of
4 water occurrence, such as the increase or decrease of stream
5 flow, or the lowering of a water table, artesian pressure,
6 or water level, by later appropriators, if the prior appro-
7 priator can reasonably acquire his water under the changed
8 conditions.

9 Sec. 46.15.070. EXISTING RIGHTS. (a) Any beneficial
10 use of water being made on the effective date of this chap-
11 ter, or that has been made within five years before the
12 effective date of this chapter, or that is made in conjunc-
13 tion with works under construction on the effective date,
14 under a lawful common law or customary appropriation or use,
15 is a lawful appropriation under this chapter. The appropri-
16 ation is subject to the provisions of this chapter and to the
17 rules and regulations adopted under this chapter.

18 (b) The owner of a valid mining claim, whose claim is
19 dated after May 3, 1917, and before the effective date of
20 this chapter, and who has included within the boundaries of
21 his claim both banks of any river, creek, or stream is con-
22 sidered to have an existing appropriation for mining purposes
23 of the water necessary to mine his claim. The date of the
24 mining claim is the priority date. The appropriation is
25 subject to the provisions of this chapter and to rules and
26 regulations adopted under this chapter.

27 Sec. 46.15.080. APPLICATION FOR PERMIT TO APPROPRIATE.

28 (a) Any person intending to appropriate water shall apply
29 for a permit from the director and shall not commence the

1 construction of works for such appropriation nor divert the
2 water until the permit has been issued.

3 (b) An application for a permit to appropriate water
4 or to change an appropriation to a preferred use shall con-
5 tain such information as the commissioner may require by
6 regulation. The commissioner may prescribe and furnish forms
7 for applications to appropriate water and to change appro-
8 priations to a preferred use.

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

22 (b) The director shall have the notice published at
23 the applicant's expense in one issue of a newspaper of
24 general distribution in the area of the state in which the
25 water is proposed to be appropriated. The director shall
26 also have the notice served personally or by certified mail
27 upon any appropriator of water or applicant for or holder of
28 a permit who, according to the records of the division of
29 lands, may be affected by the proposed appropriation. The

1 director may also serve the notice upon any state or federal
2 agency or officer, political subdivision, or private organi-
3 zation which he considers to represent or be concerned with
4 any interest that may be involved.

5 (c) Within 15 days after the publication or service of
6 the notice, any interested person may file with the depart-
7 ment a written objection concerning the matter stated by the
8 application, setting forth the reasons why the permit should
9 be denied or conditioned. The director may hold hearings on
10 the application upon giving due notice and shall grant,
11 deny or condition the application in whole or in part within
12 30 days after the receipt of the last objection or at the
13 conclusion of the hearings. Notice of the order or decision
14 shall be given as provided in subsection (b) and shall also
15 be served personally or by mail on any person who filed an
16 objection under this section.

17 (d) If no written objection is filed with the director
18 he may proceed to make a determination upon the application.

19 (e) An order or decision by the director and the
20 reasons for such order or decision shall be in writing and
21 shall be public records open for inspections in a manner
22 provided for by the regulations of the department.

23 (f) Within 20 days after notice of the order or deci-
24 sion, any person aggrieved by the action may make a written
25 application for reconsideration. After such reconsideration
26 by the director, an appeal may be taken from the order or
27 decision to the commissioner in such form as the regulations
28 of the department may provide.

29 (g) A person aggrieved by the action of the director

1 may appeal to the superior court at any time after the order
2 or decision of the director.

3 Sec. 46.15.100. SIMPLIFIED PROCEDURE IN CERTAIN CASES.

4 (a) The Commissioner may, after consulting with the commis-
5 sioner of fish and game and the commissioner of health and
6 welfare, by regulation exempt from the requirements of sec.
7 90 of this chapter, applications for any of the following:

8 (1) appropriations for specified purposes;

9 (2) appropriations for less than specified quan-
10 tities of water;

11 (3) appropriations from specified sources;

12 (4) appropriations in specified areas;

13 (5) appropriations limited by one or more of the
14 above specifications.

15 (b) Exemptions made under (a) of this section may be
16 modified or abolished by regulation.

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

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

24 (1) that rights of a prior appropriator will not
25 be unduly affected;

26 (2) that the proposed means of diversion or con-
27 struction are adequate;

28 (3) that the proposed use of water is beneficial;

29 and

1 (4) that the proposed appropriation is in the
2 public interest.

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

5 (1) the benefits to the applicant resulting from
6 the proposed appropriation;

7 (2) the effect of the economic activity related to
8 the proposed appropriation;

9 (3) the effect on the fish and game resources and
10 on public fishing, hunting, and recreational opportunities;

11 (4) the effect on public health;

12 (5) the effect of loss of alternate uses of the
13 water that would probably be made within a reasonable time
14 if not precluded or hindered by the proposed appropriation;

15 (6) the harm to other persons that would result
16 from the proposed appropriation; and

17 (7) the intent and ability of the applicant to
18 complete the appropriation.

19 Sec. 46.15.120. COORDINATION WITH COMMISSIONERS OF FISH
20 AND GAME AND HEALTH AND WELFARE. (a) Upon receipt of an ap-
21 plication, the director shall forward copies of it to the com-
22 missioner of fish and game and commissioner of health and
23 welfare.

24 (b) The commissioners of fish and game and health and
25 welfare shall expeditiously and within a reasonable time
26 after receipt of the copy of the application from the
27 director, make a recommendation for approval, disapproval,
28 or conditioning of the proposed use.

29 (c) If the commissioners of fish and game and health

1 and welfare both approve of the proposed use, the director
2 may proceed to make a determination upon the application.

3 (d) If the commissioner of fish and game recommends dis-
4 approval of the proposed use, he shall submit specific find-
5 ings to the director as to the damage to fish or game which
6 would be caused by the proposed use. If the commissioner of
7 health and welfare recommends disapproval of the proposed
8 use, he shall submit specific findings to the director as to
9 the water pollution which would be caused by the proposed
10 use. If the director refuses to accept such findings, he
11 shall be required to present his reasons for refusal in
12 rebuttal of the evidence contained in the findings.

13 (e) If the director determines that the benefits from
14 the proposed use override the benefits from the protection
15 of fish and game or from the prevention of water pollution,
16 he shall draft a statement of his findings which he considers
17 justifies overriding the disapproval of the proposed use by
18 the commissioner of fish and game or health and welfare. A
19 copy shall be forwarded to the commissioner who disapproved
20 the proposed use.

21 (f) In every case in which the director, with the
22 approval of the commissioner of natural resources, intends
23 to override the disapproval by the commissioner of fish and
24 game or the commissioner of health and welfare under (e) of
25 this section, the commissioner of natural resources shall
26 confer with the commissioner who disapproves the proposed
27 use and may confer with all interested parties to work out
28 a plan which would allow for the construction of the proposed
29 use and also protect fish and game or prevent water pollution.

1 (g) In the event that a concurrent use cannot be work-
2 ed out under (f) of this section, the commissioner of natural
3 resources shall serve a copy of his proposed decision on the
4 commissioner who disapproved the proposed use.

5 (h) The commissioner of fish and game or the commission-
6 er of health and welfare may, within 10 days of receipt of
7 the proposed decision, appeal the proposed decision served
8 under (g) of this section directly to the governor for final
9 determination. If the proposed decision is not appealed
10 within 10 days, it becomes final.

11 (i) A final decision of the commissioner of natural
12 resources or the governor rendered under the provisions of
13 this section shall be certified back to the director and he
14 shall enter it as his decision on the application.

15 Sec. 46.15.130. PREFERENCE IN GRANTING PERMITS. When
16 there are competing applications for water from the same
17 source and the source of water is insufficient to supply all
18 applicants, or when an application is made that is incon-
19 sistent with an alternative use of the water that would
20 probably be made within a reasonable time if the application
21 were denied, the director shall give preference first to
22 public water supply and then to the use which alone or in
23 combination with other foreseeable uses will constitute the
24 most beneficial use.

25 Sec. 46.15.140. TERMS OF PERMIT. The director may
26 issue a permit for less than the amount of water requested,
27 but in no case may he issue a permit for more water than can
28 be beneficially used for the purposes stated in the
29 application. He may require modification of plans and

1 specifications for the appropriation. He may issue a permit
2 subject to any terms, conditions, restrictions, and limita-
3 tions he considers necessary to protect the rights of others,
4 as necessary in the public interest, provided, however, that
5 the permit shall be subject to termination only as provided
6 in this chapter.

7 Sec. 46.15.150. TIME FOR CONSTRUCTION AND COMPLETION.
8 In a permit, the director shall state a time limit for the
9 beginning of construction work and a time limit for the
10 perfecting of an appropriation. The director shall, for
11 good cause shown by the applicant, allow reasonable exten-
12 sions of such time limits.

13 Sec. 46.15.160. CERTIFICATES. Upon the completion of
14 the construction of the works and the application of water
15 to the proposed beneficial use, the permit holder shall
16 notify the director that he has perfected his appropriation.
17 The director may then inspect the appropriation and, if he
18 determines that the appropriation has been perfected in
19 substantial accordance with the permit, he shall issue the
20 permit holder a certificate of appropriation. The certifi-
21 cate shall set forth such information as the commissioner
22 shall prescribe by regulation.

23 Sec. 46.15.170. PRIORITY. The priority of the appro-
24 priation described in the certificate of appropriation dates
25 from the filing of the original application in the office of
26 the director.

27 Sec. 46.15.180. ABANDONMENT, FORFEITURE AND REVERSION
28 OF APPROPRIATIONS. (a) The director may declare an
29 appropriation to be wholly or partially abandoned and shall

1 revoke the certificate of appropriation if an appropriator,
2 with the intention to abandon, does not make beneficial use
3 of all or a part of his appropriated water.

4 (b) The director may declare an appropriation to be
5 wholly or partially forfeited and shall revoke the certifi-
6 cate of appropriation if an appropriator voluntarily fails
7 or neglects, without sufficient cause, to make beneficial
8 use of all or a part of his appropriated water for a period
9 of five successive years.

10 (c) The director may determine in conjunction with
11 any application for a permit whether another appropriation
12 has been abandoned or forfeited.

13 (d) If the director declares an appropriation to be
14 wholly or partially abandoned or forfeited under this sec-
15 tion, or he revokes a permit or certificate under sec. 230
16 of this chapter, the unused water and the right to appropriate
17 it reverts to the state and the water becomes unappropriated
18 water.

19 Sec. 46.15.190. CHANGES TO PREFERRED USE. (a) Except
20 for public water supply, an appropriation of water shall be
21 limited to stated purposes and subject to preferences among
22 beneficial uses, concurrent or otherwise, and to the general
23 reservation of fish and wildlife. A preferred use of water
24 is one for public water supply or one that results in a
25 greater use and development of the water and makes a greater
26 contribution to the public interest than another use of the
27 same water.

28 (b) To assert a preferred use an applicant for a permit
29 to appropriate water must file a petition with the director

1 that alleges facts which tend to show that (1) the proposed
2 use will be prevented or substantially interfered with by
3 an existing prior appropriation of water, (2) the proposed
4 use is a preferred use over the existing use, (3) the appli-
5 cant for the proposed preferred use is willing and able to
6 justly compensate the permit holder or certificate owner for
7 the prior appropriation and (4) such other information as
8 the director may by regulation require.

9 (c) An application asserting a preferred use shall be
10 treated in the same manner as an original application. Any
11 prior appropriator whose rights will be adversely affected
12 by the asserted preferred use must be given notice of all
13 proceedings upon the application for a preferred use.

14 Sec. 46.15.200. TRANSFER AND CHANGE OF APPROPRIATIONS.

15 (a) The right to use water pursuant to an appropriation or
16 permit shall be appurtenant to the land or place where it
17 has been or is to be beneficially used, provided, that water
18 supplied by one person to another person's mine or mining
19 claim shall not be appurtenant to said mine or claim unless
20 the parties so intend. An appurtenant water right shall pass
21 with a conveyance of the land, or transfer, or by operation
22 of law unless specifically 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
27 other lands. Any deed, lease, contract, assignment of permit
28 or other instrument transferring an appropriation must be
29 filed for record in the office of the director and a certi-

1 filed copy of the instrument must be recorded in the recorder's
2 office of the recording district in which the appropriation
3 is located.

4 (c) The point of diversion, place of storage, place of
5 use, area of use, time of use or nature of the use of any
6 water right may, with the permission of the director and the
7 concurrence of any agency involved in the original applica-
8 tion, be changed; and an appropriator of underground water
9 may under the same conditions change the location of his well
10 to another point within the same aquifer.

11 Sec. 46.15.210. EFFECT OF UNRECORDED AND RECORDED TRANS-
12 FERS OF APPROPRIATIONS. (a) A deed, lease, contract, assign-
13 ment of permit or other instrument transferring an appropri-
14 ation is void as against a subsequent innocent purchaser who
15 in good faith paid a valuable consideration for the appropri-
16 ation or any portion of it and whose instrument is first
17 filed and recorded under sec. 200(b) of this chapter.

18 (b) A deed, lease, contract, assignment of permit or
19 other instrument transferring an appropriation which is
20 recorded under sec. 200(b) of this chapter is constructive
21 notice of its contents to subsequent purchasers of the appro-
22 priation or any portion of it. An unrecorded instrument is
23 valid as between the parties to it and as against one who
24 has actual notice of it.

25 Sec. 46.15.220. DETERMINATION OF EXISTING RIGHTS. (a)
26 Any claimant of an existing right pursuant to sec. 70 of this
27 chapter may file a declaration of appropriation with the
28 director at any time prior to the limitation date set by the
29 director pursuant to this section. An owner shall make a

1 declaration in the form and containing the information the
2 director by regulation prescribes, including the date work
3 was begun on the appropriation, the date the water was first
4 applied to a beneficial use, and a true copy of any notice or
5 claim upon which the right was initiated or is based.

6 (b) The director shall, as soon as practicable, deter-
7 mine the rights of persons owning existing appropriations. To
8 accomplish this, he shall (1) by order set a three-month
9 period within which each appropriator within a specified area
10 or from a specified source must file a declaration, (2) pub-
11 ish notice of the order once a week for three weeks before
12 the beginning of the three-month period in a newspaper of
13 general circulation in the affected area, (3) give notice of
14 the order by registered or certified mail to any appropriator
15 within the specified area or from the specified source who
16 has requested mailed notice or of whom the director can read-
17 ily obtain knowledge.

18 (c) A declaration of appropriation filed with the direc-
19 tor shall be considered prima facie correct in all proceed-
20 ings until the director makes a determination of water rights
21 and issues certificates of appropriation.

22 (d) The director shall make the investigations he con-
23 siders necessary of the source of water involved, the works
24 by which the water is appropriated, and the use to which the
25 water is put. He shall, on the basis of the declaration and
26 all information obtained, make a preliminary determination of
27 each appropriation as to priority, amount of water, and bene-
28 ficial use, Priority dates from the day work was begun on
29 the appropriation if due diligence was used in completing the

1 works; otherwise, from the day water was applied to the bene-
2 ficial use. He shall prepare a summary of his determinations
3 and mail a copy of each person who has filed a declaration in
4 the proceeding. The director's preliminary determination is
5 a statement of issues within the meaning of the Administra-
6 tive Procedure Act (AS 44.62), and any person adversely
7 affected by a preliminary determination may request a hearing
8 on it. The director shall send notice of the hearing to each
9 person who has filed a declaration.

10 (e) The director shall, on the basis of the hearing or
11 on the basis of the preliminary determination if no hearing
12 is requested, determine each existing appropriation and
13 issue to the appropriator a certificate of appropriation.

14 (f) If an appropriator who does not file a declaration
15 as required under this section later asserts a right or claim
16 to the water, the director may determine the priority, quan-
17 tity, and purpose of the appropriation on the basis of eve-
18 dence available to him. He may, if rights of other persons
19 have intervened and other persons would be injured by the late
20 assertion of the appropriation, determine that the appropria-
21 tion does not exist, or that it bears a later date than that
22 of the persons or appropriators who would be injured.

23 Sec. 46.15.230. REVOCATION OF PERMIT OR CERTIFICATE. If
24 the work or any extension thereof does not comply with the
25 completion time limit stated in the permit, or if the water
26 is not applied to a beneficial use as contemplated in the per-
27 mit or certificate, or if the plans and specifications filed
28 with the application are not followed, or if the conditions
29 of the permit or certificate are not being met, or if the

1 holder of a permit or the owner of a certificate has violated
2 any provision of this chapter or any regulation or order
3 issued under this chapter, the director may revoke the permit
4 or certificate. The Administrative Procedure Act (AS 44.62)
5 shall govern proceedings to revoke a permit or certificate.

6 Sec. 46.15.240. APPEALS. Any applicant or person
7 whose rights are affected by any decision of the director
8 may appeal to the superior court of the judicial district in
9 which the water proposed to be appropriated is located.

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

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

25 (b) The director may by order or regulation establish
26 corrective controls for an area or source by which priority
27 of rights of appropriators from the source may be enforced
28 by apportionment, rotation, cessation, or reduction of with-
29 drawals. He may by order or regulation approve any agreement

1 among appropriators in any area or from any source which
2 agreement provides for control of withdrawals, apportionment,
3 rotation, or proration of the common supply.

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

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

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

23 (b) In any suit involving appropriations of water the
24 court may order a reference to the director for investiga-
25 tion of, and report upon, any or all of the physical facts
26 involved and the director shall thereupon make such an
27 investigation and report as ordered by the court. The
28 report shall set forth such findings of facts as may be
29 required by the court's order of reference and may contain

1 such opinions upon the facts as the director seems proper
2 in view of the issues submitted. Before filing his report,
3 the director shall serve, by personal service or certified
4 mail, a copy of the report upon the parties or their
5 attorneys of record. Within 30 days from the date of service
6 of the report, any party may file objections with the direc-
7 tor. After the director has considered the objections, he
8 shall file his report, as referee, with the clerk of the
9 court and serve notice of the filing of the report to the
10 parties or their attorneys. The court shall review the
11 report and any exceptions thereto filed with the clerk of
12 the court within 30 days after date of notice of filing of
13 the report. Except in its discretion or for good cause
14 shown, the court shall not consider any exception to the
15 report unless it appears that the excepting party presented
16 the matter of the exception to the director in the form of
17 an objection. The report shall be evidence of the physical
18 facts found therein, but the court shall hear such evidence
19 as may be offered by any party to rebut the report or the
20 evidence. If such suit is brought in a federal court, the
21 director may accept a reference of such suit as master or
22 referee for the court.

23 Sec. 46.15.300. CRIMES. Any person who shall construct
24 works for an appropriation or divert, impound, withdraw or
25 use water from any source without an existing right, or per-
26 mit, or certificate of appropriation; or who shall knowingly
27 interfere with, open, close, adjust or regulate a headgate,
28 valve, switch, or other controlling works of any ditch,
29 canal, pump, pipe, well, dam or structure after the same has

1 been regulated by the director or his authorized agent; or
2 any person who shall violate any order of the director to
3 cease and desist from preventing any water from moving to a
4 person having a prior right to use the same; or who shall
5 disobey an order of the director requiring him to take steps
6 to cause the water to so move; or who shall fail or refuse
7 to install meters, gauges or other measuring devices or con-
8 trol works or structures required by the director; or who
9 shall violate any order establishing corrective controls for
10 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. Crimes
13 under this section are in addition to any other crimes pro-
14 vided by law.

15 ARTICLE III. GENERAL PROVISIONS

16 Sec. 46.15.310. ENFORCEMENT AUTHORITY. The following
17 persons are peace officers of the state and they shall en-
18 force this chapter:

- 19 (1) an employee of the department of natural re-
20 sources authorized by the commissioner;
21 (2) a police officer of the state;
22 (3) any other person authorized by the commission-
23 er.

24 Sec. 46.15.320 DEFINITIONS. In this chapter, unless
25 the context otherwise requires:

- 26 (1) "appropriate" means to divert, impound, or
27 withdraw a quantity of water from a source of water for a
28 beneficial use;
29 (2) "appropriation" means the diversion, impound-

1 ment or withdrawal of a quantity of water from a source of
2 water for a beneficial use;

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

9 (A) "fish, wildlife and recreational uses"
10 include but are not limited to the impoundment of water
11 for fish propagation, to provide fish and wildlife
12 habitat and feeding grounds, and to provide commercial
13 fishing opportunities and sport fishing, hunting, boat-
14 ing and other recreational opportunities; the retention
15 of minimum impoundments in multipurpose dams to protect
16 and preserve fish; and the impoundment of water for
17 release into a stream during periods of low flow to
18 augment flows to provide for migration, habitat and
19 spawning of commercial and sport fishes;

20 (B) "municipal use" includes the use of
21 water in excess of actual consumer needs in order to
22 maintain a circulating or constantly flowing distribu-
23 tion system, and the use of water to maintain constantly
24 flowing sewers, where climatic conditions require such
25 uses.

26 (C) "sanitary use" includes the impoundment
27 of water for release into a stream during periods of low
28 flow to augment flows for dilution and transportation of
29 lawful discharges of wastes or effluents from lawful

1 disposal systems;

2 (4) "certificate" means a certificate of appropri-
3 ation of water issued by the director under the provisions
4 of this chapter;

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

7 (6) "director" means the director of the division
8 of lands, Department of Natural Resources:

9 (7) "permit" means a permit to appropriate water
10 issued by the director under the provisions of this chapter;

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

14 (9) "source of water" means any substantial quan-
15 tity of water capable of being put to beneficial use.

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

19 (11) "well" means any artificial opening or exca-
20 vation in the ground, however made, from which underground
21 water flows under natural pressure or is artificially with-
22 drawn.

23 Sec. 46.15.330. SHORT TITLE. This chapter may be cited
24 as the "Alaska Water Use Act."

25 * Sec. 2. AS 16.05.870 is repealed and re-enacted to read:

26 Sec. 16.05.870. PROTECTION OF FISH AND GAME. (a) The
27 commissioner shall, in accordance with the Administrative
28 Procedure Act (AS 44.62) specify the various waters of the
29 state or parts of them that are important for the spawning

1 or migration of anadromous fish.

2 (b) If a person or governmental agency desires to ob-
3 struct, pollute or change the natural flow or bed of a
4 specified river, lake, or stream, or body of water, or to
5 use wheeled, tracked, or excavating equipment or log-dragging
6 equipment in the bed of a specified river, lake, or stream,
7 or body of water, the person or governmental agency shall
8 notify the commissioner of this intention before the begin-
9 ning of such action.

10 (c) The commissioner shall acknowledge receipt of
11 such notice by return air mail. If the commissioner deter-
12 mines to do so, he shall, in the letter of acknowledgement,
13 require the person or governmental agency to submit to him
14 full plans and specifications covering the proposed action,
15 and the approximate date the action will begin, and shall
16 require the person or governmental agency to obtain written
17 approval from him as to the sufficiency of the plans or
18 specifications before the proposed action is begun.

19 (d) If a person or governmental agency desires to
20 appropriate any of the waters of the state for beneficial
21 use, or for the discharge of sewage or waste, the person or
22 governmental agency shall apply for a permit from the direc-
23 tor of the division of lands in accordance with the Alaska
24 Water Use Act (AS 46.15) and the regulations thereunder.

25 * Sec. 3 The following laws are repealed: AS 16.10.010 -
26 16.10.050; AS 27.10.080; and AS 38.05.260.

27 * Sec. 4. This Act takes effect July 1, 1964

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