

Original Sponsor: Rules Committee
By Request of the Governor

Offered: 3/24/65
Referred: Finance

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH 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; establishing a
8 water resources board; and providing for an
9 effective date."

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

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

12 CHAPTER 15. WATER USE ACT

13 ARTICLE 1. ADMINISTRATION

14 Sec. 46.15.010. DETERMINATION OF WATER RIGHTS. The
15 Department of Natural Resources shall determine and adjudi-
16 cate rights in the waters of the state, and in its appro-
17 priation and distribution.

18 Sec. 46.15.020. AUTHORITY AND DUTIES OF THE COMMIS-
19 SIONER. (a) The commissioner shall exercise all those
20 powers and do all those acts necessary to carry out the
21 provisions and objectives of this chapter. The commissioner
22 may:

23 (1) enter into contractual agreements necessary
24 to carry out the provisions of this chapter including agree-
25 ments with federal, state and local agencies;

26 (2) apply for, accept, administer and expend
27 grants, gifts, and loans from the federal government and any
28 other public or private sources for the purposes of this
29 chapter, and adopt procedures and do acts not otherwise

1 restricted by law which are necessary to qualify the state
2 to receive grants, gifts and loans;

3 (3) establish a division of water in the Depart-
4 ment of Natural Resources and assign to that division the
5 responsibility for carrying out the provisions of this
6 chapter.

7 (b) The commissioner shall:

8 (1) adopt procedural and substantive regulations
9 to carry out the provisions of this chapter, taking into
10 consideration the responsibilities of the Department of
11 Health and Welfare under AS 46.05.010 - 46.05.240 and the
12 Department of Fish and Game under AS 16;

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

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

23 (4) prescribe fees or service charges for any
24 public service rendered.

25 ARTICLE II. APPROPRIATION AND USE OF WATER

26 Sec. 46.15.030. WATERS RESERVED TO THE PEOPLE: BENE-
27 FICIAL USE. Wherever occurring in a natural state, the
28 waters are reserved to the people for common use and are
29 subject to appropriation and beneficial use as provided in

1 this chapter.

2 Sec. 46.15.040. RIGHT TO APPROPRIATE. (a) A right to
3 appropriate water can be acquired only as provided in this
4 chapter. No right to the use of water either appropriated
5 or unappropriated shall be acquired by adverse use or
6 possession.

7 (b) A right to appropriate water shall be obtained by
8 first making application to the commissioner for a permit
9 to appropriate. The commissioner shall by regulation pre-
10 scribe the form and contents of the application and the pro-
11 cedure for filing the application. If a permit is granted
12 and the means of appropriation is constructed a certificate
13 of appropriation may be obtained.

14 (c) All applications to the commissioner for a permit
15 to appropriate water, filed subsequent to the effective date
16 of this chapter, shall be considered as having been simul-
17 taneously filed with the Department of Fish and Game under
18 AS 16 and the Department of Health and Welfare under AS 46.05.

19 Sec. 46.15.050. PRIORITY. Priority of appropriation
20 gives prior right. Priority of appropriation does not in-
21 clude the right to prevent changes in the condition of water
22 occurrence, such as the increase or decrease of stream flow,
23 or the lowering of a water table, artesian pressure, or water
24 level, by later appropriators, if the prior appropriator can
25 reasonably acquire his water under the changed conditions.

26 Sec. 46.15.060. EXISTING RIGHTS. Any water right
27 acquired by law before the effective date of this chapter
28 or any beneficial use of water on the effective date of this
29 chapter, or made within five years before the effective date,

1 or made in conjunction with works under construction on the
2 effective date, under a lawful common law or customary
3 appropriation or use, is a lawful appropriation under this
4 chapter. The appropriation is subject to applicable pro-
5 visions of this chapter and rules and regulations adopted
6 under this chapter.

7 Sec. 46.15.070. NOTICES, OBJECTIONS. (a) Upon receipt
8 of an application, the commissioner shall prepare a notice
9 containing the location and extent of the proposed appropri-
10 ation, the name and address of the applicant and other infor-
11 mation he considers pertinent. The notice shall state that
12 within 15 days of publication or service of notice, persons
13 may file with the director written objections, stating the
14 name and address of the objector, and any facts tending to
15 show that rights of the objector or the public interest
16 would be adversely affected by the proposed appropriation.

17 (b) The commissioner shall publish the notice at the
18 applicant's expense in one issue of a newspaper of general
19 distribution in the area of the state in which the water
20 is to be appropriated. The commissioner shall also have
21 notice served personally or by certified mail upon an appro-
22 priator of water or applicant for or holder of a permit who,
23 according to the records of the division of lands may be
24 affected by the proposed appropriation and may serve notice
25 upon any governmental agency, political subdivision or person,
26 provided, however, that notice shall be served upon the
27 Department of Fish and Game and the Department of Health and
28 Welfare.

29 (c) Within 15 days of publication or service of notice,

1 an interested person may file an objection. The commissioner
2 may hold hearings upon giving due notice and shall grant,
3 deny, or condition the application in whole or in part within
4 30 days of receipt of the last objection or at the conclusion
5 of the hearing. Notice of the order or decision shall be
6 served personally or mailed to any person who has filed an
7 objection.

8 (d) If no objection is filed, the commissioner may
9 proceed to make his determination upon the application.

10 (e) A person aggrieved by the action of the commissioner
11 may appeal to the superior court.

12 (f) The commissioner may, by regulation, designate
13 types of appropriations which are exempt from this section
14 and provide simplified procedures for ruling on the appli-
15 cations.

16 Sec. 46.15.080. CRITERIA FOR ISSUANCE OF PERMIT. (a)
17 The commissioner shall issue a permit if he finds that:

18 (1) rights of a prior appropriator will not be
19 unduly affected;

20 (2) the proposed means of diversion or construc-
21 tion are adequate;

22 (3) the proposed use of water is beneficial; and

23 (4) the proposed appropriation is in the public
24 interest.

25 (b) In determining the public interest, the commis-
26 sioner shall consider:

27 (1) the benefit to the applicant resulting from
28 the proposed appropriation;

29 (2) the effect of the economic activity resulting

1 from the proposed appropriation;

2 (3) the effect on fish and game resources and on
3 public recreational opportunities;

4 (4) the effect on public health;

5 (5) the effect of loss of alternate uses of
6 water that might be made within a reasonable time if not
7 precluded or hindered by the proposed appropriation;

8 (6) harm to other persons resulting from the
9 proposed appropriation;

10 (7) the intent and ability of the applicant to
11 complete the appropriation; and

12 (8) the effect upon access to navigable or public
13 waters.

14 Sec. 46.15.090. PREFERENCE IN GRANTING PERMITS. When
15 there are competing applications for water from the same
16 source, and the source is insufficient to supply all appli-
17 cants, the commissioner shall give preference first to
18 public water supply and then to the use which alone or in
19 combination with other foreseeable uses will constitute the
20 most beneficial use.

21 Sec. 46.15.100. TERMS OF PERMIT. The commissioner may
22 issue a permit for less than the amount of water requested,
23 but in no case may he issue a permit for more water than
24 can be beneficially used for the purposes stated in the
25 application. He may require modification of plans and
26 specifications for the appropriation. He may issue a permit
27 subject to terms, conditions, restrictions, and limitations
28 he considers necessary to protect the rights of others, and
29 the public interest. However, the permit shall be subject

1 to termination only as provided in this chapter.

2 Sec. 46.15.110. TIME FOR CONSTRUCTION AND COMPLETION.

3 A permit may place a time limit for beginning construction
4 and perfecting appropriation. Reasonable extensions of
5 time shall be permitted for good cause shown.

6 Sec. 46.15.120. CERTIFICATES. Upon completion of

7 construction of the works and commencement of use of water,
8 the permit holder shall notify the commissioner that he
9 has perfected his appropriation. If the commissioner deter-
10 mines that the appropriation has been perfected in substan-
11 tial accordance with the permit, he shall issue the permit
12 holder a certificate of appropriation. The certificate
13 shall set out such information as the commissioner may
14 prescribe by regulation.

15 Sec. 46.15.130. PRIORITY. (a) Priority of appropri-
16 ation made under this chapter dates from the filing of an
17 application with the commissioner.

18 (b) Priority of appropriation perfected before the
19 effective date of this chapter shall be determined as pro-
20 vided in sec. 135 of this chapter.

21 Sec. 46.15.135. DETERMINATION OF EXISTING RIGHTS. (a)

22 A claimant of an existing right under sec. 60 of this
23 chapter shall file a declaration of appropriation with the
24 commissioner as set out in this section. The declaration
25 shall be considered correct until a certificate of appropri-
26 ation is issued or denied. Priority of such right dates
27 from the day work was begun on the appropriation if due
28 diligence was used in completing the work; otherwise, from
29 the day water was applied for the beneficial use.

1 (b) The commissioner shall, as soon as practicable,
2 determine the rights of persons owning existing appropriations.
3 To accomplish this, the commissioner shall:

4 (1) by order set a definite period for filing a
5 declaration of appropriation within a specified area or
6 from a specified source;

7 (2) publish notice of the order once a week for
8 three weeks before the beginning of the period in a news-
9 paper of general circulation in the affected area;

10 (3) give notice of the order by certified mail to
11 any appropriator within the specified area or from the speci-
12 fied source who has requested mailed notice or of whom the
13 commissioner can readily obtain knowledge including each
14 owner of a recorded mining claim.

15 (c) The commissioner shall make such investigations as
16 he considers necessary of rights asserted by declarations
17 filed under this section and shall determine each existing
18 appropriation and mail a summary of such determination to
19 each person who has filed a declaration with respect to the
20 specified area or source. Any person adversely affected by
21 a determination may file with the commissioner a request for
22 a hearing within 20 days of the date the notice is mailed.
23 If a hearing is requested the commissioner shall send a
24 notice of the time and place of the hearing to each person
25 who has filed a declaration.

26 (d) If a hearing is not requested with respect to a
27 determination, or if, after the hearing, the commissioner
28 finds the determination to have been correctly made, he shall
29 immediately issue a certificate of appropriation. If the

1 commissioner finds the determination to be incorrect, he
2 shall correct it and either issue a certificate of appro-
3 priation or refuse the certificate according to his findings.

4 (e) Any person aggrieved by the action of the commis-
5 sioner may appeal to the superior court within 30 days of
6 the date on which that action is final.

7 Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION
8 OF APPROPRIATIONS. (a) The commissioner may declare an
9 appropriation to be wholly or partially abandoned and revoke
10 the certificate of appropriation if an appropriator, with
11 intention to abandon, does not make beneficial use of all or
12 a part of his appropriated water. An appropriation so for-
13 feited and abandoned reverts to the state and the water
14 becomes unappropriated water.

15 (b) The commissioner may declare an appropriation to
16 be wholly or partially forfeited and shall revoke the certi-
17 ficate of appropriation if an appropriator voluntarily fails
18 or neglects, without sufficient cause, to make use of all
19 or a part of his appropriated water for a period of five
20 successive years.

21 Sec. 46.15.150. PREFERRED USE. (a) An applicant who
22 asserts and proves a preferred use shall be granted a per-
23 mit and shall be granted preference over other appropriators.
24 A preferred use of water is for a public water supply.

25 (b) To be entitled to a preference an applicant must
26 show that his use will be prevented or substantially inter-
27 fered with by a prior appropriation; the use is a preferred
28 use; the applicant agrees to compensate a permit or certifi-
29 cate holder for the prior appropriation for any damages

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sustained by such preferred use, and such other information as the commissioner requires by regulation.

Sec. 46.15.160. TRANSFER AND CHANGE OF APPROPRIATIONS.

(a) The right to use water pursuant to an appropriation or permit shall be appurtenant to the land or place where it has been or is to be beneficially used, provided, that water supplies by one person to another person's property shall not be appurtenant to the property unless the parties so intend. An appurtenant water right shall pass with a conveyance of the land, or transfer, or by operation of law unless specifically exempted from the conveyance.

(b) With the permission of the commissioner, all or any part of an appropriation may be severed from the land to which it is appurtenant, may be sold, leased or transferred for other purposes or to other lands and be made appurtenant to other lands. Any permit or certificate or any deed, lease, contract, assignment of permit or other instrument transferring an appropriation must be filed for record in the office of the commissioner and a certified copy of the instrument must be recorded in the recorder's office of the recording district in which the appropriation is located.

Sec. 46.15.170. EFFECT OF RECORDING. (a) A deed,

lease, contract, assignment of permit or other instrument transferring an appropriation is void as against a subsequent innocent purchaser who in good faith paid a valuable consideration for the appropriation or any portion of it and whose instrument is first filed and recorded under sec. 160

(b) of this chapter.

(b) A deed, lease, contract, assignment of permit or



1 other instrument transferring an appropriation which is
2 recorded under sec. 160(b) of this chapter is constructive
3 notice of its contents to subsequent purchasers of the
4 appropriation or any portion of it. An unrecorded instrument
5 is valid between the parties to it and as against one who
6 has actual notice of it.

7 Sec. 46.15.180. CRIMES. Any person who shall construct
8 works for an appropriation, or divert, impound, withdraw or
9 use a significant amount of water from any source without a
10 permit or certificate of appropriation; or any person who
11 shall violate any order of the commissioner to cease and
12 desist from preventing any water from moving to a person
13 having a prior right to use the same; or who shall disobey
14 an order of the commissioner requiring him to take steps to
15 cause the water to so move; or who shall fail or refuse to
16 install meters, gauges or other measuring devices or control
17 works; or who shall violate any order establishing corrective
18 controls for an area or for a source of water, or who shall
19 knowingly make any false or misleading statement in a decla-
20 ration of existing rights, is guilty of a misdemeanor.
21 Crimes under this section are in addition to any other crimes
22 provided by law.

23 Sec. 46.15.185. APPEALS. Appeals to the superior
24 court under this chapter are subject to the provisions of
25 the Administrative Procedure Act, AS 44.62.560 - 44.62.570.

26 ARTICLE III. WATER RESOURCES BOARD

27 Sec. 46.15.190. THE WATER RESOURCES BOARD. There is
28 created the Water Resources Board composed of seven members
29 having a general knowledge of the use and requirements for

1 use of the waters of the state and the conservation and
2 protection thereof. The commissioner of Natural Resources
3 shall act as the executive secretary of the board, and shall
4 provide clerical staff for the board. Members of the board
5 are appointed by the governor, subject to confirmation by a
6 majority of the members of the legislature in joint session.

7 Sec. 46.15.200. TERM OF OFFICE. The term of office
8 for members of the board is four years. The first members
9 appointed serve as follows: two members serve for one year,
10 three for two years and two for three years. If a vacancy
11 occurs, the governor shall fill it by appointment for the
12 unexpired term. The appointment shall be submitted to the
13 legislature for confirmation at the next regular or special
14 session.

15 Sec. 46.15.210. DUTIES OF THE BOARD. The board shall
16 inform and advise the governor on all matters relating to
17 the use and appropriation of water in the state, including,
18 but not limited to: the effect and adequacy of all state
19 laws and regulations governing the establishment of water
20 rights, the multi-purpose uses of water, the prevention of
21 pollution and the protection of fish and game, studies of
22 the state's water supplies and plans for future requirements,
23 development of water resources, participation of local govern-
24 mental units in the management of water resources, lands
25 which are or may be needed for dams, reservoirs, flood dams,
26 flood ways, canals or ditches for the impoundment, storage,
27 flow and control of waters.

28 Sec. 46.15.220. BOARD MEETINGS. The board shall hold
29 one regular meeting annually at the state capitol and one

1 or more additional meetings at the time and place within
2 the state the board selects for the transaction of business.

3 Sec. 46.15.230. PUBLIC MEETINGS. The board may hold
4 and conduct public meetings at any time or any place within
5 the state in order to obtain public opinion on any water
6 use problem or proposal and it may, by majority vote of all
7 members, formally or informally delivered, authorize one or
8 more of its members to hold and conduct a public meeting.

9 Sec. 46.15.240. COMPENSATION OF BOARD MEMBERS. Each
10 member of the board is entitled to travel expenses and per
11 diem as authorized for state boards by AS 39.20.180 while
12 traveling to or from, or in attendance at, regular or special
13 meetings or conferences authorized by the board.

14 ARTICLE IV. GENERAL PROVISIONS

15 Sec. 46.15.250. ENFORCEMENT AUTHORITY. The following
16 persons are peace officers of the state and they shall
17 enforce this chapter:

18 (1) any state employee authorized by the commis-
19 sioner;

20 (2) a police officer of the state.

21 Sec. 46.15.260. DEFINITIONS. In this chapter, unless
22 the context otherwise requires:

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

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

29 (3) "beneficial use" means a use of water for the

1 benefit of the appropriator, other persons or the public,
2 that is reasonable and consistent with the public interest,
3 including, but not limited to, domestic, agricultural,
4 irrigation, industrial, manufacturing, mining, power, public,
5 sanitary, fish and wildlife, and recreational uses;

6 (4) "source of water" means any substantial
7 quantity of water capable of being put to beneficial use;

8 (5) "water" means all water of the state, surface
9 and subsurfaces, occurring in a natural state, except mineral
10 and medicinal water;

11 (6) "commissioner" means the Commissioner of
12 Natural Resources;

13 (7) "director" means the Director of the Division
14 of Lands, Department of Natural Resources;

15 (8) "person" includes an individual, partnership,
16 association, public or private corporation, state agency,
17 political subdivision of the state, and the United States.

18 Sec. 46.15.270. SHORT TITLE. This chapter may be
19 cited as the "Alaska Water Use Act".

20 * Sec. 2. The following laws are repealed: AS 27.10.080 and
21 AS 38.05.260.

22 * Sec. 3. This Act takes effect July 1, 1965.
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