

CS FOR SENATE BILL NO. 481 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SPECIAL SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 5/14/92
Referred: Finance

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the removal of water from one hydrologic unit to another hydrologic
2 unit; authorizing the commissioner of natural resources to establish a water conservation
3 fee for removal of water from one hydrologic unit to another hydrologic unit; providing
4 for the sale of water by the state of water appropriated to the state; requiring a
5 reservation of water for fish only if water is removed from one hydrologic unit to another
6 hydrologic unit or if water is sold by the state; defining hydrologic unit to mean a
7 hydrologic subregion of the state; and providing 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. 46.15.035. **APPROPRIATION OR REMOVAL OF WATER OUT OF**
11 **HYDROLOGIC UNITS TO OTHER HYDROLOGIC UNITS; WATER CONSERVATION FEE;**
12 **RESERVATION OF WATER FOR FISH. (a) Water may not be removed from the hydrologic**
13 **unit from which it was appropriated to another hydrologic unit, inside or outside the state,**

1 without being returned to the hydrologic unit from which it was appropriated nor may water be
2 appropriated for removal from the hydrologic unit from which the appropriation is sought to
3 another hydrologic unit, inside or outside the state, without the water being returned to the
4 hydrologic unit from which it is to be appropriated, unless the commissioner

5 (1) finds that the water to be removed or appropriated for removal is surplus to
6 needs within the hydrologic unit from which the water is to be removed or appropriated for
7 removal, including fishing, mining, timber, oil and gas, agriculture, domestic water supply, and
8 other needs as determined by the commissioner;

9 (2) finds that the application for removal or appropriation for removal meets the
10 requirements of AS 46.15.080; and

11 (3) assesses a water conservation fee under (b) of this section.

12 (b) The commissioner shall establish, by regulation, a water conservation fee for a use
13 of water in which the water is removed from the hydrologic unit from which it was appropriated
14 to another hydrologic unit inside or outside the state, without the water being returned to the
15 hydrologic unit from which it was appropriated. The fee established under this subsection shall
16 be graduated to encourage the conservation of water.

17 (c) Except as provided in AS 46.15.090, and in addition to the requirements of (a) of this
18 section, the commissioner may approve an application for removal or permit an appropriation for
19 removal under (a) of this section of water from a lake, river, or stream that is used by fish for
20 spawning, incubation, rearing, or migration, or ground water that significantly influences the
21 volume of water in a lake, river, or stream that is used by fish for spawning, incubation, rearing,
22 or migration, only if the commissioner reserves a volume of water in the lake or an instream flow
23 in the river or stream for the use of fish and to maintain habitat for fish. The commissioner may
24 adjust the volume of water reserved under this subsection if the commissioner, after public notice
25 and opportunity to comment and with the concurrence of the commissioner of fish and game,
26 finds that the best interests of the state are served by the adjustment. A reservation under this
27 subsection

28 (1) of a volume of water or an instream flow for the use of fish and to maintain
29 habitat for fish that is reserved under this section is withdrawn from appropriation;

30 (2) for fish from a lake, river, or stream, identified under AS 16.05.870 or
31 identified in a Department of Fish and Game regional guide as being used by fish for spawning,

1 incubation, rearing, or migration on or before the effective date of this Act, has a priority date
2 as of the effective date of this Act;

3 (3) of water does not apply to an application for removal or appropriation for
4 removal under AS 46.15.040 for nonconsumptive uses of water or for single family domestic use;

5 (4) is not subject to AS 46.15.145;

6 (5) of water does not apply to appropriations of ground water of 5,000 gallons
7 or less a day unless the commissioner, in consultation with the Department of Fish and Game,
8 determines that the appropriation may adversely affect fish habitat in a lake, river, or stream; the
9 commissioner shall consider multiple appropriations of water for a single related use as a single
10 appropriation for the purposes of this subsection.

11 (d) With respect to rivers and streams described in (c) of this section, the instream flow
12 reservation shall be limited to the portion of the stream, including tributaries to the stream, at and
13 downstream of the point of diversion or withdrawal. With respect to lakes described in (c) of
14 this section, the reservation shall be limited to the lake from which the diversion or withdrawal
15 is made, and the outlet and tributaries to the outlet flowing downstream.

16 (e) In this section,

17 (1) "fish" means a species of anadromous or freshwater fish that may be taken
18 under regulations of the Board of Fisheries;

19 (2) "hydrologic unit" means a hydrologic subregion established by the United
20 States Department of the Interior, Geological Survey, on the "Hydrologic Unit Map-1987, State
21 of Alaska."

22 Sec. 46.15.037. SALE OF WATER BY THE STATE. (a) The commissioner may
23 provide for the sale of water by the state if

24 (1) the water has first been appropriated to the state in accordance with the
25 requirements of this chapter; and

26 (2) the commissioner determines that

27 (A) the water is surplus to needs within the hydrologic unit from which
28 it was appropriated, including fishing, mining, timber, oil and gas, agriculture, domestic
29 water supply, and other needs as determined by the commissioner;

30 (B) the proposed sale of the water meets the requirements of
31 AS 46.15.080; and

1 (C) the sale price of the water is based upon the fair market value of the
2 water.

3 (b) A purchaser of water from the state under this section shall acquire only those
4 contractual rights to the water set out in sale documents prepared by the commissioner except
5 that a sale of water by the state does not constitute an appropriation of water under this chapter
6 to the purchaser.

7 (c) If water to be sold by the state under (a) of this section, is to be removed from the
8 hydrologic unit from which it was appropriated to another hydrologic unit, inside or outside the
9 state, without being returned to the hydrologic unit from which it was appropriated, the
10 commissioner may not sell the water unless the sale meets the requirements of (a)(2) of this
11 section, a water conservation fee is assessed under AS 46.15.035, and, if the water to be sold is
12 from a lake, river, or stream that is used by fish for spawning, incubation, rearing, or migration,
13 or ground water that significantly influences the volume of water in a lake, river, or stream that
14 is used by fish for spawning, incubation, rearing, or migration, the commissioner reserves a
15 volume of water in the lake or an instream flow in the river or stream for the use of fish and to
16 maintain habitat for fish. The commissioner may adjust the volume of water reserved under this
17 subsection if the commissioner, after public notice and opportunity to comment and with the
18 concurrence of the commissioner of fish and game, finds that the best interests of the state are
19 served by the adjustment. A reservation under this subsection

20 (1) of a volume of water or an instream flow for the use of fish and to maintain
21 habitat for fish that is reserved under this section is withdrawn from appropriation;

22 (2) for fish from a lake, river, or stream, identified under AS 16.05.870 or
23 identified in a Department of Fish and Game regional guide as being used by fish for spawning,
24 incubation, rearing, or migration on or before the effective date of this Act, has a priority date
25 as of the effective date of this Act;

26 (3) is not subject to AS 46.15.145;

27 (4) of water does not apply to appropriations under this section of ground water
28 of 5,000 gallons or less a day unless the commissioner, in consultation with the Department of
29 Fish and Game, determines that the appropriation may adversely affect fish habitat in a lake,
30 river, or stream; the commissioner shall consider multiple appropriations of water for a single
31 related use as a single appropriation for the purposes of this subsection.

1 (d) With respect to rivers and streams described in (c) of this section, the instream flow
2 reservation shall be limited to the portion of the stream, including tributaries to the stream, at and
3 downstream of the point of diversion or withdrawal. With respect to lakes described in (c) of
4 this section, the reservation shall be limited to the lake from which the diversion or withdrawal
5 is made, and the outlet and tributaries to the outlet flowing downstream.

6 (e) In this section,

7 (1) "fish" means a species of anadromous or freshwater fish that may be taken
8 under regulations of the Board of Fisheries;

9 (2) "hydrologic unit" has the meaning given in AS 46.15.035(e).

10 (f) The commissioner may not provide for the sale of salt water under this section.

11 * Sec. 2. AS 46.15.133 is amended to read:

12 Sec. 46.15.133. NOTICES; OBJECTIONS. (a) If the commissioner proposes a sale
13 of water or receives [UPON RECEIPT OF] an application for appropriation or removal, the
14 commissioner shall prepare a notice containing the location and extent of the proposed sale,
15 appropriation, or removal, the name and address of the applicant, if applicable, and other
16 information the commissioner considers pertinent. The notice shall state that within 15 days of
17 publication or service of notice, persons may file with the director written objections, stating the
18 name and address of the objector, and any facts tending to show that rights of the objector or the
19 public interest would be adversely affected by the proposed sale, appropriation, or removal.

20 (b) The commissioner shall publish the notice [AT THE APPLICANT'S EXPENSE] in
21 one issue of a newspaper of general distribution in the area of the state in which the water is to
22 be appropriated, removed, or sold. The commissioner shall also have notice served personally
23 or by certified mail upon an appropriator of water or applicant for or holder of a permit who,
24 according to the records of the division of lands, may be affected by the proposed sale,
25 appropriation, or removal and may serve notice upon any governmental agency, political
26 subdivision, or person; notice shall also be served upon the Department of Fish and Game and
27 the Department of Environmental Conservation. An applicant for an appropriation or removal
28 shall pay the commissioner's costs in providing publication and notice under this subsection.
29 The commissioner may require as a condition of a sale of water under AS 46.15.037, that
30 a purchaser of water reimburse the department for the costs associated with providing
31 notice of the proposed sale.

1 (c) Within 15 days of publication or service of notice, an interested person may file an
2 objection. The commissioner may hold hearings upon giving due notice and shall grant, deny,
3 or condition the proposed sale or application for appropriation or removal in whole or in part
4 within 30 days of receipt of the last objection or, if the commissioner elects to hold hearings,
5 within 180 days of receipt of the last objection. Notice of the order or decision shall be served
6 personally or mailed to any person who has filed an objection.

7 (d) If no objection is filed, the commissioner may proceed to make a determination upon
8 the application for appropriation or removal or the proposal for sale.

9 (e) A person aggrieved by the action of the commissioner or by the failure of the
10 commissioner to grant, deny, or condition a proposed sale or an application for appropriation
11 or removal in accordance with (c) of this section may appeal to the superior court.

12 (f) The commissioner may, by regulation, designate types of appropriations that are
13 exempt from this section and provide simplified procedures for ruling on the applications. The
14 commissioner may not exempt under this subsection appropriations for removal under
15 AS 46.15.035, appropriations by the state for sale or sales by the state under AS 46.15.037,
16 or removals of water under AS 46.15.035 and 46.15.037.

17 * Sec. 3. This Act takes effect July 1, 1992.