

HB

627

# Alaska State Legislature

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## Senate Committee on Resources

TO: Senate Resource Committee Members April 18, 1986

FROM: Senate Resource Committee Staff *ME*

RE: Committee Substitute for House Bill No. (Resources)  
"An Act relating to the appropriation of water."

The proposed Resources committee substitute combines HB 627 which deals with small scale uses of water with the contents of SB 460 which dealt with water quality. This committee previously passed SB 460 with seven "do pass" recommendations and the Senate passed the bill unanimously.

Attached is a memo from Dick Bradley on the combination of these two bills under the House title and a sectional analysis of the proposed committee substitute. Also attached is a analysis by the sponsor and zero fiscal notes on both HB 561 and SB 460. Relevant existing statutes and regulations dealing with water use are also attached and a newspaper article. Committee members may find it helpful if they bring their packet from SB 460's hearing.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99911  
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 16, 1986

SUBJECT: Appropriation of water  
[CSHB 627( ) (4/15 draft)]

TO: Senator Arliss Sturgulewski

FROM: Richard A. Bradley  
Legislative Counsel 

McKie Campbell has asked that I comment of the title of the bill vis-a-vis the contents of the bill and then prepare a sectional analysis of the bill.

HB 627 was introduced with the title: "An Act relating to the use of water." During second reading, the title was changed to "An Act relating to the appropriation of water." The title change was appropriate since each provision of the bill at that time amended AS 46.15, a chapter that implements art. VIII, sec. 13 of the Alaska Constitution: "All . . . waters reserved to the people for common use . . . are subject to appropriation." Those provisions are secs. 4 - 7 of the 4/15 draft of CSHB 627( ). Since then, sections amending law outside AS 46.15 have been added; these are secs. 1 - 3 of the 4/15 draft.

The sections that were added would, all things being equal, fit better within a bill that might be titled: "An Act relating to the use of water."

We are prepared to say, however, that the Alaska Supreme Court has given great deference to legislative formulations of a bill title and that therefore the provisions would probably fit within the single subject standards of the Alaska Supreme Court. In Gellert v. State, 552 P.2d (Alaska 1974), the Supreme Court stated that art. II, sec. 13 of the Alaska Constitution should be construed with considerable breadth. Otherwise statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactments and

their interrelationships. In North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534 (Alaska 1978), the court concluded that what constitutes one subject for the purposes of this section is to be broadly construed.

The significant section for these single subject questions is sec. 3 of the 4/15 draft. It provides:

When considering the quality of appropriated water and establishing regulations for the quality of appropriated water, the commissioner [of environmental conservation] may require a person who appropriates water to meet a standard that is equal to but not higher than a standard attainable through the application of best practicable and economically sustainable technology associated with the particular use.

Normal legislative drafting for this section would substitute "use" for each "appropriate" within the section. Having said that, we believe that the section has meaning and will attain the apparent goals of its sponsors. And, as written, it will likely survive single subject scrutiny by the Alaska Supreme Court.

Regarding a sectional analysis, the bill, as suggested, is divisible into two parts and the sections within each group should be read together.

Secs. 1 - 3 of the 4/15 draft apparently have relevance to the use of water in mining though the language is not limited as such.

Section 3 of the bill has been quoted above; it amends AS 46.03 ["Environmental Conservation-- General Provisions"] to provide that when the commissioner "establishes regulations for the quality of appropriated water," the commissioner may require that the water meet only those standards provided in the section.

Section 1 and section 2 of the bill are correlative sections that limit the authority of the commissioner of fish and game (section 1) and the commissioner of natural resources (section 2) in the same areas when the commissioner of environmental conservation has exercised the authority of that commissioner under section 3.

Secs. 4 - 7 of the bill amend AS 46.15.

Senator Arliss Sturgulewski  
Page 3  
April 16, 1986

Section 4 provides that a person may use less than a "significant amount of water" without a permit unless the commissioner (of natural resources) determines that the use of the water "without a permit is not in the public interest." The section then further provides that no rights to the use of the water are acquired in the absence of a permit; this is the current law and sec. 4 does not change it.

Section 5 of the bill amends AS 46.15.133(f) to provide that the commissioner of natural resources may designate "additional" types of appropriations that are exempt from the notice requirements of the section regarding applications for the appropriation of water.

Section 6 of the bill adds a new subsection to AS 46.15.133. Sec. 133(g) provides that an application to appropriate "not more than 1,000 gallons of water a day" is exempt from the notice requirements of the section except that the commissioner of natural resources will notify the Department of Fish and Game of each application for the appropriation of water from a stream designated under AS 16.05.870 (rivers, lakes, streams important for the spawning, rearing, or migration of anadromous fish). The commissioner of natural resources may require notice, notwithstanding the section, on a determination that water is limited in the area or on the request of the municipality in the area.

Section 7 of the bill amends the existing definitions section of AS 46.15, AS 46.15.260. The only substantive change to the section is the addition of the definition of "significant amount of water"; it means either (1) more than 5,000 gallons of water in a single day from a single source, (2) regular daily or recurring seasonal use of more than 500 gallons of water a day for 10 days or more a year from a single source, or (3) a use of water that may adversely affect water rights of another user of water or the public interest.

If I may be of further assistance, please advise.

RAB:mkr  
m4/122

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB 627  
 Title : Use of Water without Appropriation

Sponsor : M.W. Miller  
 Requestor House Resources  
 Date of Request : 3-18-86

**FISCAL DETAIL**

Agency Affected : Natural Resources  
 BRU : Minerals Management, Land & Water Mgmt.

Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Garv Johnson Phone : 762-4346  
 Division : Land & Water Management Date : 03-18-86

Approved by Commissioner : Nel Farnsworth Date : 03-18-86  
 Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : SB 460  
 Title : An Act relating to regulation of water quality in placer mining.  
 Sponsor : Senate Resources  
 Requestor : Senate Resources  
 Date of Request : 4/1/86

**FISCAL DETAIL**

Agency Affected : Environmental Conservation  
 BRU : \_\_\_\_\_  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS : None**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Amy D. Kyle, Deputy Commissioner Phone : 465-2600  
 Division : Office of the Commissioner Date : 4/01/86

Approved by Commissioner : Bill Ross Date : 4/01/86  
 Agency : Environmental Conservation

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

MEMORANDUM

TO: Representative Mike W. Miller

FROM: Staff *Jane*

DATE: 4/5/86

RE: Analysis of CSHB 627 (RULES)

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Section 1

amends the Water Use Act (AS 46.15) by stating that a water use permit is not necessary for an individual who wishes to use an insignificant amount of water unless, such a use is against the public interest as determined by the Commissioner of DNR. A person using less than a significant amount of water, without a water use permit, who decides not to apply for a permit for the use, does not acquire a right or priority to the water resource.

Section 2

allows the Commissioner of DNR to promulgate regulations to exempt public notice of applications for water rights in addition to the exemption outlined in Section 3 of this bill.

Section 3

allows the Commissioner of DNR to issue a water use permit for up to 1000 gallons of water per day without providing public notice as outlined in AS 46.15.133. However, notice is given to DF&G of all applications to appropriate water from anadromous fish streams. The Commissioner of DNR may disregard this subsection if:

- (1) he or she determines the total amount of water available to an area is limited for the total number of possible users; or,
- (2) the application being filed is for an area that lies within the boundary of a municipality that has requested notification of all water appropriation within its boundaries.

Section 4

(I) rewrites the current statutory language of AS 46.15.260. definitions (1)-(9) to make technical language modifications as requested by the Division of Legal Services. These changes do not alter the affect of the current statutory language.

(II) adds an additional definition number 10 which defines "significant amount of water" as:

- a) a use of more than 5,000 gallons of water in one day from a single source; or,
- b) the recurring daily use of more than 500 gallons of water for 10 or more days, in a year, from a single source; or,
- c) a use that may adversely affect the water rights of others users or the public interest.

HOUSE BILL 627 IS THE RESULT OF A REQUEST FROM MY DISTRICT THAT THE INCIDENTAL USE OF THE STATE'S WATER RESOURCES BY INDIVIDUALS BE PROTECTED BY LAW. SINCE I FIRMLY BELIEVE THE STATE'S RESOURCES SHOULD BE MADE AVAILABLE TO THE GENERAL POPULATION WHENEVER POSSIBLE, I AGREED TO SEE THAT THIS REQUEST WAS ADDRESSED BY LEGISLATION, -- THE RESULT BEING HOUSE BILL 627.

I HAVE WORKED CLOSELY WITH THE DEPARTMENT OF NATURAL RESOURCES IN DEVELOPING THE VERSION OF HB 627 THAT IS BEFORE YOU NOW. ALL OF THE MAJOR ADDITIONS TO EXISTING STATUTES PROPOSED BY CSHB 627 (RULES) ARE DERIVED DIRECTLY FROM EXISTING STATE WATER MANAGEMENT REGULATIONS. THIS LANGUAGE WILL ALLOW THE INCIDENTAL APPROPRIATION OF WATER FOR:

- 1) DOMESTIC USE
- 2) SMALL BUSINESS USE
- 3) RECREATIONAL USE - SUCH AS CAMPING OR USE OF A WILDERNESS CABIN
- 4) REGULAR SEASONAL USE - SUCH AS OPERATING A FISH CAMP ON THE  
YUKON

IN ADDITION TO ALLOWING THE UNREGULATED USE OF WATER FOR THESE AND OTHER PERSONAL PURPOSES, THE BILL ALSO GIVES THE COMMISSIONER OF NATURAL RESOURCES AUTHORITY TO REGULATE THE USE OF WATER WHEN A PARTICULAR SOURCE IS BEING THREATENED. IT WILL ALSO PROTECT AGAINST THE WANTON WASTE OF WATER BY INDIVIDUALS.

**CHAPTER 92.  
FOREST PROTECTION**  
Repealed 2/15/81.

**CHAPTER 93.  
WATER MANAGEMENT**

**Article**

1. Existing Rights  
(11 AAC 93.010—11 AAC 93.030)
2. Appropriation of Water  
(11 AAC 93.040—11 AAC 93.147)
3. Dam Safety and Construction  
(11 AAC 93.150—11 AAC 93.200)
4. Temporary Water Use  
(11 AAC 93.210—11 AAC 93.220)
5. Preferred Use  
(11 AAC 93.230—11 AAC 93.260)
6. Enforcement  
(11 AAC 93.270—11 AAC 93.290)
7. Appeals (11 AAC 93.300)
8. General Provisions  
(11 AAC 93.910—11 AAC 93.970)

**Editor's Note:** Much of the material in this chapter, effective December 29, 1979, and distributed in Register 72, constitutes a comprehensive revision, reorganization, and renumbering of regulations formerly found in 11 AAC 72. The history of each regulation has been reflected in its history note if it was possible to trace its evolution clearly. However, the section numbering is not related to the numbering in effect before December 29, 1979.

**Editor's Note:** Regulations governing grants for innovative pollution control, waste disposal, gold recovery, and water use reduction demonstration projects, adopted jointly by the Departments of Environmental Conservation and Natural Resources, are located in 18 AAC 71.

**ARTICLE 1.  
EXISTING RIGHTS**

**Section**

10. "Existing rights" defined
20. Filing period
30. Hearings on a determination of existing rights

**11 AAC 93.010. "EXISTING RIGHTS" DEFINED.** Existing rights (also called "grandfather rights") are those water use rights established on or before July 1, 1966, by one of the following means:

(1) a lawful common law or customary appropriation or use of water, such as, but not limited by example, the use of water by the holder of a mining claim including within the claim boundaries both banks of the stream from which the water was taken, or the use of water

following the posting of a notice of appropriation at the point of diversion, construction of a means of diversion, and recording of a notice of appropriation;

(2) beneficial use of water at any time during the period from July 1, 1961, to July 1, 1966; or

(3) construction of a means for appropriating water for a beneficial use if construction was in progress on July 1, 1966. (Eff. 2/8/67, Reg. 23; am 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.060

11 AAC 93.020. FILING PERIOD. A claim to an existing right is extinguished unless the claim was filed by

(1) March 27, 1967, for the Kodiak Recording District;

(2) May 31, 1967, for the Seldovia, Homer, Kenai, and Seward Recording Districts;

(3) July 31, 1967, for the Anchorage, Palmer, and Whittier Recording Districts;

(4) October 31, 1967, for all Southeast Alaska Recording Districts; and

(5) April 30, 1968, for the Cordova, Nome, and Fairbanks Recording Districts and for the remainder of the state. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.135(b)(1)

11 AAC 93.030. HEARINGS ON A DETERMINATION OF EXISTING RIGHTS. (a) Any person who is adversely affected by a determination of existing rights made by the commissioner may, within 20 calendar days after the date of mailing of the summary of determination provided for by AS 46.15.135(c), make a written request for a hearing. The request must set forth

(1) the name and address of the person making the request;

(2) the person's right or interest in water from the watershed or source affected by the

determination and the date on which the right or interest was acquired;

(3) the manner and extent of damage to the person's right or interest that may result from the determination; and

(4) the specific error believed to exist in the commissioner's determination.

(b) If a timely request is filed, the commissioner will set the determination for public hearing. Notice of the hearing will be given by publication and by mailing a copy of the notice to interested persons, including all persons who have filed a declaration with respect to the specified area or source. The commissioner will render a final determination after the conclusion of the hearing. (Eff. 2/8/67, Reg. 23; am 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.135(c)

ARTICLE 2.  
APPROPRIATION OF WATER

Section	
40.	Application for a permit to appropriate water
50.	Incomplete applications
60.	Water rights on state leased land
70.	Departmental investigations
80.	Notice
90.	Objections
100.	Exemptions to notice
110.	Hearings
120.	Issuance of a permit to appropriate water
130.	Issuance of a certificate of appropriation of water
140.	Water well standards
141.	Application for a reservation of water
142.	Content of application
143.	Incomplete applications
144.	Departmental investigations
145.	Adjudication of applications
146.	Issuance of a certificate of reservation of water
147.	Review of reservation of water

11 AAC 93.040. APPLICATION FOR A PERMIT TO APPROPRIATE WATER. (a) Unless exempted by sec. 920 of this chapter, no person

may lawfully appropriate water of the state without first obtaining a permit under the provisions of secs. 40 - 120, 210 - 220, or 260 of this chapter.

(b) Application for a permit to appropriate water must be made on a form provided by the commissioner. The form must be completed in

accordance with the instructions furnished to the applicant.

(c) Each application must be accompanied by the following items:

(1) the application or renewal fee prescribed by 11 AAC 05.010:

(2) proof that the applicant has a present possessory interest in the property where the water is to be beneficially used; proof may be in the form of a certified copy of the deed or patent transferring title, leasehold agreement, or other instrument:

(3) a map identified by section, township, range, and meridian and indicating the location of the property, take point, and point of use. (Eff. 2/8/67, Reg. 23; am 12/29/79, Reg. 72; am 1/1/86, Reg. 96)

Authority: AS 46.15.020  
AS 46.15.040

**11 AAC 93.050. INCOMPLETE APPLICATIONS.** (a) An application that does not substantially comply with the requirements of sec. 40 of this chapter cannot be accepted for filing.

(b) The commissioner will, in his discretion, require an applicant whose application is in substantial compliance with the requirements of sec. 40 of this chapter and has been accepted for filing to provide additional information if, during the adjudication process, it is determined that the application fails to afford a ready and clear understanding of the proposed project. The applicant's failure to submit the additional information requested is grounds for rejecting the application without further notice. Such a request for additional information will contain a warning to that effect. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.040

**11 AAC 93.060. WATER RIGHTS ON STATE LEASED LAND.** At the petition of a lessee of state land, water required for the use and enjoyment of the leasehold may be appropriated and reserved for the lessee's use. The lessee shall comply with the provisions of secs. 40 - 140 of this chapter in securing the appropriation. The appropriation will be for the benefit of the leased land. Upon termination of the lease, the water right will be considered intentionally

abandoned and will revert to the state, unless the lessee exercises a preference right to purchase the land or unless the commissioner grants an extension of the water right beyond the lease term for good cause shown. The water rights thus granted must be consistent with the provisions of the lease itself, this chapter, and AS 46.15. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.040

**11 AAC 93.070. DEPARTMENTAL INVESTIGATIONS.** Upon receipt of an application, the commissioner will, in his discretion, investigate the proposed works, the source of the water, and other uses or demands for water within the area, to determine whether there is a substantial possibility that the water rights of other persons or the public interest will be adversely affected or impaired by the proposed appropriation. Failure of the applicant to cooperate in the investigation will result in rejection of the application. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.080  
AS 46.15.250

**11 AAC 93.080. NOTICE.** The commissioner will provide notice according to the following procedure:

(1) The applicant will be provided with a prepared request for publication which must be submitted to a newspaper of general distribution in the vicinity in which the water is to be appropriated. The applicant shall pay the newspaper for the cost of publication.

(2) Where there is no newspaper of general circulation in the vicinity, the commissioner will post notice for a period of 15 days in a public place near the site of the proposed appropriation.

(3) No later than 10 days after publication of notice under (1) of this section or posting public notice under (2) of this section, the commissioner will serve individual notice on prior appropriators who are taking from the same source.

(4) An affidavit of publication or other proof

of notice must appear in the applicant's case file. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.070

**11 AAC 93.090. OBJECTIONS.** (a) If no written objection is received from any person within 15 days following the publication, posting, or service of notice, the commissioner will proceed with adjudication of the application.

(b) All timely objections will be considered by the commissioner and each will receive a written response after the close of the objection period.

(c) The commissioner will, in his discretion, consider objections that are mailed after the close of the objection period in adjudication of the application. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.070

**11 AAC 93.100. EXEMPTIONS TO NOTICE.** An application to appropriate no more than 1000 gallons of water per day for single family domestic purposes is exempt from the notice provisions of sec. 80 of this chapter. However, in areas where the total amount of water available appears to the department to be limited with respect to the number of potential users of the same source, or upon the request of a municipality as defined by AS 29, the commissioner will, in his discretion, require public notice as provided by sec. 80 of this chapter. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.070(f)

**11 AAC 93.110. HEARINGS.** (a) If any objections are received during the objection period, the commissioner will, in his discretion, hold a hearing on the objections. After the close of the objection period, the commissioner will decide whether a hearing will be held.

(b) The commissioner will, in his discretion, hold a hearing to acquire additional information on an application if he determines that the water rights of prior appropriators or the public interest may be adversely affected or if he determines additional information is required to rule on the application.

(c) The hearing will be public and a record will be kept. (Eff. 12/29/79, Reg. 72, and 9/11/83, Reg. 87)

Authority: AS 46.15.020  
AS 46.15.133(c)

**11 AAC 93.120. ISSUANCE OF A PERMIT TO APPROPRIATE WATER.** (a) The commissioner will issue a permit to appropriate water if he finds that the appropriation meets the requirements of AS 46.15.080. The permit will be issued for a period of time the commissioner considers adequate to finish construction and begin using the water. The permit may be extended for good cause shown.

(b) The commissioner will, in his discretion, issue a permit subject to conditions he considers necessary to protect the public interest. The conditions may include, but are not limited to, the following:

(1) the condition that no certificate will be issued until proof of the acquisition of adequate easements or other means necessary for completion of the appropriation is presented to the commissioner;

(2) conditions that reserve a sufficient quantity of water at a specific point on a stream or body of water, or in a specified stretch of stream, throughout the year or for specified times of the year, to achieve any of the following purposes:

- (A) protection of fish and wildlife habitat,
- (B) recreational purposes,
- (C) navigation,
- (D) sanitation and water quality,
- (E) protection of prior appropriators, and
- (F) any other purpose of substantial public interest;

(3) conditions that ensure that the proposed means of diversion or construction are adequate, including the requirement of adequate easements or other means necessary for completion

of the appropriation, the specification of engineering and design standards, approved location of take points, or approved location of points of return flow.

(c) Nothing in this section constitutes a waiver of the responsibility of the applicant to secure the appropriate additional state, federal, or local regulatory permits or licenses. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.010                      AS 46.15.080  
AS 46.15.020                      AS 46.15.100

**11 AAC 93.130. ISSUANCE OF A CERTIFICATE OF APPROPRIATION OF WATER.** The commissioner will issue a certificate of appropriation to the permit holder if

(1) the permit holder has shown that the means necessary for the taking of water have been developed and the permit holder is beneficially using the amount of water to be certified; and

(2) the permit holder has substantially complied with all permit conditions. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.010  
AS 46.15.020  
AS 46.15.120

**11 AAC 93.140. WATER WELL STANDARDS.** (a) For each drilled, jetted, or augered well constructed, the water well contractor shall file a report within 45 days after completion with both the property owner and the commissioner. The report must contain the following information: the location of the well, an accurate log of the soil and rock formations encountered and the depths at which the formations occur, the depth of the casing, the depth of any grouting, the depth of any screens, the total depth of the well, the static water level, the well yield and the results of any pump test that may have been conducted. If the water well contractor installs a pump at the time of construction, the report must also include the depth of the pump intake and the rated pump capacity at that depth.

(b) When the drill rig is removed from the well site, the well must be sealed with a watertight or a sanitary seal and a port provided to allow for monitoring of the static water level in the

well. At the well owner's request, the commissioner will, in his discretion, grant a written waiver of the monitoring port requirement of this provision.

(c) Hand-dug wells that are permanently abandoned must be filled to a point 12 inches above the existing ground level with well-compacted impermeable material.

(d) All wells, other than hand-dug wells, that are permanently abandoned must be cut off at or below existing ground level and sealed with concrete or other watertight material to a point above the static water level. The well must be sealed at or below ground level by means of welding a 0.25 inch thick plate to the top of the casing or by sealing the well at the surface with a concrete plug.

(e) If the commissioner finds that an encounter of oil, gas, or other hazardous substance is likely to result from well drilling, the provisions of AS 31.05.030(g) apply.

(f) The commissioner will notify the Department of Environmental Conservation of any permanently abandoned well that may contaminate a public water system under the provisions of 18 AAC 80. (Eff. 12/29/79, Reg. 72)

Authority: AS 38.05.020  
AS 38.05.035(a)(9)(C)  
AS 41.08.020(b)(4)  
AS 41.08.035  
AS 46.15.020

**11 AAC 93.141. APPLICATION FOR A RESERVATION OF WATER.** The state, an agency or political subdivision of the state, an agency of the United States, or a person may apply for a reservation of water for

(1) "protection of fish and wildlife habitat, migration and propagation," which means the quantity or level of water necessary to maintain suitable habitat conditions for the various life stages of fish, other aquatic organisms, and wildlife, including waterfowl and mammals and their habitat including water quality, depth, velocity and temperature, substrate, or streamside vegetation;

(2) "recreation and park purposes," which means the quantity or level of water necessary to maintain suitable conditions for contact and secondary recreation, including wading, swimming, fishing, boating, or hunting, or for park purposes, including scenic, natural, historic, or cultural values;

(3) "navigation and transportation purposes," which means the quantity or level of water necessary to maintain sufficient width and depth to allow vehicles, including boats or float planes, or tracked or wheeled vehicles during the winter, to travel on or through a stream or water body; and

(4) "sanitary and water quality purposes," which means the quantity or level of water necessary to attain and maintain water quality standards under 18 AAC 70 or, where applicable, drinking water standards under 18 AAC 80, or to maintain the natural balance in water quality conditions. (Eff. 9/11/83, Reg. 87)

Authority: AS 46.15.020  
AS 46.15.145

11 AAC 93.142. CONTENT OF APPLICATION. (a) Application for a reservation of water must be made to the department on a form provided by the department. The form must be completed in accordance with the instructions furnished by the department to the applicant.

(b) Each application must

(1) identify the purpose of the proposed reservation;

(2) identify the name of the stream or water body in which water is proposed to be reserved, and locate the proposed reservation on a United States Geological Survey map of 1:63,360 scale (or of 1:250,000 scale if 1:63,360 scale is unavailable for the area) identified by section, township, range, meridian, and river mile index if available, showing either the point on a water body or two points on a stream between which the proposed reservation is being requested;

(3) explain what need exists for the proposed reservation, including reasons why the reservation is being requested;

(4) quantify the water requested to be reserved, as follows:

(A) to maintain a specified instream flow rate, the quantity must be measured in cubic feet per second; or

(B) to maintain a specified level of surface water, the quantity must be measured in cubic feet, acre feet, or an elevation relative to a permanent bench mark;

(5) specify the daily duration and months of the year during which the reservation is proposed;

(6) identify and explain the methodology used to quantify the proposed reservation;

(7) identify physical, biological, water chemistry, and socio-economic data substantiating the need for and the quantity of water requested for the proposed reservation; and

(8) be accompanied by the application fee prescribed by 11 AAC 05.010.

(c) At the applicant's request, the department will provide assistance in filling out the application. (Eff. 9/11/83, Reg. 87; am 1/1/86, Reg. 96)  
Authority: AS 46.15.020 AS 46.15.080  
AS 46.15.040 AS 46.15.145

11 AAC 93.143. INCOMPLETE APPLICATIONS. (a) An application that does not substantially comply with the requirements of 11 AAC 93.142 will not be accepted by the department for filing.

(b) The commissioner will, in his discretion, require an applicant whose application is in compliance with the requirements of 11 AAC 93.142 and has been accepted for filing to provide additional information if, during the adjudication process under 11 AAC 93.145, the commissioner determines that the application fails to clearly present or sufficiently document the proposed reservation. The commissioner will identify the areas of deficiency, and the applicant will be given 60 days in which to submit supplemental information, unless a longer period of time is agreed upon by the applicant and the commissioner. An applicant's failure to submit the additional information within the time

required is grounds for rejecting the application. (Eff. 9/11/83, Reg. 87)

Authority: AS 46.15.020  
AS 46.15.040  
AS 46.15.145

**11 AAC 93.144. DEPARTMENTAL INVESTIGATIONS.** (a) Upon receipt of an application for reservation of water, the commissioner will in his discretion, investigate any aspect of the application before making a decision regarding the application.

(b) An applicant's failure to reasonably cooperate, financially and by participation, in an investigation, including acquiring and presenting any requested additional data and information may result in rejection of the application. (Eff. 9/11/83, Reg. 87)

Authority: AS 46.15.020  
AS 46.15.145  
AS 46.15.250

**11 AAC 93.145. ADJUDICATION OF APPLICATIONS.** (a) Notice of an application for a reservation of water will be provided in accordance with AS 46.15.133 and 11 AAC 93.080. In addition, the commissioner will provide notice to the Alaska regional offices of the United States Department of the Interior and Department of Agriculture, Forest Service, the Alaska Departments of Fish and Game and Environmental Conservation, and to any local government in whose jurisdiction the proposed reservation of water would occur, as well as to any other interested party who has filed a request with the department to receive notice.

(b) Timely objection received following notice of an application for a reservation of water will be considered in accordance with 11 AAC 93.090.

(c) Hearing regarding an application for a reservation of water will be held in accordance with AS 46.15.133 and 11 AAC 93.110.

(d) The commissioner's decision to grant, conditionally grant, or deny an application for a reservation of water will be summarized by written findings of fact and conclusions of law, including justification of any special conditions to which the reservation is subject. In determining whether the proposed appropriation is

in the public interest, the commissioner will consider the criteria set out in AS 46.15.080(b). (Eff. 9/11/83, Reg. 87)

Authority: AS 46.15.020 AS 46.15.133  
AS 46.15.080(b) AS 46.15.145

**11 AAC 93.146. ISSUANCE OF A CERTIFICATE OF RESERVATION OF WATER.** (a) The commissioner will issue a certificate of reservation of water if he finds that the reservation meets the requirements of AS 46.15.145.

(b) A certificate of reservation will be issued to the applicant, if it is issued. The applicant is responsible for compliance with the conditions of the certificate of reservation.

(c) A certificate of reservation will contain the following conditions:

(1) the certificate of reservation may not be voluntarily abandoned, conveyed, transferred, assigned, or converted to another use, in whole or in part, unless required as a result of review under 11 AAC 93.147; and

(2) the certificate of reservation does not authorize the certificate holder or any other person to prevent access to, on, or through the water reserved by the certificate or to prohibit the use of the reserved water for other compatible purposes set out in AS 46.15.145(a).

(d) The certificate of reservation will state any additional terms or conditions the commissioner considers necessary to protect the prior valid rights of other appropriators and the public interest. The conditions may include the following:

(1) measuring devices of a type and at a location approved by the commissioner must be installed and maintained to monitor and report on the reserved instream flow or level of water; and

(2) the reservation will be reviewed by the commissioner within a specified period of time, if sooner than the 10 year review under 11 AAC 93.147.

(e) The priority of a reservation of water is determined as of the date of application for the reservation of water or the date of a federal reservation of water.

(f) Nothing in this section constitutes a waiver of the responsibility of the applicant to secure any appropriate state, federal, or local regulatory permits or licenses with regard to the stream or water body affected. (Eff. 9/11/83, Reg 87)

Authority: AS 46.15.010 AS 46.15.120  
AS 46.15.020 AS 46.15.145  
AS 46.15.080(b)

11 AAC 93.147. REVIEW OF RESERVATION OF WATER. (a) The commissioner will review a reservation of water at least once each 10 years from the date of issuance of the certificate of reservation. The commissioner will in his discretion, review a reservation of water in fewer than ten years if circumstances warrant a review. These circumstances may include

(1) a condition on the certificate of reservation requiring an earlier review, under 11 AAC 93.145(d)(2);

(2) a significant change affecting the water resource;

(3) a subsequent application for an appropriation of water requesting more water than is available to both maintain the reservation of water and grant the application and protesting the justification for the reservation of water; or

(4) a written request by the certificate holder to the department, seeking authority to abandon, convey, transfer, assign, or convert the certificate of reservation to another use.

(b) Upon review of a reservation of water, the commissioner will determine

(1) if the purpose for the reservation still applies;

(2) if the need for the reservation still exists;

(3) the effects of the reservation on prior appropriators;

(4) the effects of the reservation on the public interest;

(5) if a beneficial use of the water not previously considered has been proposed;

(6) if additional physical, biological, water chemistry, and socio-economic data or reports concerning the reservation are available;

(7) if the quantity or level of water reserved is adequate for the purposes of the reservation;

(8) if the daily duration and months of the year of the reservation still apply; and

(9) if additional research, data collection, and analysis should be conducted, or different methodologies employed for reviewing the reservation.

(c) The commissioner will in his discretion, require that additional research, data collection, and analysis be conducted or different methods used for reviewing the reservation of water. Costs of conducting additional research, data collection, and analysis, and of using different methodology will be borne by the protestant if a protest regarding the reservation has been filed with the department. In other cases, these costs will be borne by the certificate holder.

(d) The commissioner will provide written notice, as provided in 11 AAC 93.145(a), of a review of a reservation of water to solicit information which may be pertinent to the review.

(e) In accordance with the procedural requirements of 11 AAC 93.940, the commissioner will determine whether the purpose for the reservation of water and his original findings of fact in granting the reservation have been significantly altered by subsequent events. If the purpose of the reservation or all or part of his findings in granting the reservation no longer apply to the reservation, he will, in his discretion, amend the certificate of reservation or revoke all or part of it in accordance with AS 46.15.140(b) and 11 AAC 93.940. The commissioner's final decision to amend or revoke all or part of a certificate of reservation will be summarized by written findings of fact and conclusions of law. (Eff. 9/11/83, Reg. 87)

Authority: AS 46.15.020 AS 46.15.145  
AS 46.15.140 AS 46.15.250

**ARTICLE 3.  
DAM SAFETY AND CONSTRUCTION**

**Section**

- 150. Dam safety
- 160. General requirements
- 165. Dam measurement
- 170. Construction of large dams
- 180. Construction of medium-sized dams
- 190. Construction of small dams
- 200. (Repealed)

11 AAC 93.150. **DAM SAFETY.** Sections 150 - 200 of this chapter do not in any way limit or restrict the amount or character of data that may be required by the commissioner from the owner of any dam, whether new or existing, for the administration of AS 46.15. (Eff. 2/8/67, Reg. 23; am 12/29/79, Reg. 72)

Authority: AS 46.15.020 AS 46.15.080  
 AS 46.15.040 AS 46.15.135  
 AS 46.15.060 AS 46.15.180  
 AS 46.15.070(f)

11 AAC 93.160. **GENERAL REQUIREMENTS.** (a) No person may begin the construction, enlargement, alteration, or repair of a dam 10 feet or more in height, or storing 50 acre-feet or more of water, without first submitting an application on a form provided by the commissioner, submitting plans as required by this section, paying the fees required by sec. 200 of this chapter, and receiving a certificate of approval for the proposed work. "Alteration or repair" means only an alteration or repair that directly affects the safety of the dam or reservoir and does not mean routine maintenance.

(b) Plans must be prepared on a good grade of scale-stable tracing material. Tracings must be reproducible by standard duplicating processes. Plans and drawings must be of sufficiently large scale and must have enough views with suitable dimensions to allow for complete review and analysis of the proposed project. After reviewing the information, the commissioner will notify the applicant in writing whether or not changes must be made.

(c) Plans must include the following:

(1) plans for a water measuring device that is capable of accurately measuring the total flow

of the stream below the reservoir or the rate of discharge at the outlet works:

(2) a topographic map of the dam site showing the location of the proposed dam by township, range, section, and quarter section, and the location of the spillway, outlet works, borings, test pits, and material pits;

(3) a profile along the dam axis showing the locations, elevations, and depths of borings or test pits, including logs of any bore holes or test pits; and

(4) a maximum cross-section of the dam showing elevation and width of crest, slopes of upstream and downstream faces, thickness of erosion control structures, location of cutoff and bonding trenches, and elevations, size, and type of outlet conduit, valves, and operating mechanism. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020 AS 46.15.100  
 AS 46.15.080 AS 46.15.180

11 AAC 93.165. **DAM MEASUREMENT.** The height of a dam is measured as the vertical distance from the natural bed of the watercourse of the downstream toe of the barrier, as determined by the commissioner, or from the lowest elevation of the outside limit of the barrier, if it is not across a watercourse, to the maximum storage elevation. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020

**11 AAC 93.170. CONSTRUCTION OF LARGE DAMS.** (a) This section applies to large dams, which are dams that are twenty feet or more in height or have a storage capacity of 100 acre-feet or more.

(b) The following information must be submitted along with the plans and specifications required under sec. 160 of this chapter:

(1) formulas and assumptions used in the design criteria, test results, and detailed construction specifications;

(2) hydrologic data used in the development of flood forecasting for the drainage area;

(3) a physical analysis and a permeability analysis of the materials used in the embankment and a stability analysis of the structure;

(4) an evaluation of earthquake effects in seismic zones III and IV (see the U.S. Army Corps of Engineers' publication TM 5-809-10/NAVCA P-335/AFM 88-3, Chapter 13, April 73);

(5) a complete seepage analysis;

(6) the type, location, and sizing of the outlet works;

(7) the type, location, and records of the hydrometeorological gauges appurtenant to the project;

(8) foundation data and information on geological features, including logs of borings, geologic maps, profiles, and cross-sections and reports of foundation stability; and

(9) detailed drawings of the spillway, including a curve showing discharge in cubic feet per second versus gauge height of the reservoir storage pool level, the formulas used in making the curve, detailed plans of the spillway structure, cross-sections of the channel leading to and from the spillway, and the spillway profile.

(c) All specifications submitted must include provisions, acceptable to the commissioner, for adequate supervision by a registered professional engineer during the period of construction. The supervising engineer shall devise a schedule of

incremental inspections and submit his findings in writing to the commissioner within 15 days after each inspection.

(d) In addition to the review of the dam construction plans required under sec. 160 of this chapter and (b) and (c) of this section, the work in progress must be inspected before placing any fill material following clearing and excavation of the foundation, before placing backfill around the outlet conduit following installation of the conduit, before beginning to store water following completion of construction and at such other times as determined necessary by the commissioner. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020 AS 46.15.100  
AS 46.15.080 AS 46.15.180

**11 AAC 93.180. CONSTRUCTION OF MEDIUM-SIZED DAMS.** (a) This section applies to medium-sized dams, which are dams that are at least 10 feet in height but less than 20 feet in height, or have a storage capacity of at least 50 acre-feet but less than 100 acre-feet.

(b) The requirements of this section are in addition to those in sec. 160 of this chapter.

(c) Before approving the proposed work, the commissioner will, in his discretion, require the applicant to submit any of the plans or drawings listed in sec. 170(b)(9) of this chapter.

(d) The analysis and construction requirements for large dams under sec. 170(b)(1) - (8) and (c) of this chapter are recommended, but not required, for medium-sized dams.

(e) In addition to the review of the dam construction plans required under sec. 160 of this chapter and this section, the work in progress must be inspected before placing any fill material following clearing and excavation of the foundation, before placing backfill around the outlet conduit following installation of the conduit, before beginning to store water following completion of construction, and at other times determined necessary by the commissioner. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020 AS 46.15.180  
AS 46.15.080 AS 46.15.250  
AS 46.15.100

**11 AAC 93.190. CONSTRUCTION OF SMALL DAMS.** This section applies to small dams, which are dams under 10 feet in height and having a storage capacity of less than 50 acre-feet. No additional permit or approval from the commissioner is needed to construct a small dam as long as such authorization already is included in a permit or certificate to appropriate water issued under sec. 120 or 130 of this chapter. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.180

**11 AAC 93.200. FEE FOR DAM CONSTRUCTION PERMIT.** Repealed 1/1/86.

**ARTICLE 4.  
TEMPORARY WATER USE**

**Section**

**210. Temporary water use**

**220. Simplified procedure to appropriate**

**11 AAC 93.210. TEMPORARY WATER USE.**

(a) Simplified procedures to authorize the temporary use of water, as provided in sec. 220 of this chapter, will be followed if the use of water continues for less than two consecutive years and the water applied for is not otherwise appropriated.

(b) No water right or priority is established by a temporary water use permit issued under sec. 220 of this chapter. Water so used is subject to appropriation by others. (Eff. 2/8/67, Reg. 23; am 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.040  
AS 46.15.070(f)

**11 AAC 93.220. SIMPLIFIED PROCEDURE TO APPROPRIATE.** (a) Application for a temporary water use permit must be made on a form provided by the commissioner.

(b) An application must include

(1) the filing fee as set out in the fee schedule prepared by the commissioner;

(2) a map indicating the location of the property, the take point, and the point of use.

(c) The commissioner will notify the Alaska Departments of Fish and Game and Environmental Conservation of a proposed temporary appropriation. At the applicant's expense, the commissioner will, in his discretion, give additional notice by posting or by publication in the local newspaper if the proposed appropriation is likely to affect the water rights of other persons or the public interest.

(d) The commissioner will, in his discretion, consider any pertinent information in deciding whether to issue or deny a temporary water use permit. The reason for the decision will be furnished to any person who is denied a temporary water use permit and to any person who has filed an objection.

(e) A temporary water use permit will, in his discretion, be issued subject to conditions, including suspension or termination, which he considers necessary to protect the water rights of other persons or the public interest.

(f) Denial of an application under this section does not preclude the applicant from applying for a permit under sec. 40 of this chapter. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020 AS 46.15.070(f)  
AS 46.15.040 AS 46.25.100

**ARTICLE 5.  
PREFERRED USE**

**Section**

- 230. Preferred use status
- 240. Application for preferred use status
- 250. Commissioner's decision on preferred use status
- 260. Issuance of a permit to appropriate for preferred use

**11 AAC 93.230. PREFERRED USE STATUS.** Preferred use status allows the use of water for a preferred use when adequate water is not available from the same source to supply all lawful appropriators. (Eff. 2/8/67, Reg. 23; am 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.150

**11 AAC 93.240. APPLICATION FOR PREFERRED USE STATUS.** An applicant for preferred use status shall provide the commissioner written evidence that establishes, to the satisfaction of the commissioner, that

(1) the use of water is for a public water utility which serves the general public as defined by AS 42.05.701(2)(A) and AS 42.05.701(5);

(2) the available water supply is or will be inadequate in quantity to satisfy the needs of the applicant; and

(3) water conservation measures are or will be employed to minimize damages to prior appropriators as a result of preferred use status. (Eff. 2/8/67, Reg. 23; am 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.150

**11 AAC 93.250. COMMISSIONER'S DECISION ON PREFERRED USE STATUS.** (a) If the commissioner determines that additional information is required to rule on an application, he will, in his discretion, require the submission of additional evidence, hold hearings, or provide for investigative studies.

(b) Denial of an application for preferred use status does not preclude the applicant from applying for other water rights under secs. 40 - 140 of this chapter. (Eff. 2/8/67, Reg. 23; am 12/29/79, Reg. 72)

Authority: AS 46.15.020 AS 46.15.090  
AS 46.15.040 AS 46.15.135  
AS 46.15.060 AS 46.15.150  
AS 46.15.070(f) AS 46.15.180

**11 AAC 93.260. ISSUANCE OF A PERMIT TO APPROPRIATE FOR PREFERRED USE.**

(a) If the commissioner grants an applicant preferred use status under sec. 250 of this chapter, the commissioner will issue a permit to appropriate for preferred use when

(1) notice has been given under sec. 80 of this chapter; and

(2) the applicant has submitted to the commissioner either certified copies of any compensation agreements or any court orders directing the payment of compensation.

(b) If there are no compensation agreements or orders and if scarce water conditions have resulted in the need for immediate action, the commissioner will

(1) order the posting of a bond by the applicant in an amount considered necessary to compensate prior lawful appropriators of record for damages sustained as the result of the reallocation; and

(2) order reallocation of available water among all users; these orders will continue in effect until an agreement on compensation is arrived at as provided in (a) of this section or until the scarce water condition is over. (Eff. 2/8/67, Reg. 23; am 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.150

## ARTICLE 6. ENFORCEMENT

### Section

270. Enforcement  
280. Emergency actions  
290. Commissioner's orders

11 AAC 93.270. **ENFORCEMENT.** A violation of a provision of this chapter, a lawful order of the commissioner issued under this chapter or AS 46.15, or a term or condition of a permit or certificate issued under this chapter is subject to corrective action under secs. 280 - 290 of this chapter. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020 AS 46.15.180  
AS 46.15.100 AS 46.15.250

### 11 AAC 93.280. **EMERGENCY ACTIONS.**

(a) If the commissioner finds that a person is causing, engaging in, or maintaining a condition or activity that involves the use of a water resource and that presents an imminent or present danger to the health, safety or welfare of the people of the state, or with the exception of changes in water quality, to the resource itself, the commissioner will, in his discretion

(1) order the person immediately to discontinue, abate, or alleviate the condition or activity; or

(2) take any other action considered necessary to alleviate the emergency.

(b) The owner of the property or the operator of the improvement or other condition that causes the emergency may be held liable for the costs associated with remedial action taken under this section, including the cost of any work done to make safe a water use structure or its appurtenances. If the person fails to make payment within 90 days, costs may be recovered by the state from the person in an action in superior court. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020 AS 46.15.180  
AS 46.15.080 AS 46.15.250

11 AAC 93.290. **COMMISSIONER'S ORDERS.** (a) In order to protect the public interest the commissioner will, in his discretion, after notice and hearing, issue any of the following orders:

(1) an order prescribing construction and other engineering modifications of works or structures but not waiving the responsibility of the applicant to apply for and receive appropriate state or federal regulatory permits or licenses;

(2) a cease and desist order to any person who, by means including free-flowing wells or drainage into lower strata underground, wastes water without putting it to a beneficial use;

(3) a cease and desist order to any person substantially interfering with the appropriation of water the right to which was granted under the provisions of this chapter; and

(4) a cease and desist order to any person appropriating water without a permit, including uses exempted by 11 AAC 93.920, if the commissioner determines the unauthorized appropriation to be adversely affecting the right of prior appropriators or the public interest.

(b) If he considers it necessary to prevent or rectify a violation of this chapter, the commissioner will obtain a court order authorizing him to seize or remove structures or works of appropriation. (Eff. 12/29/79, Reg. 72; am 9/11/83, Reg. 87)

Authority: AS 46.15.010 AS 46.15.180  
AS 46.15.020 AS 46.15.250

## ARTICLE 7. APPEALS

### Section

300. Appeal to the commissioner

11 AAC 93.300. **APPEAL TO THE COMMISSIONER.** (a) Any person who believes that he has been aggrieved by a delegated decision or order of the commissioner may, within 30 days after the date that the decision or order was mailed or personally served, appeal to the commissioner for a modification or reversal of the decision or order.

(b) Before making a decision, the commissioner may order the taking of additional evidence or the holding of a hearing if he determines that more information is necessary to rule on the appeal or if the appellant requests permission to present further information. (Eff.

2/8/67, Reg. 23; am 12/29/79, Reg. 72)

Authority: AS 46.15.020 AS 46.15.135  
AS 46.15.070(e) AS 46.15.180

## ARTICLE 8. GENERAL PROVISIONS

### Section

- 910. Change of address
- 920. Exemptions
- 930. Procedure for the change of appropriations
- 940. Procedure on abandonment and forfeiture
- 950. Recording of instruments
- 960. Disclaimer of liability
- 970. Definitions

### 11 AAC 93.910. CHANGE OF ADDRESS.

(a) All applicants, permit holders, and certificate holders shall promptly notify the commissioner of any change of mailing address. Failure by an applicant or permit holder to comply with this requirement is sufficient cause for discontinuance of the water appropriation procedure under secs. 40 - 140 of this chapter and closure of the case file.

(b) Correspondence and notification sent under provisions of this chapter will be sent to the last address on file with the commissioner. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.070  
AS 46.15.120

11 AAC 93.920. EXEMPTIONS. Any person using less than a significant amount of water as defined in sec. 970 of this chapter is not guilty of a misdemeanor for appropriating water without a permit. However, any person using less than a significant amount of water acquires no water right or priority unless an application is filed and a permit or certificate is issued in accordance with secs. 40 - 140 of this chapter. Water used without a permit or certificate is subject to appropriation by others and the use of water without a water right is subject to curtailment in order to supply water to lawful appropriators of record. (Eff. 2/8/67, Reg. 23; am 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.180

11 AAC 93.930. PROCEDURE FOR THE CHANGE OF APPROPRIATIONS. (a) Any person who desires to change an appropriation, including a change in the location of a take point, depth of taking, nature of use, or place of use and the addition of take points, shall apply for permission to make the change on a form available from the commissioner.

(b) In determining whether a proposed change will be approved, the commissioner will consider its effect on the water rights of other persons and the public interest.

(c) The commissioner will, in his discretion, if he determines that the proposed change will not adversely affect the water rights of other persons or the public interest, issue a temporary permit to make the change. If any person claiming to be injured by the change files an objection within one year after the date the change was made, the commissioner will, in his discretion, if it appears necessary to protect the water rights of other persons, or the public interest, temporarily suspend the order permitting the change. After notice and hearing, the commissioner will, in his discretion, confirm, modify, or rescind the order granting the permit. If no objection is filed within one year, the change will become permanent, and the commissioner will issue an amended permit or certificate to represent the water right as changed.

(d) The commissioner will, in his discretion, if he is uncertain as to the effect of the proposed change on the water rights of other persons or the public interest, give notice, receive objections, and hold a hearing as provided in secs. 80, 90, and 110 of this chapter. The application may be granted and the change allowed unless an objector shows that injury will occur to a valid water right, or unless the commissioner finds that the proposed change will adversely affect or impair the public interest, or that the appropriation proposed to be changed has been abandoned or forfeited. A change may be granted in part or subjected to conditions in order to avoid injury to the water rights of other persons or the public interest. The commissioner will issue an amended permit or certificate to represent the water right as changed. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.020  
AS 46.15.160  
AS 46.15.185

**11 AAC 93.940. PROCEDURE ON ABANDONMENT AND FORFEITURE.** (a) If the commissioner has reason to believe that all or part of an appropriation has been abandoned or forfeited, he will conduct a preliminary investigation. If the investigation supports a finding that the beneficial use of the water has been wholly or partially abandoned or forfeited, the certificate holder will be notified that the commissioner intends to cancel his certificate for nonuse to the extent of the nonuse. The revocation notice will be sent by certified mail.

(b) The holder has 60 days from the day the notice of revocation was mailed to file objections to a preliminary determination of nonuse. Upon receipt of a timely filed objection from the holder, the commissioner will, in his discretion, take additional evidence or hold a hearing before making a final determination. If no objections are filed within the time period, the determination becomes final.

(c) Based on all the evidence, the commissioner will make a final determination after the close of the response period or, if a hearing is held, after the close of the hearing. The holder will be notified of the decision by certified mail sent to the last known address on record with the division.

(d) An appropriation that is found to be abandoned or forfeited under this section reverts to the state and the water becomes unappropriated. The commissioner will record any final determination or decision that declares an appropriation abandoned in whole or in part at the recorder's office in the district where the appropriation was located. In addition, the commissioner will, in his discretion, secure a court order for the removal of the works of appropriation.

(e) In order to implement this section the commissioner will, in his discretion, require a record of use to be submitted on a specified regular basis. (Eff. 12/29/79, Reg. 72; am 9/11/83, Reg. 87)

Authority: AS 46.15.020  
AS 46.15.140  
AS 46.15.160

**11 AAC 93.950. RECORDING OF INSTRUMENTS.** The holder of a water right issued

under this chapter shall record his certificate in the recorder's office in the district where the appropriation is located to guarantee priority against adverse claimants. (Eff. 12/29/79, Reg. 72; am 9/11/83, Reg. 87)

Authority: AS 46.15.020  
AS 46.15.160  
AS 46.15.170

**11 AAC 93.960. DISCLAIMER OF LIABILITY.** The State of Alaska and the department, its agents, and employees are not liable for any claims arising out of activities conducted under a letter of entry, permit, or certificate issued under this chapter by the holder or owner of it or any third party. Neither this chapter nor any letter of entry, permit, or certificate issued under it is intended as a waiver of sovereign immunity. (Eff. 12/29/79, Reg. 72)

Authority: AS 46.15.010  
AS 46.15.020

**11 AAC 93.970. DEFINITIONS.** Unless the context indicates otherwise, in this chapter

(1) "adjudication" means the administrative determination of the validity and amount of a water right and includes the settlement of conflicting claims among competing lawful water users of record;

(2) "certificate of appropriation" means an instrument granting the owner the right to appropriate water, subject to the terms and conditions contained in it;

(3) "certificate of approval" means a certificate issued by the commissioner for the operation of a dam or reservoir and listing restrictions imposed by the commissioner;

(4) "commissioner" means the commissioner of the Department of Natural Resources or his delegate;

(5) "dam" means any artificial structure, together with appurtenant works, used for the purpose of impounding water; no obstruction in a canal used to raise, lower, or divert water from it and no fill or structure determined by the commissioner to be designed primarily for highway or railroad traffic is considered a dam;

(6) "dam owner" means any corporation (whether public, cooperative or otherwise), company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court or government agency that owns, controls, operates, maintains, manages, or has initiated construction of a dam or reservoir;

(7) "declaration of appropriation" or "grandfather right" means a formal claim to a water right acquired by law before July 1, 1966, in existence on that date, and filed with the department within the designated filing period;

(8) "department" means the Department of Natural Resources;

(9) "division" means the division of forest, land, and water management within the Department of Natural Resources;

(10) "ground water" is any water, except capillary moisture, beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water within the boundaries of the state, whatever may be the geologic formation or structure in which the water stands, flows, percolates, or otherwise moves;

(11) "permit to appropriate water" means an instrument granting the holder the right, limited to a definite period of time and subject to the terms and conditions contained in it, to construct works necessary to the appropriation of water and to establish a beneficial use;

(12) "priority" as between lawful appropriators means that first in time is first in right;

(13) "public interest" means public interest as determined by the criteria set out in AS 46.15.080;

(14) "significant amount of water" means any use of 5,000 or more gallons of water in a single day from a single source, or the regular daily or recurring seasonal use of 500 or more gallons of water per day for 10 days or more per year from a single source, or any water use that may adversely affect the water rights of other appropriators or the public interest;

(15) "storage capacity" means the total storage capacity in acre-feet at the maximum water storage elevation;

(16) "water storage elevation" means the maximum elevation of the water surface that can be obtained by the dam or reservoir without flow in the spillway;

(17) "well" means an artificial opening or artificially altered natural opening more than 18 feet in vertical depth below land surface, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn, except that this definition does not include holes or shafts drilled or dug for the purpose of exploration or production of oil, gas, or valuable minerals unless the hole or shaft is actually used for the production of water;

(18) "certificate of reservation" means an instrument granting a reservation of water subject to the terms and conditions contained in it;

(19) "instream flow" means an instantaneous flow rate of water through a stream during specified periods of time, from a designated location upstream to a designated location downstream, required to support an application to reserve water for one or more permissible purposes, as determined by an appropriate study;

(20) "reservation of water" means to appropriate water for maintaining a specified instream flow or level of water at a specified point on a stream or water body or in a specified part of a stream or water body for specified periods of time and for one or more permissible purposes.

(21) "methodology" means the scientific or technical procedures used to quantify water;

(22) "water body" means surface water in a depression of land, including intragravel water or sloughs, which is supplied from drainage, upwellings, springs, or groundwater;

(23) "stream" means any body of flowing water, including a river, creek, tributary, fork,

and rivulet. (Eff. 2/8/67, Reg. 23; am 12/29/79, Reg. 72; am 9/11/83, Reg. 87)  
Authority: AS 46.15.020 AS 46.15.133  
AS 46.15.040 AS 46.15.145  
AS 46.15.080

CHAPTER 94.  
TRAPPING CABIN CONSTRUCTION  
PERMITS

Article

1. Applicant Qualifications  
(11 AAC 94.010–11 AAC 94.030)
2. Conditions of Permit  
(11 AAC 94.210–11 AAC 94.260)
3. Renewal and Termination  
(11 AAC 94.310–11 AAC 94.330)
4. General Provisions (11 AAC 94.410)

ARTICLE 1.  
APPLICANT QUALIFICATIONS

Section

10. Application for permit
20. Cabin location
30. (Repealed)

11 AAC 94.010. APPLICATION FOR PERMIT. (a) Application for a trapping cabin construction permit must be made on a form provided by the division and must include the following:

(1) a declaration that each of up to three cabins is needed for the applicant's operation of an established trapline;

(2) evidence that the applicant has a current, valid state trapping license;

(3) evidence of the applicant's regular use of the established trapline, such as tax returns or fur receipts showing previous income derived from trapping, or official records of the Department of Fish and Game, or signed statements by witnesses or officers of the Department of Fish and Game or the division of fish and wildlife protection of the Department of Public Safety;

(4) identification of the established trapline and each cabin site on a United States Geologic Survey Map, 1:63360 scale or its equivalent;

(5) an agreement by the applicant to assume full responsibility for forest fire protection, the cabin structure and area within 150 feet of it, and full liability for any damages resulting from his negligence; and

(6) the notarized signature of the applicant.

The annual report shall be transmitted to the legislature at the beginning of each regular session. The report shall include a description of the work conducted or supported by the center, the number of jobs which have been created, the number of businesses which have been assisted, and any other information which the board determines should be included to describe the work of the center. (§ 3 ch 148 SLA 1980)

**Sec. 46.12.150. Principal office.** The principal office of the center shall be located in Fairbanks. The board shall authorize the establishment of other offices of the center in other areas of the state as appropriate to its activities. (§ 3 ch 148 SLA 1980)

**Sec. 46.12.160. Cooperation with other state agencies and the University of Alaska.** (a) All departments, agencies, and public corporations of the state, including the University of Alaska, shall provide information, services, and facilities to the center on its request. The center shall reimburse the department, agency, or corporation for expenses reasonably incurred on the center's behalf.

(b) When feasible, the center shall contract with the University of Alaska or an organization which is based in Alaska for research. (§ 3 ch 148 SLA 1980)

**Sec. 46.12.500. Definitions.** In this chapter

(1) "board" means the Board of Directors of the Alaska Energy Center;

(2) "center" means the Alaska Energy Center;

(3) "energy technology" means technological developments and innovations which are appropriate for

(A) production of energy through the use of renewable and alternative energy sources;

(B) energy conservation;

(C) development of facilities for the use of waste heat and the cogeneration of electricity and heat;

(D) the reduction of dependence on fossil fuels;

(E) efficient recovery and use of fossil fuels. (§ 3 ch 148 SLA 1980)

## Chapter 15. Water Use Act.

### Article

1. Administration (§§ 46.15.010 — 46.15.020)

3. Water Resources Board (§§ 46.15.190 — 46.15.240)

4. General Provisions (§§ 46.15.550 — 46.15.270)

19. Determination of water rights  
20. Authority and duties of the commissioner

Collateral references. — 78 Am. Jur. 93 C.J.S., Waters, §§ 1, 2, 5-14, 105, 94  
2d, Waters, §§ 1-4, 76. C.J.S., Waters, §§ 226-233.

**Sec. 46.15.010. Determination of water rights.** The Department of Natural Resources shall determine and adjudicate rights in the waters of the state, and in its appropriation and distribution. (§ 1 ch 50 SLA 1966)

### NOTES TO DECISIONS

Cited in *Paug-Vik, Inc. v. Wards Cove Packing Co.*, Sup. Ct. Op. No. 2417 (File Nos. 6015, 6149), 633 P.2d 1016 (1981).

**Sec. 46.15.020. Authority and duties of the commissioner.** (a) The commissioner shall exercise all those powers and do all those acts necessary to carry out the provisions and objectives of this chapter. The commissioner may

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

(2) apply for, accept, administer and expend grants, gifts, and loans from the federal government and any other public or private sources for the purposes of this chapter, and adopt procedures and do acts not otherwise restricted by law which are necessary to qualify the state to receive grants, gifts and loans;

(3) establish a division of water in the Department of Natural Resources and assign to that division the responsibility for carrying out the provisions of this chapter.

(b) The commissioner shall

(1) adopt procedural and substantive regulations to carry out the provisions of this chapter, taking into consideration the responsibilities of the Department of Environmental Conservation under AS 46.03 and the Department of Fish and Game under AS 16;

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

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

(4) prescribe fees or service charges for any public service rendered. (§ 1 ch 50 SLA 1966; am § 6 ch 104 SLA 1971; am § 50 ch 71 SLA 1972)

Legislative history reports. — For report on ch. 71, SLA 1972 (HCSSB 383 am II), see 1972 House Journal, p. 898.

## Article 2. Appropriation and Use of Water.

Section	Section
30. Waters reserved to the people	135. [Transferred]
40. Right to appropriate	140. Abandonment, forfeiture, and reversion of appropriations
50. Priority	145. Reservation of water
60. Existing rights	147. [Transferred]
65. Determination of existing rights	160. Preferred use
70. [Transferred]	160. Transfer and change of appropriations
80. Criteria for issuance of permit	170. Effect of recording
90. Preference in granting permits	175. Termination of permit for violation
100. Terms of permit	180. Crimes
110. Time for construction and completion	185. Appeals
120. Certificates	
130. [Transferred]	
133. Notices; objections	

Collateral references. — 78 Am. Jur. 2d, Waters, §§ 3, 51-58, 76-95, 146-163, 176-187, 195-222, 329-372.

93 C.J.S., Waters, §§ 157-205; 94 C.J.S., Waters, §§ 226-231.

Right to drain surface water into natural watercourse. 28 ALR 1262.

Rights and remedies as to chattels cast upon riparian land 41 ALR 1015.

Riparian rights in ponds by receding water of stream. 53 ALR 1156.

Constitutionality of statutes affecting riparian rights. 66 ALR 277.

Damages in eminent domain as affected by actual or potential value of riparian rights in connection with other property. 53 ALR 796.

Duty of lower land to receive surface water diverted to upper land by artificial conditions outside of both tracts. 72 ALR 344.

What constitutes natural drainway or watercourse for flow of surface water. 81 ALR 262.

Constitutionality of statutes relating to surface water. 85 ALR 461.

Right to injunction to protect water rights as affected by fact that party seeking injunction contemplates no immediate use of rights, or by doctrine of comparative injury. 106 ALR 687.

Liability of private persons or corporations draining into sewer maintained by municipality or other public body for damages to riparian owners or others. 107 ALR 1192.

Agreement in respect of water rights in stream as creating a mere personal obligation, covenant running with the land, or an easement. 127 ALR 835.

Obstruction or diversion of, or other interference with, flow of surface water as taking or damaging property within constitutional provision against taking or damaging without compensation. 128 ALR 1195.

Assignability and divisibility of easement in gross or license in respect of land or water. 130 ALR 1253.

Water as within term "minerals" in deed, lease, or license. 148 ALR 780.

Rights and duties of owners interfere with respect to upkeep and repair of water easement. 169 ALR 1147.

Liability, as regards surface waters, for raising surface level of land. 12 ALR2d 1338.

Liability for damages from obstruction of stream by debris or waste. 29 ALR2d 447.

Applicability of rules of accretion and

reliction so as to confer upon owner of island or bar in navigable stream title to additions. 54 ALR2d 643.

Liability for overflow of water confined or diverted for public water power purposes. 91 ALR3d 1065.

Modern status of rules governing interference with drainage of surface waters. 91 ALR3d 1193.

Sec. 46.15.030. Waters reserved to the people. Wherever occurring in a natural state, the waters are reserved to the people for common use and are subject to appropriation and beneficial use and to reservation of instream flows and levels of water, as provided in this chapter. (§ 1 ch 50 SLA 1966; am § 4 ch 84 SLA 1980)

Effect of amendments. — The 1980 amendment inserted "and to reservation of instream flows and levels of water" near the end of the section.

### NOTES TO DECISIONS

Pursuant to the Alaska Statehood Act, the Submerged Lands Act of 1953 applies to Alaska. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

Ownership and control of land under navigable waters. — The court takes judicial notice of the fact that Alaska lies westward of the 98th meridian. Thus, under federal law, ownership and control of the land under navigable waters is confirmed in the state. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

Ownership of ground and surface waters is to be determined according to

state law. Under the Alaska Constitution and state law, the right to use such waterways is placed in the people of the state. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

Purpose of easements along courses of major waterways is to provide a place for docks, campsites and such facilities to service those who are properly using the public waters. This purpose is apparently accommodated by the reservation of site easements under the order of the Secretary of the Interior. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

Collateral references. — Right of public to fish in stream notwithstanding objection by riparian owner. 47 ALR2d 381.

Right of public in shore of inland navigable lake between high- and low-water marks. 40 ALR3d 776.

Public rights of recreational boating, fishing, wading, or the like in inland stream the bed of which is privately owned. 6 ALR4th 1030.

Sec. 46.15.040. Right to appropriate. (a) A right to appropriate water can be acquired only as provided in this chapter. No right to the use of water either appropriated or unappropriated shall be acquired by adverse use or possession.

SECTION # 1

(b) A right to appropriate water shall be obtained by first making application to the commissioner for a permit to appropriate. The commissioner shall by regulation prescribe the form and contents of the application and the procedure for filing the application. If a permit is granted and the means of appropriation is constructed, a certificate of appropriation may be obtained.

(c) All applications to the commissioner for a permit to appropriate water, filed subsequent to July 1, 1966, shall be considered as having been simultaneously filed with the Department of Fish and Game under AS 16 and the Department of Environmental Conservation under AS 46.03. (§ 1 ch 50 SLA 1966; am § 6 ch 104 SLA 1971; am § 51 ch 71 SLA 1972)

Legislative history reports. — For report on ch. 71, SLA 1972 (HCSSB 383 am H), see 1972 House Journal, p. 898.

#### NOTES TO DECISIONS

Quoted in *Paug-Vik, Inc. v. Wards Cove Packing Co.*, Sup. Ct. Op. No. 2417 (File Nos. 6016, 6149), 633 P.2d 1015 (1981).

Collateral references. — Power of state to exact fee or require license for taking water from stream. 19 ALR 3; 29 ALR 1478.

Right of appropriator of water to recapture water which has escaped or is otherwise no longer within his immediate possession. 89 ALR 210.

Way by necessity where property is accessible by navigable water. 9 ALR2d 600.

Relative riparian or littoral rights respecting the removal of water from a

natural, private, nonnavigable lake. 54 ALR2d 1450.

Acquisition by adverse possession or use of public property held by governmental unit. 65 ALR2d 654.

Apportionment and division of area of river as between riparian tracts fronting on same bank, in absence of agreement or specification. 65 ALR2d 143.

Way by necessity where property is accessible by navigable water. 9 ALR3d 600.

**Sec. 46.15.050. Priority.** (a) Priority of appropriation gives prior right. Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of stream flow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire his water under the changed conditions.

(b) Priority of appropriation made under this chapter dates from the filing of an application with the commissioner.

(c) Priority of appropriation perfected before July 1, 1966, shall be determined as provided in AS 46.15.065. (§ 1 ch 50 SLA 1966; AS 46.15.130).

Revisor's notes. — Subsections (b) and (c) of this section were enacted as AS 46.15.130 (a) and (b) and were transferred by the revisor of statutes under the authority of AS 01.05.031.

In subsection (c), a reference to AS 46.15.066 was substituted for a reference to AS 46.15.135 to conform to the renumbering of that section by the revisor of statutes under AS 01.05.031.

Collateral references. — Right to hasten the flow and increase the volume of water in a stream by alterations or improvements in the bed. 9 ALR 1211.

Liability of one who diverts stream into new channel for overflow. 12 ALR 187.

Right of riparian owner to embank against flood or overflow water from stream. 22 ALR 956; 53 ALR 1180; 23 ALR2d 760.

Prescriptive right of lower as against upper owner to flow of stream. 53 ALR 201.

Extent of detention or retardation of water incident to riparian rights. 70 ALR 220.

Estoppel of one riparian owner to complain of diversion of water by another riparian owner. 74 ALR 1129.

Right of riparian landowners to continuance of artificial conditions established above or below their land. 88 ALR 130.

Appropriation of water as creating right, as against subsequent appropriator, to continue method or means of diversion. 121 ALR 1044.

Right of riparian owner to continuation of periodic and seasonal overflows from stream. 20 ALR2d 656.

Right of riparian owner to construct dikes, embankments, or other structures necessary to maintain or restore bank of stream or to prevent flood. 23 ALR2d 760.

Right to accretion built up from one tract of land and extending laterally in front of adjoining tract without being contiguous thereto. 61 ALR3d 1173.

Riparian owner's right to new land created by reliction or by accretion influenced by artificial condition not produced by such owner. 63 ALR3d 249.

**Sec. 46.15.060. Existing rights.** A water right acquired by law before July 1, 1966 or a beneficial use of water on July 1, 1966, or made within five years before July 1, 1966, or made in conjunction with works under construction on July 1, 1966, under a lawful common law or customary appropriation or use, is a lawful appropriation under this chapter. The appropriation is subject to applicable provisions of this chapter and rules and regulations adopted under this chapter. (§ 1 ch 50 SLA 1966)

#### NOTES TO DECISIONS

Quoted in *Paug-Vik, Inc. v. Wards Cove Packing Co.*, Sup. Ct. Op. No. 2417 (File Nos. 6016, 6149), 633 P.2d 1015 (1981).

Collateral references. — May paramount right of public to improve navigability of stream without compensating riparian owner for resulting damage be extended to improvements for

purpose not in aid of navigation. 18 ALR 403.

Character of easement in respect of water as one in gross or appurtenant. 89 ALR 1187.

**Sec. 46.15.065. Determination of existing rights.** (a) A claimant of an existing right under AS 46.15.060 shall file a declaration of appropriation with the commissioner as set out in this section. The declaration shall be considered correct until a certificate of appropria-

tion is issued or denied. Priority of such right dates from the day work was begun on the appropriation if due diligence was used in completing the work; otherwise, from the day water was applied for the beneficial use.

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

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

(2) publish notice of the order once a week for three weeks before the beginning of the period in a newspaper of general circulation in the affected area;

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

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

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

(e) A person aggrieved by the action of the commissioner may appeal to the superior court within 30 days of the date on which the action is final. (§ 1 ch 50 SLA 1966; AS 46.15.135)

Revisor's notes. — This section transferred by the revisor of statutes for formerly appeared as AS 46.15.135. It was more logical arrangement.

**Sec. 46.15.070. Notices; objections.**  
Transferred to AS 46.15.133.

Revisor's notes. — This section now transferred by the revisor of statutes for more appears as AS 46.15.133. It was trans- logical arrangement.

**Sec. 46.15.080. Criteria for issuance of permit.** (a) The commissioner shall issue a permit if he finds that

- (1) rights of a prior appropriator will not be unduly affected;
- (2) the proposed means of diversion or construction are adequate;
- (3) the proposed use of water is beneficial; and
- (4) the proposed appropriation is in the public interest.

(b) In determining the public interest, the commissioner shall consider

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

(2) the effect of the economic activity resulting from the proposed appropriation;

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

(4) the effect on public health;

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

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

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

(8) the effect upon access to navigable or public waters. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.090. Preference in granting permits.** When there are competing applications for water from the same source, and the source is insufficient to supply all applicants, the commissioner shall give preference first to public water supply and then to the use which alone or in combination with other foreseeable uses will constitute the most beneficial use. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.100. Terms of permit.** The commissioner may issue a permit for less than the amount of water requested, but in no case may he issue a permit for more water than can be beneficially used for the purposes stated in the application. He may require modification of plans and specifications for the appropriation. He may issue a permit subject to terms, conditions, restrictions, and limitations he considers necessary to protect the rights of others, and the public interest. However, the permit shall be subject to termination only as provided in this chapter. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.110. Time for construction and completion.** A permit may place a time limit for beginning construction and perfecting appropriation. Reasonable extensions of time shall be permitted for good cause shown. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.120. Certificates.** Upon completion of construction of the works and commencement of use of water, the permit holder shall notify the commissioner that he has perfected his appropriation. If the commissioner determines that the appropriation has been perfected in

(e) A person aggrieved by the action of the commissioner or by the failure of the commissioner to grant, deny, or condition an application in accordance with (c) of this section may appeal to the superior court.

(f) The commissioner may, by regulation, designate types of appropriations which are exempt from this section and provide simplified procedures for ruling on the applications. (§ 1 ch 50 SLA 1966; am § 6 ch 104 SLA 1971; am § 52 ch 71 SLA 1972; am §§ 5, 6 ch 84 SLA 1980; AS 46.15.070)

SECTIONS # 243

Revisor's notes. — This section formerly appeared as AS 46.15.070. It was transferred by the revisor of statutes for more logical arrangement.

Effect of amendments. — The 1980 amendment substituted "if the commissioner elects to hold hearings, within 180

days of receipt of the last objection" for "at the conclusion of the hearing" at the end of the second sentence of subsection (c), and inserted "or by the failure of the commissioner to grant, deny, or condition an application in accordance with (c) of this section" near the middle of subsection (e).

**Sec. 46.15.135. Determination of existing rights.**  
Transferred to AS 46.15.065.

Revisor's notes. — This section now appears as AS 46.15.065. It was transferred by the revisor of statutes for more logical arrangement.

**Sec. 46.15.140. Abandonment, forfeiture, and reversion of appropriations.** (a) The commissioner may declare an appropriation to be wholly or partially abandoned and revoke the certificate of appropriation if an appropriator, with intention to abandon, does not make beneficial use of all or a part of his appropriated water. An appropriation so forfeited and abandoned reverts to the state and the water becomes unappropriated water.

(b) The commissioner may declare an appropriation to be wholly or partially forfeited and shall revoke the certificate of appropriation if an appropriator voluntarily fails or neglects, without sufficient cause, to make use of all or a part of his appropriated water for a period of five successive years. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.145. Reservation of water.** (a) The state, an agency or a political subdivision of the state, an agency of the United States or a person may apply to the commissioner to reserve sufficient water to maintain a specified instream flow or level of water at a specified point on a stream or body of water, or in a specified part of a stream, throughout a year or for specified times, for

- (1) protection of fish and wildlife habitat, migration, and propagation;
- (2) recreation and park purposes;
- (3) navigation and transportation purposes; and
- (4) sanitary and water quality purposes.

(b) Upon receiving an application for a reservation under this section, the commissioner shall proceed in accordance with AS 46.15.133.

(c) The commissioner shall issue a certificate reserving the water applied for under this section if he finds that

(1) the rights of prior appropriators will not be affected by the reservation;

(2) the applicant has demonstrated that a need exists for the reservation;

(3) there is unappropriated water in the stream or body of water sufficient for the reservation; and

(4) the proposed reservation is in the public interest.

(d) After the issuance of a certificate reserving water, the water specified in the certificate shall be withdrawn from appropriation and the commissioner shall reject an application for a permit to appropriate the reserved water.

(e) A reservation under this section does not affect rights in existence on the date the certificate reserving water is issued.

(f) At least once each 10 years the commissioner shall review each reservation under this section to determine whether the purpose described in (a) of this section for which the certificate reserving water was issued and the findings described in (c) of this section still apply to the reservation. If the commissioner determines that the purpose or part or all of the findings no longer apply to the reservation, he may revoke or modify the certificate reserving the water in accordance with AS 46.15.140(b). (§ 7 ch 84 SLA 1980)

Revisor's notes. — In subsection (b), a reference to AS 46.15.133 was substituted for a reference to AS 46.15.070 to conform to the renumbering of that section by the revisor of statutes under AS 01.05.031.

Editor's notes. — As to declaration of legislative policy, see § 1, ch. 175, SLA 1980, in Temporary and Special Acts and Resolves.

**Sec. 46.15.147. Termination of permits.**  
Transferred to AS 46.15.175.

Revisor's notes. — As originally enacted, this section was designated AS 46.15.145 and was renumbered by the revisor of statutes. The section has been transferred to AS 46.15.175 by the revisor of statutes under the authority of AS 01.05.031.

**Sec. 46.15.150. Preferred use.** (a) An applicant who asserts and proves a preferred use shall be granted a permit and shall be granted preference over other appropriators. A preferred use of water is for a public water supply.

(b) To be entitled to a preference an applicant must show that his use will be prevented or substantially interfered with by a prior appropriation; the use is a preferred use; the applicant agrees to compensate a permit or certificate holder for the prior appropriation for any damages

sustained by the preferred use, and other information which the commissioner requires by regulation. (§ 1 ch 50 SLA 1966)

Collateral references. — Right to damages for the destruction of riparian owner's access to navigability by improvement of navigation. 21 ALR 206.

Right of riparian owner on navigable water to access to water. 89 ALR 1156.

Right of municipality, as riparian owner, to use of water for public supply. 141 ALR 639.

Liability for overflow of water confined or diverted for public water power purposes. 91 ALR3d 1035.

**Sec. 46.15.160. Transfer and change of appropriations.** (a) The right to use water under 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 supplied 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. A permit or certificate or a 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. (§ 1 ch 50 SLA 1966)

Collateral references. — Transfer of riparian right to use water to nonriparian land. 14 ALR 330; 54 ALR 1411.

Description of land conveyed by refer-

ence to river or stream as carrying to thread or center or only to bank thereof — modern status. 78 ALR3d 604.

**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 AS 46.15.160(b).

(b) A deed, lease, contract, assignment of permit or other instrument transferring an appropriation which is recorded under AS 46.15.160(b) is constructive notice of its contents to subsequent purchasers of the appropriation or any portion of it. An unrecorded instrument is valid between the parties to it and as against one who has actual notice of it. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.175. Termination of permit for violation.** (a) If the commissioner has reason to believe that a person who holds an appropriation permit under this chapter is wilfully violating or has wilfully

violated a term, condition, restriction or limitation of his permit, he may commence proceedings to terminate the appropriation permit under the Administrative Procedure Act (AS 44.62.330 — 44.62.630).

(b) When an appropriation permit is terminated under this section, the appropriation of water made by the permit reverts to the state and becomes unappropriated water. (§ 8 ch 175 SLA 1990; AS 46.15.145; AS 46.15.147)

Revisor's notes. — This section was originally enacted as AS 46.15.145 and was renumbered as AS 46.15.147 prior to its transfer to this section by the revisor of statutes under the authority of AS 01.05.031.

**Sec. 46.15.180. Crimes.** A person who constructs works for an appropriation, or diverts, impounds, withdraws or uses a significant amount of water from any source without a permit or certificate of appropriation; or a person who violates an order of the commissioner to cease and desist from preventing any water from moving to a person having a prior right to use the same; or who disobeys an order of the commissioner requiring him to take steps to cause the water to so move; or who fails or refuses to install meters, gauges or other measuring devices or control works; or who violates an order establishing corrective control works; or who violates an order establishing corrective controls for an area or for a source of water, or who knowingly makes a false or misleading statement in a declaration of existing rights, is guilty of a misdemeanor. Crimes under this section are in addition to any other crimes provided by law. (§ 1 ch 50 SLA 1966)

Cross references. — As to sentences for misdemeanors, see AS 12.55.135.

#### NOTES TO DECISIONS

Quoted in *G & A Contractors, Inc. v. Alaska Greenhouses, Inc.*, Sup. Ct. Op. No. 987 (File No. 1763), 517 P.2d 1379 (1974).

Collateral references. — Liability for damages to riparian owner by means adopted to protect bridge or other structure in or across stream at time of flood. 7 ALR 116.

Electrical energy, gas, water, heat,

power, etc., as subject of larceny. 113 ALR 1282.

Propriety of injunctive relief against diversion of water by municipal corporation or public utility. 42 ALR3d 426.

**Sec. 46.15.185. Appeals.** Appeals to the superior court under this chapter are subject to the provisions of the Administrative Procedure Act, AS 44.62.567 — 44.62.570. (§ 1 ch 50 SLA 1966)

### Article 3. Water Resources Board.

Section	Section
190. The Water Resources Board	220. Board meetings
200. Term of office	230. Public meetings
210. Duties of the board	240. Compensation of board members

Collateral references. — 78 Am. Jur. 2d, Waters, §§ 3, 76-81, 294.

**Sec. 46.15.190. The Water Resources Board.** There is created the Water Resources Board composed of seven members having a general knowledge of the use and requirements for use of the waters of the state and the conservation and protection thereof, and the commissioner of environmental conservation or his designee shall serve as an additional, ex officio member serving without a vote. The commissioner of natural resources shall act as the executive secretary of the board, and shall provide clerical staff for the board. Members of the board are appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. (§ 1 ch 50 SLA 1966; am § 1 ch 58 SLA 1972)

**Sec. 46.15.200. Term of office.** The term of office for members of the board is four years. The first members appointed serve as follows: two members serve for one year, three for two years and two for three years. If a vacancy occurs, the governor shall fill it by appointment for the unexpired term. The appointment shall be submitted to the legislature for confirmation at the next regular or special session. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.210. Duties of the board.** The board shall inform and advise the governor on all matters relating to the use and appropriation of water in the state, including, but not limited to: the effect and adequacy of all state laws and regulations governing the establishment of water rights, the multi-purpose uses of water, the prevention of pollution and the protection of fish and game, studies of the state's water supplies and plans for future requirements, development of water resources, participation of local governmental units in the management of water resources, lands which are or may be needed for dams, reservoirs, flood dams, flood ways, canals or ditches for the impoundment, storage, flow and control of waters. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.220. Board meetings.** The board shall hold one regular meeting annually at the state capital and one or more additional meetings at the time and place in the state the board selects for the transaction of business. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.230. Public meetings.** The board may hold and conduct public meetings at any time or any place in the state in order to obtain public opinion on a water use problem or proposal and it may, by majority vote of all members, formally or informally delivered, authorize one or more of its members to hold and conduct a public meeting. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.240. Compensation of board members.** Each member of the board is entitled to travel expenses and per diem as authorized for state boards by AS 39.20.180 while traveling to or from, or in attendance at, regular or special meetings or conferences authorized by the board. (§ 1 ch 50 SLA 1966)

#### Article 4. General Provisions.

Section  
250. Enforcement authority  
260. Definitions  
270. Short title

**Collateral references.** — 78 Am. Jur. 66-70, 83, 98-102, 111, 126-128, 138-140, 2d, Waters, §§ 32-42, 58, 108-116, 128, 127, 150-162, 194-205.  
140-145, 164, 170-175, 181, 187, 268-269, Periodical, seasonal, or intermittent stream as a watercourse. 40 ALR 839.  
297-308, 344, 345.  
93 C.J.S., Waters, §§ 31-40, 63-67,

**Sec. 46.15.250. Enforcement authority.** The following persons are peace officers of the state and they shall enforce this chapter:

- (1) a state employee authorized by the commissioner;
- (2) a police officer of the state. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.260. Definitions.** In this chapter, unless the context otherwise requires,

(1) "appropriate" means to divert, impound, or withdraw a quantity of water from a source of water, for a beneficial use or to reserve water in accordance with AS 46.15.145;

(2) "appropriation" means the diversion, impounding or withdrawal of a quantity of water from a source of water for a beneficial use or the reservation of water in accordance with AS 46.15.145;

(3) "beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, that is reasonable and consistent with the public interest, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, fish and shellfish processing, navigation and transportation, mining, power, public, sanitary, fish and wildlife, recreational uses, and maintenance of water quality;

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

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

(6) "commissioner" means the commissioner of natural resources;

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

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

(9) "mineral and medicinal water" means

(A) water of a hot spring or spring with curative properties which has been reserved by the federal government under Public Land Order No. 399; and

(B) geothermal fluid, as the term is defined in AS 41.06.060. (§ 1 ch 50 SLA 1966; am §§ 8-10 ch 84 SLA 1980; am §§ 10, 11 ch 175 SLA 1980)

SECTION #4

**Effect of amendments.** — The first 1980 amendment added "or to reserve water in accordance with AS 46.15.145" at the end of paragraph (1), added "or the reservation of water in accordance with AS 46.15.145" at the end of paragraph (2), inserted "fish and shellfish processing, navigation and transportation" near the middle of paragraph (3), and added "and maintenance of water quality" at the end of paragraph (3).

The second 1980 amendment substituted "subsurface" for "subsurfaces" near the middle of paragraph (5), and added paragraph (9).

**Editor's notes.** — As to declaration of legislative policy, see § 1, ch. 175, SLA 1980, in Temporary and Special Acts and Resolves.

**Sec. 46.15.270. Short title.** This chapter may be cited as the Alaska Water Use Act. (§ 1 ch 50 SLA 1966)

#### Chapter 25. Alaska State Commission of Oceanography.

Section  
10 — 50. (Repealed)

Secs. 46.25.010 — 46.25.050.  
Repealed by § 3 ch 115 SLA 1969.

**Editor's notes.** — The repealed sections derived from § 1, ch. 114, SLA 1967.

# Placer miner quits; cites EPA, lawsuits

By SAM BISHOP  
Staff Writer

In 1950, Don May arrived in the Central Mining District and began mining with a pick and shovel, making about \$1 an hour. He soon moved to Fairbanks and got a job.

Twenty-four years later, he started mining again, this time with a bulldozer and a bigger sluicebox. Since 1974, he has developed Polar Mining Inc. into one of the larger placer gold operations in Alaska. The company has worked mining claims in several locations.

May is about to lay off 10-12 employees, is trying to sell his D-10 Caterpillar and is in the middle of abandoning his 480 acres of claims on Crooked Creek northeast of Fairbanks.

Like other placer miners around the state, May said he feels he is being forced out of business by strict environmental regulations and costly lawsuits. He said he has a "good working relationship" with government agencies, but he finds the paperwork unmanageable and has difficulty keeping up with changing regulations.

This summer, he will start a new, family-size operation in the Alaska Range, where he hopes he can comply with the state and federal water quality regulations that have shut him down on Crooked Creek.

May read in the newspaper two weeks ago that he and 10 other placer miners were being put on notice by the federal Environmental Protection Agency. If they didn't meet water quality standards this summer they would face penalties of up to \$10,000 a day, the article said.

May spoke to EPA personnel last week and he said they apologized for letting their public affairs department get ahead of their legal department. He still does not have a copy of the order and doesn't know what form it will take.

He does know he can't afford to do much more to meet the EPA's water quality regulations this summer. So he's leaving.

"We're still trying to comply—that's why we're pulling out of the Central area. I know I can't do it," he said. He is switching the operation to a glacial moraine in the Alaska Range, a move he compares to "Custer's last stand."

"It's not very rich at all," he said. But the advantage is that the dis-



**DON MAY**  
*Moving to Alaska Range*

charge water from his mine will seep into the loose jumble of glacial rock without entering a creek. He hopes that will satisfy the regulations.

May is well-known among placer miners for his efforts to clean up the water from his Crooked Creek operation. He diverted the muddy water from his sluice boxes through numerous settling ponds, slowing the water down so that it took about 2½ days to travel a half mile. At one point, he routed the water across Crooked Creek through a 20-inch pipe and into more settling ponds on the other side before allowing it to escape into the stream.

When it returned to the creek, the water was usually slightly dirtier than it was when it entered May's sluicebox. Occasionally it was more than 10 times cleaner, depending upon the amount of water entering the system and the amount of sediment it carried originally.

Improving the water was made more difficult because approximately 20 other people mine upstream, May said. Sediment from their mines often ended up in his settling ponds.

"I still feel I'm completely innocent of whatever citation they bring against us," he said.

May kept accurate records of the silt in the water leaving his mine and submitted them to EPA.

"We felt we were meeting the standards," he said.

# Give Alaska miners realistic regulations

*distributed  
By Senator  
Fabienkamp*

If ever there were a political and environmental issue that should see the dawn of common sense and compromise, it is the ongoing fuss over state water quality regulation of placer mining.

Now, here is a relatively small, seasonal industry that has seen a renaissance in recent years with higher gold prices. Placer mining contributes about 2,200 jobs and \$160 million yearly to the state's economy. It's no Prudhoe Bay, but jobs immune from sliding oil prices are worth an effort to preserve.

Also, larger mining concerns that someday could make more substantial contributions to Alaska employment watch how the state treats placer miners as a kind of barometer of how they may be treated.

The problem is that water quality standards set by the state Department of Environmental Conservation and enforced, under terms of the federal Clean Water Act, by the Environmental Protection Agency, are almost impossible for placer miners to meet. A 1984 study by Shannon and Wilson Inc., commissioned by DEC, says as much: "Alaska water quality standards regarding turbidity are not attainable by any demonstrated or widely used mining practice . . . attainable levels are at least two orders of magnitude above current standards."

Miners argue the standards are appropriate for municipal water treatment plants but not generally applied across vast stretches of Alaska. If they are really enforced, the effect will be to shut down this industry.

This is a shame, because it clouds real progress that DEC and other state agencies are making in working with placer miners, particularly in the innovative and successful new



**tim bradner**

technology grant program, aimed at improving water quality and gold recovery. But if new technology can't approach the standards, it is of uncertain value.

If there's blame to be laid for this public policy quagmire, it can be spread in many directions. Miners themselves helped precipitate the situation through the practices of a few sloppy operators that soured relations for all placer miners with the public and agencies. But the agencies deserve some poor marks for first not enforcing water quality laws, then apparently over-reacting in setting and enforcing standards that may be unrealistic.

This is bad government, for many reasons. First, impossible standards breed selective enforcement. Agencies say they want a "big stick" to go after bad operators, but laws that are universal should be universally and fairly enforced. Secondly, the system encouraged distrust and non-cooperation, rather than confidence and good relations, between miners and the regulators. For example, DEC and EPA don't have resources to monitor all mining operations. They rely largely on miners to do sampling themselves, then supply the data. But because the standards can't be met, fines and penalties are the result. This sets

See Page J-10, BRADNER

## BRADNER: Miners need realistic water standards

Continued from Page J-1

up an incentive, in the future, for fiddling with the data. A solution is realistic standards and a trustful relationship on both sides.

But worst is that environmental rules that appear to have little basis in sound policy or good science can result, in the long run, in the undermining of public confidence in the agency and its procedures.

Alaska's regulations are modeled on municipal drinking water standards and techniques of measurement in urban water treatment plants, and are impractical when applied generally across Alaska. Most streams or rivers, in their natural state, would meet the standard.

The most difficult is the "turbidity" limit, a measurement of cloudiness of water. The Yukon River and its tributaries would measure 10 to 20 times the limit required of miners. The bizarre outcome of this is that most placer operators are required to put water back into a stream cleaner than when they took it out. The federal EPA has no turbidity requirement. It is a state standard.

The state's other standard is a limit on "settleable solids," or the amount of large soil particles in water coming from a settling pond. This standard is strict, but it might be attainable, some miners say. But combined with turbidity, it is impossible.

Last year, the EPA proposed a more flexible limit for settleable solids that miners felt they could meet. But the state adopted a very tight, inflexible standard. EPA was then required, under the Clean Water Act, to revise its own limit to match the state.

There ought to be room for negotiation and reasonable compromise in this. If state requirements are more strict than EPA's, there should be a good reason. A gripe by the miners, quite legitimate, is that the reasons for this tightening never have been spelled out. The change was made without a public hearing process, which is the procedure that requires agencies to lay out their reasoning and factual basis before the public, to allow critical scrutiny and the presentation of conflicting evidence.

And, what's the purpose? To protect fish downstream? Fair enough, but the fact that the Yukon River, which doesn't meet the turbidity standard, supports great fish populations would seem to undercut this reason.

If Gov. Sheffield wants to facilitate resolution to environmental problems facing miners, as he says he does, this is a good place to start. Unlike many issues caught in the web of state-federal relationships, this one is almost entirely under his control.

Miners would like a somewhat more flexible system like that proposed by EPA. The state's current standards, particularly turbidity, should be goals toward which industry, with improving technology, could work. Miners have proposed a "blue ribbon" task force of agency heads, scientists, miners, environmental groups and other affected parties, to look at this.

The governor should consider it. It isn't often that a complex, controversial policy issue can be resolved like this one could be. But a solution will take the kind of cooperation and clear thinking that can only come through communication and trust.

Tim Bradner writes for an Alaska economic reporting service.

u/c

W

#2  
COGHILL

A M E N D M E N T

Offered in the SENATE

TO: SCS CS HB 627 (Resources)

Page 1, line 18

after "WATER", delete through line 22.

after "WATER" insert "(a) When considering the quality of appropriated water and establishing regulations for the quality of appropriated water, the commissioner may require a person who appropriates water to meet a standard that is equal but not higher than a standard attainable through the application of best practicable and economically sustainable technology associated with the particular use.

(b) The commissioner may not require a higher discharge quality standard for appropriated water than the quality of water received for use.

Trying to put back milk miller  
orig language  
take Com. of D. Ec. out of loop.

HB 623

THE PROPOSED AMENDMENT WAS OFFERED IN SENATE  
RESOURCES COMMITTEE. IT WAS DISCUSSED AT SOME  
LENGTH AND <sup>not adopted</sup> REJECTED.

THE RELUCTANCE OF THIS BODY TO AGREE TO THIS  
AMENDMENT IS WHY SB 460, WHICH THIS BODY HAD  
PASSED UNANIMOUSLY, HAS NOT MOVED OUT OF THE  
HOUSE SPECIAL COMMITTEE ON FISHERIES.

THIS BILL DOES NOTHING TO LOWER WATER QUALITY  
STANDARDS. WHAT IT DOES DO IS TARGET  
ENFORCEMENT ON THOSE WHO ARE ACTUALLY MAKING  
THE WATER WORSE. THIS BILL REQUIRES IS THAT  
YOU CAN NOT REQUIRE PEOPLE TO DISCHARGE WATER  
CLEANER THEN IT WAS WHEN THEY RECEIVED IT.

IF SOMEONE UPSTREAM IS HARMING WATER QUALITY,  
THIS BILL WOULD REQUIRE ENFORCEMENT AGAINST  
THAT PERSON BEFORE ENFORCEMENT ACTION COULD BE  
TAKEN AGAINST A DOWNSTREAM MINER WHO MIGHT NOT  
BE MEETING WATER QUALITY STANDARDS BUT IS NOT  
MAKING THE WATER QUALITY ANY WORSE.

THIS AMENDMENT WOULD EFFECTIVELY NEUTER THE  
BILL. IF THE BODY WANTS TO DO THAT I WILL  
LEAVE IT TO YOUR DISCRETION, BUT I WOULD POINT  
OUT THE MINERS HAVE SAID THEY ARE AWARE OF THE  
RISKS OF THIS BILL AND FULLY SUPPORT IT  
UNAMENDED. WITH THE AMENDMENT, THE BILL  
DOESN'T DO ANYTHING.

The language in HB 627, Sections 1 through 3, is as close as possible to draft under HB 627's title. The two differences are that the HB 627 language (4/29/86 draft) deals only with appropriated water and does not specifically mention placer miners.

Both DEC and EPA have said that the passage of the language contained in SB 460 or HB 627 would probably force the state to waive its opportunity to certify federal permits. Both agencies felt that this would make conditions more difficult for miners rather than easier. This possibility has been discussed extensively with representatives of the miners.

A series of letters from the miners and a letter from the EPA are in front of each member.

A repealer for sections 1 - 3 is contained in section 8 of the bill to handle the possibility of these sections being a legal bar to takeover of the federal clean water (402) program. This repealer would become effective on the date the state takes over.

4-13  
##

SENATE AMENDMENT

By Senator Ray

To: \_\_\_\_\_ SENATE BILL No. \_\_\_\_\_

To: \_\_\_\_\_ SCS CS HOUSE BILL No. 627(Res)

PAGE: \_\_\_\_\_ LINE: \_\_\_\_\_

*This is the same amendment the Senate Resources*

Page 1: Delete lines 8 through 22 and replace with the following:

\* Section 1. AS 16.05.050 is amended by adding new subsections to read:

(b) The commissioner may not require a higher discharge quality for appropriated water used in placer mining than the natural background condition.

(c) In this section "natural background condition" means those conditions, physical, chemical, biological or radiological, which exist(ed) in a water before any man-induced discharge into the water or any activity of man resulting in addition of material into the water.

\*Sec. 2. AS 38.05.020 is amended by adding a new subsection to read:

(c) The commissioner may not require a higher discharge quality for appropriated water used in placer mining than the natural background condition.

(d) In this section "natural background condition" means those conditions, physical, chemical, biological or radiological, which exist(ed) in a water before any man-induced discharge into the water or any activity of man resulting in addition of material into the water.

\*Sec. 3. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.892. REGULATION OF APPROPRIATED-WATER. When enforcing the law or regulations for the quality of appropriated water used in placer mining, the commissioner may not require a higher discharge quality for appropriated water than the natural background condition.

(b) In this section "natural background condition" means those conditions, physical, chemical, biological or radiological, which exist(ed) in a water before any man-induced discharge into the water or any activity of man resulting in addition of material into the water.

*Committee specifically rejected.*  
*I would oppose it but not too strongly.*  
*ME*

## PLACER MINING AND ITS BEDFELLOWS

"Alaska is where a man feels free to destroy an entire valley by placer mining...in order to extract one pea butter jar full of gold dust"... (Edward Abbey, *Beyond the Wall*)

It's outrageous and it's illegal, but there may finally be a clean up of an industry that for too long has been out of control.

Several months ago, the Environmental Protection Agency took action against a few obstinate placer miners whose impacts to land and water, coupled with their contempt for the law demanded, intervention.

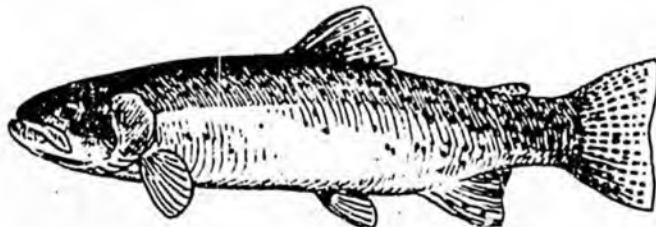
At about the same time, the federal court issued a decision in favor of plaintiffs in a case filed by environmental organizations against the Park Service and BLM for failure to follow their own agency regulations in regulating errant placer miners operating on federal lands.

Efforts by the Alaska Department of Fish and Game and the Department of Environmental Conservation to improve placer operations have been valiant, despite enormous political opposition and reduced budgets for habitat and water quality divisions of these agencies.

And yet on the horizon, the Alaska Legislature is preparing to crush these state agencies to protect the avaricious interests of a miniscule minority of placer miners, many of whom are not even residents of the state. Arliss Sturgulewski, Bettye Fahrenkamp, and Don Pett want to give away the remaining clean water to be found in the state prior to be transformed into a sea of mud. Sturgulewski has introduced a new "Dirty Water Act" (SB 460) which would allow the appropriation of water by placer miners so ADF&G and ADEC won't be able to hassle rogue miners for mucking up public resources. Of course Sturgulewski's bill is completely contrary to federal environmental regulations, but why should the bill's sponsors care? It makes good press. Right?

Maybe other Alaskans care. Maybe Alaskans don't want to find their fishing streams obliterated and their wildlife run off by a D8 Cat. Maybe villages are tired of seeing their drinking water made unpotable by the placer activities 100 miles upstream. Maybe tourists don't want to travel to a state that allows the landscape to be turned into a tortured ooze. Maybe we shouldn't vote for people who support the ruin of our state and its reputation.

It is no coincidence that authors Abbey, McPhee, and McGinniss have all emphasized the Alaskan way of doing business. Maybe it's time for Alaska to discard the idea that miners be given a special privilege to violate the law, destroy fish and wildlife, and degrade public resources just because it is "colorful, macho, and individualistic". It is, in fact, just plain wrong.



# How the Alaska Legislature Voted

## on Conservation and the Environment

1983-84  
Voting Chart



Alaska  
Environmental  
Lobby

JANE Gintan  
~~789-7432~~ Ed.

586-6862

115 Troy Ave

- 99801

MARY Lou King  
789-7540 - <sup>24th</sup> Lower  
Dun on Kately

Dick ERMAN  
789-2481



# Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801

907-586-2345

The ALASKA ENVIRONMENTAL LOBBY, INC. (AEL), a coalition of Alaskan conservation and environmental groups, was formed in 1980 to present a unified conservation voice to the Alaska legislature. The AEL is a non-profit corporation with member organizations representing over 4000 Alaskans. The AEL does not endorse candidates nor does it donate money to political campaigns. These voting records are provided for information purposes only.

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Jay Nelson  
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Many volunteers assisted in the production of this voting chart. We would like to recognize Sue Libenson, Tina Derrick, Becky McGee and especially Theresa Armetta. We would also like to thank Marty Peale for the cover design, and Sara Shulsinger, Brian Allen and an anonymous reviewer for assistance in editing portions of this document. Additional copies of this document may be obtained at a price of \$4.00 each from the AEL office in Juneau.

This document was compiled under contract to the Alaska Environmental Action Committee, Box 10-1177, Anchorage, Alaska 99510.

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## Explanation of Scores

Votes we consider pro-environmental are designated by a plus sign (+), and votes we consider anti-environmental are designated by a minus sign (-). Each Alaska legislator is given a score based on the votes shown. To compute the score, divide the number of positive votes by the total number of votes, ignoring absences. Excused absences are designated by an "E" while unexcused absences are designated by an "A". Use of a slash (/) indicates that a member was not in office at the time of the vote. The number designation for each vote corresponds to a short narrative description of that vote.

## Explanation of Votes

We chose these votes to reflect a cross section of environmental concerns during the 1983-1984 Alaska legislature. All are recorded votes taken on the House and Senate floors. The selection of possible votes is limited by the available issues. Frequently because of the small number of legislators, particularly in the 20 member Senate, deals are cut prior to the final vote. Thus, many bills pass with unanimous or near unanimous votes, limiting the usefulness of that particular vote for our purposes. It is very important to remember that specific floor votes are only one element of a legislator's record. For example, several Senators threatened to derail and kill the Smoking Bill (HB-84). The final Senate vote was 19 - 0. That vote did not fairly reflect individual ideological positions. However, we feel that the aggregate AEL score for each legislator substantially reflects that person's concern for quality of the Alaskan environment.

## HOUSE VOTE DESCRIPTIONS

1 SMOKING LEGISLATION The Smoking in Public Places Bill (HB-84) represents a strong policy to protect the rights of non-smokers to breathe clean air. Under this law, public buildings are required to provide smoke-free areas for the public and for state employees. Private businesses generally have the legal option of declaring their premises non-smoking if they so desire. Restaurants with a seating capacity of greater than 50 must provide a non-smoking area for those requesting it.

This bill passed the legislature and was signed by the governor. The House floor vote was 32 - 8. The preferred vote is YES, indicated by a +.

2 POLITICAL CONTRIBUTION PROGRAM REPEAL Presently under Alaska law, individual campaign donations of \$100 or less to political candidates, parties, or political action committees (PAC's) are directly reimbursed by the state. HB-89 would have repealed that program. The program has been very successful in involving thousands of Alaskans in the political process and, unlike most state loans and grants, everyone may participate. Although there is widespread recognition that some modifications to the program could be made, the program's elimination clearly runs counter to the public interest.

This bill passed the House 22 - 15, but was defeated in a Senate floor procedural vote. The preferred vote is NO, indicated by a +. Although the law is still on

the books, the \$2 million to fund this citizen program was deleted from the \$3.3 billion dollar budget.

3 HOMESTEADING HB-130 creates a new land disposal program, one with that seductive name left over from the last century. The sponsor's stated goal was to create an "Oklahoma style" land rush. Several improving amendments were added to the bill. However, in its attempt to give away state land, this legislation largely ignores the substantial costs, both present and future, to the state. Also, it sells an incorrect impression to Alaskans -- that this land is free. In fact, to "prove up" a homestead will require thousands of dollars in surveying, transportation, and construction costs. This is no poor peoples program. At a time when huge amounts of private land are on the market in many localities it is time for a reassessment of Alaska land policies, not an expansion.

The preferred vote is NO, indicated by a +. The final House floor vote was 21 - 13. This legislation was signed into law in 1983.

4 LATOUCHE ISLAND HARBOR REAPPROPRIATION During the 1982 legislative session, money was appropriated to build a harbor facility on the virtually uninhabited Prince William Sound island of LaTouche. Coincidentally a politically well-connected land developer was subdividing and selling parcels on that same island. Existing Prince William Sound communities were understandably angry at the appropriation since their existing harbor space was grossly inadequate. In 1983, appropriations bill HB-309 included an amendment to delete the LaTouche Island money and divert it to underfunded education programs.

The preferred vote on the amendment is YES, indicated by a +. In 1983, the governor redirected the LaTouche harbor funds to other more useful projects.

5 TANANA VALLEY STATE FOREST A wide spectrum of interest groups including environmentalists, loggers and miners supported this state forest bill (SB-108) sponsored by Sen. Fahrenkamp. Each group had its own reasons for supporting creation of a large forest near Fairbanks. However, these state forest lands will be protected from further land disposals, and resources such as water and wildlife habitat will be given appropriate consideration, along with their other potential uses. Opposition to this legislation came from those who feel the state should dispose of most of its lands, and no reserve lands for valid public purposes.

This bill passed and was signed by the Governor in 1983. The House floor vote was 29 - 10. The preferred vote on the bill is YES, indicated by a +.

6 STATE MARINE PARKS The main accomplishment of this legislation was to create and protect a dozen key, but very small, parcels of beachside land in Southeast Alaska and Prince William Sound for future Alaskans. This marine park system will likely be expanded in the future to provide additional water accessible recreation for the public. The culmination of several years' effort, SB-128 (Sen. Vic Fischer) represents a much compromised version of the original bill. All controversial parcels were excluded from the bill; nevertheless SB-128 still encountered considerable opposition from those philosophically opposed to public lands.

This bill passed and was signed by the Governor in 1983. The House floor vote was 30-10. The preferred vote on this bill is YES, indicated by a +.

7 REGIONAL RESOURCE DEVELOPMENT AUTHORITIES (RRDA) The state of Alaska presently has the largest public debt per capita of any state. Much of this debt is in the form of bonds issued by public corporations. SB-151 will allow for the establishment of 9 additional regional bonding authorities, each with the power to issue revenue bonds.

Each of these authorities will have a powerful political constituency geared to pursue development projects through both bonding and direct state appropriations. Additionally, because of the quasi-governmental nature of these authorities, the State of Alaska will be practically obligated to bail them out if the projects are not successful. To fail to do so would endanger the state's own bond rating.

This bill passed the House 29 - 11, and was eventually signed into law. The preferred vote is NO, indicated by a +.

8 PERMIT REFORM The State of Alaska through the legislature has stipulated the need for permits for actions such as bridging streams, filling wetlands, disturbing beaches and so forth. These permits are designed to protect state and local interests, as well as the environment. Permit Reform (HB-14) represents the oil industry's annual attempt to "gut" this permitting process, without concern for public health and safety.

In the last two years, Governor Sheffield has successfully implemented a package of administrative reforms designed to relieve legitimate industry complaints of red tape and permit delays. For this reason and because of stout opposition by environmentalists and local governments, the oil industry's annual attempt at enacting permits-on-demand legislation failed on the House floor 20 - 19. (Passage requires 21 votes.) The preferred vote is NO, indicated by a +.

9 INVESTMENT TAX CREDIT HB-258 will give hundreds of millions of dollars in tax breaks to subsidize mineral development projects. This pet bill of House Speaker, Joe Hayes, will allow mineral companies to apply their development costs against any tax liability -- up to \$250 million. in addition to the possible tax free bond packages newly available to the Regional Resource Development Authorities (HV #7).

The final floor vote was 26 - 14. The Governor signed this legislation. The preferred vote is NO, indicated by a +.

10 ATTORNEY FEES/PUBLIC INTEREST LAWSUITS The circumstances surrounding the introduction of HB-445 relate to an environmental lawsuit in which a southeast environmental group lost a specific lawsuit. The Alaska courts declared that it is in the public interest to encourage public interest lawsuits, and therefore the environmental group did not have to pay the winning defendants attorney's fees. The court ruling was based on several criteria for determining whether a lawsuit is truly in the public interest.

HB-445 sought to overrule the court's decision. The bill's possible chilling effect on public interest lawsuits would have been to severely restrict environmental or other public interest litigation.

Environmental organizations led a coalition of groups to defeat this legislation in a close vote on the House floor 17 - 21. A later, almost identical bill was similarly defeated. The preferred vote is NO, indicated by a +.

11 AGRICULTURAL RIGHTS TO LAND Over the last few years, the state has dis-osed of the agricultural rights to hundreds of thousands of acres of land, while retaining all development rights. This policy is designed to ensure that agricultural land stays in agricultural production. For this reason state agricultural land has been very cheap to purchase, but the farmer can only use the land for one thing - farming.

Now, many would like to change the rules and sell -- at low cost -- the full rights to that land, a case of changing the rules in the middle of the game. Dubbed the "Condo Farming Act", HB-458, actually passed the House floor. However, the key vote was amendment #5 which would have absolutely prohibited subsequent subdivision of farming lands -- thus retaining this valuable resource for future agricultural production.

Amendment #5 was defeated on the House floor 17 - 23. The preferred vote is YES, indicated by a +.

12 ALASKA RAILROAD MANAGEMENT With many thousands of acres of state land under its control, as well as access to additional state lands through expansion, the Alaska Railroad (ARR) has become a major land manager in Alaska. The ARR management bill (HB-512) makes one thing very clear. The board of directors has one primary goal -- to make money. The ARR Board will be making major decisions affecting Alaska and its development.

The board members who are running the corporation are appointed by the Governor. Board seats are designated for those with extensive transportation and financial experience. This vote concerns a floor amendment that would have fixed one slot on the board of directors for a person "with no direct or indirect financial interest in the transportation industry." This board seat could have then been available for a consumer/environmental advocate.

A vote for this amendment would have insured that average Alaskans would have had a voice in ARR management. The preferred vote is YES, indicated by a +. The amendment was defeated 16 - 23.

13 SUSITNA BLACKMAIL CLAUSE REPEAL Four years ago backers of the Susitna dam project succeeded in inserting a provision into law to require \$5 billion to be spent on Susitna -- or the rates on all other state hydro-projects would skyrocket. This provision is bad public policy, not only because it puts these other projects under a cloud, but because it assumes that Susitna is the best railbelt power option and is financially feasible. Both assumptions are highly suspect. This legislation (HB-589), as it originally passed the House, related to the Alaska Power Authority and specifically eliminated the Susitna blackmail clause.

The preferred vote on this bill is YES, indicated by a +.

14 WATERFOWL CONSERVATION STAMP The so-called Duck Stamp bill (SB-278) closely parallels the federal Duck Stamp program that has been responsible for raising millions of dollars for wetlands acquisition. Money from the state program will be used for research, public education, and other activities designed to enhance state management of Alaskan waterfowl. Purchase of this \$5 stamp will be required of all Alaska waterfowl hunters. (Actually some areas can be exempted by regulation.) In practice, most of the money raised by this program will be obtained through sales of the art prints produced along with these stamps. Other states' experience indicates that up to three quarters of the revenue generated from this program will come from the sale of art prints to collectors. However, one element required to insure the value of the prints will be that the program must be mandatory. The Zharoff/Ward amendment would have made purchase of the Duck Stamp optional, in spite of the fact that not one person or group testified in opposition to a mandatory stamp.

The amendment was defeated on the House floor 10 - 26. The preferred vote is NO, indicated by a +. This bill was signed into law by the Governor.

15 HUNTING IN STATE PARKS In response to frustration on the part of some hunters Senator Bennett (R-Fairbanks) introduced this bill (SB-289) opening up hundreds of thousands of acres of parklands to hunting. Most of the concern of hunters centered on the two biggest state parks, Denali and Chugach, but this sweeping bill actually opens a dozen parks to hunting. This meat ax approach changes long standing policy on some parks, including the Anchorage urban park, Chugach State Park.

The vote that most clearly shows legislators' views on this issue concerns an amendment by Representative Goll (D-Haines) to delete from the bill the Chilkat State Bald Eagle Preserve in Haines. That preserve, only two years old, was set aside to protect the largest concentration of bald eagles in the world. It is increasingly a major fall tourist attraction and many felt hunting was an inappropriate use of this Alaskan treasure.

The amendment passed 21 - 13. The amended bill was passed and signed by Governor Sheffield in 1984. The preferred vote on the amendment is YES, indicated by a +.

16 KNIK ARM CROSSING/TOLL COLLECTION AUTHORITY In a classic case of "log rolling" the legislature rolled two distinct bills into one package to gain support for passage. One bill authorizes the state to sell revenue bonds for toll facilities and mandates the Knik Arm Crossing to be financed first. The second bill vastly expands the purpose of the Alaska Industrial Development Authority and allows it to sell bonds for facilities that it will own and operate.

Neither bill could garner sufficient support alone, so two bills were packaged together. The bill, SB-347, raises serious legal questions for violation of a constitutional provision that mandates an allowance of only one subject per bill. This provision was meant to prevent the "Christmas tree" approach to passing legislation. Both aspects of the legislation hold numerous unanswered questions that should have been discussed and voted upon in public debate. Clearly, neither bill could stand on its own merits.

The final House floor vote was 26 - 1. The preferred vote is NO, indicated by a +. Governor Sheffield signed this legislation in 1984.

17 ALASKA RAILROAD ACQUISITION The purchase of the Alaska Railroad (ARR) represents a vote for maintaining this environmentally sound transportation system. In future surface transportation expansions, the ARR will be the environmentally preferred transportation alternative. An attempt was made to tie purchase of the ARR to a constitutional amendment requiring separation of railroad management from all aspects of state government. This provision could have been a disaster for public interest and environmental concerns making the ARR board virtually immune to public input on all issues, including land acquisitions, railroad expansions, and herbicide spraying.

The Clocksin (D-Anchorage) amendment to eliminate the tie between the ARR purchase and the constitutional amendment was defeated 19 - 21. The preferred vote on this amendment is YES, indicated by a +. The Senate eventually voted to eliminate the constitutional provision. The ARR purchase bill was passed and signed by the Governor.

18 HEALTH HAZARD ABATEMENT PROGRAM The health hazards of asbestos in Alaska's schools have recently been a topic of much discussion. In response to this grave indoor pollution health problem, SB-373, setting up a program for removal of asbestos from schools was introduced and passed the Senate unanimously.

In the House this essential legislation was held up in the Health, Education & Social Services Committee chaired by Representative Tischer (R-Anchorage). A procedural vote to bring this important bill to the House floor was defeated 17 - 23. The preferred vote is YES, indicated by a +. The bill never left Rep. Tischer's committee.

19 POWER COST ASSISTANCE For the past few years the State of Alaska has provided partial electric rate subsidies to bush areas to mitigate the high costs -- as high as \$.45 per kilowatt hour in some villages. At the same time the state has vigorously pursued alternative options and encouraged conservation.

Now the Power Cost Assistance program has been radically changed in SB-376. Rural residents under this legislation are to pay no more than the average of Anchorage, Fairbanks, and Juneau power rates. While everyone agrees that bush residents deserve a piece of the oil wealth pie, this bill clearly goes in the wrong direction. Electrical consumption is presently low in rural areas, but will almost certainly rise dramatically. The subsidy -- \$50 million appropriated for this year -- is designed to continue indefinitely. When the oil pool runs dry, however, rural electric rates will skyrocket.

This bill will eventually cause bush residents even greater hardships. It does nothing to solve the long-term problems of high cost rural power and, in fact, is counterproductive to a solution of that problem as it lulls rural people into thinking electric power is cheap.

This bill passed on the floor 24 - 16. Politically it was a trade-off for the rural politicians' support of the Susitna dam (SB-411). The preferred vote on this bill NO, indicated by a +.

20 WATER POLLUTION ABATEMENT This misnamed bill was actually an attempt to reduce clean water classifications for many of Alaska's streams and was in direct conflict

with the federal Clean Water Act. Lower water classifications from the present "drinking water" standard down to "industrial use" will allow Alaska's placer miners to pollute streams and still operate legally. Allied against these 400 miners on this legislation were sportsmen's groups, rural residents, the League of Women Voters, environmental groups, and everyone concerned about clean water in Alaska. This bill represents a crystal clear case of special interest legislation.

The bill was defeated on a House vote 18 - 20. The preferred vote is NO, indicated by a +.

21 SUSITNA APPROPRIATIONS Backers of the Susitna dam hydro project have worked mightily to insure the birth of their \$15 billion baby. Their first attempt to codify the Susitna boondoggle came with the famous "Susitna blackmail clause" (see Vote 13). Appropriation bill SB-409 automatically appropriates \$200 million to Susitna each year on July 1. \$200 million for Susitna this year makes political, if not economic, sense. But the provision to make this a continuing appropriation is constitutionally questionable. Even Governor Sheffield, in signing off on the amendment, speculated that this provision possibly violates the constitutional prohibition against legislatively dedicated funds.

The vote on the \$200 million came as an amendment by Representative Barnes (R-Anchorage). The amendment passed was adopted 22 - 18. The preferred vote on this amendment is NO, indicated by a +.

22 PLACER MINING GRANT PROGRAM Alaska is becoming famous for providing low cost loans and outright grants to one group or another. HB-461 sets up two new grant programs specifically for placer miners, a small but unarguably politically powerful group. Grants of up to \$100,000 are available to placer miners for the development of technology to increase gold recovery in placer mining. In addition, grants of up to \$100,000 are available to placer miners for the development of technology to reduce water consumption in placer mining. The reason for the first grant program is something of a mystery since presumably there presently exists a sufficient incentive to gold miners to retrieve gold. The second more acceptable grant program is intended to reduce water use and hence, water pollution. Placer mining water pollution is a serious problem in Interior Alaska.

The bill passed 26 - 14 with an odd mix of politicians in opposition questioning the value of this \$4 million subsidy for a select few people now violating water quality standards. The preferred vote on this bill is NO, indicated by a +. Governor Sheffield signed this bill into law in 1984.

Representative	<div style="display: flex; justify-content: space-between; text-align: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">SMOKING LEGISLATION</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">CONTRIBUTION REPEAL</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">HOMESTEADING</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">LATOCHE REAPPROPRIATION</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">TANANA STATE FOREST</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">STATE MARINE PARKS</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">RRDA'S</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">PERMIT REFORM</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">INVESTMENT TAX CREDIT</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">ATTORNEY FEES</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">AGRICULTURE</div> </div>										
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Abood	-	-	-	-	-	+	-	-	-	-	-
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Barnes	-	-	-	-	-	-	-	-	-	-	-
Bettisworth	+	-	E	-	+	-	-	-	-	-	-
Bussell	+	-	-	-	-	-	-	-	-	-	-
Cato	-	-	E	+	+	+	-	+	-	-	-
Clocks in	+	+	+	+	+	+	+	+	+	+	+
Cowdery	+	-	-	-	-	+	-	-	-	-	-
Davis	+	+	+	+	+	+	+	+	+	+	+
Duncan	+	+	+	+	+	+	-	+	+	+	+
Flood	+	-	E	-	+	+	-	+	+	+	+
Fritz	+	-	-	+	+	+	+	-	-	-	-
Fuller	-	-	-	-	+	-	-	+	-	+	+
Furnace	+	-	-	-	-	-	-	-	-	-	-
Goll	+	+	+	+	+	+	+	+	+	+	+
Grussendorf	+	+	+	-	+	-	-	-	-	+	-
Hayes	+	-	-	-	-	+	-	-	-	E	-
Herrmann	+	+	+	+	+	+	-	+	+	+	-
Hurlbert	-	-	+	-	+	+	-	+	-	-	-
Koponen	+	+	+	+	+	+	-	+	+	+	+
Lacher	+	-	-	+	+	+	+	+	+	+	+
Larson	+	+	-	+	+	+	+	+	+	+	+
Lindauer	+	-	-	-	+	+	-	-	-	+	+
Liska	-	-	-	+	-	+	-	-	-	-	-
Malone	+	+	+	+	+	+	+	+	+	+	+
Martin	+	-	E	-	+	+	-	-	-	-	+
McBride	+	+	+	+	+	+	-	/	/	+	/
Miller (D)	+	+	+	+	+	+	+	+	+	+	+
Miller (R)	+	-	-	-	+	+	-	-	-	-	-
Pestinger	+	-	-	-	+	+	-	-	-	-	-
Phillips	+	+	-	+	+	+	+	+	+	+	+
Ringstad	+	-	-	-	+	+	-	-	-	-	-
Shultz	+	+	-	-	+	-	-	-	-	-	-
Sund	/	/	/	/	/	/	/	+	-	/	+
Szymanski	+	+	-	+	+	+	+	-	-	+	-
Tischer	-	-	-	-	-	-	+	-	-	-	-
Uehling	+	-	-	+	A	+	-	-	-	+	-
Vaska	+	+	+	+	-	+	-	+	+	+	+
Ward	+	-	-	E	+	+	-	-	-	-	-
Wendte	+	E	E	+	+	+	-	E	-	+	+
Zharoff	+	E	A	+	-	-	-	+	+	A	-

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+	+	-	+	+	+	+	+	+	+	-	91
-	-	+	-	-	-	-	-	-	-	-	14
+	+	+	+	+	+	+	+	+	+	-	95
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-	-	+	-	-	-	-	-	-	-	+	19
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+	-	-	+	-	-	-	-	+	+	+	45
-	E	+	-	-	-	-	-	-	-	-	14
+	+	-	+	+	+	+	+	+	+	+	95
-	-	+	+	-	-	-	+	+	-	+	43
/	+	/	/	/	/	/	/	/	/	/	89
+	+	+	+	+	+	+	-	+	+	+	95
-	+	+	-	-	-	-	-	-	-	-	23
-	+	+	+	-	-	+	+	+	+	+	50
-	+	+	E	-	+	+	+	+	+	-	81
-	+	+	-	-	-	-	-	-	-	-	23
-	+	+	-	-	-	-	-	-	-	-	23
+	/	-	+	+	+	+	+	+	+	-	77
+	-	+	+	+	+	+	+	+	-	+	73
-	-	E	-	-	-	-	+	E	+	-	15
-	-	+	A	-	-	-	-	-	-	-	25
+	+	-	A	+	+	+	-	+	+	+	81
-	-	-	E	-	-	-	+	-	-	-	20
+	+	E	A	+	+	+	+	-	+	-	76
+	+	-	+	+	+	+	-	+	+	-	63

Average House Vote

51

## SENATE VOTE DESCRIPTIONS

1 TANANA VALLEY STATE FOREST A wide spectrum of interest groups including environmentalists, loggers and miners supported this state forest bill (SB-108) sponsored by Sen. Fahrenkamp. Each group had its own reasons for supporting creation of a large forest near Fairbanks. However, these state forest lands will be protected from further land disposals and resources such as water and wildlife habitat will be given appropriate consideration, along with their other potential uses. Opposition to this legislation came from those who feel the state should dispose of most of its lands, and not reserve lands for valid public purposes.

This bill was signed into law by the Governor in 1983. The Senate floor vote was 16 - 4. The preferred vote of this bill is YES, indicated by a +.

2 STATE MARINE PARKS The main accomplishment of this legislation was to create and protect a dozen key, but very small, parcels of beachside land in Southeast Alaska and Prince William Sound for future Alaskans. This marine park system will likely be expanded in the future to provide additional water accessible recreation for Alaskans. The culmination of several years' effort, SB-128 (Sen. Vic Fischer) represents a much compromised version of the original bill. All controversial parcels were excluded from the bill; nevertheless SB-128 still encountered considerable opposition from those philosophically opposed to public lands.

The bill was signed by the Governor in 1983. The Senate floor vote was 13 - 5. The preferred vote on this bill is YES, indicated by a +.

3 ALASKA ADMINISTRATIVE JOURNAL SB-132 (Sen. Fahrenkamp, D-Fairbanks) created an administrative journal for the state of Alaska, similar to the Federal Register. It will be a compendium of information on all state actions from construction bids to notice of leasing, and promulgation of new state rules and regulations. The Alaska Administrative Journal will be a benefit to all those dealing with state agencies, particularly those people interested in making government more accountable.

This public interest bill passed the Senate 17 - 3 and was eventually signed by the Governor. The preferred vote on this bill is YES, indicated by a +.

4 REGIONAL RESOURCE DEVELOPMENT AUTHORITIES (RRDA) The state of Alaska presently has the largest public debt per capita of any state. Much of this debt is in the form of bonds issued by public corporations. SB-151 will allow for the establishment of 9 additional regional bonding authorities, each with the power to issue revenue bonds.

Each of these authorities will have a powerful political constituency geared to pursue development projects through both bonding and direct state appropriations. Additionally, because of the quasi-governmental nature of these authorities, the State of Alaska will be practically obligated to bail them out if the projects are not successful. To fail to do so would endanger the state's own bond rating.

This bill passed the Senate 15 - 4 and was signed by the Governor. The preferred vote is NO, indicated by a +.

5 PERMIT REFORM The State of Alaska through the legislature has stipulated the need for permits for actions such as bridging streams, filling wetlands, disturbing beaches and so forth. These permits are designed to protect state and local interests, as well as the environment. Permit Reform (HB-14) represents the oil industry's annual attempt to "gut" this permitting process, without concern for public health and safety.

The bill passed the Senate floor 14 - 6, but stalled in the House Finance Committee. An identical bill HB-14 was killed on the house floor (see HV #8). The preferred vote on this bill is NO, indicated by a +.

6 POLITICAL CONTRIBUTION PROGRAM REPEAL Presently under Alaska law, individual campaign donations of \$100 or less to political candidates, parties, or political action committees (PAC's) are directly reimbursed by the state. HB-89 would have repealed that program. The program has been very successful in involving thousands of Alaskans in the political process and, unlike most state loans and grants, everyone may participate. Although there is widespread recognition that some modifications to the program could be made, the program's elimination clearly runs counter to the public interest.

The bill was killed in a Senate floor procedural vote, 7 - 11. The preferred vote on this bill is NO, indicated by a +.

7 HOMESTEADING HB-130 creates a new land disposal program, one with that seductive name left over from the last century. The sponsor's stated goal was to create an "Oklahoma style" land rush. Several improving amendments were added to the bill. However, in its attempt to give away state land, this legislation largely ignores the substantial costs, both present and future, to the state. Also, it sells an incorrect impression to Alaskans -- that this land is free. In fact, to "prove up" a homestead will require thousands of dollars in surveying, transportation, and construction costs. This is no poor peoples program. At a time when huge amounts of private land are on the market in many localities it is time for a reassessment of Alaska land policies, not an expansion.

Specifically, the Senate vote concerns an amendment by Fischer (D-Anchorage) to restrict the subdividing, leasing, or selling of homestead land for a period of 5 years after acquisition. This provision was added to prevent homestead land from being used purely for land speculation.

The amendment originally passed 13 - 7, but was later modified and weakened. The preferred vote on this amendment is YES, indicated by a +.

8 HUNTING IN STATE PARKS In response to frustration on the part of some hunters, Senator Bennett (R-Fairbanks) introduced this hunting in parks bill, SB-289, opening up hundreds of thousands of acres of land to hunting. Most of the concern of hunters centered on the two biggest state parks, Denali and Chugach, but this sweeping bill actually opens a dozen parks to hunting. This meat ax approach changes long standing policy in some parks, including the Anchorage urban park, Chugach, and the Haines State Bald Eagle Preserve set aside specifically for protection of huge concentrations of bald eagles. Other traditionally people-parks were included in this legislation to the detriment of most park visitors interested in other types of recreation.

The Senate approved the bill, 15 - 5. The preferred vote is NO, indicated by a -

9 POWER COST ASSISTANCE For the past few years the State of Alaska has provided partial electric rate subsidies to bush areas to mitigate the high costs -- as high as \$.45 per kilowatt hour in some villages. At the same time the state has vigorously pursued alternative options and encouraged conservation.

Now the Power Cost Assistance program has been radically changed in SB-376. Rural residents under this legislation are to pay no more than the average of Anchorage, Fairbanks, and Juneau power rates. While everyone agrees that bush residents deserve a piece of the oil wealth pie, this bill clearly goes in the wrong direction. Electrical consumption is presently low in rural areas, but will almost certainly rise dramatically. The subsidy -- \$50 million appropriated for this year -- is designed to continue indefinitely. When the oil pool runs dry, however, rural electric rates will skyrocket.

This bill will eventually cause bush residents even greater hardships. It does nothing to solve the long-term problems of high cost rural power and, in fact, is counterproductive to a solution of that problem as it lulls rural people into thinking electric power is cheap.

This bill passed on the Senate floor 13 - 6. Politically this bill was a trade-off for the rural politicians' support of Susitna dam (SB-411). The preferred vote on this bill is NO, indicated by a +.

10 JRCA RESOLUTION Probably no legislative issue captured the public's imagination in 1984 as vividly as the Orca Resolution, SR-31. Drafted in response to a proposal by SeaWorld, Inc. to capture up to 100 Alaskan killer whales and export ten of them, a groundswell of public support eventually persuaded a reluctant Senate to pass a resolution of disapproval of the Orca capture, 13 - 5. The House held the bill in committee, effectively killing it.

The preferred vote on this bill is YES, indicated by a +.

11 INVESTMENT TAX CREDIT HB-258 will give hundreds of millions of dollars in tax breaks to subsidize mineral development projects. This pet bill of House Speaker, Joe Hayes, will allow mineral companies to apply their development costs against any tax liability -- up to \$250 million, in addition to the possible tax free bond packages newly available to the Regional Resource Development Authorities (see SV #4).

The Senate passed the bill 14 - 6, and the Governor signed it into law. The preferred vote on this bill is NO, indicated by a +.

Senator	1 TANANA STATE FOREST	2 STATE MARINE PARKS	3 ALASKA ADMINISTRATIVE JNL	4 RRDA 's	5 PERMIT REFORM	6 CONTRIBUTION REPEAL	7 HOMESTEADING	8 HURTING IN STATE PARKS	9 POWER COST ASSISTANCE	10 ORCA RESOLUTION	11 INVESTMENT TAX CREDIT	Σ Correct Votes
Bennett	+	+	+	-	-	+	-	-	-	-	-	36
Eliason	+	+	+	E	+	-	+	-	-	E	+	67
Fahrenkamp	+	+	+	-	-	+	-	-	-	-	-	36
Faiks	-	-	+	-	-	-	+	-	-	+	-	27
Ferguson	+	+	+	-	+	-	+	-	-	+	-	54
Fischer, Paul	+	+	+	-	-	-	+	+	A	E	-	56
Fischer, Vic	+	+	+	-	+	+	+	+	-	+	+	82
Gilman	+	+	-	-	-	-	-	-	-	+	-	27
Halford	-	-	+	+	+	-	-	-	+	+	-	45
Josephson	+	A	+	-	-	+	+	+	-	+	+	70
Kerttu	+	+	+	-	-	+	+	-	+	+	+	73
Kelly	-	-	-	+	-	-	+	-	+	+	-	36
Loss	+	+	+	-	-	+	+	-	-	-	-	45
Mulcahy	+	+	+	-	+	+	-	-	-	-	-	45
Pettyjohn	-	-	-	+	-	A	-	-	+	+	-	30
Ray	+	+	+	-	-	+	+	+	-	+	+	72
Rodey	+	A	+	-	-	+	+	-	+	+	-	60
Sackett	+	+	+	-	-	A	+	-	-	+	+	60
Sturgulewski	+	+	+	+	+	+	+	+	+	+	-	91
Ziegler	+	-	+	-	-	+	-	-	-	-	-	27
Average Senate Vote	16 YES	15 YES	18 YES	4 NO	6 NO	11 NO	13 YES	5 NO	6 NO	13 YES	6 NO	52

SUMMARY ANALYSIS OF VOTES

	<u>House</u>	<u>Senate</u>
Average	51%	52%
Democrats	68%	60%
Republicans	30%	46%
Majority Coalition	27%	55%
Minority	85%	46%

Regional Votes

Anchorage		
Bush	37%	55%
Interior	50%	53%
Southcentral (excluding Anchorage)	45%	39%
Southeast	64%	52%
	79%	52%

WANT TO BE A MEMBER? NEED TO RENEW?

Here is a membership form for National Audubon Society and the Juneau Chapter (A-51,7XCH). Send to: Membership Chair, JAS, Box 1725; Juneau, AK 99802

Check one: Introductory \$20 \_\_\_ Individual \$30 \_\_\_ Family \$38 \_\_\_ Student \$18 \_\_\_

Sr. Citizen Individual \$21 \_\_\_ Sr. Cit. Family \$21 \_\_\_

Check one: Payment enclosed \_\_\_ Please bill me \_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_

Are you interested in helping? IF YES, please check:

Membership       Conservation       Publicity  
 Programs       Newsletter       Field Trips  
 Education       Occasional Volunteer (booths, phones, events, etc...)

#### JUNEAU AUDUBON SOCIETY OFFICERS AND CHAIRPERSONS

PRESIDENT: Mary Lou King, 789-7540      CONSERVATION: Pete Martinez, 789-4947  
VICE-PRES: Jane Ginter, 789-7432      EDUCATION: Marilyn Sigman, 789-1375  
SECRETARY: Patricia Dobbins, 789-2986      FIELD TRIPS: Paul Bowen, 586-6923  
TREASURER: Richard Erman, 789-2481      PROGRAM: Vacant  
PUBLICITY: George Utermohle, 586-3849      MEMBERSHIP: Pat Shaw, 536-1457  
RAVEN PRODUCER/EDITOR: Jane McMillan Ginter, 789-7432  
ADOPT A REFUGE: Pete Islieb and Jim King, 789-7540  
SPRINGFEST COORDINATOR: Judy Shuler, 789-9544  
ARTABON COORDINATOR: Marti Early, 586-5975

**Juneau Audubon Society**  
**Box 1725**  
**Juneau, AK 99802**

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DICK ERMAN  
1280 FRITZ COVE RD  
JUNEAU AK 99801

# THE RAVEN



Vol.10 No. 9

JUNEAU AUDUBON SOCIETY

MAY 1986

#### MAY MEETING

RECREATION ON JUNEAU'S PUBLIC LANDS--current status and future plans.

Linda Kruger from State Parks will talk about State Park Trails around Juneau. Reid Gardener from the Forest Service will discuss recreation on Forest Service Lands. Bob Grochow from the Borough Parks and Recreation Department, has been asked to tell us about the new Ordinance on Borough Park Land and Paul Bowers, Airport Manager will discuss plans for the float plane basin and dyke and recreational use of the airport/wetland area.

Election of officers.

THURSDAY  
May 8, 1986

NORTHERN LIGHT UNITED CHURCH  
400 11th Street

7:00 PM

NEXT REGULAR MEETING AFTER THE MAY MEETING WILL NOT BE UNTIL SEPTEMBER

#### AUDUBON'S CLINE TO RECEIVE CONSERVATION AWARD

David R. Cline, Alaska Regional Vice President for the National Audubon Society, has been selected to receive the 1986 Chevron Conservation Award. Cline is one of 10 recipients of the award nationwide in the Professional Conservationist category. The awards program honors Americans who have made an outstanding contribution to the conservation of renewable natural resources. He and other award winners will be honored at a banquet in Washington, D.C. on May 22.

## CONSERVATION NEWS FROM THE ALASKA REGIONAL OFFICE OF AUDUBON

Dave Cline, head of the Alaska Regional Office, joined officials from the U.S. Fish and Wildlife Service, the Alaska Dept. of Fish and Game and the Association of Village Council Presidents and their Waterfowl Conservation Committee in Bethel to renegotiate the Yukon-Kuskokwim Delta Goose Management Plan. The goal is to restore four species of geese that nest on the Y-K Delta to healthy population levels.

The four species of geese involved are the cackling Canada goose (population dropped from 384,000 to 32,000, a 90 percent drop), black brant (from 187,000 to 128,000), emperor goose (from 139,000 to 53,000) and Pacific white-fronted goose (from 490,000 to 94,000) and the population dropped these amounts between 1965 and 1985.

Provisions of 1986 plan include:

- 1) A total flyway-wide ban on shooting cacklers, whether for sport or subsistence;
- 2) No gathering of goose eggs;
- 3) Subsistence hunting of brant, white-fronts, and emperors allowed prior to nesting, and sport and subsistence hunting of these species in the fall;
- 4) No hunting of any geese during nesting, molting, and brood rearing;
- 5) Timely development of a "comprehensive Goose Conservation Plan" for the four species by the U.S. Fish and Wildlife Service;
- 6) Identification of alternative sources of food to meet village nutritional needs;
- 7) Sharing of annual population and harvest data, and involvement of natives in discussions of goose biology, regulations, research and management;
- 8) Acquisition of additional wintering habitat and establishment of sanctuaries for geese in the Pacific Flyway;
- 9) Refraining from unnecessarily disturbing geese during their nesting, rearing, molting, staging and pre-migration periods;
- 10) Joint monitoring, verification and enforcement of plan provisions by ADF&G, FWS and AVCP.

## CLASSIFICATION OF VALLEY WETLAND VALUES

A Juneau City-Borough effort to evaluate and classify Mendenhall Valley wetlands was kicked off in early April. The goal of the study is to assign a low, medium or high value to valley wetlands based on biological and hydrological data. A final report is expected by January 1987.

The main boundaries of the study area are the National Forest boundary near the Mendenhall Glacier, the Mendenhall Peninsula, the North Douglas Highway and an imaginary line down the ridge of Thunder Mountain. Some gerrymandering of the boundary allows inclusion of wetlands along the proposed water line to AuKe Bay. Excluded from the evaluation are lands within the Mendenhall Game Refuge and within airport boundaries, the latter being excluded because of a separately funded and scheduled evaluation.

Performing the \$189,734 study are Paul Adamus, namesake of the nationally recognized Adamus Wetland Evaluation System, Dr. Don Siegel, project hydrologist, and Peter Bales, research assistant. Ira Winograd, Assistant Planning Director for the City-Borough, is the project manager and chairs an advisory task force comprised of representatives of five federal and six state agencies.

A public meeting is tentatively scheduled for June.

## PLANT OF THE MONTH

By Sondra Stanway

### Wild Cucumber (*Streptopus amplexifolius*)

A walk through any of the wooded areas around Juneau should provide an opportunity for you to become familiar with the wild cucumber. At this time of the year, the pale green shoots are only a few inches high. Within a short time, however, the plant reaches up to 3 1/2 feet. The leaves are from 2 to 5 inches long, alternate, and appear to clasp the stem, hence one of its other common names, the clasping twisted stalk.

The bell-shaped flowers are greenish-white and grow singly beneath each leaf along the upper part of the stem. The fruits are elongated, yellowish-white or orange berries which turn a light red when ripe. Although these juicy berries are used by the Natives in the Bristol Bay area, the Northwest Coast Indian groups believed them to be poisonous to humans. All agree, however, that the tender young shoots are edible; they can be eaten raw and enjoyed for their cucumber-like flavor.



### Mendenhall Peninsula Blueberry Trail

This is an unofficial trail used by berry pickers. It follows the old logging road up the ridge. The trailhead is approximately 500 feet from the top of the peninsula on Engineer's Cutoff on the east uphill side. It is approximately 1/2 mile to the top of the ridge on the trail where there is an outstanding view of the Mendenhall Wetlands to the east and AuKe Bay to the west. Great place to go for a picnic when time is limited and the weather is good.

A ridge trail to run the full length of the Peninsula has been proposed by a number of people. Old trails already exist a good part of the way.

## SPRINGFEST REPORT

BY Judy Shuler

Once again, we seemed to touch a responsive chord with Audubon Springfest. Our activities were very well-attended and well-received.

Over 100 persons turned out for the wetlands celebration featuring author Peter Steinhart, a slide program by Bob Armstrong and presentation of the first Georg Wilhelm Steller awards (winners are listed in another article). Auction of the wildflower quilt stitched by Mary Lou King brought \$425 from William and Evelyn Dunn enriching their home and Audubon coffers.

Artabon '86 at Anderson Gallery featured 46 pieces in watercolor, photography, batik, serigraphy, acrylic, oil, scratchboard, pen and ink, pencil, linoleum embossing, woodcarving, stained glass, ceramic and fiber. Best of show award went to Sharron Lobaugh for her watercolor of skunk cabbage. Awards for excellence were presented to Bob Armstrong, Pat Bergander, Deborah Hansen, Karen House, Cynthia Meyer, Kristi Allen Moritz, Gail Niebrugge, David Sekstrom and Alice Slattery. More than 100 persons attended the opening reception.

Much of the credit for the success of Springfest goes to our special guests, magazine writer Peter Steinhart and wildlife artist Daniel Smith. They willingly shared their experience and insights not only in public workshops and lectures, but also in classrooms and media interviews.

Numerous individuals, businesses and agencies also contributed resources and energy to Springfest activities. These include Juneau Arts and Humanities Council; University of Alaska-Juneau Continuing Education Department; Anderson Gallery; U.S. Forest Service Information Center; Baranof Hotel; Juneau Parks and Recreation Department; Fred Meyer Corp.; Dale De Armond; flutists Julie Gasparek and Carrie Burke; auctioneer Lady Jane Mulready; Juneau Empire; KTOO-FM; KJUD; KINY; KJNO.

Finally, special thanks to all Audubon members who supported Springfest activities with your attendance as well as your assistance in the countless organizational details.

It's gratifying to realize that Juneau Audubon Society has a wellspring of community interest from which to draw. Hopefully the support and goodwill demonstrated during Springfest will enhance our effectiveness when we become involved in various environmental issues.

## JUNEAU AUDUBON SOCIETY ANNOUNCES STELLER AWARDS

Past and present public officials, elementary and middle school teachers and a long-time local ornithologist are among the first recipients of the Georg Wilhelm Steller awards presented by Juneau Audubon Society.

Awards were presented at a program highlighting wetlands resources Tuesday, April 22 at the Baranof Hotel.

Steller awards recognize actions that support a healthy environment for people and wildlife. A German naturalist, Steller conducted the first scientific field trip in Alaska, in 1741.

Named as Birder of the Year was Dr. Ralph Williams, a long-time Juneau ornithologist.

Former Mayor Fran Ulmer and former city manager Pat Teague were recognized for enhancing the human environment through their commitment to urban beautification.

Members of the Juneau City and Borough Assembly were commended for passing a Park System Ordinance protecting wild park areas and important access routes between highways and beaches.

Alvin L. Ewing, U.S. Environmental Protection Agency, and Col. Wilbur T. Gregory, U.S. Army Corps of Engineers, received awards for their role in protecting the natural habitat of the downtown Gold Creek Delta.

Rep. Mike Miller was recognized for his role in creation of the Mendenhall Wetlands State Game Refuge as a member of the House of Representatives and for consistently voicing environmental concerns throughout his legislative career.

Teachers receiving awards for their involvement in the annual Sea Week program include Janie Homan, Judy Maier and Susan Baxter, Capital School; Chris Thomas, Mendenhall River Community School, and Jerry Hard, Leslie Lyman and Mary Becker, Marie Drake Middle School.

The Steller awards and wetlands' program were a part of Audubon Springfest.

## SITKA'S CHRISTMAS BIRD COUNT

By Kent Hanson

A new phrase was used with increasing frequency during the Sitka Christmas Bird Count--"A paucity of." Fewer species and numbers of birds were counted. There were fewer participants and the number of party hours dropped, a five year low. And yet, forty nine species with a 3599 total count wasn't too bad when nine determined birders "tallied up" in the evening after the Christmas count that warm December 29 Sunday.

The land bird count was very low. Pine grosbeaks seemed common but where were the raptors, siskins, crossbills, juncos? "Probably the warm weather?" "They're scattered and high", were some of the comments of hypothesis.

The water birds saved the day. Wintering mallards were greatly up in number. We only recorded two loon species, common and yellow-billed, but everything else was in place. Even the gulls were abundant despite the closure of the Sitka landfill (the dump).

The week before the Christmas Bird Count a single gadwall was often seen in Swan Lake at Sitka. The Trumpeter swans were in Nakwasina Sound and a goshawk was seen near town.

The year in birding in the Sitka area was superb. This correspondent recorded two cassin's auklets near Biorka Island in September. Jaegers of all three species were seen harrying gulls off Symmond Bay near Biorka. A state park employee reported seeing a peregrine making feral pigeon kills over the Castle Hill in Sitka!! Another reliable observation was made of a band-tailed pigeon near the ferry terminal.

So many outstanding birding experiences were had here at Sitka thru the year despite the low count at Christmas--which really wasn't that bad--just down from the past years.

## TRAILS OF THE MONTH

By Mary Lou King

### Auke Lake Trail

**Access:** 11.3 mile on the Glacier Highway (starts on the south side of the parking lot by the float planes on Auke Lake)

This trail goes to the right through the trees for 1/8 of a mile before coming to the Lake shore line. The trail is a beautiful one mile fairly easy walk though some very big trees and along the edge of the Lake from Glacier Highway to the Mendenhall Loop Road. Beaver, otter, squirrels, fish, waterfowl and forest birds live here. The Loop Road trailhead is located 500 feet west of the Goat Hill Road 1.2 miles from the DeHart innersection. It is an approximately 3 mile round trip to walk along the trail from Glacier Highway to the Loop Road then back around the other side of the Lake on the Loop Road to the UAJ trail to the campus and back to Glacier Highway.

### Beach Access Trails on Fritz Cove Road

**Ann Coleman Road Beach Access** at 1.6 mile Fritz Cove Road. Turn on the Ann Coleman Road. The trailhead is .2 of mile straight down this road to the beach. The trail is just a few feet to the beach with a beautiful view of Auke Bay and the Chilkat Mountains and a very rich innertidal beach. The small island to the left is Borough property. No Parking

**Smuggler's Cove Beach Access.** Trailhead at the end of the Fritz Cove Road. It is approximately 50 feet to the beach on a fairly gentle slope making it possible to launch a canoe or kayak. Extremely rich innertidal beach and good bird watching.

### Mendenhall Peninsula Road Beach Access

There are two Beach Access trails on the East side of the Mendenhall Peninsula. Turn off on the Engineer's Cutoff Road at 10.8, follow it 1.1 to Mendenhall Peninsula Road. Turn left on this road for .9 of a mile for a short gentle trail to the Mendenhall Wetlands. The second access is at the end of the road. It is approximately 1/4 mile to the beach. The view of the Mendenhall Glacier is spectacular to the north. The mouth of the Mendenhall River is to the East. Good bird watching spot.

It is possible to walk down the trail then to the beach and on around to Smugglers cove on the beach at low tide.



## PLACER MINING AND ITS BEDFELLOWS

"Alaska is where a man feels free to destroy an entire valley by placer mining...in order to extract one peanutbutter jar full of gold dust"... (Edward Abbey, Beyond the Wall)

It's outrageous and it's illegal, but there may finally be a clean up of an industry that for too long has been out of control.

Several months ago, the Environmental Protection Agency took action against a few obstinate placer miners whose impacts to land and water, coupled with their contempt for the law demanded, intervention.

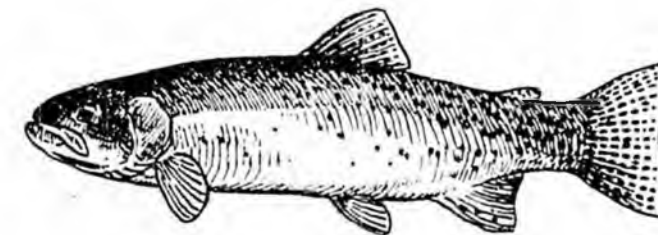
At about the same time, the federal court issued a decision in favor of plaintiffs in a case filed by environmental organizations against the Park Service and BLM for failure to follow their own agency regulations in regulating errant placer miners operating on federal lands.

Efforts by the Alaska Department of Fish and Game and the Department of Environmental Conservation to improve placer operations have been valiant, despite enormous political opposition and reduced budgets for habitat and water quality divisions of these agencies.

And yet on the horizon, the Alaska Legislature is preparing to crush these state agencies to protect the avaricious interests of a miniscule minority of placer miners, many of whom are not even residents of the state. Arliss Sturgulewski, Bettye Fahrenkamp, and Don Bennett want to give away the remaining clean water to be found in the Interior to be transformed into a sea of mud. Sturgulewski has sponsored a new "Dirty Water Act" (SB 460) which would allow the appropriation of water by placer miners so ADF&G and ADEC won't be able to hassle rogue miners for mucking up public resources. Of course Sturgulewski's bill is completely contrary to federal environmental regulations, but why should the bill's sponsors care? It makes good press. Right?

Maybe other Alaskans care. Maybe Alaskans don't want to find their fishing streams obliterated and their wildlife run off by a DB Cat. Maybe villages are tired of seeing their drinking water made unpotable by the placer activities 100 miles upstream. Maybe tourists don't want to travel to a state that allows the landscape to be turned into a tortured ooze. Maybe we shouldn't vote for people who support the ruin of our state and its reputation.

It is no coincidence that authors Abbey, McPhee, and McGinniss have all emphasized the Alaskan way of doing business. Maybe it's time for Alaska to discard the idea that miners be given a special privilege to violate the law, destroy fish and wildlife, and degrade public resources just because it is "colorful, macho, and individualistic". It is, in fact, just plain wrong.



RSN#1495

ALASKA HOUSE OF REPRESENTATIVES  
SCS CSHB 627 (RES) RS

2ND SESSION 14TH LEG

5/13/86

21 YEAS 19 NAYS 0 EXC

0 ABS

Y	ADAMS	Y	FULLER	Y	LARSON	N	POURCHOT
N	BINKLEY	Y	FURNACE	Y	MARROU	Y	RIEGER
N	TOUCHER	N	GOLL	Y	MARTIN	Y	RINGSTAD
N	CATO	N	GRUENBERG	N	MILLER, R.M.	Y	SHOLTZ
N	CLOCKSTN	Y	GRUSSENDORF	Y	MILLER, R.W.	N	SUND
Y	COLLINS	Y	HANLEY	N	MUARRE	N	SZYMANSKI
Y	COTTON	N	HERRMANN	Y	PEARCE	Y	TAYLOR
N	DAVIS	N	HURLEY	Y	PETTYJOHN	N	THOMPSON
N	DUNCAN	Y	JENKINS	Y *	PHILLIPS	N	UEHLING
Y	FRANK	Y	KUPONEN	N	SIGNALBERT	N	WALLIS

\* VOTED FOR

Introduced: 5/9/86  
Referred: Rules

1 IN THE SENATE BY THE TRANSPORTATION COMMITTEE  
2 SENATE RESOLUTION NO. 12  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 Supporting the provisions of the Alaska  
6 Native Claims Settlement Act and oppos-  
7 ing certain amendments to that Act.

8 BE IT RESOLVED BY THE SENATE:

9 WHEREAS the State of Alaska traditionally has considered and treated  
10 all residents of the state as equal citizens under the law, the United  
11 States Constitution, and the Alaska Constitution; and

12 WHEREAS the United States Congress declared as its policy in Section  
13 2(b) of the 1971 Alaska Native Claims Settlement Act that "the settlement  
14 should be accomplished rapidly, with certainty, in conformity with the real  
15 economic and social needs of Natives, without litigation, with maximum  
16 participation by Natives in decisions affecting their rights and property,  
17 without establishing any permanent racially defined institutions, rights,  
18 privileges, or obligations, without creating a reservation system or  
19 lengthy wardship or trusteeship, and without adding to the categories of  
20 property and institutions enjoying special tax privileges or to the legis-  
21 lation establishing special relationships between the United States Govern-  
22 ment and the State of Alaska"; and

23 WHEREAS the State of Alaska has been an active participant in effect-  
24 ing the Alaska Native Claims Settlement Act, has contributed \$500,000,000  
25 from the state treasury to the 13 Alaska Native regional corporations, and  
26 has supported the granting of title to 44,000,000 acres of land in the  
27 state; and

28 WHEREAS the Alaska Native Claims Settlement Act provided for the  
29 gradual transition from trust status for Alaska Natives to equality for all

Introduced: 5/9/86  
Referred: Rules

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26 has supported the granting of title to 44,000,000 acres of land in the  
27 state; and

28 WHEREAS the Alaska Native Claims Settlement Act provided for the  
29 gradual transition from trust status for Alaska Natives to equality for all

1 Alaska citizens; and

2 WHEREAS in 1986 two members of the Alaska Congressional delegation  
3 introduced S. 2065 and H.R. 4162, which would substantially amend the  
4 intent and specific agreements of the Alaska Native Claims Settlement Act;  
5 and

6 WHEREAS any action at the federal level to weaken the State of  
7 Alaska's position in treating all Alaskans equally is detrimental to the  
8 long-term social, cultural, and economic future of the citizens of the  
9 state; and

10 WHEREAS the Alaska Native Claims Settlement Act intended that the  
11 Alaska Native Community, through its regional corporations, would become a  
12 significant element of the business and economic enterprise system in the  
13 state, and certain immunities included in the proposed 1991 amendments  
14 would preclude free economic exchange; and

15 WHEREAS United States Senator Frank Murkowski has requested "the  
16 official views of our state legislators...on this important legislation";

17 BE IT RESOLVED that the Alaska State Senate supports the Alaska Native  
18 Claims Settlement Act as originally passed, including its intent and pur-  
19 poses; and be it

20 FURTHER RESOLVED that the Alaska State Senate opposes any amendments,  
21 such as those proposed in the "1991" package, that would legally alter the  
22 intent and provisions of the 1971 Alaska Native Claims Settlement Act by  
23 creating permanent racially defined institutions, by granting racial stock  
24 provisions, or by establishing racially defined tax privileges; and be it

25 FURTHER RESOLVED that the Alaska State Senate opposes any amendments  
26 to the 1971 Alaska Native Claims Settlement Act, including those proposed  
27 in the "1991" package, that would establish a unique relationship between  
28 certain Native Americans and the federal government, that would cause  
29 Alaska Natives to relinquish their Alaskan and United States "first class

1 citizen" status, and that would reduce Alaska Natives to the status of a  
2 "ward of the United States government"; and be it

3 FURTHER RESOLVED that the Alaska State Senate does not oppose extend-  
4 ing the 1991 deadline under the Alaska Native Claims Settlement Act to the  
5 year 1996; and be it

6 FURTHER RESOLVED that the Alaska State Senate opposes any amendments  
7 to the Act that would allow unequal exempt status of developed state land  
8 and thereby unfairly transfer the tax burden to other existing land owners;  
9 and be it

10 FURTHER RESOLVED that the Alaska State Senate opposes amendments to  
11 the Act that would permit the transfer of nontaxable properties to corpo-  
12 rations or entities organized under federal law, but not organized and  
13 recognized under the constitution and laws of the State of Alaska; and be  
14 it

15 FURTHER RESOLVED that the Alaska State Senate desires to preserve the  
16 provisions and spirit of the 1971 Alaska Native Claims Settlement Act that  
17 ratify Native Alaskans' rights as full citizens of the State of Alaska and  
18 the United States of America; and be it

19 FURTHER RESOLVED that the Alaska State Senate respectfully requests  
20 the United States Congress to hold extensive public hearings in all elec-  
21 tion districts of Alaska on the 1991 amendments to assure broad public  
22 understanding and comment.

23 COPIES of this resolution shall be sent to the Honorable Ronald  
24 Reagan, President of the United States; the Honorable George Bush, Vice  
25 President of the United States and President of the U.S. Senate; the  
26 Honorable Thomas P. O'Neill, Speaker of the U.S. House of Representatives;  
27 and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S.  
28 Senators, and the Honorable Don Young, U.S. Representative, members of the  
29 Alaska delegation in Congress.

\* Section 1. AS 16.05.<sup>050</sup>~~930~~ is amended by adding new subsections to read:

(b) The commissioner may not require a person engaged in placer mining to discharge water used in placer mining with a higher quality than the natural background condition.

(k) In this section "natural background condition" means those conditions, physical, chemical, biological or radiological, which exist(ed) in a water before any man-induced discharge into the water or any activity of man resulting in addition of material into the water.

by V. Fischer  
4/30/86

OK

A M E N D M E N T

Senate CS for CS for House Bill 627 (Resources) 4/29

Page 1, lines 10 and 11

after quality delete: "for appropriated water than the quality of water received for use"

and insert: "for appropriated water used in placer mining than the quality of water received for such use"

Page 1, lines 13 and 14

after quality delete: "for appropriated water than the quality of water received for use"

and insert: "for appropriated water used in placer mining than the quality of water received for such use"

Page 1, line 17

after "quality of appropriated water" insert: "used in placer mining,"

Page 1, line 19

after "for" insert: "such"

TELECONFERENCE PARTICIPATION

Sponsor Anti Sources  
 Subject SB 627  
 Date/Time 4/30

LIO

Anchorage	Petersburg <i>listen Only</i>
Barrow	Sitka
Bethel	Soldotna
Delta Junction	Valdez
Dillingham	LTC
Fairbanks <i>Bruce Grayby to testify</i>	Cordova
Glennallen	Haines
<del>Duneau</del>	Homer
Ketchikan	Naknek
Kodiak	Newhalen
Kotzebue	Saint Paul
Mat-Su	Sand Point
Nome	Seward
	Togiak
	Unalaska
	Wrangell

Amendment Rejected

4-1

\* Section 1. AS 16.05.<sup>050</sup>~~920~~ is amended by adding new subsections to read:

(b) The commissioner may not require a person engaged in placer mining to discharge water used in placer mining with a higher quality than the natural background condition.

(c) In this section "natural background condition" means those conditions, physical, chemical, biological or radiological, which exist(ed) in a water before any man-induced discharge into the water or any activity of man resulting in addition of material into the water.

the

adopted *4/30/86*

by V. Fischer  
4/30/86

A M E N D M E N T

Senate CS for CS for House Bill 627 (Resources) 4/29

Page 1, lines 10 and 11

after quality delete: "for appropriated water than the quality of water received for use"

and insert: "for appropriated water used in placer mining than the quality of water received for such use"

Page 1, lines 13 and 14

after quality delete: "for appropriated water than the quality of water received for use"

and insert: "for appropriated water used in placer mining than the quality of water received for such use"

Page 1, line 17

after "quality of appropriated water" insert: "used in placer mining,"

Page 1, line 19

after "for" insert: "such"



# ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

April 30, 1986

Senator Arliss Sturgulewski  
Chairman, Resources Committee  
Pouch V  
Juneau, Alaska 99811

RE: CSHB 627  
4/29/86 Draft

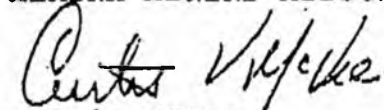
Dear Arliss:

Based on further analysis the Alaska Miners Association would support and recommend passage of the bill as now worded.

We understand the risks related to the regulatory position of EPA and the relationships of this language to the Clean Water Act.

Sincerely,

ALASKA MINERS ASSOCIATION

  
Curtis McVee  
Executive Director



# ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

April 30, 1986

Senator Arliss Sturgulewski  
Chairman, Senate Resources  
Pouch V  
Juneau, Ak 99811

RE: CSHB 627

Dear Arliss;

Thank you very much for the opportunity to comment on CSHB 627. You should have received a communication from Curt McVee, Executive Director of the Alaska Miners Association. I support that position.

In addition to Mr. McVee's position, I would like to state that the legislature must make the decision as to whether they want Alaska's oldest industry to survive, or not. This decision can no longer be delayed. The State of Alaska has to take a firm stand, and it appears that that stand can only come from the legislature at this point.

The Clean Water Act, which is the very basis for regulation of water quality in Alaska, is dedicated to ensuring that regulations are economically achievable. We believe that the wording of CSHB 627 that discussed economics would allow the State and EPA flexibility in dealing with the placer mining issue in Alaska.

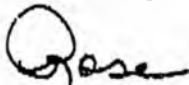
We supported SB 460 which contained essentially the same language that is currently in CSHB 627. In that respect, we support the current draft of CSHB 627. However, we strongly urge your consideration to keeping the original change in that discussed economics.

We have received a copy of a letter written by Representative Goll to Mr. Ralph R. Bauer, EPA. In his fourth paragraph, Mr. Goll discusses a typical situation, where miner A is discharging water that measures .7 ml/l, Miner B (receiving .7 ml/l into his operation is required to discharge .2 ml/l. It appears that Representative Goll would prefer that miner B be cited for his inability to clean up the discharge, rather than miner A, nature or other causes. We believe this reasoning is flawed.

Also, from discussions with EPA in Washington, D.C., we are led to believe that EPA would have no problem with the current proposed legislation. In fact, EPA, in their proposed permits for 1985, had a 1.5 ml/l surge factor that would have covered the situation in all but the most extreme cases. As you know, the State of Alaska modified that proposed permit to .2 ml/l.

Again, I believe it is of the utmost importance for the State of Alaska to take a strong stand in support of its oldest industry. We urge your immediate passage of CSHB 627.

Sincerely,



Rose Rybachek



# Miners Advocacy Council

P.O. Box 83909

Fairbanks, Alaska 99708

452-6227

April 30, 1986

Senator Arliss Sturgulewski  
Chairman, Senate Resource Committee  
Pouch V  
Juneau, AK 99801

Dear Arliss:

The Board of Directors of MAC are very much in favor of Senate CS for CS for HB 627 (Resources) as written. However, we understand from your office that the bill cannot pass as written, due to the technical advice that the economic considerations would place the State at odds with the Federal Government. I am not sure that's bad. But the CWA does have provisions for economic considerations and in the Federal Register of proposed National Effluent Guidelines economics plays a major role in the proposed levels of attainment for the industry. So while we disagree with the technical advice the Senate has received, we feel strongly that we miners must have at least some measure of legislative relief this year, and hopefully we can work again next year in a more favorable climate to accomplish, at long last, enough legislative relief to allow at least the majority of miners to operate legally.

Therefore, we do support the bill with some changes.

1. Line 16 - change [may] to shall.
2. Line 19 - insert not require, delete [a person...(delete through line 23 to)... may not require] a higher discharge...
3. Line 24 delete [standards] for...

This would clean up the bill enough so that economics would not be considered. Therefore, the proposed addition of repeal language would not be required. This bill, then, in effect would remove water quality regulation from DNR and F&G, which it should. It also would require the DEC to measure above intake levels, which it should.

The only need I can foresee to ever change this bill would be if the state needed to budget cut so much that they placed all natural resource matters, including water quality, within the DNR, and regulated DEC's and F&G's activities as a division of DNR.

At that time, this bill may need some slight modifications, as well as other bills pertaining to DEC and F&G.

We disagree with Commissioner Bill Ross's position that the bill would still be in conflict with EPA or jeopardize the State's assumption of section 402, CWA.

Respectfully submitted,



Bob Aumiller  
President  
Miners Advocacy Council

BA/cf

cc: All members of the Senate Resource Committee



# ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

April 30, 1986

Senator Arliss Sturgulewski  
Chairman, Resources Committee  
Pouch V  
Juneau, Alaska 99811

RE: CSHB 627

Dear Arliss;

The Alaska Miners Association has been following CSHB 627 because of language proposed concerning regulation of appropriated water. We were very supportive of early language recognizing that standards have to be attainable through practicable and economically sustainable technology. This language would allow for realistic regulations. We are not promoting irresponsible disregard for water quality but trying to obtain laws and regulations under which the industry can survive.

We understand that the above language has been further amended to now just state that "the commissioner (ADEC) may not require a higher discharge quality than the quality received for use" and that this language is not acceptable to ADEC. They are using the argument that it will not meet federal standards, will result in the State of Alaska losing its ability to certify the federal NPDES permits, and jeopardize the mining industry.

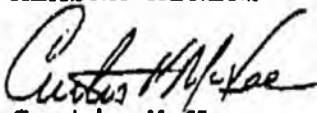
The AMA position is that the industry is in such dire straits that without the support of the legislature and the State of Alaska, it will not survive. We would like to see the initial AMA supported language moved and then negotiate with EPA on the highest level.

Governor Sheffield has stated that he will take on the federal governments regulations and policies even it if means litigation to protect Alaska's interest.

Please vote to support the original language in CSHB 627, recognizing attainable and economic constraints.

Sincerely yours,

ALASKA MINERS ASSOCIATION

  
Curtis McVee  
Executive Director

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 101200 SIXTH AVENUE  
SEATTLE, WASHINGTON 98101

APR 23 1986

REPLY TO  
ATTN OF

M/S 601

Peter Goll, Chairman  
Special Committee on Fisheries  
House of Representatives  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Representative Goll:

This letter is in response to your April 19, 1986, letter which posed several questions relative to draft Senate Bill (S.B.) 460. Specifically, your questions, as we understand them, pertain to a section of S.B. 460 which reads, "The commissioner may not require a higher discharge quality standard for appropriated water than the water received for use."

Your questions and EPA responses follow:

1. Would incorporation of the language in S.B. 460 in Alaska statute affect ADEC's ability to certify federal NPDES permits for placer mining? Specifically, do you foresee circumstances under which ADEC would be forced to forego its right to certify the federal permits.

Response: The Federal Clean Water Act provides for states to review and certify that federally issued NPDES permits are consistent with state water quality standards. The language of draft S.B. 460 appears to preclude any consideration by the state of consistency of a permit with water quality standards particularly when intake water exceeds EPA proposed permit limitations. Under those circumstances, the state would probably have to waive the opportunity to certify.

2. Would passage of this legislation affect possible assumption by the state of the NPDES permitting program?

Response: Legislation of this nature would definitely preclude delegation of the NPDES permitting program to the state of Alaska. If language of this nature were enacted, it would cloud the possibility of a delegation because it establishes a clear intent to operate in a manner inconsistent with federal law.

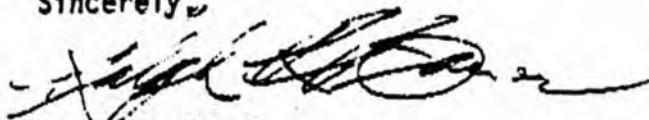
2

3. Would this legislation in any way effect federal funding of the state's water pollution control program or other projects, such as minicipal (sic) water and sewer construction grant funds?

Response: Grant funding levels could be impacted by legislation of this nature. EPA program grants are performance based. Therefore, the state grant might well be reduced in proportion to the work currently being done by the state which the proposed the legislation would preclude.

I hope this information will be useful to you and your colleagues as you deliberate on this matter. If you need additional information, please feel free to contact Al Ewing, Assistant Regional Administrator for Alaska at (907) 271-5083.

Sincerely,



Ralph R. Bauer  
Acting Regional Administrator

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

APR 22 1986

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

April 22, 1986

Honorable Arlisc Sturgulewski  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Re: Senate Committee Substitute for Committee  
Substitute for House Bill No. 627 (Resources)

Dear Senator Sturgulewski:

On April 21, 1986 the Department of Environmental Conservation ("DEC") requested the Attorney General's Office to provide you with an analysis of SCS CSHB 627 (Res.). This letter constitutes our response to DEC's request. As discussed below, SCS CSHB 627 (Res.) will have major impacts on the existing state water quality regulatory structure, particularly in the area of placer mining. Because of the limited time available for this review, our discussion focuses on the major legal impacts of the bill. Additional impacts may well exist.

Section 3, the bill's key provision, provides as follows:

AS 46.03 is amended by adding a new section to read:

Sec. 46.03.892. Regulation of appropriated water. (a) When considering the quality of appropriated water and establishing regulations for the quality of appropriated water, the commissioner may require a person who appropriates water to meet a standard that is equal to but not higher than a standard attainable through the application of best practicable and economically sustainable technology associated with the particular use.

(b) The commissioner may not require a higher discharge quality standard for appropriated water than the quality of water received for use.

When read in context, it becomes apparent that the term "appropriated water" means "water used in placer mining." <sup>1/</sup> Section 3 would prohibit DEC from requiring a placer miner to meet any water quality standard more stringent than those standards "attainable through the application of best practicable and economically sustainable technology" ("BPEST").

To understand the problems associated with Sec. 3, one must recognize that the federal Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., establishes a comprehensive scheme for the control and abatement of water pollution. Under the doctrine of supremacy, where a state law conflicts with a federal law the federal law preempts the state law and the state law becomes void. See United States Constitution, Art. VI, cl.2. SCS CSHB 627 (Res.) appears to conflict with several major provisions of the CWA.

CWA § 301(b)(2)(A) imposes an attainability requirement different from BPEST. CWA § 301(b)(2)(a) requires "application of the best available technology economically achievable [BATEA] ... which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants." By its terms, the BPEST attainability requirement appears less stringent than the federally-mandated BATEA attainability requirement. Hence, the BPEST requirement conflicts with the CWA BATEA requirement and would be preempted.

Aside from the preemption problem, adoption of SCS CSHB 627 (Res.) would assure that the state could not assume control of the CWA National Pollution Discharge Elimination System (NPDES) permit process. CWA § 402(b) authorizes states to assume, subject to EPA approval, EPA's NPDES permit issuance functions. Alaska's placer mining community has long sought state assumption of the NPDES process from EPA. However, CWA §

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1/ Appropriation of water occurs through the process set forth in the Alaska Water Use Act, AS 46.15. The appropriation of state waters for placer mining purposes is commonplace and occurs via the "tri-agency application" process.

402(b) provides that EPA cannot approve state assumption of the NPDES process if the state lacks legal authority to issue permits which "insure compliance" with various provisions of the CWA. Under CWA § 402(b), before the state can assume the NPDES process, the state must possess legal authority to issue permits that insure compliance with federally-adopted BATEA limits (CWA § 301) and with federally-adopted national performance standards (CWA § 306). Under CWA § 402(b), before the state can assume the NPDES process, the state must also possess legal authority to "abate violations of the [NPDES] permit." SCS CSHB 627 (Res.) would remove the state's legal authority to "insure compliance" with or "abate violations" of any permit or water quality standard more stringent than BPEST. In the absence of adequate state legal authority, EPA could not transfer the NPDES program to the state.

SCS CSHB 627 (Res.) also constitutes a de facto revision of existing state water quality standards. This legislative revision would occur because the bill effectively nullifies any existing state water quality standard which is more stringent than BPEST. Such an attempt to revise existing state water quality standards violates the CWA. The CWA establishes specific requirements for the revision of existing state water quality standards. CWA § 303(c) provides that whenever the state revises water quality standards, the state must submit the revised standards to EPA for approval. Under 40 C.F.R. Part 131, state water quality standards cannot be revised unless the water uses sought to be excluded (i) do not currently exist, and (ii) are not attainable through the imposition of BATEA-based effluent limits and national performance standards. 40 C.F.R. § 131.10. To determine the non-attainability of a use, a use attainability analysis usually must be performed. 40 C.F.R. § 131.10(j). Also, before water quality standards may be revised, the state must hold public hearings in conformity with EPA hearing requirements. 40 C.F.R. § 131.20(b).

If EPA determines that the state's attempted revision of water quality standards fails to conform to the CWA requirements, federal law requires that EPA "shall promptly prepare and promulgate such standard[s]" for the state. 40 C.F.R. § 131.22(a). Thus, to the extent EPA construes SCS CSHB 627 (Res.) as an attempt to unlawfully revise state water quality standards, the bill opens the door to the imposition upon Alaska of federally-mandated water quality standards by EPA.

In addition, SCS CSHB 627 (Res.) would hamper the state's ability to certify NPDES permits. 2/ SCS CSHB 627 (Res.) would preclude the state from certifying NPDES permits which contain terms based on existing water quality standards if the standards are more stringent than BPEST. The bill could force the state to waive the state's certification opportunity, and thereby forfeit the major opportunity for the state to influence the federal permit adoption process. Waiver of certification would leave the entire NPDES permit adoption process to EPA. Since a certified NPDES permit also serves as the state discharge permit required by AS 46.03.100, waiver of certification would force the state to promulgate its own discharge permits -- a lengthy and expensive process.

SCS CSHB 627 (Res.) would also damage the state's ability to work with the federal government toward fair and reasonable enforcement of placer mining water quality violations. The EPA assistant regional administrator for Alaska, Al Ewing, informs us that, from EPA's perspective, adoption of SCS CSHB 627 (Res.) would remove the state from cooperative federal/state placer mining enforcement efforts. Such removal would cut off state input into EPA's placer mining enforcement decisions, and would eliminate the state's opportunity to incorporate Alaskan concerns into the enforcement decision process.

Other sections of SCS CSHB 627 (Res.) also impact the existing regulatory structure. Section 1 of SCS CSHB 627 (Res.) might impair the Department of Fish and Game's ability to regulate placer mining activities and to otherwise protect waters "important for the spawning, rearing, and migration of anadromous fish" under AS 16.05.870. Section 2 of SCS CSHB 627 (Res.) would, in broad terms, prohibit DNR from any regulation of appropriated waters. Such a prohibition might restrict DNR's regulatory authority under the Water Use Act, AS 46.15.

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2/ CWA § 401(a) and 40 C.F.R. § 124.53(a)-(c) provide the state with an opportunity to review and certify NPDES permits prior to issuance of the final permits by EPA.

Honorable Arliss Sturgulewski  
SCS CSHB No. 627 (Resources)

April 22, 1986  
Page 5

If you have any questions concerning our analysis of  
SCS CSHB 627 (Res.) please contact us. Thank you for your  
consideration.

HAROLD M. BROWN  
ATTORNEY GENERAL

By:



John A. McDonagh  
Assistant Attorney General

JAM/ja

cc: William Ross, Commissioner  
Dept. of Environmental Conservation  
Ronald Lorensen, Deputy Attorney General  
Department of Law

Almost every permitting activity (especially those in or adjacent to streams) the Habitat Division is involved with includes an aspect of water pollution control and abatement to protect fish and fish habitat through implementation of AS Title 16. General examples of erosion control actions to protect fish habitat that the Habitat Division has been recently involved in include:

1. Utility and pipeline crossings of anadromous streams where we assist contractors with information on fluming techniques and channel diversions.
2. Bank stabilization projects where we assist property owners in designing projects to prevent erosion while maintaining fish habitat.

Specific examples of projects the division has protected fish streams through implementation of AS 16 include:

1. The Anchorage Water and Wastewater Utility (AWWU) project to construct a sewerline across Campbell Creek (FG 84-II-0474). The department assisted the AWWU in designing a channel diversion to reduce the transportation of sediments into Campbell Creek thereby protecting fish habitat.
2. The AWWU project to construct a sewerline across Campbell Creek (FG 85-II-0138). The department

assisted the AWWU in designing a flume and coffer dam system to almost totally prevent impacts to fish habitat of the creek.

3. The AWWU project to construct the Potter pump station adjacent to Potter Marsh. This project resulted in pollution of the Marsh but with department assistance, sedimentation of Marsh habitats was reduced and eventually eliminated.
4. The Alaska Diversified Properties project to construct the Potter Creek subdivision above Potter Marsh. This project resulted in pollution of both the Marsh and Potter Creek. Working with the Corps of Engineers (CE) and the developer, the department was able to correct most of the major erosion problems through reducing impacts to fish and wildlife habitats of Potter Marsh and Potter Creek. We will be assisting the developer in cleaning out Potter Creek this spring.
5. The AWWU Abbott 30-inch waterline crossing of both the North and South Forks of Campbell Creek (FG 83-II-0216). The department assisted the contractor in developing a fluming technique to prevent impacts to fish habitat allow winter construction.

6. The Salamatof Native Corporation project to drain wetlands adjacent to the Kenai River (Kenai River 118). Ditches were constructed which drained into the river and resulted in water pollution. The department worked with the developer to design a system of ditch treatments which eliminated most of the water pollution problem in the Kenai River and thereby protect fish habitats and the recreational fishery.
7. Construction of the Enstar Beluga to Anchorage gas pipeline (FG 83-II-0090) which crossed 28 anadromous streams. The department worked with Enstar to design channel diversions, flumes and borings to avoid impacts to fish and wildlife habitat. We also assisted in the development of a revegetation and erosion control plan to prevent long-term erosion of stream banks.
8. Hyer Park Subdivision - Kim and Terry Griswold/Bill Nelson. This project resulted in the complete removal of all vegetation along a reach of Wasilla Creek for commercial and residential development. The ADF&G has worked with the applicant and contractor to design adequate revegetation efforts to preclude reduction of coho salmon spawning and rearing habitat which occurs

along this reach. This remedial action has been coordinated closely with the Matanuska-Susitna Borough (MSB) planning staff.

9. Mariah Subdivision - Campbell Creek Realignment. This project was designed to provide for subdivision development while modifying the existing stream channel which is an important coho salmon rearing area. The ADF&G assisted the contractor in the design and monitored construction of the project. The new alignment will preclude impacts to the fish stream from urban runoff and siltation.
  
10. West Interceptor Sewerline Project - Municipality of Anchorage (MOA). The ADF&G worked closely with the MOA to design an effective methodology to bore beneath Campbell Creek to install a 78-inch diameter sewer connector line. This crossing occurred in known chinook salmon spawning habitat. The ADF&G also monitored the project which included a temporary diversion of the entire flow of this creek to ensure water quality and spawning habitat were maintained. The end project resulted in the expansion of spawning habitat and the revegetation of disturbed stream banks.



# Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

April 28, 1986

Senator Arliss Sturgulewski  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Sturgulewski:

*Talked to Russ  
on telephone -  
4/28/86  
are changing CS -  
MCA*

The Alaska Sportfishing Association opposes the Senate Resources Committee substitute to HB 627, which would amend AS 16.05.930 and remove the Commissioner of Fish and Game's authority to regulate water quality under Alaska Statutes Title 16.

Since statehood, Alaska statutes 16.05.840 and 16.05.870 have mandated that the Department of Fish and Game maintain and protect fish passage, integrity of the stream bed and banks, and the quality and quantity of water in Alaska's streams. No other department reviews activities specifically for the impact they would have on anadromous fish and provides protection for fish that are economically and recreationally important to Alaskans.

Our members, and thousands of other Alaskans, depend upon anadromous fish for their recreation and, in many cases, their livelihood. The experts on anadromous fish, anadromous fish habitat, and the needs of fishermen are in the Department of Fish and Game, not some other state agency.

In recent years we have seen the threat to anadromous streams increase dramatically and we feel strongly that the Department of Fish and Game must continue to be actively and directly involved in the regulation of those who would pollute anadromous fish habitat.

We recommend that if your committee pursues this legislation that you hold a statewide teleconference to provide add residents with the opportunity to express their opinion on this vital issue.

Thank you for your consideration in addressing our concerns.

Sincerely,

*Russ Redick*  
R. Russell Redick  
Executive Director

cc: Senate Resources Committee Members  
Fish & Game Commissioner Collinsworth

Bradley ✓  
4/18/86

*Miller's  
Resource Dev. Council*

Original sponsor: M.W. Miller by request

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 627 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

*Miller's  
Resource Dev. Council*

6 For an Act entitled: "An Act relating to the appropriation of water."

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

8 \* Section 1. AS 16.05.930 <sup>ENR.</sup> is amended by adding a new subsection to

9 read:

10 (g) The commissioner may not regulate the quality of the water

11 when it is regulated under AS 46.03.892. ~~DEC.~~

12 \* Sec. 2. AS 38.05.020 is amended by adding a new subsection to read:

13 (c) The commissioner may not regulate the quality of the water

14 when it is regulated under AS 46.03.892.

15 \* Sec. 3. AS 46.03 is amended by adding a new section to read:

16 Sec. 46.03.892. REGULATION OF APPROPRIATED WATER. (a) When

17 considering the quality of appropriated water and establishing regu-

18 lations for the quality of appropriated water, the commissioner may

19 require a person who appropriates water to meet a standard that is

20 equal to but not higher than a standard attainable through the appli-

21 cation of best practicable and economically sustainable technology

22 associated with the particular use.

23 (b) The commissioner may not require a higher discharge quality

24 standard for appropriated water than the quality of water received for

25 use.

26 \* Sec. 4. AS 46.15 is amended by adding a new section to read:

27 Sec. 46.15.045. SMALL SCALE USE OF WATER. A person may use less

28 than a significant amount of water without a permit unless the commis-

29 sioner determines under AS 46.15.080(b) that the use of less than a

*check w/ EPA re 7th \$10 pollution control*

*more pertinent  
N.P.S.  
Quality to  
unify 401  
Committee  
may wish  
to consider  
amendments*

*APR 16 1986*

1 significant amount of water without a permit is not in the public  
2 interest. A person using less than a significant amount of water  
3 without a permit acquires no water right or priority unless an appli-  
4 cation is filed and a permit or certificate is issued under AS 46.15.-  
5 030 - 46.15.185.

6 \* Sec. 5. AS 46.15.133(f) is amended to read:

7 (f) The commissioner may, by regulation, designate additional  
8 types of appropriations that [WHICH] are exempt from this section and  
9 provide simplified procedures for ruling on the applications.

10 \* Sec. 6. AS 46.15.133 is amended by adding a new subsection to read:

11 (g) An application to appropriate not more than 1,000 gallons of  
12 water a day is exempt from the notice provisions of this section  
13 except that the commissioner shall notify the Department of Fish and  
14 Game of each application to appropriate water from a stream designated  
15 under AS 16.05.870. Notwithstanding this subsection, the commissioner  
16 may require public notice under this section

17 (1) on a determination that the total amount of water  
18 available in an area is limited considering the number of potential  
19 users from the source of the water; or

20 (2) on request of the municipality in which the area is  
21 located.

22 \* Sec. 7. AS 46.15.260 is amended to read:

23 Sec. 46.15.260. DEFINITIONS. In this chapter, unless the  
24 context otherwise requires,

25 (1) "appropriate" means

26 (A) to divert, impound, or withdraw a quantity of  
27 water from a source of water, for a beneficial use; or

28 (B) to reserve water under [IN ACCORDANCE WITH]  
29 AS 46.15.145;

1 (2) "appropriation" means

2 (A) the diversion, impounding, or withdrawal of a  
3 quantity of water from a source of water for a beneficial use; or

4 (B) the reservation of water under [IN ACCORDANCE  
5 WITH] AS 46.15.145;

6 (3) "beneficial use" means a use of water for the benefit  
7 of the appropriator, other persons or the public, that is reasonable  
8 and consistent with the public interest, including, but not limited  
9 to, domestic, agricultural, irrigation, industrial, manufacturing,  
10 fish and shellfish processing, navigation and transportation, mining,  
11 power, public, sanitary, fish and wildlife, recreational uses, and  
12 maintenance of water quality;

13 (4) "source of water" means a substantial quantity of water  
14 capable of being put to beneficial use;

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

18 (6) "commissioner" means the commissioner of natural re-  
19 sources;

20 (7) "director" means the director of land and water manage-  
21 ment [THE DIVISION OF LANDS], Department of Natural Resources;

22 (8) "person" includes an individual, partnership, asso-  
23 ciation, public or private corporation, state agency, municipality  
24 [POLITICAL SUBDIVISION] of the state, and the United States; [.]

25 (9) "mineral and medicinal water" means

26 (A) water of a hot spring or spring with curative  
27 properties that [WHICH] has been reserved by the federal govern-  
28 ment under Public Land Order No. 399; and

29 (B) geothermal fluid, as [THE TERM IS] defined in

1 AS 41.06.060;

2 (10) "significant amount of water" means

3 (A) a use of more than 5,000 gallons of water in a  
4 single day from a single source; or

5 (B) the regular daily or recurring seasonal use of  
6 more than 500 gallons of water a day for 10 days or more a year  
7 from a single source; or

8 (C) a water use that may adversely affect the water  
9 rights of another appropriator or the public interest.

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Bradley  
4/29/86

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Original sponsor: M.W.Miller by request

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 627 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the appropriation of water."

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

8 \* Section 1. AS 16.05.050 is amended by adding a new subsection to  
9 read:

10 (b) The commissioner may not require a higher discharge quality  
11 for appropriated water than the quality of water received for use.

12 \* Sec. 2. AS 38.05.020 is amended by adding a new subsection to read:

13 (c) The commissioner may not require a higher discharge quality  
14 for appropriated water than the quality of water received for use.

15 \* Sec. 3. AS 46.03 is amended by adding a new section to read:

16 Sec. 46.03.892. REGULATION OF APPROPRIATED WATER. When enforc-  
17 ing the law or regulations for the quality of appropriated water, the  
18 commissioner may not require a higher discharge quality for appropri-  
19 ated water than the quality of water received for use.

20 \* Sec. 4. AS 46.15 is amended by adding a new section to read:

21 Sec. 46.15.045. SMALL SCALE USE OF WATER. A person may use less  
22 than a significant amount of water without a permit unless the commis-  
23 sioner determines under AS 46.15.080(b) that the use of less than a  
24 significant amount of water without a permit is not in the public  
25 interest. A person using less than a significant amount of water  
26 without a permit acquires no water right or priority unless an appli-  
27 cation is filed and a permit or certificate is issued under AS 46.15.-  
28 030 - 46.15.185.

29 \* Sec. 5. AS 46.15.133(f) is amended to read:

1 (f) The commissioner may, by regulation, designate additional  
2 types of appropriations that [WHICH] are exempt from this section and  
3 provide simplified procedures for ruling on the applications.

4 \* Sec. 6. AS 46.15.133 is amended by adding a new subsection to read:

5 (g) An application to appropriate not more than 1,000 gallons of  
6 water a day is exempt from the notice provisions of this section  
7 except that the commissioner shall notify the Department of Fish and  
8 Game of each application to appropriate water from a stream designated  
9 under AS 16.05.870. Notwithstanding this subsection, the commissioner  
10 may require public notice under this section

11 (1) on a determination that the total amount of water  
12 available in an area is limited considering the number of potential  
13 users from the source of the water; or

14 (2) on request of the municipality in which the area is  
15 located.

16 \* Sec. 7. AS 46.15.260 is amended to read:

17 Sec. 46.15.260. DEFINITIONS. In this chapter, unless the con-  
18 text otherwise requires,

19 (1) "appropriate" means

20 (A) to divert, impound, or withdraw a quantity of  
21 water from a source of water, for a beneficial use; or

22 (B) to reserve water under [IN ACCORDANCE WITH]  
23 AS 46.15.145;

24 (2) "appropriation" means

25 (A) the diversion, impounding, or withdrawal of a  
26 quantity of water from a source of water for a beneficial use; or

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28 WITH] AS 46.15.145;

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

1 of the appropriator, other persons or the public, that is reasonable  
2 and consistent with the public interest, including, but not limited  
3 to, domestic, agricultural, irrigation, industrial, manufacturing,  
4 fish and shellfish processing, navigation and transportation, mining,  
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6 maintenance of water quality;

7 (4) "source of water" means a substantial quantity of water  
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11 water;

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14 (7) "director" means the director of land and water manage-  
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4           \* Sec. 8. AS 16.05.930(g), AS 38.05.020(c), and AS 46.03.892 are re-  
5           pealed on the date the state assumes responsibility for the pollutant dis-  
6           charge elimination program authorized by sec. 402 of the Act of June 30,  
7           1948, 33 U.S.C. 1342.

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Bradley  
4/29/86~~\_\_\_\_\_~~  
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Original sponsor: M.W.Miller by request

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 627 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

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5 A BILL

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8 Game of each application to appropriate water from a stream designated  
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17 Sec. 46.15.260. DEFINITIONS. In this chapter, unless the con-  
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21 properties that [WHICH] has been reserved by the federal govern-  
22 ment under Public Land Order No. 399; and

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24 AS 41.06.060;

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5           pealed on the date the state <sup>osd b</sup> assumes responsibility for the pollutant dis-  
6           charge elimination program authorized by sec. 402 of the Act of June 30,  
7           1948, 33 U.S.C. 1342.

Offered: 5/1/86  
Referred: Rules

Original sponsor: M.W.Miller by request

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
2 SENATE CS FOR CS FOR HOUSE BILL NO. 627 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL  
6 For an Act entitled: "An Act relating to the appropriation of water."  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 16.05.050 is amended by adding a new subsection to  
9 read:

10 (b) The commissioner may not require a higher discharge quality  
11 for appropriated water used in placer mining than the quality of water  
12 received for the use.

13 \* Sec. 2. AS 38.05.020 is amended by adding a new subsection to read:

14 (c) The commissioner may not require a higher discharge quality  
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16 received for the use.

17 \* Sec. 3. AS 46.03 is amended by adding a new section to read:

18 Sec. 46.03.892. REGULATION OF APPROPRIATED WATER. When enforc-  
19 ing the law or regulations for the quality of appropriated water used  
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21 quality for appropriated water than the quality of water received for  
22 the use.

23 \* Sec. 4. AS 46.15 is amended by adding a new section to read:

24 Sec. 46.15.045. SMALL SCALE USE OF WATER. A person may use less  
25 than a significant amount of water without a permit unless the commis-  
26 sioner determines under AS 46.15.080(b) that the use of less than a  
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28 interest. A person using less than a significant amount of water  
29 without a permit acquires no water right or priority unless an

*Handwritten notes:*  
of act for "appropriated water"  
"water" (see title)  
Appeals - amendments  
Same as SB 460  
which primarily  
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did it to  
act. a further

1 application is filed and a permit or certificate is issued under  
2 AS 46.15.030 - 46.15.185.

3 \* Sec. 5. AS 46.15.133(f) is amended to read:

4 (f) The commissioner may, by regulation, designate additional  
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19 \* Sec. 7. AS 46.15.260 is amended to read:

20 Sec. 46.15.260. DEFINITIONS. In this chapter, unless the con-  
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25 (B) to reserve water under [IN ACCORDANCE WITH]  
26 AS 46.15.145;

27 (2) "appropriation" means

28 (A) the diversion, impounding, or withdrawal of a  
29 quantity of water from a source of water for a beneficial use; or

1                   (B) the reservation of water under [IN ACCORDANCE  
2                   WITH] AS 46.15.145;

3                   (3) "beneficial use" means a use of water for the benefit  
4                   of the appropriator, other persons or the public, that is reasonable  
5                   and consistent with the public interest, including, but not limited  
6                   to, domestic, agricultural, irrigation, industrial, manufacturing,  
7                   fish and shellfish processing, navigation and transportation, mining,  
8                   power, public, sanitary, fish and wildlife, recreational uses, and  
9                   maintenance of water quality;

10                   (4) "source of water" means a substantial quantity of water  
11                   capable of being put to beneficial use;

12                   (5) "water" means all water of the state, surface and  
13                   subsurface, occurring in a natural state, except mineral and medicinal  
14                   water;

15                   (6) "commissioner" means the commissioner of natural re-  
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18                   ment [THE DIVISION OF LANDS], Department of Natural Resources;

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29                   (A) a use of more than 5,000 gallons of water in a

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6           rights of another appropriator or the public interest.

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8       pealed on the date the state assumes responsibility for the pollutant dis-  
9       charge elimination program authorized by sec. 402 of the Act of June 30,  
10      1948, 33 U.S.C. 1342.

Introduced: 3/5/86  
Referred: Resources

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2

SENATE BILL NO. 460

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to regulation of water quality in  
7 placer mining."

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

9 \* Section 1. AS 16.05.930 is amended by adding a new subsection to  
10 read:

11 (g) The commissioner may not require a person engaged in placer  
12 mining to discharge water used in the placer mining with a higher  
13 quality than the water initially received for use in the placer min-  
14 ing.

15 \* Sec. 2. AS 38.95 is amended by adding a new section to read:

16 ARTICLE 5. WATER QUALITY IN PLACER MINING.

17 Sec. 38.95.180. PLACER MINING WATER QUALITY REGULATION. The  
18 commissioner may not require a person engaged in placer mining to  
19 discharge water used in the placer mining with a higher quality than  
20 the water initially received for use in the placer mining.

21 \* Sec. 3. AS 46.03 is amended by adding a new section to read:

22 Sec. 46.03.892. PLACER MINING WATER QUALITY REGULATION. The  
23 commissioner may not require a person engaged in placer mining to  
24 discharge water used in the placer mining with a higher quality than  
25 the water initially received for use in the placer mining.

*Rep. Miller  
make  
Chil Holdsworth*

Bradley ✓  
4/18/86

Original sponsor: M.W.Miller by request

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 627 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

8 \* Section 1. AS 16.05.930 is amended by adding a new subsection to  
9 read:

10 (g) The commissioner may not regulate the quality of the water  
11 when it is regulated under AS 46.03.892.

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13 (c) The commissioner may not regulate the quality of the water  
14 when it is regulated under AS 46.03.892.

15 \* Sec. 3. AS 46.03 is amended by adding a new section to read:

16 Sec. 46.03.892. REGULATION OF APPROPRIATED WATER. (a) When  
17 considering the quality of appropriated water and establishing regu-  
18 lations for the quality of appropriated water, the commissioner may  
19 require a person who appropriates water to meet a standard that is  
20 equal to but not higher than a standard attainable through the appli-  
21 cation of best practicable and economically sustainable technology  
22 associated with the particular use.

23 (b) The commissioner may not require a higher discharge quality  
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25 use.

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27 Sec. 46.15.045. SMALL SCALE USE OF WATER. A person may use less  
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Bradley ✓  
4/18/86

Original sponsor: M.W.Miller by request

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
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*7/22/86  
 Carl  
 DEC 1986*

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 17 considering the quality of appropriated water and establishing regu-  
 18 lations for the quality of appropriated water, the commissioner may  
 19 require a person who appropriates water to meet a standard that is  
 20 equal to but not higher than a standard attainable through the appli-  
 21 cation of best practicable and economically sustainable technology  
 22 associated with the particular use.

*Handwritten notes:*  
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23 (b) The commissioner may not require a higher discharge quality  
 24 standard for appropriated water than the quality of water received for  
 25 use.

26 \* Sec. 4. AS 46.15 is amended by adding a new section to read:

27 Sec. 46.15.045. SMALL SCALE USE OF WATER. A person may use less  
 28 than a significant amount of water without a permit unless the commis-  
 29 sioner determines under AS 46.15.080(b) that the use of less than a

1 significant amount of water without a permit is not in the public  
2 interest. A person using less than a significant amount of water  
3 without a permit acquires no water right or priority unless an appli-  
4 cation is filed and a permit or certificate is issued under AS 46.15.-  
5 030 - 46.15.185.

6 \* Sec. 5. AS 46.15.133(f) is amended to read:

7 (f) The commissioner may, by regulation, designate additional  
8 types of appropriations that [WHICH] are exempt from this section and  
9 provide simplified procedures for ruling on the applications.

10 \* Sec. 6. AS 46.15.133 is amended by adding a new subsection to read:

11 (g) An application to appropriate not more than 1,000 gallons of  
12 water a day is exempt from the notice provisions of this section  
13 except that the commissioner shall notify the Department of Fish and  
14 Game of each application to appropriate water from a stream designated  
15 under AS 16.05.870. Notwithstanding this subsection, the commissioner  
16 may require public notice under this section

17 (1) on a determination that the total amount of water  
18 available in an area is limited considering the number of potential  
19 users from the source of the water; or

20 (2) on request of the municipality in which the area is  
21 located.

22 \* Sec. 7. AS 46.15.260 is amended to read:

23 Sec. 46.15.260. DEFINITIONS. In this chapter, unless the  
24 context otherwise requires,

25 (1) "appropriate" means

26 (A) to divert, impound, or withdraw a quantity of  
27 water from a source of water, for a beneficial use; or

28 (B) to reserve water under [IN ACCORDANCE WITH]

29 AS 46.15.145;

1 (2) "appropriation" means

2 (A) the diversion, impounding, or withdrawal of a  
3 quantity of water from a source of water for a beneficial use; or

4 (B) the reservation of water under [IN ACCORDANCE  
5 WITH] AS 46.15.145;

6 (3) "beneficial use" means a use of water for the benefit  
7 of the appropriator, other persons or the public, that is reasonable  
8 and consistent with the public interest, including, but not limited  
9 to, domestic, agricultural, irrigation, industrial, manufacturing,  
10 fish and shellfish processing, navigation and transportation, mining,  
11 power, public, sanitary, fish and wildlife, recreational uses, and  
12 maintenance of water quality;

13 (4) "source of water" means a substantial quantity of water  
14 capable of being put to beneficial use;

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

18 (6) "commissioner" means the commissioner of natural re-  
19 sources;

20 (7) "director" means the director of land and water manage-  
21 ment [THE DIVISION OF LANDS], Department of Natural Resources;

22 (8) "person" includes an individual, partnership, asso-  
23 ciation, public or private corporation, state agency, municipality  
24 [POLITICAL SUBDIVISION] of the state, and the United States; [.]

25 (9) "mineral and medicinal water" means

26 (A) water of a hot spring or spring with curative  
27 properties that [WHICH] has been reserved by the federal govern-  
28 ment under Public Land Order No. 399; and

29 (B) geothermal fluid, as [THE TERM IS] defined in

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AS 41.06.060;

(10) "significant amount of water" means

(A) a use of more than 5,000 gallons of water in a single day from a single source; or

(B) the regular daily or recurring seasonal use of more than 500 gallons of water a day for 10 days or more a year from a single source; or

(C) a water use that may adversely affect the water rights of another appropriator or the public interest.



# Resource Development Council

for Alaska, Inc.

807 "G" Street, Suite 200, Anchorage, Alaska 99501-3440  
Box 100516, Anchorage, Alaska 99510-0516 - 907/276-0700

**RED ALERT**

**Reasonable Water Quality Legislation Needs Your Help!!**

Please contact Governor Sheffield's office immediately and make him aware of your support for reasonable water quality measures for Alaska.

HB 627 allows the administration to take positive action to support the growth of the important Alaska mining industry. We need this new law to give reasonable direction to the Department of Environmental Conservation.

The Governor is presently considering HB 627 and is receiving pressure to veto this bill. The mining industry, and all other water users in Alaska, cannot bear yet another setback at this time.

This legislation will straighten out many of the serious water use problems facing Alaska today. HB 627 will not place the state out of compliance with federal standards. It will not make it harder for the state to assume control of federal water quality programs.

Contact the Governor by phone or public opinion message right away and ask him to do something positive for our economy by signing HB 627.

Governor's Office 465-3500

POM's

Anch 278-3668

Fbx 452-4448

**RED ALERT**

Offered: 4/7/86  
Referred: Rules

Original sponsor: M.W.Miller by request

*ML*

1 IN THE HOUSE BY THE RULES COMMITTEE  
2 CS FOR HOUSE BILL NO. 627 (Rules)(title am)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the appropriation of water."

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

8 \* Section 1. AS 46.15 is amended by adding a new section to read:

9 Sec. 46.15.045. SMALL SCALE USE OF WATER. A person may use less  
10 than a significant amount of water without a permit unless the commis-  
11 sioner determines under AS 46.15.080(b) that the use of less than a  
12 significant amount of water without a permit is not in the public  
13 interest. A person using less than a significant amount of water  
14 without a permit acquires no water right or priority unless an appli-  
15 cation is filed and a permit or certificate is issued under AS 46.15.-  
16 030 - 46.15.185.

17 \* Sec. 2. AS 46.15.133(f) is amended to read:

18 (f) The commissioner may, by regulation, designate additional  
19 types of appropriations that [WHICH] are exempt from this section and  
20 provide simplified procedures for ruling on the applications.

21 \* Sec. 3. AS 46.15.133 is amended by adding a new subsection to read:

22 (g) An application to appropriate not more than 1,000 gallons of  
23 water a day is exempt from the notice provisions of this section  
24 except that the commissioner shall notify the Department of Fish and  
25 Game of each application to appropriate water from a stream designated  
26 under AS 16.05.87. Notwithstanding this subsection, the commissioner  
27 may require public notice under this section

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29 available in an area is limited considering the number of potential

1 users from the source of the water; or

2 (2) on request of the municipality in which the area is  
3 located.

4 \* Sec. 4. AS 46.15.260 is amended to read:

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6 context otherwise requires,

7 (1) "appropriate" means

8 (A) to divert, impound, or withdraw a quantity of  
9 water from a source of water, for a beneficial use; or

10 (B) to reserve water under [IN ACCORDANCE WITH]  
11 AS 46.15.145;

12 (2) "appropriation" means

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14 quantity of water from a source of water for a beneficial use; or

15 (B) the reservation of water under [IN ACCORDANCE  
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18 of the appropriator, other persons or the public, that is reasonable  
19 and consistent with the public interest, including, but not limited  
20 to, domestic, agricultural, irrigation, industrial, manufacturing,  
21 fish and shellfish processing, navigation and transportation, mining,  
22 power, public, sanitary, fish and wildlife, recreational uses, and  
23 maintenance of water quality;

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25 capable of being put to beneficial use;

26 (5) "water" means all water of the state, surface and  
27 subsurface, occurring in a natural state, except mineral and medicinal  
28 water;

29 (6) "commissioner" means the commissioner of natural

1 resource.;

2 (7) "director" means the director of land and water manage-  
3 ment [THE DIVISION OF LANDS], Department of Natural Resources;

4 (8) "person" includes an individual, partnership, asso-  
5 ciation, public or private corporation, state agency, municipality  
6 [POLITICAL SUBDIVISION] of the state, and the United States; [.]

7 (9) "mineral and medicinal water" means

8 (A) water of a hot spring or spring with curative  
9 properties that [WHICH] has been reserved by the federal govern-  
10 ment under Public Land Order No. 399; and

11 (B) geothermal fluid, as [THE TERM IS] defined in  
12 AS 41.06.060;

13 (10) "significant amount of water" means

14 (A) a use of more than 5,000 gallons of water in a  
15 single day from a single source; or

16 (B) the regular daily or recurring seasonal use of  
17 more than 500 gallons of water a day for 10 days or more a year  
18 from a single source; or

19 (C) a water use that may adversely affect the water  
20 rights of another appropriator or the public interest.

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