

Introduced: 2/13/79  
Referred: Resources and  
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 186

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Water Use Act; and providing  
7 for an effective date."

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

9 \* Section 1. AS 46.15 is amended by adding new sections to read:

10 Sec. 46.15.069. DETERMINATION OF EXISTING RIGHTS. (a) A  
11 claimant of an existing right under AS 46.15.060 shall file a declara-  
12 tion of appropriation with the commissioner as set out in this section.  
13 The declaration shall be considered correct until a certificate of  
14 appropriation is issued or denied. Priority of the right dates from  
15 the day work was begun on the appropriation if due diligence was used  
16 in completing the work; otherwise, from the day water was applied to  
17 the beneficial use.

18 (b) The commissioner shall, as soon as practicable, determine  
19 the rights of persons owning existing appropriations. To accomplish  
20 this, the commissioner shall

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

23 (2) publish notice of the order once a week for three weeks  
24 before the beginning of the period in a newspaper of general circula-  
25 tion in the affected area;

26 (3) give notice of the order by certified mail to any  
27 appropriator within the specified area or from the specified source  
28 who has requested mailed notice or of whom the commissioner can readily  
29 obtain knowledge, including each owner of a recorded mining claim.

1 (c) The commissioner shall make investigations he considers  
2 necessary of rights asserted by declarations filed under this section  
3 and shall determine each existing appropriation and mail a summary of  
4 that determination to each person who has filed a declaration with  
5 respect to the specified area or source. Any person adversely affected  
6 by a determination may file with the commissioner a request for a  
7 hearing within 15 days after the date the notice is mailed. If a  
8 hearing is requested, the commissioner shall send a notice of the time  
9 and place of the hearing to each person who has filed a declaration.

10 (d) If a hearing is not requested with respect to a determination,  
11 or if, after the hearing, the commissioner finds the determination to  
12 have been correctly made, he shall immediately issue a certificate of  
13 appropriation. If the commissioner finds the determination to be  
14 incorrect, he shall correct it and either issue a certificate of  
15 appropriation or refuse the certificate according to his findings.

16 (e) A person aggrieved by the action of the commissioner may  
17 appeal to the superior court within 30 days after the date on which  
18 that action is final.

19 Sec. 46.15.115. TERMINATION OF PERMITS. (a) If the commissioner  
20 has reason to believe that a permit holder has wilfully violated any  
21 terms, conditions, restrictions, or limitations of the permit, he may  
22 require the holder to show cause why the permit should not be canceled.  
23 Notice must be provided to the holder by personal service or by  
24 certified mail. Upon giving notice, the commissioner may, and at the  
25 request of the applicant shall, hold a hearing. Whenever, after  
26 notice and hearing, if any, the commissioner finds that a wilful  
27 violation has occurred, he may cancel or suspend the permit or impose  
28 conditions on its future use to prevent further violations. Notice of  
29 the order or decision must be served personally or sent by certified

1 to the permit holder.

2 (b) If a permit holder fails to notify the commissioner, upon or  
3 before the expiration of his permit or any extension of it, that he  
4 has perfected his appropriation as provided in AS 46.15.120, the com-  
5 missioner may require the holder to show cause why the permit should  
6 not be canceled. Notice must be provided to the holder by personal  
7 service or by certified mail. Upon giving notice, the commissioner  
8 may, and at the request of the applicant shall, hold a hearing. Notice  
9 of the order or decision must be served personally or sent by certified  
10 mail to the permit holder.

11 (c) Upon termination of a permit under this section, the appro-  
12 priation reverts to the state and the water becomes unappropriated  
13 water.

14 \* Sec. 2. AS 46.15.120 is amended to read:

15 Sec. 46.15.120. CERTIFICATES. Upon completion of construction  
16 of the works and commencement of use of water, the permit holder shall  
17 notify the commissioner that he has perfected his appropriation. If  
18 the commissioner determines that the appropriation has been perfected  
19 in substantial accordance with the permit, he shall issue the permit  
20 holder a certificate of appropriation. The commissioner may issue the  
21 certificate subject to conditions he considers necessary to protect  
22 the water rights of other persons and the public interest. [THE  
23 CERTIFICATE SHALL SET OUT SUCH INFORMATION AS THE COMMISSIONER MAY  
24 PRESCRIBE BY REGULATION.]

25 \* Sec. 3. AS 46.15 is amended by adding a new section to read:

26 Sec. 46.15.134. NOTICES; OBJECTIONS. (a) Upon receiving an  
27 application, the commissioner shall prepare a notice containing the  
28 location and extent of the proposed appropriation, the name and address  
29 of the applicant, and other information he considers pertinent. The

1 notice must state that within 15 days after publication or service of  
2 notice, persons may file with the director written objections, stating  
3 the name and address of the objector, and any facts tending to show  
4 that rights of the objector or the public interest would be adversely  
5 affected by the proposed appropriation.

6 (b) The commissioner shall have notice published at the appli-  
7 cant's expense in one issue of a newspaper of general circulation in  
8 the area of the state in which the water is to be appropriated. The  
9 commissioner shall also have notice served personally or by certified  
10 mail upon an appropriator of water or applicant for or holder of a  
11 permit who, according to the records of the Department of Natural  
12 Resources, might be affected by the proposed appropriation, and may  
13 serve notice upon any governmental agency, political subdivision or  
14 person; notice must also be served upon the Department of Fish and  
15 Game and the Department of Environmental Conservation.

16 (c) Within 15 days after publication or service of notice, an  
17 interested person may file an objection. The commissioner may hold  
18 hearings upon giving notice and shall grant, deny, or condition the  
19 application in whole or in part after receipt of the last objection or  
20 after conclusion of the hearing. Notice of the order or decision must  
21 be served personally or mailed to any person who has filed an objection.

22 \* Sec. 4. AS 46.15.140 is amended to read:

23 Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF APPRO-  
24 PRIATIONS. (a) The commissioner may declare an appropriation to be  
25 wholly or partially abandoned and cancel the permit, certificate, or  
26 declaration [REVOKE THE CERTIFICATE] of appropriation if an appropriator  
27 with intention to abandon, does not make beneficial use of all or a  
28 part of his appropriated water. An appropriation so forfeited and  
29 abandoned reverts to the state and the water becomes unappropriated

1 water.

2 (b) The commissioner may declare an appropriation to be wholly  
3 or partially forfeited and shall cancel the permit, certificate, or  
4 declaration [REVOKE THE CERTIFICATE] of appropriation if an appro-  
5 priator voluntarily fails or neglects, without sufficient cause, to  
6 make use of all or a part of his appropriated water for a period of  
7 five successive years.

8 \* Sec. 5. AS 46.15.150(b) is amended to read:

9 (b) To be entitled to a preference, an applicant must show that  
10 his use will be prevented or substantially interfered with by a prior  
11 appropriation, [;] the use is a preferred use, [;] the applicant agrees  
12 to compensate a permit or certificate holder of [FOR] the prior appro-  
13 priation for any damages occasioned or caused by the preferred use  
14 [SUSTAINED BY THE PREFERRED USE], and other information which the  
15 commissioner requires by regulation.

16 \* Sec. 6. AS 46.15.160(a) is amended to read:

17 (a) The right to use water under an appropriation is [OR PERMIT  
18 SHALL BE] appurtenant to the land or place where it has been or is to  
19 be beneficially used; however, [PROVIDED, THAT] water supplied by one  
20 person to another person's property is [SHALL] not [BE] appurtenant to  
21 the property unless the parties so intend. An appurtenant water right  
22 passes [SHALL PASS] with a conveyance of the land, or transfer, or by  
23 operation of law unless specifically exempted from the conveyance.

24 \* Sec. 7. AS 46.15.180 is amended to read:

25 Sec. 46.15.180. CRIMES. A person who constructs works for an  
26 appropriation, or diverts, impounds, withdraws, or uses a significant  
27 amount of water from any source without a permit or certificate of  
28 appropriation; or a person who violates an order of the commissioner  
29 to cease and desist from preventing any water from moving to a person

1 having a prior right to use the same; or who violates an order of the  
2 commissioner requiring him to modify a water body alteration that is  
3 preventing water from moving to a person having a right to use the  
4 water; or who disobeys an order of the commissioner requiring him to  
5 take steps to cause the water to so move; or who fails or refuses to  
6 install meters, gauges or other measuring devices or control works; or  
7 who violates an order establishing corrective control works; or who  
8 violates an order establishing corrective controls for an area or for  
9 a source of water, or who knowingly makes a false or misleading  
10 statement in a declaration of existing rights, is guilty of a misde-  
11 meanor. Crimes under this section are in addition to any other crimes  
12 provided by law.

13 \* Sec. 8. AS 46.15.070 and 46.15.135 are repealed.

14 \* Sec. 9. This Act takes effect immediately in accordance with AS 01.-  
15 10.070(c).

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29