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Official Business

# Alaska State Legislature

## House

COMMITTEE ON STATE AFFAIRS

April 21, 1988

Pouch V  
State Capitol  
Juneau, Alaska 99811

Judy Brady, Commissioner  
Department of Natural Resources  
400 Willoughby Avenue  
Juneau, AK 99801

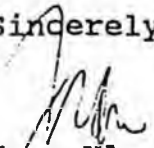
Dear Commissioner Brady:

Yesterday the House State Affairs Committee held a hearing on House Bill 480, An Act relating to appropriations of water. At the end of the discussion, I asked for the following information from your department.

- 1) How is beneficial use defined and interpreted by the department? Is there definition in statute, regulation, or case law?
- 2) To what extent does the department make that information available to applicants so that they know exactly what standards they are being judged against?
- 3) How many beneficial use studies has the department done? Do you have the resources to do them?
- 4) When somebody comes in with an application, is a beneficial use study initiated at that time or does it only get initiated when another state agency has an interest in it?

The discussion on this bill raised some interesting policy questions which may not easily be resolved but I believe it is important to clarify the issue so that the public can at least have a better understanding of the process.

Sincerely,

  
Fran Ulmer, Chair  
Committee on State Affairs

**DEPARTMENT OF NATURAL RESOURCES**

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

May 2, 1988

The Honorable Fran Ulmer  
Chair, House State Affairs Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Ulmer:

I have received your letter regarding HB 480, a bill which proposes to amend AS 46.15.090. You asked several policy questions which I will address by number.

1 & 2) How is the term "beneficial use" defined and interpreted by the department, and to what extent is it made available to the applicant?

The term is defined in AS 46.15.256 (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;

The department interprets this in a straight forward manner to mean a use of water which benefits the appropriator, other persons, or the public and which is also reasonable and consistent with the public interest. Under AS 46.15.080 (3) the Commissioner in deciding to issue a permit must determine if the proposed use of water is beneficial. AS 46.15.080 (4) provides guidance as to those aspects the Commissioner shall consider in determining the public interest. In an effort to inform and assist the public in understanding the state's water right system the department publishes fact sheets and a water users handbook which includes the statute (copy enclosed). All of these publications are readily available and usually included with requests for applications.

3) How many beneficial use studies has the department completed, and do we have the resources to do them?

Statewide the department makes approximately 2500 decisions a year pertaining to applications to appropriate water. Ninety-nine percent of these are granted. The department does not use the term "beneficial use studies". AS 46.15.080 sets forth criteria for issuing permits, and the Commissioner makes a decision on whether the proposed appropriation meets all the criteria. One of these criteria [AS 46.15.080 (3)] is that the proposed use of water is beneficial. In that regard the department is continually making decisions as to beneficial use. Given the broad definition, beneficial use is rarely ever an issue.

The majority of these decisions (roughly 70 percent) are non-controversial in nature and represent appropriations of relatively small quantities of water. Roughly 20 percent represent cases which could potentially involve negotiation and resolution of relatively simple issues, concerns, or objections. Approximately 10 percent represent cases which by their very nature involve sensitive issues and public concerns. These usually involve issues ranging from the use of large quantities of water, impacts to important coastal resources and values, and a limited supply of water to meet the demands of users, to whether or not the proposed appropriation is in the public interest. The resolution of these types of cases are given a high priority. Although the department has sustained extensive cuts to this project in recent years, we remain capable of carrying out our statutory responsibilities even though response time has been affected.

4) When somebody comes in with an application, is a beneficial use study initiated at that time or does it only get initiated when another state agency has an interest in it?

No, these issues are not addressed solely when another state agency has an interest. Each individual application requires a decision which includes a finding that the use is beneficial under AS 46.15.080 (3). Most applications are required by statute to go through a public notice process whereby the Commissioner receives input from the public and other state agencies to help determine the public interest aspect of the specific case.

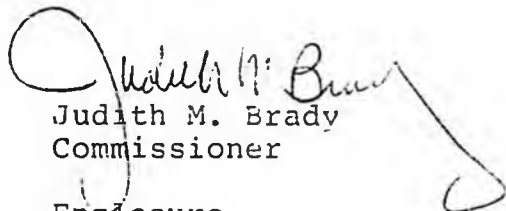
Representative Ulmer

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May 2, 1988

I hope I have adequately addressed your questions. My staff and I are available to respond should you require further information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Judith M. Brady". The signature is written in dark ink and is positioned to the left of the typed name.

Judith M. Brady  
Commissioner

Enclosure

cc: Committee Members  
Rod Swope  
Bob Evans  
Dick LeFebvre

# STATE OF ALASKA WATER USER'S HANDBOOK



Division of  
LAND AND WATER  
MANAGEMENT

 Alaska Department of  
**NATURAL  
RESOURCES**

STATE OF ALASKA

# WATER USER'S HANDBOOK



WATER MANAGEMENT SECTION  
DIVISION OF LAND AND WATER MANAGEMENT  
ALASKA DEPARTMENT OF NATURAL RESOURCES  
BOX 7-005  
ANCHORAGE, ALASKA 99510

May 1981  
Revised  
June 1984  
Jan 1986

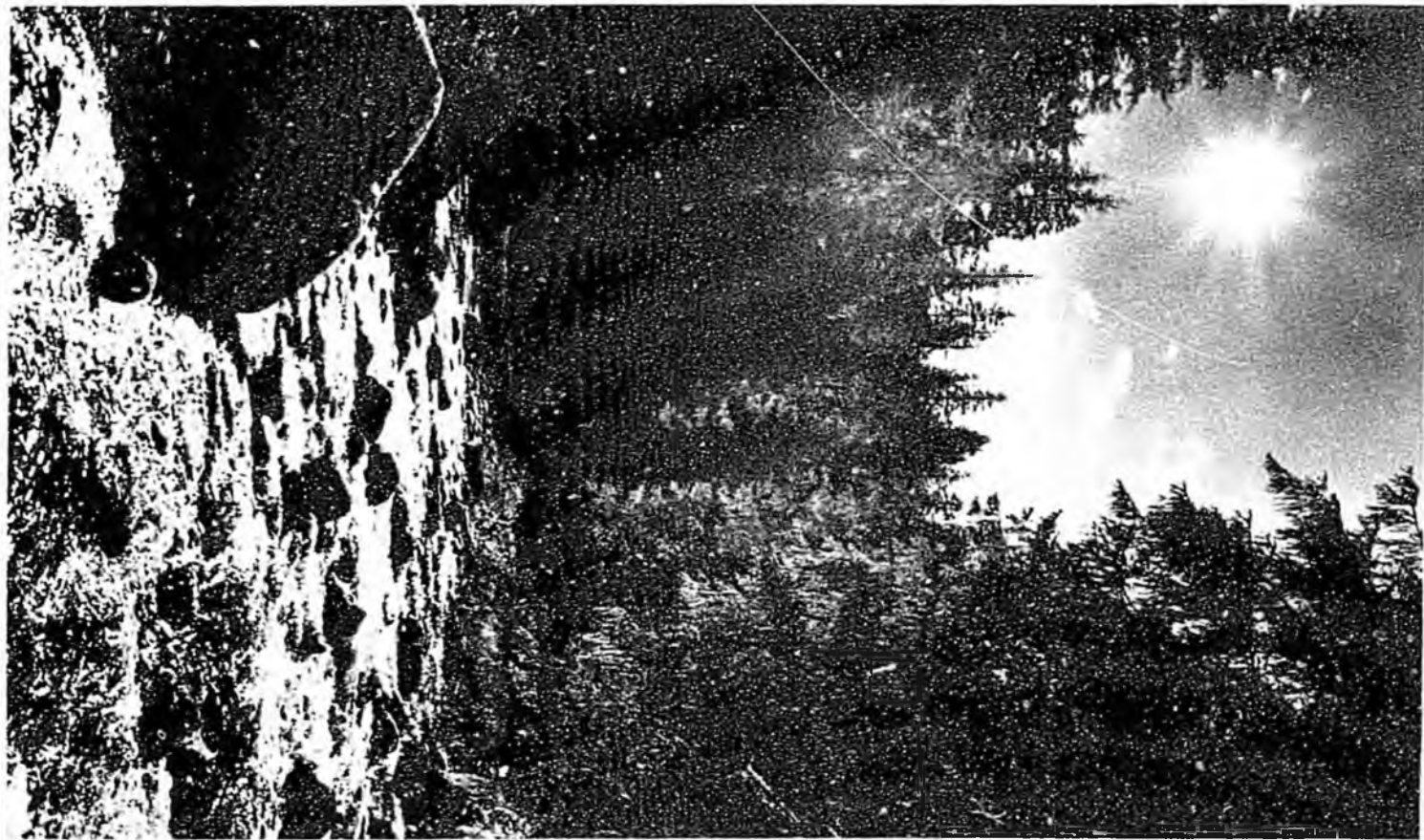


Photo © 1983 Kurt Savikko

## FOREWORD

The first issue of the Alaska Water Users Handbook was funded by the 1980 Alaska Legislature to assist Alaskans in improving their knowledge and understanding of water rights within the state. This booklet has been designed to give citizens a broad base of historical background on water rights, information about the procedures which are necessary to obtain a Certificate of Appropriation, pointers on special types of water uses, and on-going management programs within the Department of Natural Resources.

The Department of Natural Resources, Division of Land and Water Management, Water Management Section, is responsible for planning and administering the appropriation of water in Alaska. Future conservation and development of water resources is dependent upon these important functions.

The division also publishes "fact sheets" to provide further information on items of importance to Alaskan citizens.

Cover Photo © Gary Prokosch

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## I. GENERAL INFORMATION ABOUT WATER RIGHTS

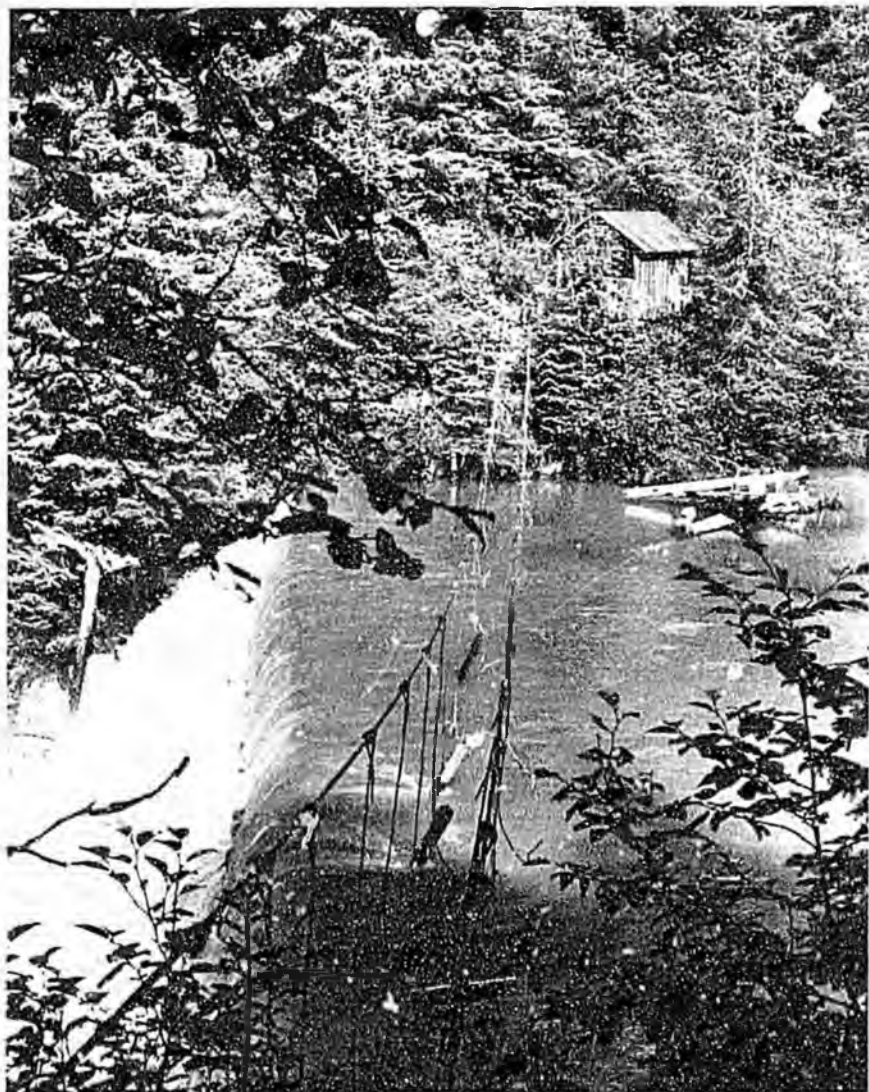


Photo © 1983 Kurt Savikko

The Alaska Water Use Act provides the public with a legal method to obtain water rights for the use of surface and subsurface waters. A water right is a property right and is issued only to individuals who apply for it. The user has the right to divert, impound and/or withdraw specified amounts of water from particular water sources for certain uses.

When the water right is granted, it becomes attached to (appurtenant to) the land where the water is being used, for as long as the water is utilized. If the land is sold, the water right goes with the land to the new owner, unless the water right has been separated from the land through prior approval of the Commissioner of the Department of Natural Resources.

To obtain a water right, individuals must complete the Application for Water Rights (Form 10-102) obtained from and submitted to the local regional or area office of the Department of Natural Resources Division of Land and Water Management. A permit is then issued to develop the water source and the means to use it. Only after the water is being beneficially used is a Certificate of Appropriation issued. This is the legal document which conveys water rights once the water is in use.

In Alaska there are no rights to ground water based on ownership of the overlying land nor are there any rights to surface waters based on ownership of the adjoining or surrounding land.

With an established water right, individuals have a legal standing to assert that right against conflicting uses of water with people who do not have water rights or who are junior in priority. The use of water without a permit or certificate does not give the user defensible legal rights to the water, no matter how long the water has been in use or continues to be in use. Holders of water rights also have a priority to the use of water over persons who later file for water rights from the same water source.

Water rights records provide valuable resource information to the Department of Natural Resources about water use and consumption in Alaska. This information is essential in estimating the present uses of water, predicting future withdrawals, protecting the rights of prior appropriators and providing for proper management of this valuable resource.

If a significant amount of water is needed for a short-term project, such as a construction project, temporary authorization can be obtained. Applications should be made in the form of a letter request to the Department of Natural Resources stating the amount of water needed and the time period for which it will be used. An associated map showing the location of the point from which the water will be taken and if it differs from the source, the place at which the water will be used, should be attached to the letter of request. The temporary authorization does not establish a water right. It is only intended to help avoid problems between those who have a short-term water need and those who have existing water rights.



Photo © 1970 Ken Roberson

## **II. HISTORY OF WATER RIGHTS IN ALASKA**

### **A. The Alaska Constitution**

Water. The issue of water rights was a disputed issue in the State of Alaska for many years. Miners, homesteaders and recreational users argued among themselves for many years about who really had the right to use the water.

In 1959 when Alaska was admitted to the Union and the Constitution of the State of Alaska was ratified, water use was addressed in Sections 3, 13, and 16. These sections outlined the doctrine of "prior appropriation" allowing the first appropriator of water a priority of right over subsequent appropriators on a "first-in-time, first-in-right" basis.

The following sections are quoted from the Alaska Constitution:

**SECTION 3, COMMON USE**—Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

**SECTION 13, WATER RIGHTS**—All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

**SECTION 16, PROTECTION OF RIGHTS**—No person shall be involuntarily divested of his right to the use of waters, his interest in land, or improvements affecting either, except for superior beneficial use or public purpose and then only with just compensation and by operation of law.

With the need for a clear definition of the boundaries of the doctrine of prior appropriation, the Alaska Water Use Act was introduced.

### **B. The Alaska Water Use Act**

In 1961, Governor William A. Egan called for a comprehensive water code which would address all aspects of Alaska's future water uses. Frank J. Trelease, Dean and Professor of Law, University of Wyoming College of Law was hired by the Commissioners of the Alaska Departments of Natural Resources, Health and Welfare, Fish and Game, and Public Works as a consultant to draft a comprehensive water code tailored to the future needs of the state.

Trelease's final report, "A Water Code for Alaska, A Report to the State of Alaska," was submitted in January 1962. This code was rewritten as a bill and introduced to the legislature where it failed to pass. A revised version, "The Alaska Water Use Act, Alaska Statutes 46.15.010-270," was enacted in 1966 covering appropriation and use of water. This Act gave a statutory definition to the doctrine of prior appropriation as authorized by the state constitution.

The Alaska Water Use Act established a procedure for maintaining existing rights and obtaining new rights to all ground and surface waters of the state. The Alaska Department of Natural Resources (DNR) was delegated the authority to determine and adjudicate rights to the use of the waters of the state and to administer the Act. Regulations were adopted by the Commissioner of Natural Resources and became effective in February 1967.

These regulations defined existing rights, or "grandfather rights", as those rights which were established as of July 1, 1966. They included the beneficial use of water on mining claims that included within the claim boundaries both banks of the stream from which the water was taken, the use of water after posting a notice of appropriation at the point of diversion, construction of a means of diversion and the recording of a notice of appropriation, the beneficial use of water during the periods of July 1, 1961 to July 1, 1966, and the construction of a means for diverting water to a beneficial use if the construction was in progress on July 1, 1966.

The procedure used in formalizing existing rights was to file a declaration of appropriation with the Commissioner of the Department of Natural Resources during specified filing periods, the last of which closed in April, 1968. A preliminary determination of validity was made and notice was sent to each person who filed within the area. After a 20-day comment period or hearing, the Commissioner then issued or denied the Certificate of Appropriation. Any declarations received since April, 1968 are treated as applications for water rights.

The statutory procedure for obtaining new water rights requires filing an Application for Water Rights with the Commissioner of the Department of Natural Resources. After a permit is issued and beneficial use of water has begun, a Certificate of Appropriation is issued. All persons planning to withdraw, impound or divert surface or ground water must file an Application for Water Rights. (Section III discusses the process of obtaining water rights.)

The original regulations implementing the Water Use Act were extensively amended on December 29, 1979 and incorporated as 11 AAC 93, Water Management. Those of particular interest relate to the appropriation of water, water-well standards, dam safety and construction, and temporary water use. These regulations have significantly reduced the average time for issuance of a domestic water use permit (for 1,000 gallons of water per day or less) from up to six months to a matter of days.

Any questions regarding these regulations or requests for copies may be addressed to any of the local public offices of the Department of Natural Resources, Division of Land and Water Management as listed in the appendix.

The latest amendments to the Alaska Water Use Act include legislation relating to instream uses of water and geothermal development

### **C. Instream Flow and Geothermal Legislation**

The instream flow amendments to the Alaska Water Use Act were passed by the 1980 Alaska Legislature and signed into law by Governor Jay Hammond in June, 1980. The regulations for instream flow became effective in September 1983 and are incorporated in 11 AAC 93.

This legislation allows private parties and public agencies to apply to the Department of Natural Resources for reservations of water for instream uses including fisheries, navigation, recreation, and water quality purposes. It provides for quantification of instream water uses, the establishment of a priority date and issuance of a Certificate of Reservation within the existing state water rights system.

Legislation regarding development of geothermal resources was also passed by the 1980 Legislature. This legislation replaced the lengthy and outdated Geothermal Resources Act and also contained amendments to the Water Use Act.

The bill bases the definition of "geothermal resources" on a temperature threshold exceeding 120°C (248°F). When obtaining rights to the use of hot water resources below 120°C, only a water right is required from the Department of Natural Resources, Division of Land and Water Management. This provides an incentive for local and small-scale developers of thermal energy. Rights to develop geothermal resources above the 120°C threshold may be obtained from the Department of Natural Resources, Division of Oil & Gas. The use of geothermal resources may thus decrease dependency on the more expensive, non-renewable energy resources.

The amendments of the Geothermal Act to Alaska Water Use Act also clarify the ability of the state to place conditions on Certificates of Appropriation. The Act also clarifies the basis for terminating Permits to Appropriate Water. Thus the State has the ability to enforce safety and resource conservation aspects of drilling hot water resources below 120°C.

### III. OBTAINING WATER RIGHTS IN ALASKA

#### A. Water Rights Application to Certificate Process

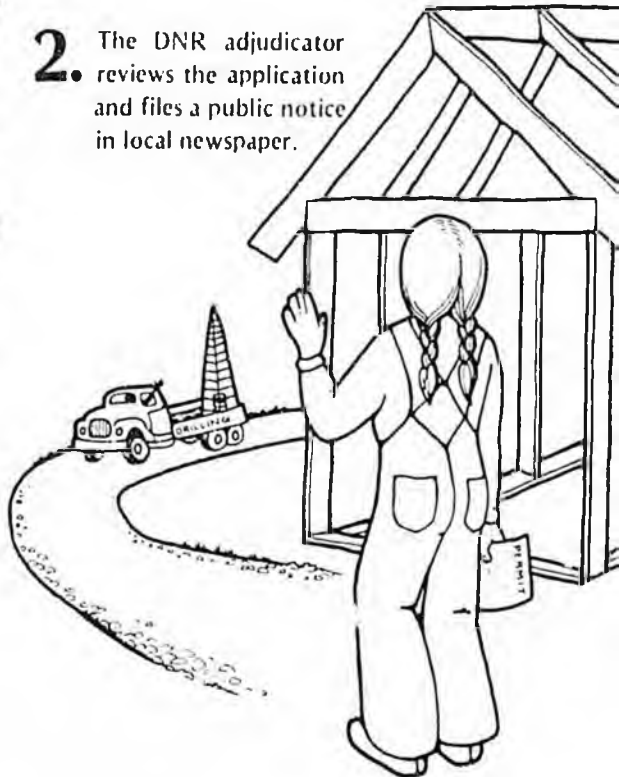
1. Claimant submits application to the Regional office of DNR.



2. The DNR adjudicator reviews the application and files a public notice in local newspaper.



3. Claimant is issued a permit to begin diversion of water.





**4.** Water source is developed and beneficial use has begun

**5.** A site inspector verifies use, methods of diversion, and measures flow of the water source.



**6.** DNR issues water rights certificate and records document.

## B. Filling out an Application for Water Rights

- This completed application should be submitted to the appropriate Department of Natural Resources regional or area office in which the property is located. The application shall be accompanied by the appropriate filing fee as set forth in the fee schedule of the Department of Natural Resources. Please see the appendix for the listing of the local public offices in the Department of Natural Resources.

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF LAND AND WATER MANAGEMENT

OFFICE USE ONLY

ADL

### APPLICATION FOR WATER RIGHTS

Instructions: You will need (1) a map showing the location of your source of water and the area of use, (2) a copy of your property ownership document, i.e. deed, patent, lease agreement or an easement agreement if you do not own the property involved, (3) a copy of your driller's well log, if application is for an existing well, (4) Statement of Beneficial Use Of Water (Form 10-1003A) if this is an existing water use, and (5) Application for Permit to Construct or Modify Dam (Form 10-1015) if you will be constructing a dam over 10 feet high or over 50 acre feet of storage. Please type or print in ink.

- Do not write in the Office Use Only space. The date and time at which the application is submitted are placed here when the application is filed. This date/time stamp is known as the "priority date."
- An Alaska Division of Lands case file number is assigned by the local intake office when the application is properly completed and filed. This number is placed on the receipt, all correspondence, and the permit and certificate when they are issued. Remember, the date/time stamp establishes the priority date, not the case file number. Water rights are issued on the first come, first served principle.

1. Full legal name of Applicant(s) \_\_\_\_\_

#### Item 1 - Full legal name:

- The full, legal name of the applicant should be entered here and should correspond with the signature at the end of the form.
- If a husband and a wife are filing the application, the names should be shown as John T. and Mary L. Sample, rather than Mr. and Mrs. John T. Sample.

2. Mailing Address \_\_\_\_\_  
 \_\_\_\_\_  
 Home Phone \_\_\_\_\_ Business Phone \_\_\_\_\_

Item 2 - Mailing Address and Telephones:

- Self-explanatory.

3. Source of Water Supply:

Item 3 - Source of Water Supply:

- Determine whether the water source is a well or surface water. If the water is taken from two separate sources, (such as a well and a stream) two separate applications should be filed.

(a)  Well  
 Drilled     Hand Driven     Dug     Other \_\_\_\_\_

If existing well, attach copy of driller's well log.

If existing well, and no log, supply all known information

Total depth \_\_\_\_\_ Drawdown \_\_\_\_\_

Intake Depth \_\_\_\_\_ Screened Yes \_\_\_\_\_ No \_\_\_\_\_ Unknown \_\_\_\_\_

Static level \_\_\_\_\_

- (a) Check the appropriate box for well type and supply a well log or all known information.

- The driller's well log is a record of the various rock layers drilled through, the thickness of those layers and the depth to the water in the well. The driller usually gives the land owner a copy of the well log.
- If the well is in existence and no log is available, please supply information on total depth. This is the distance from the land surface to the deepest point in the well as reached by the drill, the depth of the open hole. If the depth of the well is not known, please state "depth unknown".
- The intake depth is the distance from the ground surface to the device in the well which allows water to enter the well casing going up to the pump.
- The level at which water stands in a well when no water is being taken from the well is the static water level. This is the distance from the ground surface to the water level in the well.

- The drawdown in a well is how much the water level lowers when pumping is in progress or when water is discharging from a flowing well. Drawdown is the difference, measured in feet, between the static water level and the pumping level. The water table in the vicinity of the well is lowered when drawdown occurs
- Most wells are either screened or have slotted casings. These are installed in wells to permit sand-free water to flow into the well and also to provide support for unstable formations to prevent caving

(b)  Surface Water

Stream  River  Lake  Spring

Give geographic name (if unnamed, state so) \_\_\_\_\_

Water will be taken from surface water source by:

Pumping

Gravity Flow System

Diversion (Altering a watercourse) - Attach sketch and plans giving dimensions and specifications.

Damming - Attach sketch and plans giving dimensions and specifications. If dam is over 10 feet high or over 50 acre feet storage, MUST file Application for Permit to Construct or Modify Dam (Form 10-1015).

Other \_\_\_\_\_

(b) Indicate the type of surface water and its geographic name. If it is unnamed, state "unnamed stream", "unnamed lake", etc.

- Sketches must be attached for diversions, along with plans to divert or alter the water course.
- When a dam is to be built or altered in conjunction with an appropriation, an Application to Construct or Modify a Dam must be filed if the dam is over 10 feet high and/or has over 50 acre-feet of water storage. Sketches and plans giving dimensions and specifications must be attached both for existing dams and dams under construction.

#### 4. Location of point of WITHDRAWAL, DIVERSION or IMPOUNDMENT:

MUST attach copy of map or subdivision plat and indicate location

(a) Fraction part \_\_\_\_\_ Section \_\_\_\_\_  
Township \_\_\_\_\_, Range \_\_\_\_\_, Meridian \_\_\_\_\_.

(b) If applicable, Lot, Block, Subdivision; U.S. Survey No. \_\_\_\_\_

(c) Does applicant own or lease the property at point of water withdrawal and over which water is transported? Yes  No

If "Yes," MUST attach copy of ownership document (i.e. deed, patent)

If "No," MUST obtain an easement or right-of-way and supply copy. Give name, mailing address and phone number(s) of legal owner.

Name \_\_\_\_\_

Mailing Address \_\_\_\_\_

\_\_\_\_\_ Zip \_\_\_\_\_

Home Phone \_\_\_\_\_ Business Phone \_\_\_\_\_

**Item 4 - Location of Point of Withdrawal, Diversion, or Impoundment**

- Write the legal description of the parcel of property containing the point of water withdrawal (well, spring, water collection point in stream), diversion or impoundment. Legal descriptions should be precise to at least the quarter-quarter section. If the parcel of property is irregularly shaped, a metes and bounds (boundary line) description is necessary.
- Copies of documents showing proof of interest in this property (deed, patent, lease) should be attached.
- If the property at the point of water withdrawal or over which water is transported is not owned by the applicant, copies of easement or right-of-way applications, permits or agreements, should be attached, if these have been applied for, obtained or executed. The land owner's name, address and telephone numbers must be stated.

5. Location of point of USE: If same as question 4, check and go to question 6.

MUST attach copy of map or subdivision plat and indicate location.

(a) Fractional Part \_\_\_\_\_ Section \_\_\_\_\_  
Township \_\_\_\_\_, Range \_\_\_\_\_, \_\_\_\_\_ Meridian.

(b) If applicable, Lot, Block, Subdivision; U.S. Survey No. \_\_\_\_\_

(c) Does applicant own or lease the property at point of water use? Yes  No

If "Yes," MUST attach copy of ownership document (i.e. deed, patent)

If "No," MUST obtain an easement or right-of-way and supply copy. Give name, mailing address and phone number(s) of legal owner.

Name \_\_\_\_\_

Mailing Address \_\_\_\_\_

\_\_\_\_\_ Zip \_\_\_\_\_

Home Phone \_\_\_\_\_ Business Phone \_\_\_\_\_

**Item 5 - Location of Point of Use:**

- Write the legal description of the parcel of property on which the water is to be used. This may or may not be the same as the parcel of property from which the water is withdrawn, diverted or impounded. If the property is the same, check the box on question five and go to question six. A subdivision plat or other type of map showing the location of the point of use must be attached.
- Copies of the ownership document (deed, patent, lease) must be attached for the property at the point of use.

- If the applicant does not own or lease the property, copies of easement or right-of-way applications, permits or agreements must be attached. The legal land owner's name, address and telephone number must be stated. Documents showing proof of the applicant's interest in the property must be attached.

6. Type of water use and Quantity of water needed: Please fill in the attached Water Use Chart indicating quantity of water and months of use for each type of water use. Standard quantities and definitions are provided for your convenience. If water use is for a Commercial/Industrial purpose or other Use not shown on the Water Use Chart, refer to question 7.

WATER USE CHART

Office Use SIC	Type(s) of Use	Standard Quantities	Quantity Requested	Months of Use From To (Inclusive)
8800	(1) Single Family	Per Household	GPD	
	(a) Fully plumbed	50 <sup>3</sup> GPD	GPD	
	(b) Partially plumbed	250 GPD	GPD	
	(c) Unplumbed	75 GPD	GPD	
6514	(2) Duplex	Per Duplex 1000 GPD	GPD	
	(3) Multi-Family	Per Unit 250 GPD	GPD	
7011	(4) Motel, Resort	Per Room 100 GPD	GPD	
0241	(5) Livestock Dairy Cows	Per Head 30 GPD	GPD	
	Hosing dairy barn	35 GPD	GPD	
0212	Range Cattle	15 GPD	GPD	
0272	Horses	15 GPD	GPD	
0214	Sheep	2 GPD	GPD	
	Goats and Hogs	3 GPD	GPD	
	Poultry, Rabbits, etc.	1 GPD	GPD	
	Livestock Total			GPD
	(6) Irrigation (Type of Crop: _____)	Per Acre 0.5 AFY	AFY	
	(7) Commercial Industrial			
	(8) Other _____			

DEFINITIONS:

GPD—gallons per day                      AFY—acre feet per year                      CFS—cubic feet per

- (1) SINGLE FAMILY—Water use necessary for a single household and the irrigation of up to 10,000 sq. ft. of yard and garden.
- (a) Fully plumbed—Water piped into the residence for domestic uses. Hot water heater and flush toilet included.
  - (b) Partially plumbed—Water piped into residence for limited domestic uses. Generally no hot water heater and no water flush toilet included.
  - (c) Unplumbed—No water piped into the residence. Water is hand carried for limited domestic uses.
- (2) DUPLEX—Water use necessary for two single households and the irrigation of up to 20,000 sq. yard and garden.
- (3) MULTI-FAMILY—Water use necessary; for three or more households. Apartment units included.

## Item 6 - Type of Water Use and Quantity

- Specify type of water use, quantity, and periods of use on the attached Water Use Chart. Any exceptions to the standardized quantities must be fully explained in writing and attached.

### 7. Commercial/Industrial and Other Uses:

Explain in detail the basis for quantity of water requested. Use additional sheet of paper if needed. Indicate type of operation including structures and methods used. Include a sketch or engineering drawings. Enter quantity requested and months of use on attached Water Use Chart.

## Item 7 - Commercial Industrial and Other Uses

- Quantity requested, periods of use and type of use must be stated on the attached Water Use Chart along with any calculations used to determine the quantity requested.

8. Date when water use began or is expected to begin \_\_\_\_\_. If water use is existing, fill out Statement of Beneficial Use of Water (Form 10-1003A).

## Item 8 - Date of Use

- If water use is in existence, show the date use began and also include a notarized Statement of Beneficial Use of Water.
- If the property is being developed, show the approximate month and year when construction is expected to be completed and water use will begin.

### HAVE YOU ATTACHED?

- |   |   |
|---|---|
| <input type="checkbox"/> Deed, patent, lease, etc.  | <input type="checkbox"/> Driller's log (if existing well) |
| <input type="checkbox"/> USGS or Subdivision map  | <input type="checkbox"/> Diversion sketch and plans       |
| <input type="checkbox"/> Water Use Chart  | <input type="checkbox"/> Dam Sketch and plans             |
| <input type="checkbox"/> Statement of Beneficial Use of Water (Form 10-1003A) (if existing water use) |   |

## Attachments

- Check to be sure you have attached all the necessary information. Without these attachments, the application is incomplete and will be returned to you. This will delay the processing of your water right.

Statements appearing herein are to the best of my knowledge true and correct.

▶ SIGNED \_\_\_\_\_  
(Applicant) DATE \_\_\_\_\_

OFFICE USE ONLY	XY	RMI	Location check	Other
-----------------------	----	-----	-------------------	-------

10-102 Rev. 6/79

### Signature

- Check to make sure the application is SIGNED with your full legal name and correctly DATED. The application cannot be processed without the proper signature.

### Incomplete Applications

An incomplete application will be returned to the applicant with a date time stamp but without an Alaska Division of Lands number, along with the check and attachments, and a letter requesting additional information.

### Complete Applications

When it is determined the application is complete, the ADL number is assigned. Your application form will then be processed.

## C. Water Quantity Conversion Table

- 1 cubic foot per second (cfs) expresses a rate of flow of water equivalent to the following:
  - 7.48 U.S. gallons per second
  - 448.8 U.S. gallons per minute
  - 646,272 U.S. gallons per day
  - 1.98 acre-feet per day
- 1 acre-foot is equivalent to a volume of water which will cover one acre to a depth of one foot or:
  - 43,560 cubic feet
  - 325,851 U.S. gallons

## **D. Legal Advertisement and Public Notice**

Once the completed application is received and processed, staff of the Commissioner of the Department of Natural Resources may investigate the site. This may include the proposed construction work, source of water or other uses or demands for water within the area. This inspection is to determine if other water rights or the public interest will be affected by the proposed appropriation.

The applicant will then be provided with a prepared request for publication which must appear in a newspaper of general distribution in the vicinity of the water appropriation. The applicant must submit this to the newspaper and pay for the legal ad. This legal advertisement will summarize the proposed appropriation and allow the public to submit comments or objections regarding the appropriation to the Department. If there is no newspaper in the vicinity, the notice must be posted for 15 days in a public place near the proposed appropriation site.

During this period, the Commissioner will also serve individual notice to prior appropriators who may be affected by the new appropriation, and to the Alaska Departments of Fish and Game and Environmental Conservation. Objections must be submitted in writing within 15 days containing all pertinent facts and reasons why the appropriation should be modified or withheld. All objections will be answered in writing by the Department of Natural Resources.

If there are no written objections within the 15 days following publication, posting or serving of notice, the Department will then proceed with adjudication of the application. Any objections received after the closing date for comments will be considered by the Commissioner at his discretion.

Applications to appropriate 1,000 gallons of water per day or less for single-family domestic use are exempt from this public notice except in areas where the total amount of available water appears to the Department to be limited with respect to the number of potential users of the same source. A municipality may also request notice.

Once the posting notice or legal advertisement and public notice period is over and the adjudication is completed, a permit may be issued.

## E. Permit to Appropriate Water

The Permit to Appropriate Water is the authorization necessary from the Alaska Division of Land and Water Management to begin construction of a means to take water and begin beneficial use of that water.

The permit allows the permittee to look for water on the specified property, from a specified water source, for a specified use and in a maximum quantity. The permittee may then construct a means to use the water, begin beneficial use of the water and determine the specific quantity of water needed for the development.

The Commissioner will issue the Permit to Appropriate Water if it meets the requirements of Alaska Statute 46.15.080. The permit will be issued for a period of time adequate to complete construction and development of the project and begin using water. Conditions may be placed on the permit, such as the requirement for obtaining an easement or right-of-way or the requirement for metering and/or submission of water use reports.

Once the appropriation is completed, beneficial water use has begun, and the permittee has shown that all permit conditions have been met, the Statement of Beneficial Use of Water (Form 10-1003A) may be submitted requesting that a Certificate of Appropriation be issued.

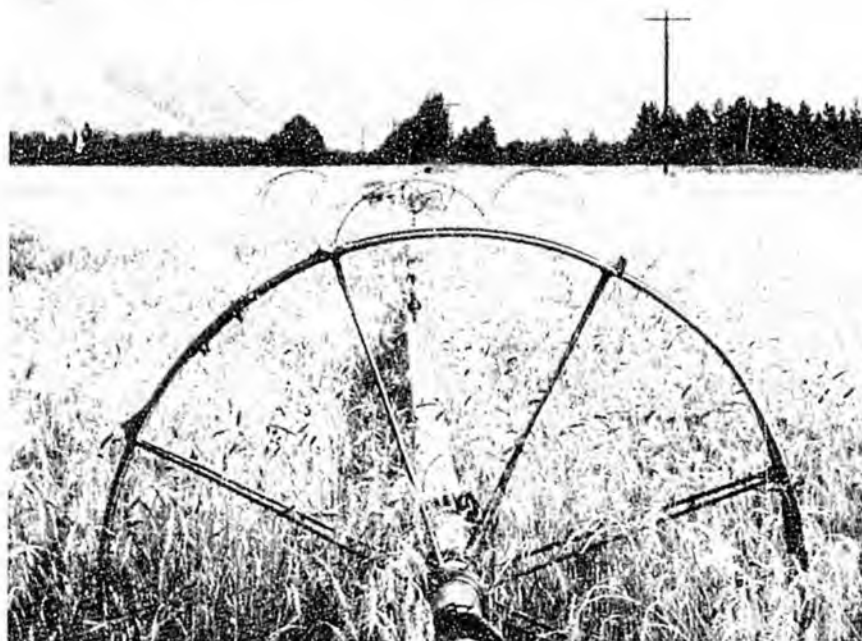


Photo © 1982 Gary Prokosch

**F. Filling out a Statement of Beneficial Use/Request for Permit Extension/Notice of Relinquishment**

Part A - STATEMENT OF BENEFICIAL USE OF WATER

- A notarized Statement of Beneficial Use of Water (Form 10-1003 A) must be submitted to the appropriate Department of Natural Resources regional or area office by the permittee after a water appropriation has been perfected and beneficial use begun, or if a water use is already in existence.

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF LAND AND WATER MANAGEMENT

Please complete A, B, or C, as required, and return to your District Office.

**-A-**

STATEMENT OF BENEFICIAL USE OF WATER

Permit No. \_\_\_\_\_

ADL \_\_\_\_\_

Construction of structures authorized under the above numbered Permit to Appropriate Water, of which I am the lawful holder, have been completed and beneficial use of water is being made. I hereby request that a Certificate of Appropriation be issued to me. I certify that I have complied with all conditions on the permit.

Amount of water being used for each type of water use: \_\_\_\_\_

Item 1 - Amount and Type of Water Use:

- This should state the type and quantity of water use which has been perfected and is being beneficially used. The quantities may not exceed those on the permit.

Location of point of withdrawal, include sketch: \_\_\_\_\_

Item 2 - Location of Point of Withdrawal:

- The location of the point of water withdrawal, impoundment or diversion must be stated. A sketch of this location may also be submitted

Location of point of use, include sketch: \_\_\_\_\_

Item 3 - Location of Point of Use:

- The location of the parcel of property on which water is used must be stated. A sketch of this location may also be submitted.

Briefly describe the structures for withdrawing and conveying water to the point of use (if a well, please attach copy of well log): \_\_\_\_\_  
\_\_\_\_\_

Item 4 - Structures Used

- Structures such as a well, catchment basin, pipe or dam, used to withdraw and transport water to the point of use must be stated. If a well is used to obtain water, a well log should be attached. If a well log cannot be obtained, all known data such as type, depth, and static water level should be submitted.

I certify under penalty of perjury that the foregoing is a true and accurate statement of the extent to which the above water use has been developed.

SUBSCRIBED AND SWORN TO before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_

SIGNED \_\_\_\_\_  
(Permit Holder)  
DATE \_\_\_\_\_

\_\_\_\_\_  
Notary Public or Postmaster  
State of \_\_\_\_\_  
Commission expires \_\_\_\_\_

PLACE \_\_\_\_\_

10-1003A

Item 5 - Signature:

- a) The form MUST be signed by at least one of the permittees.
- b) The form must be dated.
- c) The form must be notarized or witnessed by a postmaster to certify the signature of the permittee.

Part B - REQUEST FOR PERMIT EXTENSION

- If the Permit to Appropriate Water has or will soon expire and the permittee has not completed the structures to appropriate water and/or begun beneficial use of that water, a Request for Permit Extension (Form 10-1003 B) may be filed.

**-B-**

**REQUEST FOR PERMIT EXTENSION**

Permit No. \_\_\_\_\_

ADL \_\_\_\_\_

Construction of the structures authorized under the above numbered Permit to Appropriate Water, of which I am the lawful holder, have not yet been completed.

The structures already completed. \_\_\_\_\_  
\_\_\_\_\_

**Item 1 - Completed Structures**

- List the structures such as a well, catchment basin, pipe or dam that have been constructed and completed to appropriate water

The structures to be installed: \_\_\_\_\_  
\_\_\_\_\_

**Item 2 - Structures to be Installed**

- List the structures not yet constructed or completed that are necessary to withdraw, impound or divert water and begin beneficial use of water.

The reason work has not been completed: \_\_\_\_\_  
\_\_\_\_\_

**Item 3 - Work Not Completed**

- Explain the reasons why the appropriation has not been perfected during the permit period

Estimated date of completion: \_\_\_\_\_  
\_\_\_\_\_

**Item 4 - Completion Date**

- State the estimated time to complete the structures to take water and begin beneficial use of water

I hereby apply for an extension of time in which to complete construction of the structures and begin beneficial use of water.

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_  
(Permit Holder)

**Item 5 - Signature**

- This form must be signed and dated by at least one of the permittees. The extension request must be accompanied by the appropriate fee as set forth in the fee schedule of the Department of Natural Resources. The permit may be extended for good cause shown. Extensions are granted by amending the Permit to Appropriate Water.

## Part C - NOTICE OF RELINQUISHMENT

- If the permittee intends to abandon the works to impound, withdraw or divert water and/or beneficially use all or part of the water, a Notice of Relinquishment (Form 10-1003 C) must be submitted to the local Department of Natural Resources regional office.

-C-

### NOTICE OF RELINQUISHMENT

Permit No. \_\_\_\_\_ Certificate No. \_\_\_\_\_ ADL. \_\_\_\_\_

To Whom It May Concern:

The project/beneficial water use has been abandoned and I hereby relinquish to the State of Alaska all my right, title and interest in and to the above numbered Permit to Appropriate Water/Certificate of Appropriation. I understand that the appropriation reverts to the State and the water becomes unappropriated water.

SUBSCRIBED AND SWORN TO before me

SIGNED \_\_\_\_\_  
(Permit or Certificate Holder)

this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

DATE \_\_\_\_\_

\_\_\_\_\_  
Notary Public or Postmaster

PLACE \_\_\_\_\_

State of \_\_\_\_\_

Commission Expires \_\_\_\_\_

10-1003B

Item I - Signature:

- a) The form must have the legal signature of at least one of the permittees.
- b) The form must be dated.
- c) The form must be notarized or witnessed by a postmaster to certify the permittee's signature

## G. Site Inspection of Perfected Water Rights

Personnel from the nearest regional or area office of the Department of Natural Resources may conduct a field inspection of the completed appropriation. The purpose of this visit will be to determine if actual water use has begun, or to determine what stage of construction has been reached. The water officer may want to see your operation to check the size and type of equipment used, or the area or size of the house to verify the amount of water which you have requested. Water measurements may be taken at this time, if deemed necessary.

The Alaska Water Use Act provides that a water right may only be issued for a quantity of water that is beneficially used. In some instances, applicants inadvertently ask for more water than can be beneficially used or the applicant does not ask for enough water to cover the needs. After the field inspection, the water officer can usually determine the appropriate quantity



Photo © 1988 Gary Prokosch

## **H. Certificate of Appropriation**

Once the water rights application is completed, the permit issued, beneficial use established and any necessary site inspection completed, a Certificate of Appropriation will be issued. When this certificate is issued, it is the applicant's responsibility to have it recorded in the recorder's office in the area in which the appropriation is located.

In the event of a change of address, change of applicant's name or change in ownership of the property, the Department of Natural Resources and recorder's office should be notified in order to keep their files current.

The Certificate of Appropriation conveys a property right and should be kept in a safe place with other documents relating to property ownership.

## **I. Appeal Procedures**

By statute, there are 15 days to respond to a notice of proposed appropriation of water and to file any written objection regarding that application.

The Commissioner of the Department of Natural Resources is obligated by statute to grant or deny any application, in whole or in part, within 30 days of receipt of the last objection. If the Commissioner elects to hold a hearing, the application must be granted or denied within 180 days of receipt of the last objection. If the Commissioner fails to grant, deny or condition the application in accordance with these time periods, the unsatisfied party may appeal directly to Superior Court.

If any person is unsatisfied by a delegated decision or order of the Commissioner he may, within 30 days after the date that the decision or order was mailed or personally served, appeal to the Commissioner for modification or reversal of the decision or order. Before making a decision the Commissioner may require additional information or hold a hearing. The appellant may also request permission to present further information to the Commissioner. If a party is still unsatisfied by the decision of the Commissioner, there are 30 days to appeal to Superior Court in accordance with the Administrative Procedures Act.

## **IV. GUIDELINES FOR SPECIAL WATER USES**

### **A. Drilling a Water Well**

When drilling a water well it is important to determine what the water will be used for and how much water will be needed. For most single family residences in this state, 500 gallons of water per day is more than adequate for a fully plumbed dwelling unit. If the well will serve other needs such as livestock watering, agricultural irrigation, or commercial use, the water well driller must determine the water required in order to design the well. Sources of information for determining these needs are the Department of Natural Resource's Division of Land and Water Management, the Extension Service of the U.S. Department of Agriculture, the Department of Environmental Conservation, and the water-well drilling contractor.

When drilling a water well, the selection of a reliable drilling contractor is a significant factor. Locate the names of local water well drilling contractors from the classified telephone directory, or from local banks, pump dealers, or neighbors who have recently had a well completed. In selecting a contractor, check reliability, reputation, record of satisfied customers and how long they have been established. Do not be afraid to ask the contractor for references; nor hesitate to check those references.

Feel free to ask a prospective contractor the following questions:

- 1) Will you make a written contract for our mutual protection?
- 2) Do you carry adequate insurance to protect both of us?
- 3) Will you explain how you will construct the well?
- 4) Are you licensed as a specialty contractor with the State of Alaska?
- 5) Do you furnish a certified log of the well?

Also ask the prospective drilling contractor to itemize the cost estimate as follows:

- cost of drilling per foot
- casing per foot
- cost of other materials, drive shoe, screen, pitless adapter, etc
- cementing
- developing and test pumping
- water treatment equipment
- pump

Keep in mind that a contractor cannot always determine the depth at which an adequate supply of water may be found. Neighboring wells may give some indication of adequate water depth, but depths may vary significantly within a matter of a few hundred feet on the surface.

If applying for water rights for an existing drilled well, submit a copy of the well log for the well. If there is no copy of the well log, try to contact the original owners to see if they still have one, or if they can identify the water well contractor. If the contractor is located, he may still have a copy of the water well log which should be included with the Application for Water Rights or Statement of Beneficial Use of Water.

In some instances, a water well log may already be on file with the Department of Natural Resources. Since 1977 it has been a state law that water well logs be filed with the Department of Natural Resources. Some drillers have filed their logs while others have not. If a water well driller fails to file a well log, then later goes out of business, it may be impossible to locate a log of the water well.

Driven or hand-dug wells do not require a well log because it is generally impossible to obtain one from a driven well and dug wells are usually very shallow. In either case, however, provide information on the total depth of the well and total yield of the well if it is known.

## **B. Dam Construction and Safety**

When developing water rights, individuals may also need to construct a dam and reservoir at the site. An Application to Construct or Modify a Dam is required by the Department of Natural Resources for dams which are 10 feet or more in height or storing 50 acre-feet or more of water.

In general, any dam 10 feet or more in height must have plans submitted ... well as specifications, topographic maps of the dam site, profiles and cross sections of the dam. And in some cases, detailed hydrologic data, a seepage and permeability analysis of the structure, and a stability analysis must be submitted if the structure is in an earthquake zone.

For dams less than 10 feet in height, or less than 50-acre feet in storage, no special additional approval is needed other than the granting of a water rights permit to develop the water source. However, plans and specifications will generally still be required.

The purpose of the dam construction and safety regulations is twofold. The primary purpose is to maintain an accurate central file system of existing structures. The system may be utilized by civil defense and emergency personnel in the event of an earthquake which may cause cracking or failure of reservoir structures and necessitate evacuation of the area below the dam. The secondary purpose of the dam construction and safety regulations is to ensure a consistent review of dam construction and the application of sound engineering standards in the construction of dams.

## **C. Water Rights for Placer Mining**

Water rights play an important part in mining operations. Mining operations which affect water flow, quantity or quality and anadromous fish habitats need several land and water permits. A single tri-agency application form, the Annual Placer Mining Application for Land Use and Water Use Permits and Mining License (Form 00-001, Revised 12/83), simplifies the permit process. This form may be obtained from and submitted to the nearest local intake office of the Department of Natural Resources, Division of Land and Water Management (see the appendix for these listings).

Completion of this single, joint-application form allows individuals to satisfy the application requirements for the following permits:

- 1) Permit to Appropriate Water - Issued by the Department of Natural Resources, Division of Land and Water Management.
- 2) Miscellaneous Land Use Permit - Issued by the Department of Natural Resources, Division of Mining.

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- 3) Anadromous Fish Permit - Issued by the Department of Fish and Game
- 4) Wastewater Discharge Permit - Issued by the Department of Environmental Conservation
- 5) Alaska Mining License - Issued by the Department of Revenue.

All applications should be submitted by February 15 of each year to allow time for the issuance of permits before operations in the field begin. A copy of a U.S. Geological Survey 1:63,360 map showing the vicinity of your mining operation should accompany this application.

The 1980 revision of the booklet "Regulations and Statutes Pertaining to Mining Rights on Alaska Lands as Contained in the Alaska Statutes and the Alaska Administrative Code," contains pertinent information of interest to miners and may be obtained at the local offices of the Department of Natural Resources.

## **V. DEPARTMENT OF NATURAL RESOURCES WATER MANAGEMENT PROGRAMS**

### **A. Alaska Water-Use Data System**

Water use in Alaska is increasing significantly. However, all major population and industrial centers indicate concern over the adequacy of present supplies, and possible future sources. In cooperation with the U.S. Geological Survey (USGS), the Department of Natural Resources (DNR) is continuing a program where significant water use in Alaska is recorded, computer stored for evaluation, and then disseminated to those in need of such data. Information gathered by the State is shared with the USGS, where it is compiled with other co-operating states, then published every five years as a national "estimate." The national publication indicates trends in water use per state based on five categories. Statistical increases or decreases are shown for nation-wide water use per type of use, i.e., hydroelectric, public supply, rural, self-supplied industrial and irrigation.

The development of a computerized water-use program was completed in 1983. With an operational data base, efforts to compile existing water-use data have begun. A five-year Project Management Plan detailing collection schedules and strategies is being designed to enable present and future water users to examine specific areas, to assess their ability to obtain adequate water for either commercial, industrial or private needs, and plan accordingly. (Confidentiality between DNR and providers of commercial or industrial water-use data is maintained. Only a "summary" of total water used per type of use is ever published.)

In Alaska, the availability of water-use data for each different type of use will provide a powerful and essential tool in regional planning, land-use management, water rights adjudications, and for maintaining in-stream flows. Mining, recreation, fisheries, irrigation, as well as seafood processing, and hydroelectric power generation are among the categories established for data compilation. More information on the Alaska Water-Use Data System is available through the Department of Natural Resources, Division of Land and Water Management.



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## B. Water Resources Inventory Programs

Water resources data gathering programs are conducted by the Water Resources Section of the Department of Natural Resources's Division of Geological and Geophysical Surveys. The Division of Geological and Geophysical Surveys is responsible for all data collection (water as well as geological, soils, etc.) within the Department of Natural Resources. The Water Resources Section conducts data collection programs for surface water, ground water and water quality throughout Alaska. The section also coordinates hydrological investigation and data collection with the U.S. Geological Survey, Water Resources Division.

The U.S. Geological Survey, Water Resources Division is currently the principal water resources data collector in Alaska. Under its supervision and with cooperation from several other agencies, stream data are collected at 188 stations throughout Alaska. Of these stations, 104 are continuous record stations and 83 are partial record stations. The stations are primarily located near population or activity centers; thus much of Alaska is not adequately covered by the stream station network. Only three lake stage stations exist in spite of the large number of lakes in Alaska.

Wells provided the primary and most important ground water information. Observation wells have been established in order to document water level fluctuations. Of the 141 observation wells, 32 are continuously recording, 64 are long term, and 45 are short term stations. These wells are located near centers of population, but future observation wells are planned for less populated Alaskan communities and locations.

Water quality data are collected from about 56 surface water stations throughout Alaska. Surface waters are variously analyzed for temperature, specific conductance, pH, sediment, inorganic constituents, pesticides, minor elements, radiochemical components and biological data.

Data storage and retrieval is an important part of the Department of Natural Resources data program. Alaskan data for surface water, ground water and water quality are stored in the U.S. Geological Survey WATSTORE computer program. These data can be called for by computer technicians to produce printouts for small or large areas. Also the data are published each year by the U.S. Geological Survey in cooperation with the State of Alaska in a publication called "Water Resources Data for Alaska - Water Year 19\_\_\_\_\_".

## VI. ALASKA WATER RESOURCES BOARD

The Alaska Water Resources Board serves as an advisory group to the governor on all water related matters in the State of Alaska. This Board was created by Article 3 of Alaska Statutes 46 15, the Alaska Water Use Act.

The Board is required to hold at least two meetings each year with one of those meetings held in the state capital. The Board functioned as an active group from the Water Use Act's passage in 1966 until 1975. The Board did not meet in 1976 and 1977.

In late 1977, a concerted effort was made to reestablish the Board as a citizen's advisory group to provide input on an increasingly complex array of water resource issues facing the state. Governor Jay Hammond made appointments to fill existing vacancies and the Board began meeting regularly again in May 1978.

The Water Resources Board covers a wide range of topics at its meetings. Generally, a presentation of a topic is given by an agency representative followed by a discussion of the topic by the Board members. Action taken by the Board is usually in the form of a resolution to the governor or letters to state department commissioners requesting some form of action.

Recently, the Board has addressed itself to matters relating to administrative efficiency on the part of the agencies dealing with the public as well as policy matters that may cut across agency lines.

## VII. APPENDICES

### A. Regional Location Map



REGIONAL LOCATION MAP

**B. Department of Natural Resources Regional  
and Area Office Locations for Obtaining  
Forms and Assistance**

**DIVISION OF LAND AND WATER  
MANAGEMENT**

**NORTHERN REGION OFFICE**

4420 Airport Way  
Fairbanks, Alaska 99709  
479-2243

**SOUTHEASTERN REGION OFFICE**

400 Willoughby Avenue  
Suite 400  
Juneau, Alaska 99801  
465-3400

**SOUTHCENTRAL REGION OFFICE**

3601 C Street, 10th Floor  
Post Office Box 7-005  
Anchorage, Alaska 99510  
762-2277

**MAT-SU AREA OFFICE**

Century Plaza, Suite 202  
P.O. Box 874008  
Wasilla, Alaska 99687  
376-4595

**DIVISION OF FORESTRY**

**Haines/Skagway Area Office**

Room 6, Gateway Bldg.  
Post Office Box 263  
Haines, Alaska 99827  
766-2120

**Petersburg Area Office**

Petersburg State Office Building  
215 Sing Lee Alley  
Box 1580  
Petersburg, Alaska 99833  
772-3236

**Ketchikan Area Office**

318 NBA Building  
Post Office Box 5220  
Ketchikan, Alaska 99901  
225-3070

**Kenai Peninsula Area Office**

Mile 92.5 Sterling Highway  
S.R.2, Box 107  
Soldotna, Alaska 99669  
262-7559

**Copper River Area Office**

Mile 110 Richardson Highway  
Post Office Box 185  
Glennallen, Alaska 99588  
822-5534

**Tok Area Office**

Mile 124.1 Glenn Highway  
Post Office Box 305  
Tok, Alaska 99780  
883-5134

**Delta Area Office**

Mile 267.5 Richardson Highway  
Post Office Box 1149  
Delta Junction, Alaska 99737  
895-4225

**McGrath Area Office**

McGrath Airport  
Post Office Box 130  
McGrath, Alaska 99627  
524-3010

# Alaska Statutes

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## Title 46. Water, Air, Energy, and Environmental Conservation.

### Chapter 15. Water Use Act.

#### Article

1. Administration (§§ 46.15.010—46.15.020)
2. Appropriation and Use of Water (§§ 46.15.030—46.15.185)
3. Water Resources Board (§§ 46.15.190—46.15.240)
4. General Provisions (§§ 46.15.250—46.15.270)

#### Article 1. Administration.

#### Section

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

**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)

**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 expand grants, gifts, and loans from the federal government and any other public or private sources for the purpose 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 committee report.**—For report on ch. 71, SLA 1972 (HCSSB 383 am H), see 1972 House Journal, p. 898.

## Article 2. Appropriation and Use of Water.

Section	Section
30. Waters reserved to the people	130. Priority
40. Right to appropriate	133. Notices; objections
50. Priority	135. [Renumbered]
60. Existing rights	140. Abandonment, forfeiture, and reversion of appropriations.
65. Determination of existing rights	145. Reservation of water
70. [Renumbered]	147. Termination of permits
80. Criteria for issuance of permit	150. Preferred use
90. Preference in granting permits	160. Transfer and change of appropriations
100. Terms of permit	170. Effect of recording
110. Time for construction and completion	180. Crimes
120. Certificates	185. Appeals

**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 in-stream flows and levels of water, as provided in this chapter. (§ 1 ch 50 SLA 1966; am § 4 ch 84 SLA 1980)

**Effect of amendment.** — The 1980 amendment, effective June 19, 1980, inserted "and to reservation of in-stream flows and levels of water" near the end of the section.

**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 easement 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).

**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.

(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 committee report.* — For report on ch. 71, SLA 1972 (HC SSB 383 am H), see 1972 House Journal, p. 898.

**Sec. 46.15.050. Priority.** 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. (§ 1 ch 50 SLA 1966)

**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)

**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 appropriation 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 that action is final. (§ 1 ch 50 SLA 1966)

*Revisor's note.* - This section formerly appeared as AS 46.15.135. It was renumbered by the revision of statutes for more logical arrangement.

### **Sec. 46.15.070. Notices; objections [Renumbered].**

*Revisor's note.* - This section now appears as AS 46.15.133. It was renumbered by the revision of statutes for more 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 substantial accordance with the permit, he shall issue the permit holder a certificate of appropriation. The certificate shall set out any condition which the commissioner may prescribe by regulation, including conditions that are necessary to protect the prior rights of other persons and the public interest. (§ 1 ch 50 SLA 1966; am § 9 ch 175 SLA 1980)

**Sec. 46.15.130. Priority.** (a) Priority of appropriation made under this chapter dates from the filing of an application with the commissioner.

(b) Priority of appropriation perfected before July 1, 1966, shall be determined as provided in § 135 of this chapter. (§ 1 ch 50 SLA 1966)

**Sec. 46.15.133. Notices; objections.** (a) Upon receipt of an application, the commissioner shall prepare a notice containing the location and extent of the proposed appropriation, the name and address of the applicant and other information he considers pertinent. The notice shall state that within 15 days of publication or service of notice, persons may file with the director written objections, stating the name and address of the objector, and any facts tending to show that rights of the objector or the public interest would be adversely affected by the proposed appropriation.

(b) The commissioner shall publish the notice at the applicant's expense in one issue of a newspaper of general distribution in the area of the state in which the water is to be appropriated. The commissioner shall also have notice served personally or by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the division of lands, may be affected by the proposed appropriation and may serve notice upon any governmental agency, political subdivision or person; notice shall also be served upon the Department of Fish and Game and the Department of Environmental Conservation.

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

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

(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)

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

**Effect of amendment.** — The 1980 amendment, effective June 19, 1980, 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 (c).

### **Sec. 46.15.135. Determination of existing rights [Renumbered].**

**Revisor's note.** — This section now appears as AS 46.15.065. It was renumbered 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 46.15.070.

(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)

*Effective date.* — Section 12, ch. 84, SLA 1980, makes this section effective June 19, 1980, in accordance with AS 01.10.070(c).

*Editor's note.* — 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.** (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 1980)

*Editor's note.* — As originally enacted, this section was designated AS 46.15.145. However, since a section with that designation had already been enacted by SLA 1980, ch. 84, this section was redesignated AS 46.15.147.

**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)

**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)

**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 § 160(b) of this chapter.

(b) A deed, lease, contract, assignment of permit or other instrument transferring an appropriation which is recorded under § 160(b) of this chapter 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. 46.15.180. 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)

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

**Sec. 46.15.185. Appeals.** Appeals to the superior court under this chapter are subject to the provisions of the Administrative Procedure Act, AS 44.62.560 — 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

**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

**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 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 the Department 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. (§ 1 ch 50 SLA 1966)

(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. (am §§ 8 — 10 ch 84 SLA 1980; am §§ 10, 11 ch 175 SLA 1980)

**Effect of amendment.** — The first 1980 amendment, effective June 19 1980, 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).

As the rest of the section was not affected by the amendment, it is not set out.

**Editor's note.** — 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)

## NOTES

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# Fact Sheet: WATER RIGHTS IN ALASKA

SEPTEMBER 1985

## WHAT ARE WATER RIGHTS?

A water right is a property right for the use of surface and subsurface waters by the public as provided by the Alaska Water Use Act (Alaska Statutes 46.15). This water right allows specified amounts of water from particular water sources to be diverted, impounded and withdrawn for specified uses. When a water right is granted, it becomes attached to the land where the water is being used for as long as you use it. If the land is sold, the water right goes with the land to the new owner, unless it is separated from the land with the approval of the Department of Natural Resources.

## HOW DO I OBTAIN WATER RIGHTS?

To obtain water rights in Alaska you submit an Application for Water Rights to the Alaska Division of Land and Water Management. You are issued a permit to develop a water source and construct the means to use the water. Once you prove you are beneficially using the water, a certificate of appropriation is then issued. This is a legal document which conveys water rights once the water is being used. In Alaska, there are no automatic rights to ground water because of ownership of overlying land and there are no rights to surface waters because of ownership of adjoining or surrounding land. Use of water without a permit or certificate does not give the user defensible legal rights to the water, no matter how long the water use continues.

## WHAT COSTS ARE INVOLVED?

To insure that the public is notified of the proposed water use, you are required to pay the cost of legal advertisement in at least one issue of a local newspaper in the vicinity of the proposed appropriation. However, if the proposed use will not exceed 1,000 gallons of water per day in a single-family domestic household there is no requirement to publish an advertisement. If there are more potential users than the source of water can supply, the Department may require legal advertisement of all types of water rights applicants.

## WHY SHOULD I APPLY FOR WATER RIGHTS?

1. If you have established water rights, you have a legal standing to assert those rights against conflicting uses of water with people who do not have water rights.

2. A person with established water rights has priority to the use of water over persons who later file for water rights from the same water source.
3. Anyone who constructs works for the taking of water (an appropriation), or uses a significant amount of water without a permit or certificate of appropriation is guilty of a misdemeanor. (Alaska Statutes 46.15.180)

A significant amount of water as defined by regulation (Alaska Administrative Code 11 AAC 93.970(14)) is the:

- use of 5,000 or more gallons of water in a 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 affect the water rights of other users or the public interest.
4. By filing for water rights, you provide valuable information about water use and consumption in Alaska. This is essential in estimating the present uses of water, predicting future withdrawals, protecting the rights of prior appropriators, and providing for proper management for this important resource.

## WHAT OTHER WATER RESOURCES PERMITS MIGHT BE NEEDED FROM THE DEPARTMENT OF NATURAL RESOURCES?

A certificate of approval is required if you want to construct or modify a dam of 10 feet or more in height, or if the storage capacity exceeds 50 acre-feet. A separate application form along with a sliding filing fee applies for various size dams as set forth in the regulations (11 AAC 93.200).

An application for reservation of water may be filed to maintain a specified flow or level of water in a water body at a specified point for specified times. By statute, an instream flow reservation can be made to ensure sufficient water is maintained for protection of fish and wildlife, recreation and park purposes, navigation or transportation purposes, and sanitary and water quality purposes.



## **HOW DO I OBTAIN AUTHORIZATION FOR SHORT-TERM WATER USE?**

Temporary authorization may be required for significant short-term water uses such as construction projects. This authorization does not establish a water right but may help avoid problems with fisheries or existing water right holders. Applications should be made in the form of a letter request to the Department with an associated map showing the location of the water take point and location and amount of water use.

Further information about water rights and copies of the application forms may be obtained from one of the following offices. Applications for water rights must be submitted to a Division of Land and Water Management regional office.

### **DEPARTMENT OF NATURAL RESOURCES DIVISION OF LAND AND WATER MANAGEMENT**

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#### **SOUTHEASTERN REGIONAL OFFICE**

400 Willoughby Avenue  
Suite 400  
Juneau, Alaska 99801  
465-3400

#### **NORTHERN REGIONAL OFFICE**

4420 Airport Way  
Fairbanks, Alaska 99701  
479-2243

#### **SOUTHCENTRAL REGIONAL OFFICE**

Frontier Building  
3601 C Street, 10th Floor  
Pouch 7-005  
Anchorage, Alaska 99510  
762-2277

#### **Mat-Su Area Office**

Central Plaza, Suite 202  
Pouch 874008  
Wasilla, Alaska 99687  
376-4595

### **DIVISION OF FORESTRY**

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#### **HAINES AREA OFFICE**

Room 6, Gateway Building  
Main Street  
Post Office Box 263  
Haines, Alaska 99827  
766-2120

#### **KETCHIKAN AREA OFFICE**

318 NBA Building  
Post Office Box 5220  
Ketchikan, Alaska 99901  
225-3070

#### **PETERSBURG AREA OFFICE**

Petersburg State Office Building  
215 Sing Lee Alley  
Box 1580  
Petersburg, Alaska 99833  
722-3236

#### **DELTA AREA OFFICE**

Mile 267.5 Richardson Highway  
Post Office Box 1149  
Delta Junction, Alaska 99737  
895-4225

#### **TOK AREA OFFICE**

Mile 124.1 Glenn Highway  
Post Office Box 10  
Tok, Alaska 99780  
883-5134

#### **SOUTHWEST (McGRATH) AREA OFFICE**

McGrath Airport  
Box 130  
McGrath, Alaska 99627  
524-3010

#### **KENAI PENINSULA AREA OFFICE**

Mile 92.5 Sterling Highway  
S.R.2, Box 107  
Soldotna, Alaska 99669  
262-7559

#### **COPPER RIVER AREA OFFICE**

Mile 110 Richardson Highway  
Post Office Box 185  
Glennallen, Alaska 99588  
822-5534



# Fact Sheet:

## RESERVING WATER FOR INSTREAM USE

SEPTEMBER 1985

### WHAT ARE RESERVATIONS OF WATERS?

A reservation of water is a type of water right. The use of water within a stream, lake, or other surface water body may be reserved to maintain an adequate instream flow or level of water for specific activities, such as fish spawning or a river rafting enterprise. Water can be reserved for one or more permissible uses at a particular point or part of a stream or other waterbody, during a certain period of time. Under Alaska Statute 46.15.145, permissible instream uses include:

- Protection of fish and wildlife habitat, migration and propagation.
- Recreation and park purposes.
- Navigation and transportation purposes, and
- Sanitary and water quality purposes.

A reservation of water for one use may also serve as a reservation for another purpose. For example, a reservation for fish spawning may also benefit recreation.

Like out-of-stream water rights, a reservation of water is a property right. However, it cannot be abandoned, conveyed, transferred, assigned, or converted to another use without the approval of the Department of Natural Resources.

### WHO CAN APPLY FOR A RESERVATION OF WATER?

Private individuals or organizations as well as government agencies may apply for a reservation of water for instream use. This is not a required permit, but rather an optional water right. Those who wish to divert, impound, or withdraw water from a surface or ground water source will continue to file for their water rights under Title 46 for obtaining diversionary water rights.

### HOW CAN I APPLY FOR A RESERVATION OF WATER

- You can get an Application for Reservation of Water (Form 10-1151) at any Department of Natural Resources, Division of Land and Water

Management regional office. Your application, however, must be submitted to the regional office in the area where your proposed reservation of water will occur.

- Before submitting your application, you should talk with the regional office people about the type of work or study needed to quantify the instream water use, and information needed in your application.
- When your application is complete and has been accepted, it will be reviewed to ascertain the need for the reservation of water, impacts on other water right holders, and the public interest. An assessment will be made to determine if water is available for the reservation, and if the hydrologic and technical information in the application is accurate and adequate. Public notice of your application must be given.
- Certificates of reservation, when issued, will be granted to the applicant. Conditions may be placed on certificates.
- Certificates of reservation must be reviewed by the Division of Land and Water Management every ten years, but can be reviewed in less than ten years if changed conditions warrant a review.

### WHAT COSTS ARE INVOLVED?

- The Application for Reservation of Water should be accompanied by the appropriate filing fee as set forth in the fee schedule of the Department of Natural Resources.
- You will be required to pay the cost of a legal advertisement to notify the public of your proposed reservation of water.
- If a certificate is issued, you may be required to install and maintain measuring devices, such as stream gages, weirs, or staff gages, and monitor and report on the instream flow or level of water.
- You may also be responsible for additional data collection or analysis during the certificate review period.



## **WHY SHOULD I APPLY FOR A RESERVATION OF WATER?**

You should apply if you want to ensure that the level or flow of water in a stream or lake that you need for your purposes will be available when and where you need it, and will not be appropriated or diverted for another use.

If you have an established instream water right, you have priority use of that water over people who file later for water rights as well as legal standing in case of conflicting uses of water by those without a water right.

Further information about reservations of water for instream uses and application forms may be obtained from the following offices. Applications for reservations of water must be submitted to a Division of Land and Water Management regional or area office.

## **WHAT OTHER WATER RESOURCES PERMITS MIGHT BE NEEDED FROM THE DEPARTMENT OF NATURAL RESOURCES?**

A permit or certificate of appropriation is required for diverting, impounding, or withdrawing water for use from a water body or ground water source.

A certificate of approval is required if you want to construct or modify a dam ten feet or more in height, or if the storage capacity is 50 acre-feet or more. A separate application form along with a sliding filing fee applies for various size dams as set forth in regulations (11 AAC 93.200).

### **DEPARTMENT OF NATURAL RESOURCES DIVISION OF LAND AND WATER MANAGEMENT**

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**SOUTHEASTERN REGIONAL OFFICE**  
400 Willoughby Avenue  
Suite 400  
Juneau, Alaska 99801  
465-3400

**NORTHERN REGIONAL OFFICE**  
4420 Airport Way  
Fairbanks, Alaska 99701  
479-2243

**SOUTHCENTRAL REGIONAL OFFICE**  
Frontier Building  
3601 C Street, 10th Floor  
Pouch 7-005  
Anchorage, Alaska 99510  
762-2277

**Mat-Su Area Office**  
Central Plaza, Suite 202  
Pouch 874008  
Wasilla, Alaska 99687  
376-4595

### **DIVISION OF FORESTRY**

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**HAINES AREA OFFICE**  
Room 6, Gateway Building  
Main Street  
Post Office Box 263  
Haines, Alaska 99827  
766-2120

**KETCHIKAN AREA OFFICE**  
318 NBA Building  
Post Office Box 5220  
Ketchikan, Alaska 99901  
225-3070

**PETERSBURG AREA OFFICE**  
Petersburg State Office Building  
215 Sing Lee Alley  
Box 1580  
Petersburg, Alaska 99833  
722-3236

**DELTA AREA OFFICE**  
Mile 267.5 Richardson Highway  
Post Office Box 1149  
Delta Junction, Alaska 99737  
895-4225

**TOK AREA OFFICE**  
Mile 124.1 Glenn Highway  
Post Office Box 10  
Tok, Alaska 99780  
883-5134

**SOUTHWEST (McGRATH) AREA OFFICE**  
McGrath Airport  
Box 130  
McGrath, Alaska 99627  
524-3010

**KENAI PENINSULA AREA OFFICE**  
Mile 92.5 Sterling Highway  
S.R.2, Box 107  
Soldotna, Alaska 99669  
262-7559

**COPPER RIVER AREA OFFICE**  
Mile 110 Richardson Highway  
Post Office Box 185  
Glennallen, Alaska 99588  
822-5534

# **Fact Sheet: DAM SAFETY, CONSTRUCTION AND MODIFICATION IN ALASKA**

SEPTEMBER 1985

## **WHO IS ULTIMATELY RESPONSIBLE FOR THE SAFETY OF DAMS IN ALASKA?**

Old English common law, on which our legal system is based, holds that the capture of water in itself is a hazardous activity. Therefore, whoever captures the water is liable for any damages caused. In almost all cases, the dam owner is responsible.

## **TO WHOM DOES THIS FACT SHEET APPLY?**

Any person undertaking the construction, enlargement, alteration, repair, or takes out of service a dam either 10 feet or more in height or impounding 50 acre-feet or more of water, must submit the appropriate application together with plans and specifications to the State of Alaska, Department of Natural Resources, Division of Land and Water Development. A "person" includes:

- An individual
- Partnership
- Association
- Public or private corporation
- State agency
- State political subdivision

## **HOW IS THE HEIGHT AND WATER VOLUME OF A DAM MEASURED?**

- If the dam is across a watercourse its height is measured vertically from the natural bed of the water-course at the downstream toe of the dam to the maximum storage elevation.
- If the dam is not across a watercourse, its height is measured from the lowest elevation of the outside limit of the dam to the maximum storage elevation.

Water volume in the case of impoundments is expressed by the acre-foot unit, which is the volume that would cover one acre to a depth of one foot. Since water volume, rather than land coverage, is the measured quantity, a pond, two feet deep, covering a one-half acre land area, would also be one acre-foot in volume.

## **WHAT ARE THE REQUIREMENTS TO BUILD OR MODIFY A DAM?**

- File an "Application for Permit to Construct or Modify a Dam" that includes complete plans and specifications. Forms may be obtained at the Division of Land and Water Management regional offices listed on the reverse side of Fact Sheet.
- The owner will be notified in writing whether or not changes must be made.
- When the application is approved, construction may begin.

During construction, the state will inspect the work to make sure the dam is being built according to the approved plans and specifications. When the dam is completed and the state is satisfied as to its safety, the owner is issued a water rights certificate that allows him to store water according to certain terms, such as specified water level.

Articles 2 and 3 of the Alaska Administrative Code (11 AAC 93.040 through 200) clearly detail all procedures governing the permitting process. Copies of the code are available at any Division of Land and Water Management regional office.

## **ARE OTHER PERMITS REQUIRED?**

Water rights permits are required to construct a water diversion or impoundment. These may be obtained through the Division of Land and Water Management's regional offices in your area. Once use of the dam begins and water quantity actually used is established, a certificate of appropriation can then be issued. This certificate is the legal document which actually conveys the water rights.

## **WHAT OTHER AGENCIES MIGHT REQUIRE PERMITS AND COORDINATION?**

- Alaska Dept. of Environmental Conservation
- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Service
- Federal Energy Regulatory Commission
- U.S. Forest Service
- Local Governments



## HOW MUCH ARE PERMIT FEES?

The fee for a permit to alter or repair an existing dam is based on an estimate made by the Department of Natural Resources of the costs of inspections to be made. The fee for a permit to construct a new dam is related to the proposed storage capacity. For a permit to enlarge an existing dam and storage reservoir, the fee is based on the proposed increase in storage capacity. The fee schedule is found in the Alaska Administrative Code (11 AAC 93.200) and ranges from a minimum of \$250 for 50 acre-feet to a maximum of \$5,000 for 26,666 acre-feet or more.

## DOES THE STATE PERFORM SAFETY INSPECTIONS?

In an effort to protect the public from present or future hazards related to the storage of water, the state conducts periodic inspection of dams.

## CAN THE STATE TAKE ACTION TO CORRECT UNSAFE DAMS?

Alaska maintains a statewide inventory of dams and classifies them according to how often they should be inspected based on height, size of reservoir, and location in relation to population and property. Should it be determined that the structure is unsafe, the state has authority to require that the owner correct the unsafe condition. The owner is responsible for the safe operation and maintenance of the dam in all cases.

## SOURCES OF INFORMATION ON DAMS

Additional information available for construction and maintenance of dams may be obtained from the following sources:

- Division of Land and Water Management

- U.S. Soil Conservation Service
- *Guidelines for the Design and Construction of Small Embankment Dams*  
State of California  
Division of Safety of Dams  
P.O. Box 388  
Sacramento, California 95802
- *Design of Gravity Dams*  
U.S. Dept. of the Interior  
Bureau of Reclamation  
1376 Denver Federal Center  
Denver, Colorado 80225
- *Dam Safety Manual*  
State of Colorado  
Division of Water Resources  
1313 Sherman, #818  
Denver, CO. 80203

## DEPARTMENT OF NATURAL RESOURCES DIVISION OF LAND AND WATER MANAGEMENT

SOUTHEASTERN REGIONAL OFFICE  
400 Willoughby Avenue  
Suite 400  
Juneau, Alaska 99801  
465-3400

NORTHERN REGIONAL OFFICE  
4420 Airport Way  
Fairbanks, Alaska 99701  
479-2243

SOUTHCENTRAL REGIONAL OFFICE  
Frontier Building  
3601 C Street, 10th Floor  
Pouch 7-005  
Anchorage, Alaska 99510  
762-2277

Mat-Su Area Office  
Century Plaza, Suite 202  
Pouch 874008  
Wasilla, Alaska 99687  
376-4595

Applications to construct or modify a dam must be submitted to a Division of Land and Water Management regional office.



# Fact Sheet: FEDERAL RESERVED WATER RIGHTS

JULY, 1985

## WHAT ARE FEDERAL RESERVED WATER RIGHTS?

- Federal reserved water rights are created when federal lands are withdrawn from entry (by Congress or other lawful means) for federal use.
- Federal reserved water rights:
  - apply to both instream and out-of-stream use
  - may be created without actual diversion or beneficial use
  - are not lost by non-use
  - priority dates are established as the date the land is withdrawn for the primary purpose(s)
  - are created for the minimal amount of water reasonably necessary to satisfy both existing and reasonable foreseeable future uses of water for the primary purpose(s) for which the land is withdrawn
- Water rights for secondary purposes must be obtained under state law, AS 46.15.

## WHY ARE FEDERAL RESERVED WATER RIGHTS IMPORTANT TO YOU?

- Water users in areas where there are federal land withdrawals should file for water rights with DNR in order to protect their use of water. If a basin wide adjudication is started for your river basin, you can then be assured of being included in the adjudication.
- Holders of water rights with priority dates established before the withdrawal of federal lands within a basin will have water rights senior to the federal government. Water users filing for water rights after the withdrawal of federal lands within a specific basin will have water rights with priority dates later than those of the federal government.

## HOW ARE FEDERAL RESERVED WATER RIGHTS ADJUDICATED?

- Federal reserved water rights are a judicial creation. The United States Supreme Court first recognized federal reserved water rights in

*Winters v. United States*, 207 U.S. 564 (1908), an Indian reservation case. Since that time, court cases have extended the Winters Doctrine to other types of federal land withdrawals.

- Federal law, the McCarren Amendment (43 U.S.C. 666), allows judicial adjudication of federal reserved water rights in state court.
- The McCarren Amendment requires that state court adjudications include all water rights in a river basin, including all claimed federal reserved water rights and state administered water rights.

## WHY ARE WE CONCERNED ABOUT FEDERAL RESERVED WATER RIGHTS?

- Because federal reserved water rights are unquantified, DNR does not know how much water is needed or used for the primary purposes of federal land withdrawals in Alaska. Because the unappropriated water available from a water source and the amount of water reserved by a federal withdrawal is unknown, water resources cannot be effectively managed.
- Alaska's growing population and development pressures have caused water supply and water rights conflicts in several areas of unquantified federal reserved water rights. Examples include Sitka's Indian River and Anchorage's Ship Creek.
- For DNR to effectively manage and allocate the state's water and adjudicate water rights, it is necessary to have the federal reserved water rights in Alaska inventoried and quantified by the appropriate federal land management agencies in cooperation with the State of Alaska. The state can then integrate federal reserved water rights with state administratively adjudicated water rights and manage water sources with greater certainty.



## **HOW MUCH LAND IN ALASKA HAS FEDERAL RESERVED WATER RIGHTS?**

- Of the 367.7 million acres in Alaska, almost 49 percent, or more than 178 million acres are reserved federal lands which may have federal reserved water rights:

These federal lands are made up of:

Military land - 2.5 million acres  
National Forests - 23.2 million acres  
BLM lands - 26.1 million acres  
National Parks - 51 million acres  
Fish and Wildlife Refuges - 76 million acres

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For more information about federal reserved water rights and application forms for water rights, please call, write, or come to one of the following Offices:

### **DEPARTMENT OF NATURAL RESOURCES DIVISION OF LAND AND WATER MANAGEMENT**

**SOUTHEASTERN REGIONAL OFFICE**  
400 Willoughby Avenue  
Suite 400  
Juneau, Alaska 99801  
465-3400

**NORTHERN REGIONAL OFFICE**  
4420 Airport Way  
Fairbanks, Alaska 99701  
479-2243

**SOUTHCENTRAL REGIONAL OFFICE**  
Frontier Building  
3601 C Street, 10th Floor  
Pouch 7-005  
Anchorage, Alaska 99510  
361-2020

**Mat-Su Area Office**  
Century Plaza, Suite 202  
Pouch 874008  
Wasilla, Alaska 99510  
376-4595

### **DIVISION OF FORESTRY**

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**TOK AREA OFFICE**  
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883-5134

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McGrath Airport  
Box 130  
McGrath, Alaska 99627  
524-3010

**KENAI PENINSULA AREA OFFICE**  
Mile 92.5 Sterling Highway  
S.R. 2, Box 107  
Soldotna, Alaska 99669  
262-7559

**COPPER RIVER AREA OFFICE**  
Mile 110 Richardson Highway  
Post Office Box 185  
Glennallen, Alaska 99588  
822-5534

# STATE OF ALASKA THE LEGISLATURE

POUCHY - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907.465-3800

## LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HSA	4-20-88	3:00 p.m.
HSA	5-3-88	3:00 p.m.

Wilderness Acquisitions, Inc.  
9720 Trappers Lane  
Juneau, Alaska 99801  
(907) 789-0740

April 19, 1988

Ms. Frances A. Ulmer, Chairperson  
House State Affairs Committee  
P.O. Box V  
Juneau, Alaska 99811

Re: House Bill 480  
Water Appropriations

Dear Ms. Ulmer:

House Bill 480, in its original draft version (5-1352A), was designed to eliminate an injustice existing in the current law relating to water appropriations. This is how we became aware of that injustice.

In November 1985, we purchased a small portion of the Baranof Townsite at Warm Springs Bay for \$350,000 partly because the hot springs made the property suitable for resort development but mainly because it was well suited for private aquaculture. Before closing the purchase transaction, we checked with DNR to see if there were water appropriations ahead of and therefore superior to the application to appropriate water from the Baranof River which we intended to file on closing. In doing so, we were relying on AS 46.15.050(b) which states that priority of appropriation dates from the filing of an application with the (DNR) Commissioner. DNR informed us that ADF&G had filed an application to appropriate water for a hatchery in 1978 but that the application has been abandoned and the file closed for inaction on the part of ADF&G in 1983. DNR also informed us that with the exception of one minor appropriation, there were no prior rights to the water in the river. We therefore closed on the property and filed our application for water. Soon after doing so, ADF&G learned of our intentions and filed its own application to appropriate water from the river. When DNR received the ADF&G application, it determined that it was not in the public interest to award water rights to us and denied our application. We, justifiably, felt like we had been had and were now out over a third of a million dollars. For almost two years, we have been struggling to reverse that determination. In WAI v. DNR, No. 1JU-86-2429 (First Judicial District 1988), the Superior Court affirmed DNR's legal right to award water to a subsequent applicant.

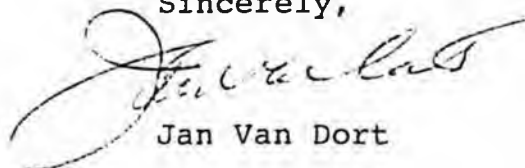
Although we disagree with that decision, the question which

we, through this bill, pose for the Legislature is not whether the judge is correct but, assuming he is, whether the present statutes represent good public policy. We feel that they do not because there is no way that a person engaging in an enterprise which depends upon fresh water can be sure that he or she will be able to obtain the right to obtain the needed water prior to making his or her investment. Under present law, the right to use water is appurtenant to real property. Consequently, the real property interest must be acquired or a commitment to its acquisition undertaken before the water rights application is processed. Also, the right to use water is not vested until a certificate of appropriation is obtained and that certificate cannot be obtained until beneficial use of the water is made. This means that you cannot be sure that you will receive the right to use water until after the required real estate is purchased, the engineering and design completed, the improvements constructed and beneficial use made. Up until that time, the applicant's right to use the water is subject to being subordinated to a subsequent application because DNR determines that the subsequent application represents a higher public interest. This is obviously unworkable from the viewpoint of an investor or lender and must be changed.

HB 480, in its present form, falls short of that goal. The last sentence gives protection only from users of the same class. It would not, for example, give a PNP hatchery operator protection from a domestic user. A person contemplating an investment needs protection from all subsequent applications not just those of the same class. Second, the bill, as it is, would lead to arguments over what constitutes a class. Would, for another example, a private nonprofit hatchery be in the same class as a private for profit hatchery? Third, in order to remedy the injustice to which we have been subjected, the language in the original draft version should be given retroactive application to October 1, 1985. The bill, in whatever form it finally takes, must create some mechanism for protecting the expectations of a potential water user. The original draft version would implement a system similar to the race-notice provisions of our real estate recording statutes. This is both familiar and fair.

We look forward to the opportunity to present additional oral testimony to your committee on this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan Van Dort", written in dark ink.

Jan Van Dort

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

OFFICE OF THE COMMISSIONER

April 19, 1988

The Honorable Fran Ulmer  
Chair, House State Affairs Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Ulmer:

Subject: HB 480, An Act relating to appropriations of water.

Position: The department is opposed to this legislation.

Background: AS 46.15.080 applies only to instances when competing applications for water from the same source have been filed with the department, and the source is insufficient to supply the needs of all the application proposals filed. The section as it presently exists enables the department to evaluate each competing proposal and to grant permits to those which alone or in combination will constitute the fullest use of the resource and result in the most benefit to the public. The concepts of maximum use and beneficial use in this section are based upon and fully consistent with Article VIII of the Constitution.

This proposed legislation seeks to remove the ability of the department to manage and allocate the use of the resource in a way which maximizes the public benefits consistent with the Constitution and the public interest. The legislation seems to dictate a preference, in these special instances, to allocate the resource in the order which development proposals were submitted regardless of the level of public benefit to be derived from competing proposals that would be precluded. The proposed amendment therefore appears to conflict with the basic intent of the Constitution.

Alaska Statute 46.15.080 provides criteria for determining the public interest used to evaluate competing applications. I believe the state's duty to make allocation decisions based on these criteria in those very rare instances where there are competing applications and insufficient water from a limited source be maintained to protect the public interest.

Representative Ulmer

- 2 -

April 19, 1988

Recommendation: The term "class of users" on line 14 should be defined.

As you are aware the Alaska Water Resources Board passed a resolution regarding this legislation. I have enclosed a copy for your information. Thank you for the opportunity to comment. Please contact me if you have further questions.

Sincerely,

*Tom Hawkins*  
for Judith M. Brady  
Commissioner

Enclosure

cc: Rod Swope  
Bob Evans  
Committee Members  
Bill Sponsor  
Margaret Hayes

Alaska Water Resources Board  
Resolution No. 88-12

House Bill 480 Regarding Priority of Water Right Applications

WHEREAS: House Bill 480 affects the appropriation of water under the Alaska Water Use Act by assigning a preference to water rights applicants in order of the date of receipt of applications "within any class by user"; and

WHEREAS: The Alaska Constitution in Article VIII, Section 13 grants priority of water right upon priority of water appropriation; and

WHEREAS: Under the Alaska Water Use Act a water appropriation is issued, and a priority right created, only after application and adjudication, including review of the public interest affected; and

WHEREAS: No classes of users have been established by law, except for public water supply which is recognized in the Constitution as preferred used.

NOW THEREFORE BE IT RESOLVED: That the Alaska Water Resources Board urges that the Alaska Legislature not adopt House Bill 480.

Adopted this 25th day of February, 1988  
Alaska Water Resources Board

Peg Tileston, Chairwoman

*Peg Tileston*

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to the appro-  
priation of water  
Sponsor: Representative Ulmer  
Requestor: House State Affairs

Agency Affected: DNR  
BRU: Land and Water  
Components: Land & Water Public Use

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Janet Burleson  
Division: Land and Water Management  
Approved by Commissioner: Tom Hawkins  
Agency: Department of Natural Resources

Phone: 465-3400  
Date: 4/18/88  
Date: \_\_\_\_\_

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