

**SB442**

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/4/92

FURTHER:

DATE TURNED INTO OFFICE:

5/11/92

The Finance Committee considered SENATE BILL NO. 442

"An Act relating to the authority of the commissioner of the Department of Natural Resources to establish water use fees or provide for the sale of water resources; and providing for an effective date."

and recommends:

- replace with \_\_\_\_\_ CS SB 442 (FINANCE)
- or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

- do pass
- do not pass
- no recommendation
- individual recommendations

CS SB 442 (FIN)  
to follow

**NEW FISCAL NOTES:** Dept/Date

zero fiscal notes \_\_\_\_\_

fiscal notes \_\_\_\_\_

appropriation--no fiscal note

**PREVIOUS FISCAL NOTES:** Dept/Date

zero fiscal notes DFG 2/19/92

fiscal notes DIR 324.0 4-22-92

**DO PASS:**

*[Handwritten signatures]*

1. Pat [unclear] no rec  
Co-Chair: Signature/Recommendation

**OTHER RECOMMENDATIONS:**

*[Handwritten signatures]*

2. Kathleen [unclear] no rec  
Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 2

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

REPORTED OUT OF

SFC

5-12-92

Bill Version: CSSB 442 (RES)

(S) Publish Date: 4-24-92

BILL NO.

Revision Date: 22-Apr-92 Department Affected: Natural Resources  
 Title: Water Use Fees and Sale BRU: Water Management  
 Components: Water Management  
 Sponsor: Rules Committee for Governor  
 Requestor: Senate Resources COMPONENT SERIAL NO. 916

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	147.3	148.3	148.3	148.3	148.3	148.3
TRAVEL	39.0	39.0	39.0	39.0	39.0	39.0
CONTRACTUAL	91.9	47.4	47.4	47.4	47.4	47.4
SUPPLIES	11.0	11.0	11.0	11.0	11.0	11.0
EQUIPMENT	35.0	15.0	15.0	15.0	15.0	15.0
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING *	324.2	260.7	260.7	260.7	260.7	260.7

CAPITAL						
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REVENUE GF/PR						
Fnd Source: 1005	350.0	15,000.0	30,000.0	200,000.0	200,000.0	200,000.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PR						
Fnd Source: 1005	324.2	260.7	260.7	260.7	260.7	260.7
TOTAL	324.2	260.7	260.7	260.7	260.7	260.7

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

\* Funding needs changed per Senate Finance Committee Instructions.

Prepared by: David Orr Phone: 762-2572  
 Division: Water Management Date: 22-Apr-92  
 Approved by Commissioner: Harold C. Hein Date: 22-Apr-92  
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Additional Information  
- Water Use Fees and Sale of Water Bill

Operations

- 100 Personal -- One Hydrologist II, Range 16, Southeast (pft)  
Services Personal Services for Director, replaces GF  
reduction in House Finance.
- 200 Travel -- For field work throughout Southeast on streams  
and other water bodies; to regional offices to  
update water files. Increase Director's  
Office Travel.
- 300 Contractual Aircraft and boat charters, office space rent  
for new employee, newspaper advertising, water  
marketing services and analyses, etc.  
Director's Office Contractual.
- 400 Supplies -- Misc. office supplies, small professional  
tools, survey supplies for field work.  
Director's Office Supplies.
- 500 Equipment -- Computer terminals for position to support  
data collection and storage; professional  
hydro-survey equipment.

Revenues:

1. Water Use Fees: Once water user records are updated, water fees  
from existing appropriations can be collected. New applications for  
350,000 acre feet of water have been received, and we expect  
applications for an additional 500,000 acre feet by the end of FY 93  
(for water export to California).
2. Water Sales: The sale of water for export could generate  
significant new revenues for the State of Alaska. Delivery and  
infrastructure costs are yet to be determined, but prices paid for  
water in California provide some indication of the potential size of  
water fees. The California water bank is buying water rights from  
agricultural sources at \$125 per acre foot. The cost of local water  
delivered to coastal communities of California is about \$500 per  
acre foot, and the price of reclaimed water is about \$1400 per acre  
foot. Current estimates for desalinated water are \$1800 to \$2000  
per acre foot. Santa Barbara has authorized paying up to \$1960 per  
acre for desalinated water delivered to that county. The initial  
target volume for sales would be 1-2 million acre feet per year.  
Alaska's rivers discharge between 800 million and 1 billion acre  
feet into the ocean each year.

Funds collected from water fees and sales could be used to offset the  
cost of water management programs, increase the network of stream gages,  
augment the STORET water data base, and fund village safe water projects.

Position Title		Hydrologist II		No. of Positions	1	Range/Step	16A	Barg. Unit	GGU
Time Status	PFT	Staff Months	12	Location	AWA		Election District	4	
TYPE OF EXPENDITURE			Amount	Justification This position will inventory water resources in Southeast Alaska and collect data on waterbodies, especially those that have been selected, or are highly likely to be selected, for large scale water appropriations and withdrawals.					
Salary		7.0	37.0						
Benefits			14.6						
Premium Pay			-						
Other			-						
Total Personal Services			51.6						
Travel			8.0						
Contractual			20.0						
Commodities			6.0						
Equipment			35.0						
Other									
Total Cost			120.6						
FUNDING SOURCE FOR TOTAL COST									
Federal Receipts		1002							
G.F. Match		1003							
General Fund		1004	120.6						
I-A Receipts		1007							
CIP Receipts		1061							
Other									

Request For  
New Position  
FNPW01

AGENCY Natural Resources  
BRU Water Management  
COMPONENT Water Management

Page 3 of 3  
Revised Date:

FY 93

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

FISCAL NOTE  
REPORTED OUT OF  
SFC 5-12-92

Version: SB 442  
(S) Publish Date: 2-19-92

Revision Date: \_\_\_\_\_ Department Affected: Fish and Game

Title: Water Use Fees BRU: Habitat

Component: Habitat

Sponsor: Governor by Rules Committee

Requestor: Governor Hickel

COMPONENT SERIAL NO. 

4	8	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: No impact on current year.

ANALYSIS: (Attach a separate page if necessary.)

Assuming there is no cost to the state for hatcheries and there will be no fiscal impact.

Changes in CSA 442 (FIN) have no fiscal impact. This fiscal note is appropriate.

5-11-92 date [Signature] (Comptroller Initial)

Prepared By: Frank Rue, Director Phone: 465-4105

Division: Division of Habitat Date: 2/13/92

Approved by Commissioner: [Signature]

Agency: Department of Fish and Game Date: 2/13/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. OSC., & Impacted Agency(ies).

7-GS2047E  
Luckhaupt  
5/10/92

CS FOR SENATE BILL NO. 442 *(Fin)*

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the commissioner of natural resources to establish a water  
2 conservation fee only for the use or sale of water in which the water is removed from  
3 the hydrologic unit from which it was appropriated and is not returned to that hydrologic  
4 unit; providing for the sale by the state of water appropriated to the state; relating to  
5 the removal or appropriation for removal of water from one hydrologic unit to another;  
6 relating to the reservation of water for fish; relating to notice of a proposed sale or an  
7 application for appropriation or removal; and providing for an effective date."

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

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

10 Sec. 46.15.035. APPROPRIATION OR REMOVAL OF WATER OUT OF  
11 HYDROLOGIC UNITS TO OTHER HYDROLOGIC UNITS; WATER CONSERVATION FEE;  
12 RESERVATION OF WATER FOR FISH. (a) Water may not be removed from the hydrologic  
13 unit from which it was appropriated to another hydrologic unit, inside or outside the state,

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

5 (1) finds that the water to be removed or appropriated for removal is surplus to  
6 needs within the hydrologic unit from which the water is to be removed or appropriated for  
7 removal;

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

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

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

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

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

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

1 as of the effective date of this section;

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

4 (4) is not subject to AS 46.15.145;

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

10 (d) In this section,

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

13 (2) "hydrologic unit" means either a hydrologic unit or subunit established by the  
14 United States Geologic Survey on current hydrologic unit maps of the state.

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

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

19 (2) the commissioner determines that

20 (A) the water is surplus to needs within the hydrologic unit from which  
21 it was appropriated;

22 (B) the proposed sale of the water meets the requirements of  
23 AS 46.15.080; and

24 (C) the sale price of the water is based upon the fair market value of the  
25 water.

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

30 (c) If water to be sold by the state under (a) of this section, is to be removed from the  
31 hydrologic unit from which it was appropriated to another hydrologic unit, inside or outside the

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

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

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

18 (3) is not subject to AS 46.15.145;

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

24 (d) In this section,

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

27 (2) "hydrologic unit" has the meaning given in AS 46.15.035(d).

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

29 \* Sec. 2. AS 46.15.133 is amended to read:

30 Sec. 46.15.133. NOTICES; OBJECTIONS. (a) If the commissioner proposes a sale  
31 of water or receives [UPON RECEIPT OF] an application for appropriation or removal, the

1 commissioner shall prepare a notice containing the location and extent of the proposed sale,  
2 appropriation, or removal, the name and address of the applicant, if applicable, and other  
3 information the commissioner considers pertinent. The notice shall state that within 15 days of  
4 publication or service of notice, persons may file with the director written objections, stating the  
5 name and address of the objector, and any facts tending to show that rights of the objector or the  
6 public interest would be adversely affected by the proposed sale, appropriation, or removal.

7 (b) The commissioner shall publish the notice [AT THE APPLICANT'S EXPENSE] in  
8 one issue of a newspaper of general distribution in the area of the state in which the water is to  
9 be appropriated. The commissioner shall also have notice served personally or by certified mail  
10 upon an appropriator of water or applicant for or holder of a permit who, according to the records  
11 of the division of lands, may be affected by the proposed sale, appropriation, or removal and  
12 may serve notice upon any governmental agency, political subdivision, or person; notice shall  
13 also be served upon the Department of Fish and Game and the Department of Environmental  
14 Conservation. An applicant for an appropriation or removal shall pay the commissioner's  
15 costs in providing publication and notice under this subsection. The commissioner may  
16 require as a condition of a sale of water under AS 46.15.037, that a purchaser of water  
17 reimburse the department for the costs associated with providing notice of the proposed  
18 sale.

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

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

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

30 (f) The commissioner may, by regulation, designate types of appropriations that are  
31 exempt from this section and provide simplified procedures for ruling on the applications. The

- 1 commissioner may not exempt under this subsection appropriations for removal under
- 2 AS 46.15.035, appropriations by the state for sale or sales by the state under AS 46.15.037,
- 3 or removals of water under AS 46.15.035 and 46.15.037.
- 4 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

Revision Date: \_\_\_\_\_ Department Affected: Natural Resources  
 Title: An Act relating to the reservation of water for in-stream flow GRU: Water Management  
 Component: Water Management  
 Sponsor: Davidson  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	47.0	47.0	47.0	47.0	47.0	47.0
TRAVEL	2.0	2.0	2.0	2.0	2.0	2.0
CONTRACTUAL	3.0	3.0	3.0	3.0	3.0	3.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	8.0					8.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	62.0	54.0	54.0	54.0	54.0	62.0
CAPITAL						
REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	62.0	54.0	54.0	54.0	54.0	62.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	62.0	54.0	54.0	54.0	54.0	62.0

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
 See attached page(s).

Prepared By: House Resources Committee Phone: 465-3715  
 Division: \_\_\_\_\_ Date: March 10, 1992  
 Approved by Commissioner: Representative Cliff Davidson, Chairman  
 Agency: House Resources Committee Date: March 10, 1992

The following analysis is based on the attached fiscal note dated March 10, 1992 by the House Resource Committee:

Line 100 Personal Services

FY 93- FY 98

47.0 - (Range 16) Hydrologist II Position

House Bill 355 may require an additional hydrologist. The Division of Water already has twelve full time hydrologists. The creation of this additional full time position would ensure personnel for HB 355. This position would estimate surface flows for the water body with an offstream application based on published records if there is USGS data available, or using mathematical expressions that relate data to water bodies where there is no data available.

Line 200 Travel

FY 93 - FY 98

2.0

Some travel may be necessary for the hydrologist position. Current hydrologists do not travel to assess stream flows and can often do this based on existing published records and regression equations. There will be no new gaging stations to install, equip, or maintain. There is already current money appropriated for maintenance of existing gages.

Line 300 Contractual

FY 93-FY 98

3.0

Some money may be necessary for incidental expenses,

Line 400 Supplies

2.0

Some money may be necessary for office supplies, materials, and office equipment.

Line 500 Equipment

8.0

This would allow purchase of a computer and software for the new position. This would be for FY 93 only.

Total operating: General Fund Source

62.0 for FY 93

54.0 for FY 94 - FY 98



# Alaska State Legislature

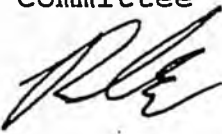
SENATOR RICHARD I. ELIASON

*President of the Senate*

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3755

## M E M O R A N D U M

TO: Sen. Finance Committee

FROM: Sen. Eliason 

DATE: May 11, 1992

RE: SB 442, "Water Fee" bill

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SB 442, the so-called "water fee" bill is currently in the Senate Finance Committee. The Senate Resources version of SB 442 pertains to water which is removed from a hydrologic unit, and the authority of the state to sell water. While this bill generates less opposition than the original bill or the version considered by the House, there are some concerns raised by the whole notion of "selling water."

My main concern is that once we create a "financial incentive" for the state to sell and export water, we must ensure that adequate protections are in place to prevent the removal of too much water. There must be safeguards to monitor the "cumulative effects" of the removal of amounts of water to ensure that the waterways upon which the fish of Alaska depend are not depleted.

It seems crucial to me, that any measure we pass to allow the sale of state water must include provisions for the reservation of water to meet the needs of fish. To that end, I submit the attached draft committee substitute for the committee's consideration. Basically, this draft begins with CSSB 442 (Res), adds that salt water is not to be sold, clarifies that the appropriation and sale of water provided for in the bill are covered by the same public notice requirements as other applications under the chapter, and adds language regarding water reservation for fish which would pertain ONLY to the water which is the subject of this bill. That is, if water is being considered for removal from a hydrologic unit (such as export out of state), or for sale, the additional consideration for the needs of fish would apply.

I would very much appreciate the Senate Finance Committee's consideration of the attached committee substitute.

## WHY ALASKA NEEDS PROTECTION OF WATER FOR FISH AND WILDLIFE

-Article VIII, Sec. 13 of *The Alaska Constitution* mandates a general reservation of water for fish and wildlife.

-State law does not provide a guarantee that water be reserved for fish and wildlife. Alaska's Water Use Act only requires DNR "consider" the effect of a proposed appropriation of water on fish and game. My legislation would guarantee that a sufficient flow of water remain "in the stream" for the survival of fish and wildlife

-Requires adequate instream flows for fish and wildlife be reserved *before* additional water is appropriated for other uses.

-Alaskan water law is based on "first in time, first in right". An applicant who receives a water right first is senior to all subsequent water right applicants, regardless of applicants' future needs. Enactment of my bill would effectively guarantee fish and wildlife have an immediate, legal right to water they use now and forever.

-Guarantees automatic instream flow protection for over 12,000 known fish and wildlife streams.

-To acquire water rights for fish and wildlife an applicant must file an instream flow application -- a complex and costly process. For out-of-stream uses of quantities less than 100,000 gallons, furnishing water data is discretionary and treated on a case by case basis.

-Approximately 4,500 out-of-stream water rights have been granted since statehood. Only 11 instream flow reservations have been granted out of a total 46 applications since 1980. (29 are still pending and 6 were denied).

-Extended into the future, protection for instream flows will not be able to keep up with out-of-stream use. Under current law, it would take over 1000 years and a cost of \$96,000,000 to submit applications to reserve water for fish and wildlife. My bill provides guarantees this level of protection in a very cost-effective manner by reserving a water right for fish and wildlife at the time of an application.

-Guarantees automatic instream flow protection for all fish and wildlife streams identified in the future

-Instream flow legislation would also guarantee protection for all fish and wildlife bearing rivers identified in the future.

.....over

**-Helps protect important uses of water: navigation, transportation, water quality and sanitation, recreation, tourism, scenery as well as the Public Trust**

-Under Alaska's Water Use Act, instream flow can be reserved for protection of fish and wildlife; recreation and park purposes; navigation and transportation; and sanitary and water quality purposes. Guaranteeing instream flows for fish and wildlife, consistent with the Alaska Constitution, benefits these other uses of water.

**-Provides a cost-effective approach to water management**

-This legislation does not require additional state funds. While improving our state's hydrological and biological data bases is important, instream flows can still be estimated based on the best available and existing data. As our information improves, the quantity of water necessary for survival of fish and wildlife reserved can be further refined. Until then, the automatic reservation of water is a cost-effective way to prevent the over-appropriation of water.

**Prevents the water-management fiascoes now being experienced by the Lower-48**

-Western water law was formed when clean fresh water running to the sea was considered wasted unless it was used for irrigation, farming, ranching, and mining. The instream reservation of water was, until recently, not recognized as a beneficial use of water in many western states and could not legally be reserved.

-In the last thirty years, many western states have changed their laws to include instream flow reservations among the beneficial uses of water. But after more than a century of applicants. By now, however, most streams have little or no water left. Water must be leased or purchased back at tremendous expense, or through disruptive court-action, in order to restore stream flows.

**..Provides an Insurance Policy for Alaska's future**

-Reservation of instream flows are particularly suitable to Alaska because we still have few water conflicts. We have a unique opportunity to legislate intelligent water use and avoid conflicts unlike the west.

-Alaska, with our highly valued subsistence, sport and commercial fish and wildlife uses differs from other western states in that our fisheries and wildlife are indispensable to our health, welfare and economy. My legislation would preserve, in perpetuity, our natural permanent fund - our fish and wildlife - long after our known oil reserves dry up.

**EXISTING LEGISLATION &  
REGULATIONS**

DNR only required to *"consider"* granting instream flows for fish and wildlife despite a general reservation of instream flows for fish and wildlife specified in Article VIII, Section 13 of the Alaska Constitution.

Guarantees consistency with Constitutional mandate by requiring that sufficient water be reserved to maintain fish and wildlife production.

The only procedure to acquire formal instream flow water rights for fish and wildlife is to file an instream flow application. Alaskan water law is based upon *"first in time and first in right"*. Therefore, fish and wildlife are among many resources or uses to be considered by DNR when it, in its own discretion, appropriates water for an out of stream use, unless water rights to acquire instream flows for fish and wildlife were filed first.

Automatically grants instream flow protection and priority date for instream flow water rights for over 12,000 known fish and wildlife streams as the date of bill enactment. Priority date for streams identified as supporting fish and wildlife after bill passage is date of identification. Applications on file and existing out of stream appropriations at time of passage of bill receive grandfather rights.

Public water supplies are granted priority over all other water uses.

No change. Instream flows for fish and wildlife are given priority consideration second only to public water supply, while allowing for other out of stream and instream uses.

Single family household uses of water also exempted from provisions of bill. Groundwater appropriations of 5,000 gpd or less that do not have an effect on surface water fish and wildlife habitat are exempted from provisions of the bill.

EXISTING LEGISLATION & REGULATIONS

Approximately 4,500 <sup>→ may be higher</sup> out of stream flow water rights granted since 1966. 40 in-stream flow reservation applications filed since passage of legislation in 1980. Of them, eleven have been granted, and six are in process of adjudication.

Six have been denied, and the rest are in the process of adjudication.

Automatic guaranteed instream flow protection in more than 12,000 fish and wildlife streams.

No blanket requirement to immediately quantify instream flows for every stream protected by the legislation. Instead, analyses must only be performed for a stream protected by this law after an application to appropriate water for out of stream uses for that individual stream is filed.

Therefore, it is estimated that only 200 to 300 out of stream applications received each year by DNR might be subject to provisions of this bill.

Instream flow applicants must go through extensive data gathering and analysis processes to provide sufficient data to DNR to complete final applications for instream flows. Similar requirements apply to applications for out of stream uses for water quantities of 100,000 gpd or more. Requirements for out of stream quantities less than 100,000 gpd are discretionary and treated on case by case basis.

Instream flow protection guaranteed with no data requirement as provided by constitution.

Instream flow applicants can file applications to receive a priority date before completing all analyses and assembling documentation. Analyses must be completed three to five years after filing. Applicants for out of stream water rights are granted a priority date upon receipt of application with or without supporting documentation. Five years are automatically granted to perfect the amount of water requested.

All fish and wildlife streams receive automatic guarantee of instream flow reservation and priority date effective the date of legislation without expending resources. Quantification of instream flows for an individual stream is not performed or required until an application for an out of stream appropriation application for that stream is filed. Minimal resources required to quantify the instream flows for individual reservations on case by case basis. Existing quantification procedures apply unless modifications to regulations are made.

EXISTING LEGISLATION &  
REGULATIONS

No mandatory requirements for out of stream water rights applicants to provide hydrologic data to enable DNR to determine whether sufficient water is available for appropriation from a stream and avoid overappropriation unless the quantity requested is 100,000 gpd or greater. No similar requirement for applicant to provide hydrologic data to assist other agencies and the public to evaluate instream flow requirements or impacts of an out of stream appropriation less than 100,000 gpd on other appropriators.

Instream flows must be quantified and protected prior to allocating additional water from a stream or river that is identified as supporting fish and wildlife.

Descriptions of water availability based upon mean annual or mean monthly flow based using best available data or estimate of mean annual flow is required for all instream flow applications and limited to out of stream appropriations equal to or greater than 100,000 gpd (0.15 cfs)

This type of information would still be required to quantify instream flows. It would not be required as a prerequisite to guarantee instream flow protection.

ADF&G, other agencies, or the private sector must apply for individual instream flow regimes. An average of ten instream flow applications are filed each year due to the requirements for data and documentation. Insufficient stream gage data are also limiting. Each instream flow application, assuming there is no controversy, averages a cost of \$8,000 to \$10,000 to the applicant. At this present rate it will, at a minimum, take over 1000 years and more than \$96,000,000 to file for instream flows for rivers and streams presently identified as supporting fish and wildlife.

All known fish and wildlife streams (over 12,000) and additional streams identified in the future as supporting fish and wildlife are automatically granted instream flow protection on the date of enactment of bill without expending funding. Instream flows are not quantified until an out of stream appropriation is received following the existing adjudication process.

EXISTING LEGISLATION &  
REGULATIONS

No mandatory requirement for ADNR to determine cumulative effects of multiple appropriations. No automated data base or mechanism in force to know availability of unappropriated water or if streams have been over appropriated.

Requires DNR to reserve adequate instream flows for fish and wildlife before additional water is appropriated for other uses. Public water supply, single family domestic use, small groundwater consumption, and nonconsumptive water uses are exempt from this provision. However, the significance of an automated data base and information system for the proper and cost effective management, monitoring, and enforcement of Alaska's water rights is recognized. Therefore, separate legislation, HB353, was introduced to fund the completion and implementation of an automated data base and tracking system for the DNR in FY 93. DNR has been requesting funding to complete this system for several years.

DNR has flexibility to determine whether a method is acceptable for calculating instream flows. DNR has discretion to decide the best public interest for uses of water when approving out of stream appropriations and instream flows.

DNR maintains flexibility to determine if a method to calculate instream flows is acceptable. DNR must grant instream flows to protect existing fish and wildlife habitat when appropriating new out of stream water rights.

No gaging station requirements or requirements for additional gages. However, it would benefit all water users and managers to improve the existing gaging system. There is only one gage per 7,000 square miles in Alaska while in the lower 48 states, it's one gage per 400 square miles, yet Alaska has 1/3 of the nation's freshwater.

No Change. This legislation is designed to be implemented using existing data base. Additional hydrological data would refine and improve decisions but is not a requirement of legislation. Recognizing the shortages and need for stream gage data to improve the management of Alaska's waters, separate legislation, HB 354, has been introduced to provide funding to evaluate the effectiveness of the existing stream gage collection network and recommend locations and priorities for future gaging data. The evaluation would also analyze the effectiveness and limitations of models used to predict flows at ungaged sites.

# MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

## State of Alaska

Southeast Regional Office  
Division of Water

To: Senate Finance Committee

Date: May 11, 1992

File No:

Telephone No: 465-3400

From: Ric Davidge  
Director of Water

Subject: The Great Alaska  
Water Give Away

*Alaska is already exporting glacier ice and millions of gallons of water to Japan, California and other parts of the world with no compensation.*

*The Division of Water is currently processing applications for the export of 350,000 acre feet\* of water per year to Southern California. If SB 442 does not pass, the state has no way of receiving compensation for the exploitation of this resource.*

*\*350,000 acre feet of water is 350,000 acres covered by one foot of water  
or*

***114,047,850,000 gallons of water!!!***

LETTERS AND ORGANIZATIONS IN SUPPORT

HOUSE BILL 355

INSTREAM FLOW RESERVATION OF WATER FOR FISH AND WILDLIFE

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- United Fishermen of Alaska
- United Cook Inlet Drift Association
- Kenai Peninsula Fishermen's Association
- Alaska Sportfishing Association
- Trout Unlimited
- Alaska Environmental Lobby, Inc.
- American Fisheries Society (National and Alaska Chapter)
- Alaska Center for the Environment
- American Rivers, Inc.
- Kodiak Regional Aquaculture Association
- Ketchikan Sports and Wildlife Club
- The Good Sam Club
- Anchorage Waterways Council
- Anchorage Audubon Society
- National Audubon Society (Alaska Office)
- Trustees for Alaska
- Northern Alaska Environmental Center
- The Wilderness Society
- Rural Alaska Community Action Program, Inc.
- Tanana Chiefs Conference
- Association of Village Council Presidents
- Village of Tuluksak
- Native American Rights Fund
- Cenaliulriut Coastal Management District
- The Wildlife Society, Alaska Chapter
- The Wildlife Federation of Alaska
- Municipality of Anchorage, Municipal Health & Human Services Commission

FEDERAL AGENCIES AND OTHER STATES

- United States Department of Interior, Fish and Wildlife Service, National Ecology Research Center
- Montana Department of Fish, Wildlife and Parks
- California Department of Fish and Game
- United States Department of Interior, Fish and Wildlife Service
- United States Department of Interior, Bureau of Land Management
- United States Department of Agriculture, United States Forest Service
- United States Department of Commerce, National Oceanic and Atmospheric Administration
- United States Department of the Interior, National Park Service, Alaska Office

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

442

February 19, 1992

The Honorable Richard I. Eliason  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to specifically authorize the Commissioner of the Department of Natural Resources to establish water use fees or provide for the sale of water resources.

The bill is designed to provide for the recovery of the market value of water resources conveyed by the state, particularly under circumstances involving the conveyance of rights to consumptive uses of large quantities of water.

Regulations developed with public involvement will spell out the details of who will be charged for water, but we estimate that only those who use 50 or more acre feet per year (approximately 45,000 gallons a day) will be affected. State agencies, nonprofit groups, such as hatcheries, single family domestic users, and other water users to be identified during the legislation and regulation writing process would not be subject to the fee.

Water revenues can be used to support a wide variety of water-related programs, including safe drinking water, water quality and water flow measurements.

The waters of the State of Alaska are an important and extremely valuable natural resource. The state has an important interest in recovering, for the benefit of the people of Alaska, the real value of the state's water and the real costs of managing and conserving water resources. I urge your early and favorable consideration of this bill.

Sincerely,

A handwritten signature in black ink that reads "Walter J. Hickel".

Walter J. Hickel  
Governor

PLEASE MICROFILM TOP PAGE ONLY

