

Original Sponsor: Rules  
Committee by Request of  
the Governor

Offered: 2/20/64  
Referred: Finance

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
2 2d 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 applicable provisions of this chapter  
17 and to the 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 applicable provisions of this chapter and to  
26 rules and 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 commissioner

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, upon agreement with the commissioner  
5 of fish and game and the commissioner of health and welfare,  
6 adopt regulations which 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 property or mining  
19 claim shall not be appurtenant to said property or claim  
20 unless the parties so intend. An appurtenant water right shall  
21 pass with a conveyance of the land, or transfer, or by opera-  
22 tion 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, the director shall (1) by order set a three-  
9 month period within which each appropriator within a specified  
10 area or from a specified source must file a declaration, (2)  
11 publish notice of the order once a week for three weeks before  
12 the beginning of the three-month period in a newspaper of gen-  
13 eral circulation in the affected area, (3) give notice of the  
14 order by registered or certified mail to any appropriator with-  
15 in the specified area or from the specified source who has re-  
16 quested mailed notice or of whom the director can readily obtain  
17 knowledge, including each owner of a recorded mining claim.

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 sider 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 draws. 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 deems 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 a significant amount of water from any source without an  
26 existing right, or permit, or certificate of appropriation;  
27 or who shall knowingly interfere with, open, close, adjust or  
28 regulate a headgate, valve, switch, or other controlling  
29 works of any ditch, canal, pump, pipe, well, dam or structure

1 after the same has been regulated by the director or his  
2 authorized agent; or any person who shall violate any order  
3 of the director to cease and desist from preventing any water  
4 from moving to a person having a prior right to use the same;  
5 or who shall disobey an order of the director requiring him  
6 to take steps to cause the water to so move; or who shall fail  
7 or refuse to install meters, gauges or other measuring devices  
8 or control works or structures required by the director; or  
9 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. 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) any state employee authorized by the  
20 commissioner;

21 (2) a police officer of the state.

22 Sec. 46.15.320 DEFINITIONS. In this chapter, unless  
23 the context otherwise requires:

24 (1) "appropriate" means to divert, impound, or  
25 withdraw a quantity of water from a source of water for a  
26 beneficial use;

27 (2) "appropriation" means the diversion, impound-  
28 ment or withdrawal of a quantity of water from a source of  
29 water for a beneficial use;

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

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

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

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

29           (4) "certificate" means a certificate of appropri-

1           ation of water issued by the director under the provisions  
2           of this chapter;

3                   (5) "commissioner" means the commissioner of  
4           natural resources;

5                   (6) "director" means the director of the division  
6           of lands, Department of Natural Resources;

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

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

12                   (9) "source of water" means any substantial quan-  
13          tity of water capable of being put to beneficial use;

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

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

21                   (12) "pollution" means the discharge of any  
22          material which unreasonably impairs the quality of water for  
23          the maximum beneficial use in over-all public interest.

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

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

27                   Sec. 16.05.870. PROTECTION OF FISH AND GAME. (a) The  
28          commissioner shall, in accordance with the Administrative  
29          Procedure Act (AS 44.62) specify the various waters of the

1 state or parts of them that are important for the spawning  
2 or migration of anadromous fish.

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

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

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

26 \* Sec. 3. The following laws are repealed: AS 16.10.010 -  
27 16.10.050; AS 27.10.080; and AS 38.05.260

28 \* Sec. 4. This Act takes effect July 1, 1964  
29