

Introduced: 2/17/82
Referred: Resources and
Finance

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 810

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending the Alaska Water Use Act to establish
7 procedures for administrative and judicial adjudication
8 of basin-wide water rights, and to provide for enforce-
9 ment of orders of the commissioner issued under that
10 Act; and providing for an effective date."

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

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

13 Sec. 46.15.165. BASIN-WIDE ADMINISTRATIVE ADJUDICATIONS. (a) The
14 commissioner may, by order, initiate an administrative adjudication to
15 quantify and determine the priority of all water rights and claims in a
16 drainage basin, river system, ground water aquifer, or other identifi-
17 able and distinct hydrologic regime, including interrelated surface and
18 ground water systems. Notice of the adjudication must be mailed by
19 certified mail

20 (1) to each appropriator or claimant of record with the de-
21 partment, for any appropriation or claim within the adjudication area;

22 (2) to the United States and to any of its affected component
23 agencies with management authority over land or water within the adjudi-
24 cation area; and

25 (3) to the United States on behalf of any person whose title
26 to land within the adjudication area contains a restriction on aliena-
27 tion imposed by the United States.

28 (b) Notice of initiation of the administrative action must be
29 published once each week during at least four consecutive weeks in a

1 newspaper of general circulation in the vicinity of the adjudication
2 area. The published notice is adequate service of notice of the adjudi-
3 cation upon all unknown potential claimants of water within the adjudi-
4 cation area.

5 (c) An administrative adjudication under this section supersedes
6 the procedure set out in AS 46.15.065 for determination of rights exist-
7 ing before July 1, 1966, and includes water rights and claims existing
8 before and after that date. Before such an administrative adjudication,
9 the commissioner shall determine the appropriate geographic and hydro-
10 logic limits of the adjudication area. This determination is final
11 unless significant hydrologic evidence which establishes facts support-
12 ing modification of the limits of the adjudication area is presented
13 before consideration of the merits of an asserted right or claim.

14 (d) The following rules and procedures apply to an adjudication
15 under this section:

16 (1) The commissioner may, at his discretion, appoint an
17 impartial qualified person as a water referee to preside over the adju-
18 dication and, after conclusion of testimony and presentation of evi-
19 dence, to propose a recommended order adjudicating, quantifying, and
20 determining the priority of all valid rights and claims.

21 (2) The commissioner or referee may request that the water
22 resources staff of the department provide impartial support in the form
23 of documentary and testimonial evidence, research, and scientific anal-
24 ysis. The commissioner or referee may, if funds permit, obtain similar
25 support from sources outside the department. If the water resources
26 staff of the department furnishes this support, it may not participate
27 as agent for the state as a water right holder or claimant in the adju-
28 dication.

29 (3) In managing the adjudication, the commissioner or referee

1 may

2 (A) categorize participating water right holders and
3 claimants according to amounts and uses of water claimed;

4 (B) determine indispensable, necessary, and convenient
5 parties to the adjudication;

6 (C) restrict as active participants those persons with
7 minimal, theoretical or inchoate claims who will nevertheless be
8 bound by the final order;

9 (D) specify the method of service of documents to be
10 provided the various categories of claimants to satisfy due process
11 requirements and reduce duplicative or unduly burdensome service
12 requirements; and

13 (E) prescribe other reasonable procedures in the adjudi-
14 cation which fulfill fundamental due process guarantees and reduce
15 the administrative burdens on the commissioner or referee, and on
16 the water rights holders and claimants who are active parties in
17 the adjudication.

18 (4) For purposes of asserting a water right, a certificate of
19 appropriation issued by the department is prima facie evidence of the
20 right and its priority, determined by the date of appropriation. A
21 water right evidenced by a certificate is subject, in whole or in part,
22 to proof of any allegations of abandonment, forfeiture, conversion from
23 a preferred use under AS 46.15.150, or any other circumstance which, if
24 proved, would reduce or extinguish the water right or its priority.

25 (5) The commissioner may apportion and assign to each appro-
26 priator in the final decree the reasonable costs incurred by the state
27 in conducting the basin-wide adjudication, based upon the proportion
28 which the quantity of water of each validated water right or claim,
29 except instream flow reservations, bears to the total quantity of water

1 determined to be subject to existing valid water rights or claims in the
2 adjudication area.

3 (6) A person adversely affected by an order of the commis-
4 sioner adjudicating water rights may appeal to the superior court within
5 30 days after the order becomes final.

6 Sec. 46.15.166. BASIN-WIDE JUDICIAL ADJUDICATIONS. (a) The com-
7 missioner may, by filing a complaint in superior court, initiate a
8 judicial adjudication to quantify and determine the priority of all
9 water rights and claims in a drainage basin, river system, ground water
10 aquifer, or other identifiable and distinct hydrologic regime, including
11 interrelated surface and ground water systems, if a water right or claim
12 is or may be asserted

13 (1) by the United States or any of its component agencies; or

14 (2) by or on behalf of any person whose title to land con-
15 tains a restriction on alienation imposed by the United States.

16 (b) All existing water right holders and claimants of record in
17 the adjudication area, including a person or entity asserting a federal
18 or federally-derived right or claim, must be joined as parties to the
19 action under the provisions of this section, 43 U.S.C. sec. 666(a), and
20 any other applicable federal or state law.

21 (c) In an action under (a) of this section, the superior court
22 shall conduct a trial without a jury, and may appoint an impartial
23 qualified person as a special master to compile evidence, take testi-
24 mony, and make recommendations to the court regarding the scope and
25 content of a proposed judicial decree which would finally adjudicate,
26 quantify and determine priorities among the valid water rights holders
27 and claimants in the adjudication area. In managing the action, the
28 court may exercise authority which corresponds to that granted the
29 commissioner or his designee in AS 46.15.165 for administrative adjudi-

1 cations.

2 Sec. 46.15.167. EFFECT OF DECISION. (a) A final order by the
3 commissioner under AS 46.15.165, or a final decree by the superior court
4 under AS 46.15.165, has the effect of adjudicating, quantifying, deter-
5 mining priority and quieting all existing rights and claims arising
6 under state law to the water in the drainage basin, river system, ground
7 water aquifer or other identifiable and distinct hydrologic regime which
8 is the subject of the action, and, in the case of a judicial decree
9 entered under AS 46.15.165, all existing rights or claims arising under
10 federal law to that water. The final order or decree is conclusive as to
11 the facts contained in it, and is binding on all existing and subsequent
12 appropriators and claimants.

13 * Sec. 2. AS 46.15.250 is amended to read:

14 Sec. 46.15.250. ENFORCEMENT AUTHORITY AND PROCEDURE. (a) The
15 following persons are peace officers of the state, and they shall en-
16 force this chapter:

17 (1) a state employee authorized by the commissioner;

18 (2) a police officer of the state.

19 (b) In addition to a penalty which may be imposed under AS 46.15.-
20 180 for violation of an order issued under this chapter, after notice to
21 the violator and opportunity for hearing in the manner provided by AS 46.-
22 15.065 or after a superior court order in an emergency situation, the
23 department may

24 (1) remove or abate unpermitted works of appropriation,
25 diversion, impoundment, or withdrawal;

26 (2) install corrective controls or control works after a vio-
27 lator fails to do so under a lawful order; and

28 (3) seek enforcement of any other order of the commissioner
29 by appropriate civil action in the superior court.

1 (c) A person who violates an order issued under this chapter is
2 liable in a civil action for all costs of removal, abatement or install-
3 ation, and for any related court costs and attorney fees incurred by the
4 department.

5 (d) To carry out the provisions of this chapter and to fairly al-
6 locate water as a publicly owned resource, the department may

7 (1) inspect books, records, meters, gauges, well logs, works
8 of appropriation, diversion, impoundment, withdrawal or control, and
9 any other relevant information or physical condition;

10 (2) enter onto private property at all reasonable times,
11 after first obtaining a search warrant from an appropriate judicial of-
12 ficer if entry is otherwise denied by the owner; and

13 (3) compel the production of available, relevant information
14 by administrative subpoena or other appropriate administrative order.

15 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
16 070(c).