

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

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## ANNOTATED BIBLIOGRAPHY

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Andrews, W.H. and G.E. Madsen. 1976. "Assessment of Recreation and Aesthetic Stream Flow Methodologies." Pp. 364-378 In J.F. Orsborn and C.H. Allman (eds.), **Instream Flow Needs**, Vol. I. American Fisheries Society, Bethesda, Maryland. 551 pp.

This paper is a good starting point for those wishing to file for a recreational instream flow reservation. While it presents no specific methods, it provides a background on stream recreation categories and ways to evaluate the recreational experience. The large list of references will be helpful to those wishing to pursue the stream and lake recreation topic in more detail. It is written at a low to medium technical level and is suitable for nontechnical readers.

Bovee, Ken D. 1982. **A Guide to Stream Habitat Analysis Using the Instream Flow Incremental Methodology**. Instream flow information paper no. 12. Cooperative Instream Flow Service Group. Ft. Collins, Colorado. 248 pp.

This is a comprehensive guide for Instream Flow Incremental Methodology (IFIM) users. It provides stepwise suggestions for conducting an IFIM study, with specific references to studies which might be encountered in reserving instream flow in Alaska. Especially relevant are sections on specific biologic, hydrologic, and hydraulic problems and how they might be solved using IFIM. It is written at a medium technical level, with some sections at higher levels, and is suitable for those with technical background or some IFIM training.

Bovee, Ken D. and Robert Milhous. 1978. **Hydraulic Simulation in Instream Flow Studies: Theory and Techniques**. Instream flow information paper no. 5. Cooperative Instream Flow Service Group, Fort Collins, Colorado. 130 pp.

This publication discusses stream hydraulics pertaining to hydraulic rating and habitat rating instream flow methods. Major sections include an introduction to concepts and terminology, selection of study sites, data requirements, data collection techniques and lists of required equipment. It is written at a medium to high technical level, probably most appropriate for those with a technical background or who are engaged in IFIM training.



Photo Fred Eubanks, NPS.

Chow, Ven Te (ed.) 1964. **Handbook of Applied Hydrology**. McGraw Hill Book Co. Subtitled "A Compendium of Water-Resources Technology." 1451 pp.

This has been the hydrologist's "Bible" for two decades. It contains sections on virtually every phase of hydrology. However, some areas of current interest, most notably computer techniques, are not well addressed due to the age of this text. The technical level is medium to high.

Dunne, Thomas and Luna Leopold. 1978. **Water in Environmental Planning**. W. H. Freeman. 818 pp.

The most recent of major hydrology textbooks, this is an excellent source of information on the most recent hydrologic methods. It is written for the layman as much as for the professional.

Grenney, W.J., D.B. Porcella, and M.L. Cleave. 1976. "Water Quality Relationships to Flow, Streams, and Estuaries." Pp. 35-87 In C.B. Stalnaker and J.L. Arnette (eds.) **Methodologies for the Determination of Stream Resource Flow Requirements: An Assessment**. Utah State University, Logan, Utah. 199 pp.

This publication describes the potential streamflow and water quality relationships likely to be encountered by those making an instream flow reservation. Included is information on temperature, dissolved oxygen, nitrogen, phosphorous, and suspended sediment. Discharge/water quality relationships in estuaries are also discussed. The technical level is extremely high, suitable primarily for engineers and chemists.

Hyra, Ronald. 1978. **Methods of Assessing Instream Flows for Recreation.** Instream flow information paper no. 6. Cooperative Instream Flow Service Group, Fort Collins, Colorado. 52 pp.

This paper presents an alternative approach to determining recreation values at various streamflows. The described method uses hydraulic simulation techniques and preference curves specific to stream recreational activities to produce *Weighted Usable Area vs. discharge* relationships. Technical level is medium to high, suitable for those with technical backgrounds or some IFIM training.

Kadlec, J.A. 1976. "Methodologies for Assessing Instream Flows for Wildlife." Pp. 139-146 In C.B. Stalnaker and J.L. Arnette (eds.) **Methodologies for the Determination of Stream Resource Flow Requirements: An Assessment.** Utah State University, Logan, Utah. 199 pp.

This is a general paper which provides background on instream flows for wildlife, describes current methods for wildlife assessments, and presents suggestions for future research. While no specific methods are presented, the discussions are informative and the literature cited is valuable to those wishing more background or detail. The technical level is low to medium.



Photo Lisa R. Holzapfel © 1985

Linsley, R., M. Kohler, and J. Paulhus. 1975. **Hydrology for Engineers**. McGraw Hill Book Co. Series in Water Resources and Environmental Engineering. 340 pp.

A hydrology text from a rigorous engineering viewpoint. It is of a moderate to high technical level.

Loar, J.M. and M.J. Sale. 1981. **Analysis of Environmental Issues Related to Small-scale Hydroelectric Development. V. Instream Flow Needs for Fishery Resources**. Oak Ridge National Laboratory, Oak Ridge, Tennessee. Environmental Sciences Division, publication no. 1829. 105 pp.

This is a compilation of fisheries instream flow methods. It includes descriptions of the major discharge-related, hydraulic rating, and habitat rating methods; a history of instream flow activities; an evaluation of existing methods; and an extensive bibliography. The writing is at a medium technical level.

Orsborn, J.F. and C.H. Allman (eds.) 1976. **Instream Flow Needs**. Vols. I and II. American Fisheries Society, Bethesda, Maryland. 551 and 656 pp.

These volumes are collections of instream flow papers from a variety of disciplines including legal-institutional, engineering, technical, resource agency perspectives, and accounts of instream flow experiences. The papers cover topics ranging from river mechanics and water-sediment dynamics through evaluations of instream flow methods for fish, wildlife, recreation, aesthetics, and water quality. The technical level varies from low to high.

Stalnaker, C.B. and J.L. Arnette. 1976. **Methodologies for the Determination of Stream Resource Flow Requirements: An Assessment**. Prepared for U.S. Fish & Wildlife Service, Office of Biological Services. Utah State University, Logan, Utah. 199 pp.

This publication gives a comprehensive presentation and assessment of many aspects of instream flow: water resources allocation; comprehensive planning; instream flow needs for fisheries, wildlife, recreation, aesthetics and water quality; hydrologic principles; hydraulic relationships; and computer modeling. It contains a good description of single-transect hydraulic rating methods and is a comprehensive source for the instream flow assessment field. However, because of its age, it is no longer descriptive of the scope of available methods.

Tennant, D.L. 1976. "Instream Flow Regimens for Fish, Wildlife, Recreation, and Related Environmental Resources." Pp. 359-373 In J.F. Orsborn and C.H. Allman (eds.), **Instream Flow Needs**. Vol. II. American Fisheries Society, Bethesda, Maryland. 651 pp.

This paper describes development and application of the most often utilized discharge-related instream flow method. It is useful in providing a step-by-step process for making a flow recommendation, given sufficient information to use this method, and it is written at a low to medium technical level.

U.S. Geological Survey. Various Years. **Water Resources Data - Alaska**, Water Years 1971- . (Individual volumes for each water year).

These annuals contain all water resources data collected and compiled by the USGS in Alaska. The data include continuous discharge data, water quality data, and groundwater levels from permanent record sites as well as miscellaneous discharge, water quality, and lake storage records from many Alaskan streams and lakes. These volumes are the primary source for hydrologic information on lakes and streams in Alaska.

Wesche, T.A. and P.A. Rechar. 1968. **Summary of Instream Flow Methods for Fisheries and Related Research Needs**. Water Resources Research Institute, University of Wyoming, Laramie, Wyoming. 122 pp.

This publication contains descriptions of many fisheries instream flow methods, a detailed procedures section, and an extensive bibliography. It also contains criteria for determining which method to use for an instream flow study. The technical level is medium.



Photo Keith Trexler, NPS.

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# APPENDICES

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## DNR Regional Location Map

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DNR Regional Location Map

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

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**DIVISION OF LAND AND WATER MANAGEMENT**

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

**SOUTHEAST REGIONAL OFFICE**  
400 Willoughby Avenue  
Pouch MA  
Juneau, Alaska 99611  
465-3400

**SOUTHCENTRAL REGIONAL OFFICE**  
3601 C Street, 10th Floor  
Pouch 7-005  
Anchorage, Alaska 99510  
276-2653

**MAT-SU AREA OFFICE**  
Century Plaza, Suite 202  
P.O. Box 874008  
Wasilla, Alaska 99687  
376-4595

# Alaska Statutes

## 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;

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

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**DIVISION OF LAND AND WATER MANAGEMENT**

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4420 Airport Way  
Fairbanks, Alaska 99701  
479-2243

**SOUTHEAST REGIONAL OFFICE**

400 Willoughby Avenue  
Pouch MA  
Juneau, Alaska 99811  
465-3400

**SOUTHCENTRAL REGIONAL OFFICE**

3601 C Street, 10th Floor  
Pouch 7-005  
Anchorage, Alaska 99510  
276-2653

**MAT-SU AREA OFFICE**

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

(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 instream 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 (HCSSD 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 1977)

Revisor's note. - This section formerly appeared as AS 46.15.135. It was renumbered by the revisor 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 revisor 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 (e).

### **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**

190. The Water Resources Board

200. Term of office

210. Duties of the board

**Section**

220. Board meetings

230. Public meetings

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. (amended by §§8 — 10 ch 84 SLA 1980; and §§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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# STATE OF ALASKA

Bill Sheffield, *Governor*

Esther C. Wunnick, *Commissioner, Dept. of Natural Resources*



# 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  
555 CORDOVA STREET, POUCH 7-005  
ANCHORAGE, ALASKA 99510

May 1981  
Revised  
June 1984

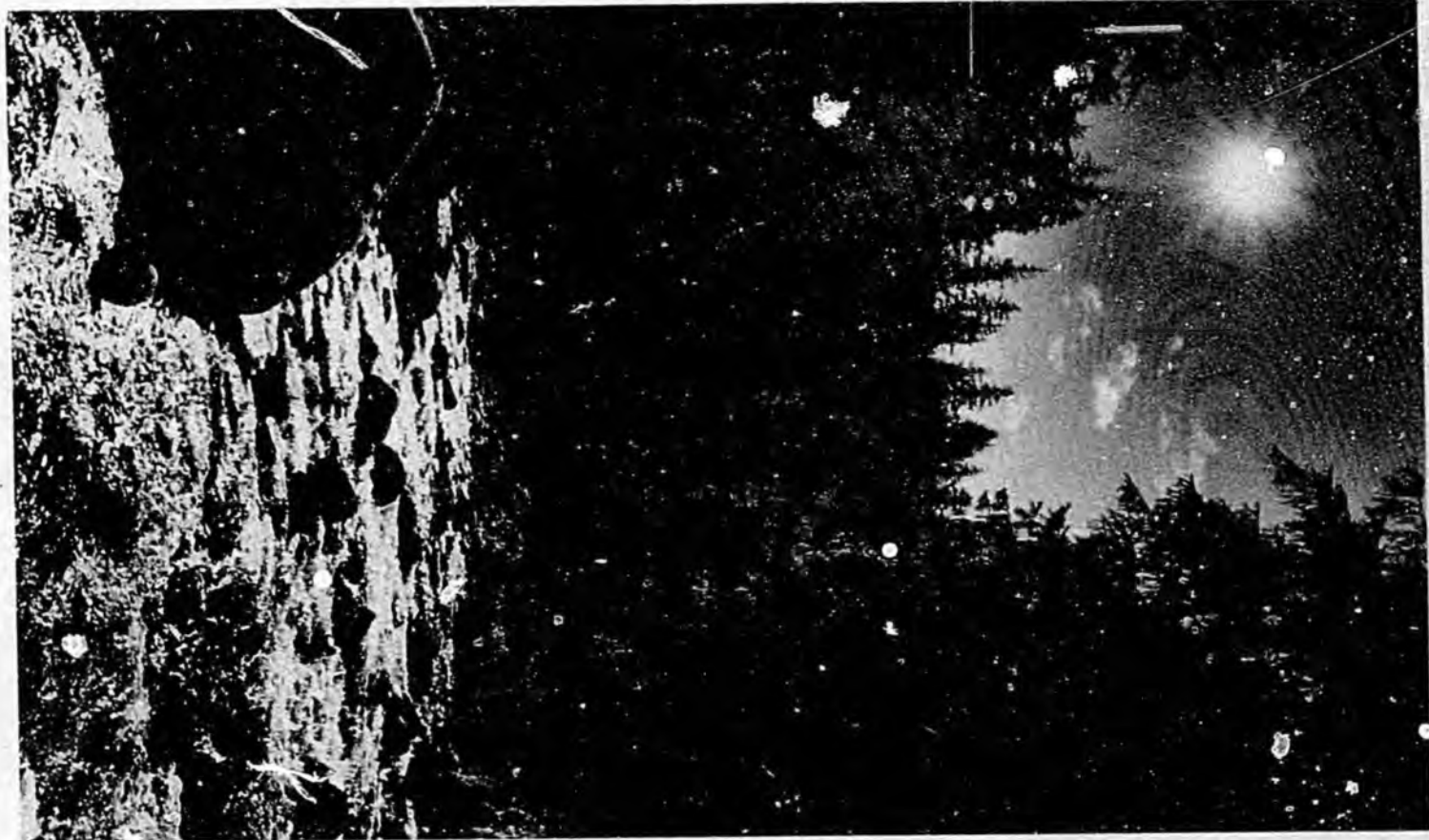


Photo © 1983 Kurt Savikko

## 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

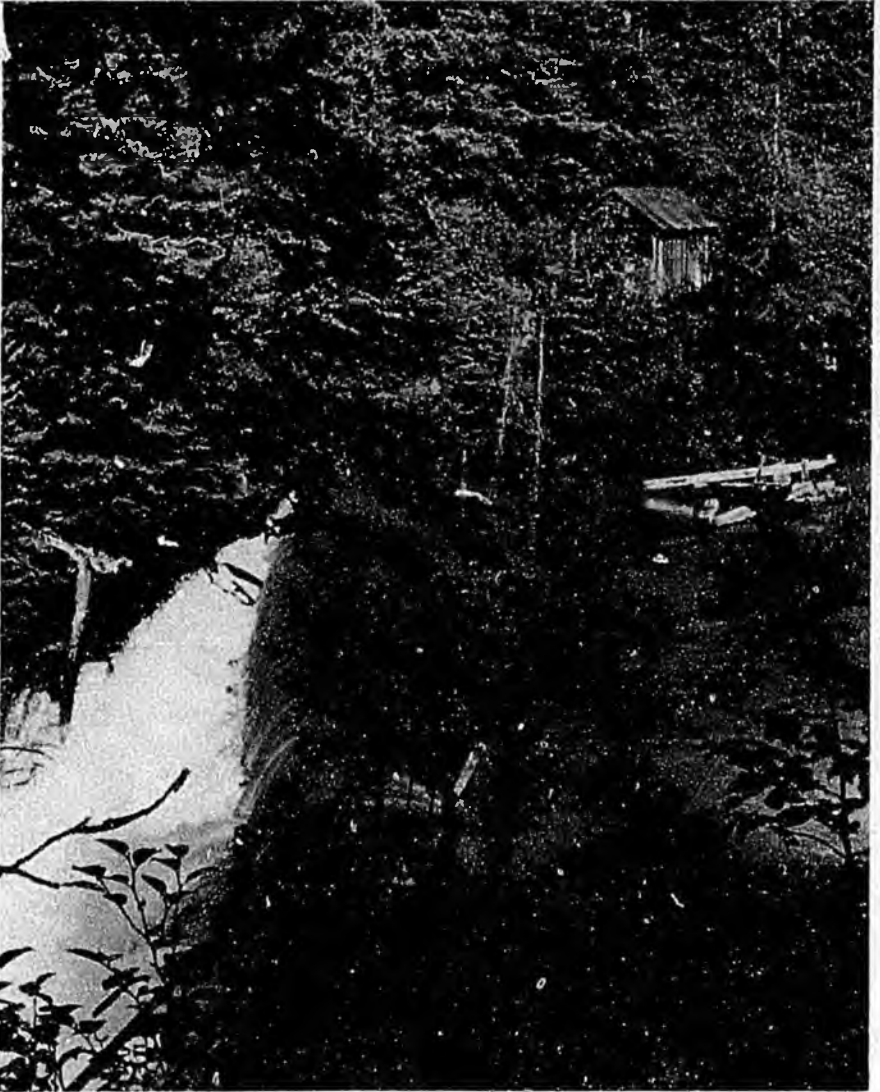


Photo © 1983 Kurt Savikko

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 district 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.

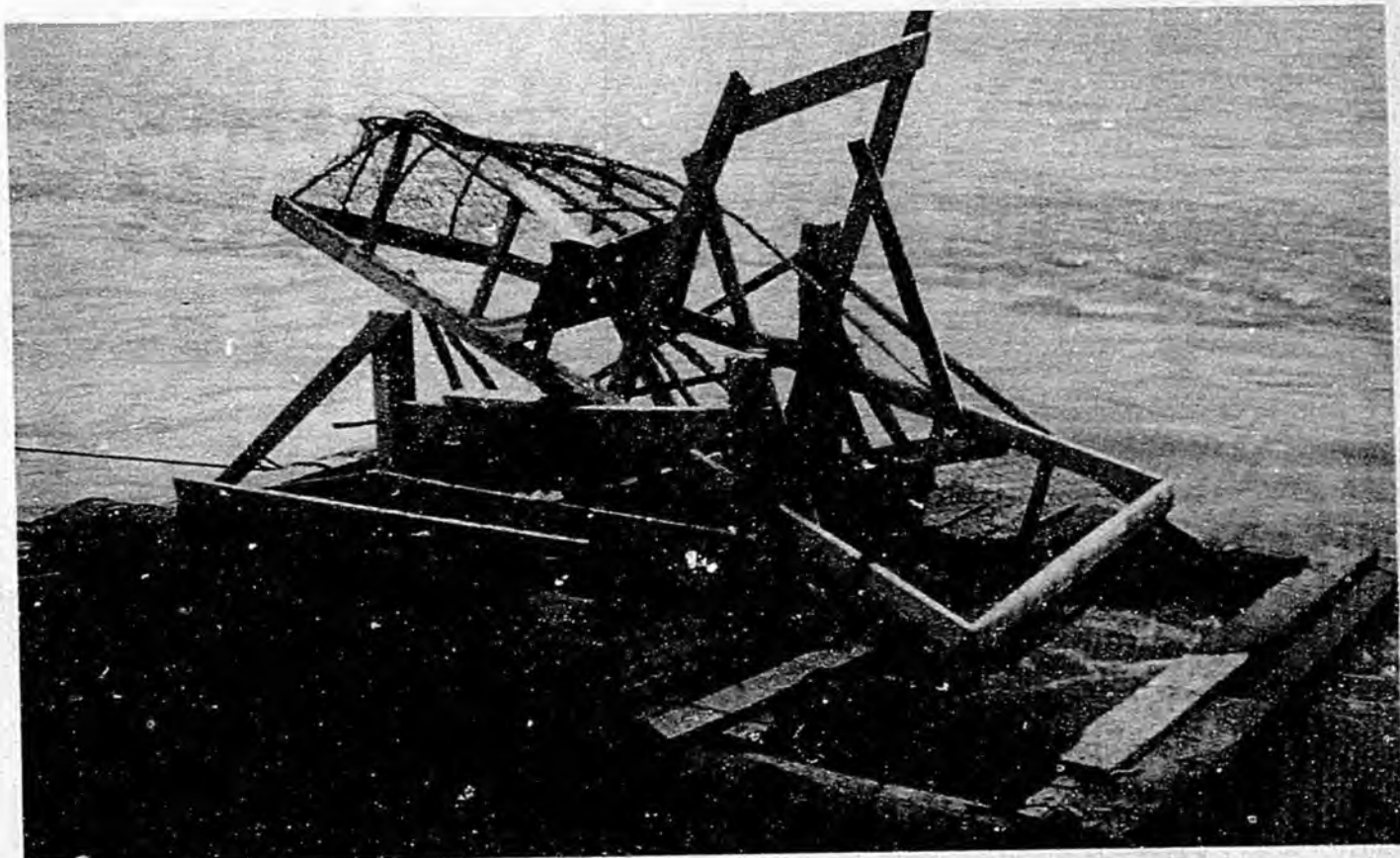


Photo © 1970 Ken Roberson

## **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

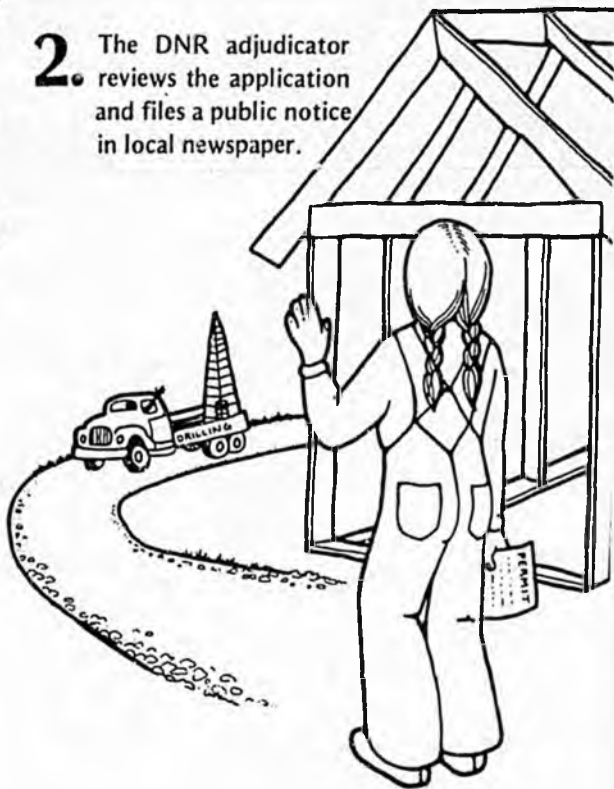
1. Claimant submits application to the District office of DNR.



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 district 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 of 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 RIGHT

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 the 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 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	500 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 second

- SINGLE FAMILY**—Water use necessary for a single household and the irrigation of up to 10,000 sq. ft. of yard and garden.
  - Fully plumbed—Water piped into the residence for domestic uses. Hot water heater and water flush toilet included.
  - Partially plumbed—Water piped into residence for limited domestic uses. Generally no hot water heater and no water flush toilet included.
  - Unplumbed—No water piped into the residence. Water is hand carried for limited domestic use.
- DUPLEX**—Water use necessary for two single households and the irrigation of up to 20,000 sq. ft. of yard and garden.
- 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 \_\_\_\_\_ DATE \_\_\_\_\_  
(Applicant)

OFFICE USE ONLY	X,Y	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.

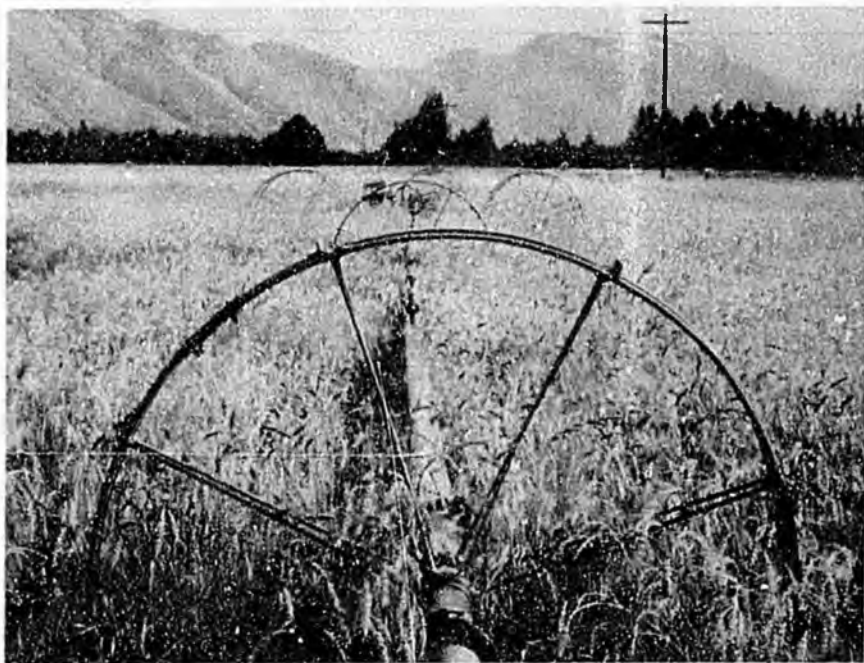


Photo © 1982 Gary Prokosch

## 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 district 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

SIGNED \_\_\_\_\_

(Permit Holder)

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

DATE \_\_\_\_\_

Notary Public or Postmaster

PLACE \_\_\_\_\_

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

Commission expires \_\_\_\_\_

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, has 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 district 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 1 - 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 district 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 © 1980 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; do not 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 as 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.

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

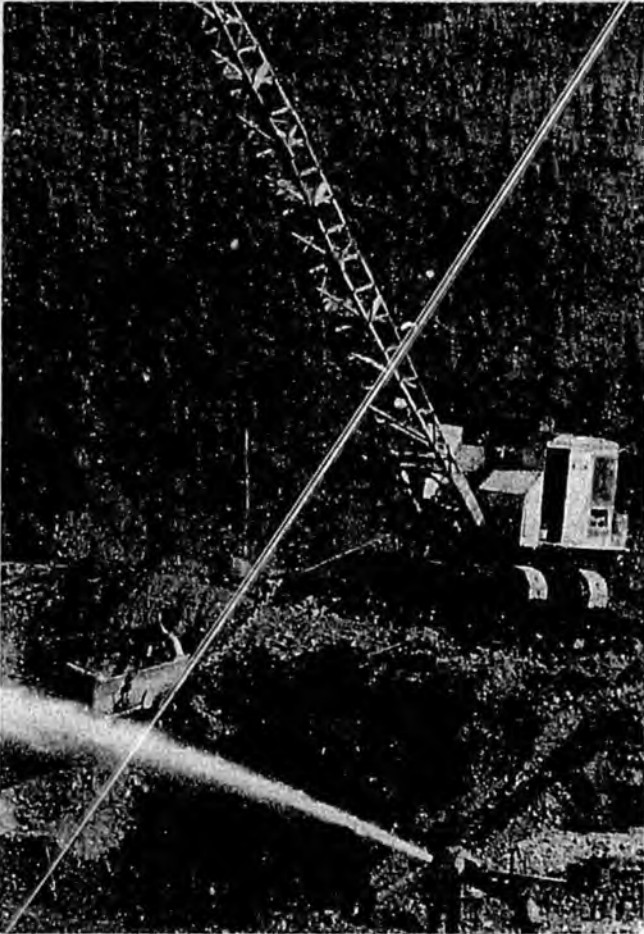
### **A. Alaska Water-Use Data System**

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 1981. 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 for 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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- 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**

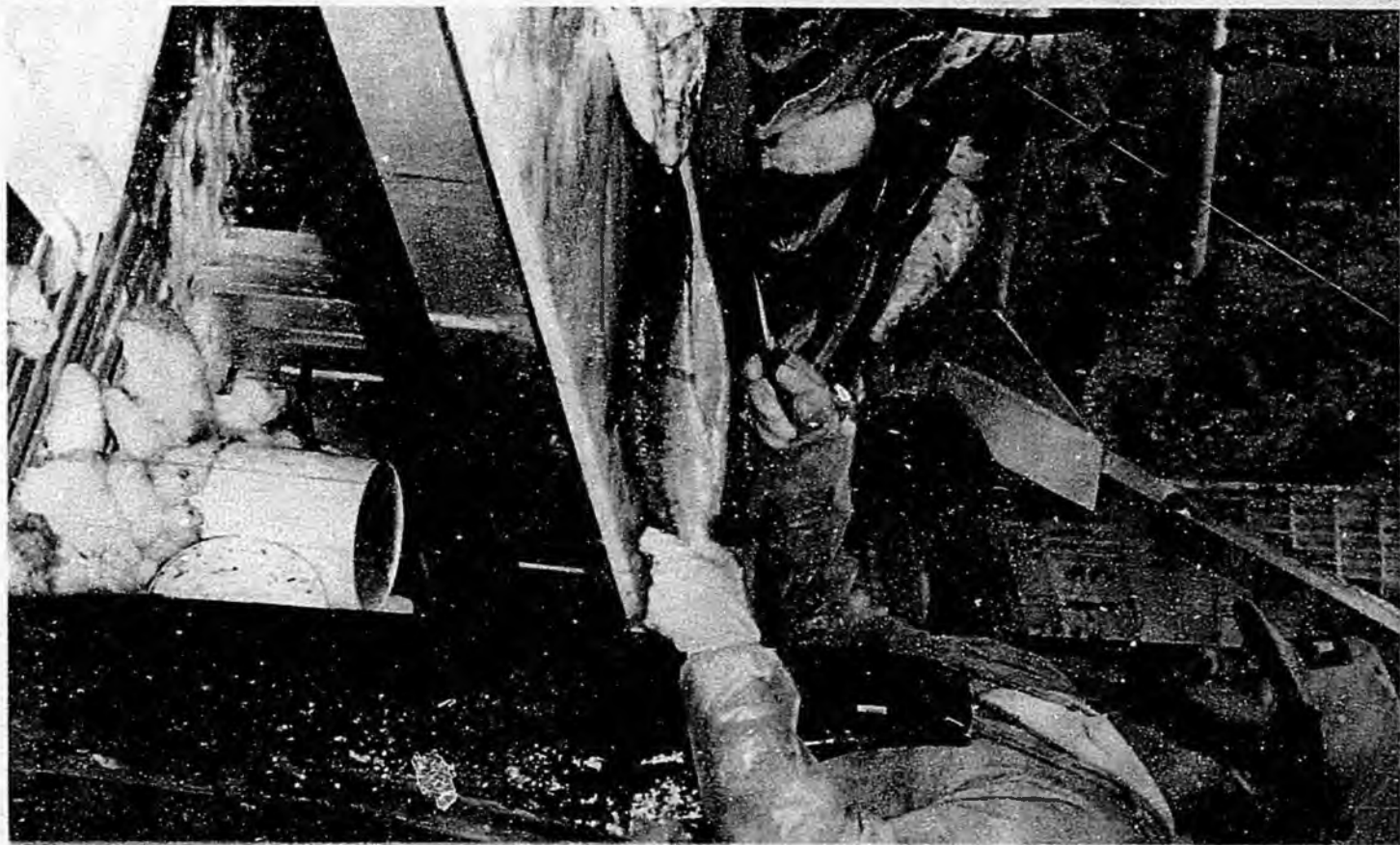
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Photo © 1980 Polly Walter



## B. Water Resources Inventory Programs

Water resources data gathering programs are conducted by the Water Resources Section of the Department of Natural Resources' 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, 102 are continuous record stations and 86 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 provide the primary and most important ground water information. Observation wells have been established in order to document water level fluctuations. Of the 125 observation wells, 36 are continuously recording, 54 are measured monthly and 35 semiannually. 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 125 surface water stations throughout Alaska. Surface waters are variously analyzed for temperature, specific conductance, pH, sediment, inorganic constituents, organic 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. District Location Map



DISTRICT LOCATION MAP

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

**DIVISION OF LAND AND WATER  
MANAGEMENT**

**NORTHCENTRAL DISTRICT OFFICE**

4420 Airport Way  
Fairbanks, Alaska 99701  
479-2243

**SOUTHEASTERN DISTRICT OFFICE**

400 Willoughby Avenue  
Pouch MA  
Juneau, Alaska 99811  
465-3400

**SOUTHCENTRAL DISTRICT OFFICE**

3601 C Street, 10th Floor  
Pouch 7-005  
Anchorage, Alaska 99510  
276-2653

**MAT-SU AREA OFFICE**

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

**DIVISION OF FORESTRY**

Haines/Skagway Area Office  
Second Floor, Gateway Bldg.  
Post Office Box 263  
Haines, Alaska 99827  
766-2120

Petersburg Area Office  
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 Sterling Highway  
Post Office Box 1130  
Soldotna, Alaska 99669  
262-7559

Copper River Area Office  
Gulkana Airport  
Post Office Box 185  
Glennallen, Alaska 99588  
822-5535

Tok Area Office  
Post Office Box 304  
Tok, Alaska 99780  
883-5134

Delta Area Office  
Mile 267.5 Richardson Highway  
Post Office Box 1149  
Delta Junction, Alaska 99737  
895-4226

McGrath Area Office  
P.O. Box 101  
McGrath, Alaska 99267  
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)

*Sec 1,*

**Legislative committee report.** — For report on ch. 71, SLA 1972 (HCSSB 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 revisor 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 revisor 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 1965)

**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 resolution, 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)

**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 (e).

### **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

**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 (e).

### **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)

**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**

- 190. The Water Resources Board
- 200. Term of office
- 210. Duties of the board

**Section**

- 220. Board meetings
- 230. Public meetings
- 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)



Introduced: 2/12/85  
Referred: Resources and Judiciary

1-4  
6  
5 165-166

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

SENATE BILL NO. 150

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act making miscellaneous amendments to the Alaska  
7 Water Use Act (AS 46.15); establishing procedures for  
8 administrative and judicial adjudication of water  
9 rights under that Act; and providing for an effective  
10 date."

11

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

12

\* Section 1. AS 46.15.040 is amended by adding a new subsection to  
13 read:

14

(d) A right to appropriate water granted under this chapter may  
15 not be construed against the state as a guarantee of a particular  
16 water level or volume, except as provided in AS 46.15.145, as a guar-  
17 antee of a particular artesian pressure or water quality, or as a  
18 guarantee that water may be withdrawn or diverted at a particular  
19 cost.

20

\* Sec. 2. AS 46.15.065 is amended by adding a new subsection to read:

21

(f) The adjudication process for a declaration filed under (a)  
22 of this section, which is pending before the commissioner on the  
23 effective date of this Act, is to continue under the procedures set  
24 out in this section until the commissioner finally determines whether  
25 the declarant is entitled to a certificate. If a certificate is  
26 issued under this section, the certificate holder may be included as a  
27 participant in an adjudication under the procedures set out in AS 46.-  
28 15.165 or 46.15.166.

29

\* Sec. 3. AS 46.15.140 is amended to read:

1           Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF APPRO-  
2           PRIATIONS. (a) The commissioner may declare an appropriation to be  
3           wholly or partially abandoned and revoke the certificate of appropria-  
4           tion in whole or in part if an appropriator, with intention to aban-  
5           don, does not make beneficial use of all or a part of the [HIS] appro-  
6           priated water. [AN APPROPRIATION SO FORFEITED AND ABANDONED REVERTS  
7           TO THE STATE AND THE WATER BECOMES UNAPPROPRIATED WATER.]

8           (b) The commissioner may declare that an appropriator has [AN  
9           APPROPRIATION TO BE] wholly or partially forfeite<sup>d</sup> an appropriation,  
10           and shall revoke the certificate of appropriation in whole or in part  
11           if the [AN] appropriator voluntarily fails or neglects, without suffi-  
12           cient cause, to make use of all or a part of the [HIS] appropriated  
13           water for a period of five successive years.

14           (c) Failure to use beneficially, for five successive years, all  
15           or part of the water granted in a certificate of appropriation raises  
16           a rebuttable presumption that the appropriator has abandoned or for-  
17           feited the right to use the unused quantity of water, and shifts to  
18           the appropriator the burden to prove otherwise to the satisfaction of  
19           the commissioner.

20           (d) A state agency may not abandon or forfeit a certificate of  
21           appropriation in whole or in part except after public notice.

22           (e) If the commissioner revokes a certificate in whole or in  
23           part, that portion of the certificate covered by the revocation re-  
24           verts to the state and the water becomes unappropriated water.

25           \* Sec. 4. AS 46.15.145(f) is amended to read:

26           (f) At least once each 10 years the commissioner shall review  
27           each reservation under this section to determine whether the purpose  
28           described in (a) of this section for which the certificate reserving  
29           water was issued and the findings described in (c) of this section

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1 still apply to the reservation. If the commissioner determines that  
2 the purpose, or part or all of the findings, no longer apply to the  
3 reservation, the commissioner [HE] may revoke or modify the certifi-  
4 cate reserving the water after notice, hearing when appropriate, and a  
5 written determination that the revocation or modification is in the  
6 best interests of the state [IN ACCORDANCE WITH AS 46.15.140(b)].

7 \* Sec. 5. AS 46.15 is amended by adding new sections to read:

8 Sec. 46.15.165. ADMINISTRATIVE ADJUDICATIONS. (a) The commis-  
9 sioner may, by order, initiate an administrative adjudication to  
10 quantify and determine the priority of all water rights and claims in  
11 a drainage basin, river system, ground water aquifer system, or other  
12 identifiable and distinct hydrologic regime, including any hydrologi-  
13 cally interrelated surface and ground water systems.

14 (b) In the order initiating an administrative adjudication, the  
15 commissioner shall describe the appropriate geographic and hydrologic  
16 boundaries of the adjudication area. During the adjudication, the  
17 commissioner may adjust the boundaries to insure the efficient admin-  
18 istration of water appropriations among users.

19 (c) Upon initiation of the adjudication, the commissioner shall

20 (1) serve the order on each applicant, certificate holder,  
21 or permittee listed in the department's records within the adjudica-  
22 tion area;

23 (2) serve the order on any agency of the federal, state, or  
24 local government with management authority over land or water within  
25 the adjudication area;

26 (3) serve the order on any person who owns land within the  
27 adjudication area if the land is held in trust by the United States or  
28 if the patent or deed to the land contains a restriction on alienation  
29 imposed under 25 U.S.C. sec. 334 (Indian General Allotment Act of

1 February 8, 1887, 24 Stat. 389, as amended and supplemented), 25  
2 U.S.C. sec. 372 (the Allotment Act of June 25, 1910, 36 Stat. 855), or  
3 43 U.S.C. secs. 270-1, 270-2 (the Allotment Act of May 17, 1906, 34  
4 Stat. 197), and on the United States on behalf of any such person;

5 (4) serve the order on the United States and the appropri-  
6 ate governing body of the Annette Island Reserve established by 25  
7 U.S.C. sec. 495 (the Act of March 3, 1891, 26 Stat. 1101) if the land  
8 or water of the reserve, or hydrologically interconnected water, is  
9 within the adjudication area; and

10 (5) publish the order once each week during four consecu-  
11 tive weeks in a newspaper of general circulation in the adjudication  
12 area.

13 (d) Service of the order under (c)(1) of this section is suffi-  
14 cient if mailed by certified mail, return receipt requested, to the  
15 last known address that the applicant, certificate holder, or  
16 permittee has given to the division of the department responsible for  
17 administration of water rights. A person served under (c)(1) -- (4)  
18 of this section who fails to appear in a timely manner and assert a  
19 claim as prescribed by the commissioner is estopped from subsequently  
20 asserting any objection to the adjudication of that person's water  
21 rights within the adjudication area, unless the person is entitled to  
22 a federal reserved water right and has failed to consent under (i) of  
23 this section.

24 (e) In an adjudication under this section, the commissioner may  
25 appoint an impartial qualified person as a master to preside over the  
26 adjudication; to hold hearings; to take testimony; to collect evi-  
27 dence; to propose to the commissioner an order adjudicating the valid-  
28 ity of, quantifying, and determining the priority of all water rights;  
29 and to take other action the commissioner decides is necessary. The

1 master may be an employee of the state.

2 (f) Any division of the department, or other departments, may  
3 provide support during the adjudication, in the form of documentary  
4 and testimonial evidence; research; and scientific analysis. If  
5 funding permits, the commissioner may obtain similar support from  
6 sources outside government. Any state agency may assert a water right  
7 on behalf of the state in the adjudication.

8 (g) In managing an adjudication, the commissioner may take such  
9 action as is necessary for the efficient and fair administration and  
10 use of the state's water, including but not limited to

11 (1) determining indispensable, necessary, and convenient  
12 parties to the adjudication;

13 (2) classifying applicants, certificate holders, per-  
14 mittees, and claimants in groups that share similar interests, such as  
15 by the amount of water used or the type of use, and restricting their  
16 active participation in the adjudication by appointing group represen-  
17 tatives for the purposes of receiving notices, examining witnesses,  
18 and other adjudicatory functions;

19 (3) entering such interlocutory orders as may be appropri-  
20 ate to dispose of all or part of the issues in the adjudication, and  
21 designating these orders as final ones for the purposes of any appeal  
22 to superior court under (j) of this section; and

23 (4) allocating to a participant any extra costs that the  
24 state has incurred in conducting the adjudication because the partici-  
25 pant has in bad faith asserted a claim to water wholly without merit  
26 or has unreasonably delayed the proceeding.

27 (h) For the purposes of asserting a water right in an adjudica-  
28 tion, a certificate issued under this chapter is prima facie evidence  
29 of the water right and its priority date.

1 master may be an employee of the state.

2 (f) Any division of the department, or other departments, may  
3 provide support during the adjudication, in the form of documentary  
4 and testimonial evidence; research; and scientific analysis. If  
5 funding permits, the commissioner may obtain similar support from  
6 sources outside government. Any state agency may assert a water right  
7 on behalf of the state in the adjudication.

8 (g) In managing an adjudication, the commissioner may take such  
9 action as is necessary for the efficient and fair administration and  
10 use of the state's water, including but not limited to

11 (1) determining indispensable, necessary, and convenient  
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22 to superior court under (j) of this section; and

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24 state has incurred in conducting the adjudication because the partici-  
25 pant has in bad faith asserted a claim to water wholly without merit  
26 or has unreasonably delayed the proceeding.

27 (h) For the purposes of asserting a water right in an adjudica-  
28 tion, a certificate issued under this chapter is prima facie evidence  
29 of the water right and its priority date.

1 (i) If the commissioner has initiated the adjudication, and the  
2 federal government or a private person who has been served under  
3 (c)(2) -- (4) of this section asserts a federal reserved water right  
4 but fails to consent in writing to the adjudication, then the commis-  
5 sioner shall exclude the federal government or that person, respec-  
6 tively, as participants in the adjudication. The commissioner may  
7 negotiate the terms of the written consent.

8 (j) A person adversely affected by a final order of the commis-  
9 sioner adjudicating water rights under this section may appeal to the  
10 superior court within 30 days after the decision is mailed or de-  
11 livered to the person.

12 (k) The commissioner may adopt regulations setting out proce-  
13 dures for administrative adjudications under this section.

14 Sec. 46.15.166. JUDICIAL ADJUDICATIONS. (a) Instead of initi-  
15 ating an adjudication under AS 46.15.165, the commissioner may, with  
16 the concurrence of the attorney general, file on behalf of the state a  
17 complaint in superior court to initiate a judicial adjudication con-  
18 sistent with 43 U.S.C. sec. 666 to quantify and determine the priority  
19 of all water rights in a drainage basin, river system, ground water  
20 aquifer system, or other identifiable and distinct hydrologic regime,  
21 including any hydrologically interrelated surface and ground water  
22 systems. The commissioner may initiate an adjudication under this  
23 section only if a federal reserved water right has been or might be  
24 asserted

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

26 (2) by or on behalf of a person whose patent or deed to  
27 land contains a restriction on alienation imposed by a federal statute  
28 cited in AS 46.15.165(c)(3) or (4), or whose land is held in trust by  
29 the United States.

Any other  
Persons  
w/ Federal  
Rights

1 (b) Venue is proper if a complaint under this section is filed  
2 in a judicial district in which all or a part of the hydrologic regime  
3 is located.

4 (c) In an action brought under (a) of this section, the court  
5 may initially appoint a designee of the commissioner as a master to  
6 hold hearings, take testimony, collect evidence, and make recommenda-  
7 tions to the court regarding the scope and content of a proposed  
8 judicial decree that would finally adjudicate the validity of water  
9 rights, quantify them, and determine priorities among the water right  
10 appropriations in the adjudication area. The master may be an employ-  
11 ee of the state. In managing the action, the master may, with the  
12 court's permission, take such action as the commissioner would be  
13 authorized to take in an administrative adjudication under AS 46.15.-  
14 165.

15 (d) In an adjudication under this section, the court may incor-  
16 porate in any order or judgment any final orders of the commissioner  
17 previously issued under AS 46.15.165.

18 (e) Proceedings under this section are conducted without a jury.

19 Sec. 46.15.167. EFFECT OF DECISION. A final order of the com-  
20 missioner under AS 46.15.165, or a final judgment of a court under  
21 AS 46.15.166, is binding on all parties to the adjudication and on all  
22 persons who subsequently make an application for a water right. The  
23 court or the commissioner may retain continuing jurisdiction for the  
24 periods of time necessary to implement any adjudication order or  
25 judgment and to provide for any subsequent water appropriations.

26 Sec. 46.15.168. OTHER ACTIONS. (a) The state may timely inter-  
27 vene as a party in a superior court action potentially involving a  
28 determination of the validity, quantity, use, reservation, or priority  
29 of water rights.

1 (b) The commissioner may accept a remand from a state or federal  
2 court of a water rights dispute, and may administratively adjudicate  
3 it under AS 46.15.165.

4 (c) The commissioner may enter into arbitration with a private  
5 person or the federal government to resolve a water rights issue.

6 (d) The commissioner may incorporate and apply as binding upon  
7 the parties to an administrative adjudication under AS 46.15.165 any  
8 federal court decree concerning the state hydrologic regime involved  
9 in the adjudication.

10 Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. Nothing in  
11 AS 46.15 is an admission by the State of Alaska that a federal re-  
12 served water right exists in the state.

13 \* Sec. 6. AS 46.15 is amended by adding new sections to read:

14 Sec. 46.15.255. ENFORCEMENT. (a) In addition to a penalty that  
15 may be imposed under AS 46.15.180 for violation of an order issued  
16 under AS 46.15, the department may

17 (1) remove or abate unpermitted works of appropriation,  
18 diversion, impoundment, or withdrawal;

19 (2) install corrective controls or control works; and

20 (3) seek enforcement of the order by filing an action in  
21 the superior court.

22 (b) A person who violates an order issued under AS 46.15.180 is  
23 liable for all costs of removal, abatement or installation, and for  
24 any related court costs and attorney fees incurred by the state in  
25 seeking enforcement of the order.

26 Sec. 46.15.256. DATA COLLECTION AUTHORITY. To carry out the  
27 provisions of this chapter, the department may

28 (1) inspect books; records; meters; gauges; well logs;  
29 works of appropriation, diversion, impoundment, withdrawal, or

*Clarify*

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control; and any other relevant information or physical condition;

(2) enter private property at all reasonable times, after first obtaining a search warrant from an appropriate judicial officer if the owner refuses consent to entry; and

(3) compel the production of relevant information by an administrative subpoena signed by the commissioner if the commissioner reasonably believes the information is necessary to carry out the purposes of this chapter.

\* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 2/12/85  
Referred: Resources and Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

SENATE BILL NO. 150

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act making miscellaneous amendments to the Alaska  
7 Water Use Act (AS 46.15); establishing procedures for  
8 administrative and judicial adjudication of water  
9 rights under that Act; and providing for an effective  
10 date."

11

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

12

\* Section 1. AS 46.15.040 is amended by adding a new subsection to  
13 read:

14

(d) A right to appropriate water granted under this chapter may  
15 not be construed against the state as a guarantee of a particular  
16 water level or volume, except as provided in AS 46.15.145, as a guar-  
17 antee of a particular artesian pressure or water quality, or as a  
18 guarantee that water may be withdrawn or diverted at a particular  
19 cost. *(New Section - major appropriations must get conditional permit)*

20

\* Sec. 2. AS 46.15.065 is amended by adding a new subsection to read:

21

(f) The adjudication process for a declaration filed under (a)  
22 of this section, which is pending before the commissioner on the  
23 effective date of this Act, is to continue under the procedures set  
24 out in this section until the commissioner finally determines whether  
25 the declarant is entitled to a certificate. If a certificate is  
26 issued under this section, the certificate holder may be included as a  
27 participant in an adjudication under the procedures set out in AS 46.-  
28 15.165 or 46.15.166.

29

\* Sec. 3. AS 46.15.140 is amended to read:

1           Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF APPRO-  
2           PRIATIONS. (a) The commissioner may declare an appropriation to be  
3           wholly or partially abandoned and revoke the certificate of appropria-  
4           tion in whole or in part if an appropriator, with intention to aban-  
5           don, does not make beneficial use of all or a part of the [HIS] appro-  
6           priated water. [AN APPROPRIATION SO FORFEITED AND ABANDONED REVERTS  
7           TO THE STATE AND THE WATER BECOMES UNAPPROPRIATED WATER.]

8           (b) The commissioner may declare that an appropriator has [AN  
9           APPROPRIATION TO BE] wholly or partially forfeited an appropriation,  
10          and shall revoke the certificate of appropriation in whole or in part  
11          if the [AN] appropriator voluntarily fails or neglects, without suffi-  
12          cient cause, to make use of all or a part of the [HIS] appropriated  
13          water for a period of five successive years.

14          (c) Failure to use beneficially, for five successive years, all  
15          or part of the water granted in a certificate of appropriation raises  
16          a rebuttable presumption that the appropriator has abandoned or for-  
17          feited the right to use the unused quantity of water, and shifts to  
18          the appropriator the burden to prove otherwise to the satisfaction of  
19          the commissioner.

20          (d) A state agency may not abandon or forfeit a certificate of  
21          appropriation in whole or in part except after public notice.

22          (e) If the commissioner revokes a certificate in whole or in  
23          part, that portion of the certificate covered by the revocation re-  
24          verts to the state and the water becomes unappropriated water.

25          \* Sec. 4. AS 46.15.145(f) is amended to read:

26                 (f) At least once each 10 years the commissioner shall review  
27                 each reservation under this section to determine whether the purpose  
28                 described in (a) of this section for which the certificate reserving  
29                 water was issued and the findings described in (c) of this section

1 still apply to the reservation. If the commissioner determines that  
2 the purpose, or part or all of the findings, no longer apply to the  
3 reservation, the commissioner [HE] may revoke or modify the certifi-  
4 cate reserving the water after notice, hearing when appropriate, and a  
5 written determination that the revocation or modification is in the  
6 best interests of the state [IN ACCORDANCE WITH AS 46.15.140(b)].

7 \* Sec. 5. AS 46.15 is amended by adding new sections to read:

8 Sec. 46.15.165. ADMINISTRATIVE ADJUDICATIONS. (a) The commis-  
9 sioner may, by order, initiate an administrative adjudication to  
10 quantify and determine the priority of all water rights and claims in  
11 a drainage basin, river system, ground water aquifer system, or other  
12 identifiable and distinct hydrologic regime, including any hydrologi-  
13 cally interrelated surface and ground water systems.

14 (b) In the order initiating an administrative adjudication, the  
15 commissioner shall describe the appropriate geographic and hydrologic  
16 boundaries of the adjudication area. During the adjudication, the  
17 commissioner may adjust the boundaries to insure the efficient admin-  
18 istration of water appropriations among users.

19 (c) Upon initiation of the adjudication, the commissioner shall

20 (1) serve the order on each applicant, certificate holder,  
21 or permittee listed in the department's records within the adjudica-  
22 tion area;

23 (2) serve the order on any agency of the federal, state, or  
24 local government with management authority over land or water within  
25 the adjudication area;

26 (3) serve the order on any person who owns land within the  
27 adjudication area if the land is held in trust by the United States or  
28 if the patent or deed to the land contains a restriction on alienation  
29 imposed under 25 U.S.C. sec. 334 (Indian General Allotment Act of

1 February 8, 1887, 24 Stat. 389, as amended and supplemented), 25  
2 U.S.C. sec. 372 (the Allotment Act of June 25, 1910, 36 Stat. 855), or  
3 43 U.S.C. secs. 270-1, 270-2 (the Allotment Act of May 17, 1906, 34  
4 Stat. 197), and on the United States on behalf of any such person;

5 (4) serve the order on the United States and the appropri-  
6 ate governing body of the Annette Island Reserve established by 25  
7 U.S.C. sec. 495 (the Act of March 3, 1891, 26 Stat. 1101) if the land  
8 or water of the reserve, or hydrologically interconnected water, is  
9 within the adjudication area; and

10 (5) publish the order once each week during four consecu-  
11 tive weeks in a newspaper of general circulation in the adjudication  
12 area.

13 (d) Service of the order under (c)(1) of this section is suffi-  
14 cient if mailed by certified mail, return receipt requested, to the  
15 last known address that the applicant, certificate holder, or  
16 permittee has given to the division of the department responsible for  
17 administration of water rights. A person served under (c)(1) -- (4)  
18 of this section who fails to appear in a timely manner and assert a  
19 claim as prescribed by the commissioner is estopped from subsequently  
20 asserting any objection to the adjudication of that person's water  
21 rights within the adjudication area, unless the person is entitled to  
22 a federal reserved water right and has failed to consent under (i) of  
23 this section.

24 (e) In an adjudication under this section, the commissioner may  
25 appoint an impartial qualified person as a master to preside over the  
26 adjudication; to hold hearings; to take testimony; to collect evi-  
27 dence; to propose to the commissioner an order adjudicating the valid-  
28 ity of, quantifying, and determining the priority of all water rights;  
29 and to take other action the commissioner decides is necessary. The

1 master may be an employee of the state.

2 (f) Any division of the department, or other departments, may  
3 provide support during the adjudication, in the form of documentary  
4 and testimonial evidence; research; and scientific analysis. If  
5 funding permits, the commissioner may obtain similar support from  
6 sources outside government. Any state agency may assert a water right  
7 on behalf of the state in the adjudication.

8 (g) In managing an adjudication, the commissioner may take such  
9 action as is necessary for the efficient and fair administration and  
10 use of the state's water, including but not limited to

11 (1) determining indispensable, necessary, and convenient  
12 parties to the adjudication;

13 (2) classifying applicants, certificate holders, per-  
14 mittees, and claimants in groups that share similar interests, such as  
15 by the amount of water used or the type of use, and restricting their  
16 active participation in the adjudication by appointing group represen-  
17 tatives for the purposes of receiving notices, examining witnesses,  
18 and other adjudicatory functions;

19 (3) entering such interlocutory orders as may be appropri-  
20 ate to dispose of all or part of the issues in the adjudication, and  
21 designating these orders as final ones for the purposes of any appeal  
22 to superior court under (j) of this section; and

23 (4) allocating to a participant any extra costs that the  
24 state has incurred in conducting the adjudication because the partici-  
25 pant has in bad faith asserted a claim to water wholly without merit  
26 or has unreasonably delayed the proceeding.

27 (h) For the purposes of asserting a water right in an adjudica-  
28 tion, a certificate issued under this chapter is prima facie evidence  
29 of the water right and its priority date.

1 (i) If the commissioner has initiated the adjudication, and the  
2 federal government or a private person who has been served under  
3 (c)(2) -- (4) of this section asserts a federal reserved water right  
4 but fails to consent in writing to the adjudication, then the commis-  
5 sioner shall exclude the federal government or that person, respec-  
6 tively, as participants in the adjudication. The commissioner may  
7 negotiate the terms of the written consent.

8 (j) A person adversely affected by a final order of the commis-  
9 sioner adjudicating water rights under this section may appeal to the  
10 superior court within 30 days after the decision is mailed or de-  
11 livered to the person.

12 (k) The commissioner may adopt regulations setting out proce-  
13 dures for administrative adjudications under this section.

14 Sec. 46.15.166. JUDICIAL ADJUDICATIONS. (a) Instead of initi-  
15 ating an adjudication under AS 46.15.165, the commissioner may, with  
16 the concurrence of the attorney general, file on behalf of the state a  
17 complaint in superior court to initiate a judicial adjudication con-  
18 sistent with 43 U.S.C. sec. 666 to quantify and determine the priority  
19 of all water rights in a drainage basin, river system, ground water  
20 aquifer system, or other identifiable and distinct hydrologic regime,  
21 including any hydrologically interrelated surface and ground water  
22 systems. The commissioner may initiate an adjudication under this  
23 section only if a federal reserved water right has been or might be  
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25 (1) by the United States or any of its component agencies;

26 (2) by or on behalf of a person whose patent or deed to  
27 land contains a restriction on alienation imposed by a federal statute  
28 cited in AS 46.15.165(c)(3) or (4), or whose land is held in trust by  
29 the United States.

1 (b) Venue is proper if a complaint under this section is filed  
2 in a judicial district in which all or a part of the hydrologic regime  
3 is located.

4 (c) In an action brought under (a) of this section, the court  
5 may initially appoint a designee of the commissioner as a master to  
6 hold hearings, take testimony, collect evidence, and make recommenda-  
7 tions to the court regarding the scope and content of a proposed  
8 judicial decree that would finally adjudicate the validity of water  
9 rights, quantify them, and determine priorities among the water right  
10 appropriations in the adjudication area. The master may be an employ-  
11 ee of the state. In managing the action, the master may, with the  
12 court's permission, take such action as the commissioner would be  
13 authorized to take in an administrative adjudication under AS 46.15.-  
14 165.

15 (d) In an adjudication under this section, the court may incor-  
16 porate in any order or judgment any final orders of the commissioner  
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20 missioner under AS 46.15.165, or a final judgment of a court under  
21 AS 46.15.166, is binding on all parties to the adjudication and on all  
22 persons who subsequently make an application for a water right. The  
23 court or the commissioner may retain continuing jurisdiction for the  
24 periods of time necessary to implement any adjudication order or  
25 judgment and to provide for any subsequent water appropriations.

26 Sec. 46.15.168. OTHER ACTIONS. (a) The state may timely inter-  
27 vene as a party in a superior court action potentially involving a  
28 determination of the validity, quantity, use, reservation, or priority  
29 of water rights.

1 (b) The commissioner may accept a remand from a state or federal  
2 court of a water rights dispute, and may administratively adjudicate  
3 it under AS 46.15.165.

4 (c) The commissioner may enter into arbitration with a private  
5 person or the federal government to resolve a water rights issue.

6 (d) The commissioner may incorporate and apply as binding upon  
7 the parties to an administrative adjudication under AS 46.15.165 any  
8 federal court decree concerning the state hydrologic regime involved  
9 in the adjudication.

10 Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. Nothing in  
11 AS 46.15 is an admission by the State of Alaska that a federal re-  
12 served water right exists in the state.

13 \* Sec. 6. AS 46.15 is amended by adding new sections to read:

14 Sec. 46.15.255. ENFORCEMENT. (a) In addition to a penalty that  
15 may be imposed under AS 46.15.180 for violation of an order issued  
16 under AS 46.15, the department may

17 (1) remove or abate unpermitted works of appropriation,  
18 diversion, impoundment, or withdrawal;

19 (2) install corrective controls or control works; and

20 (3) seek enforcement of the order by filing an action in  
21 the superior court.

22 (b) A person who violates an order issued under AS 46.15.180 is  
23 liable for all costs of removal, abatement or installation, and for  
24 any related court costs and attorney fees incurred by the state in  
25 seeking enforcement of the order.

26 Sec. 46.15.256. DATA COLLECTION AUTHORITY. To carry out the  
27 provisions of this chapter, the department may

28 (1) inspect books; records; meters; gauges; well logs;  
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control; and any other relevant information or physical condition;

(2) enter private property at all reasonable times, after first obtaining a search warrant from an appropriate judicial officer if the owner refuses consent to entry; and

(3) compel the production of relevant information by an administrative subpoena signed by the commissioner if the commissioner reasonably believes the information is necessary to carry out the purposes of this chapter.

\* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

EW → BA → file

cc MV  
D. Hor  
Tom H

Introduced: 2/12/85  
Referred: Resources and Judiciary, Land & Water mgmt

FEB 19 1985

Director's Office

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 150

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making miscellaneous amendments to the Alaska  
7 Water Use Act (AS 46.15); establishing procedures for  
8 administrative and judicial adjudication of water  
9 rights under that Act; and providing for an effective  
10 date."

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

12 \* Section 1. AS 46.15.040 is amended by adding a new subsection to  
13 read:

14 (d) A right to appropriate water granted under this chapter may  
15 not be construed against the state as a guarantee of a particular  
16 water level or volume, except as provided in AS 46.15.145, as a guar-  
17 antee of a particular artesian pressure or water quality, or as a  
18 guarantee that water may be withdrawn or diverted at a particular  
19 cost.

20 \* Sec. 2. AS 46.15.065 is amended by adding a new subsection to read:

21 (f) The adjudication process for a declaration filed under (a)  
22 of this section, which is pending before the commissioner on the  
23 effective date of this Act, is to continue under the procedures set  
24 out in this section until the commissioner finally determines whether  
25 the declarant is entitled to a certificate. If a certificate is  
26 issued under this section, the certificate holder may be included as a  
27 participant in an adjudication under the procedures set out in AS 46.-  
28 15.165 or 46.15.166.

29 \* Sec. 3. AS 46.15.140 is amended to read:

2/19/85

1           Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF APPRO-  
2           PRIATIONS. (a) The commissioner may declare an appropriation to be  
3           wholly or partially abandoned and revoke the certificate of appropria-  
4           tion in whole or in part if an appropriator, with intention to aban-  
5           don, does not make beneficial use of all or a part of the [HIS] appro-  
6           priated water. [AN APPROPRIATION SO FORFEITED AND ABANDONED REVERTS  
7           TO THE STATE AND THE WATER BECOMES UNAPPROPRIATED WATER.]

8           (b) The commissioner may declare that an appropriator has [AN  
9           APPROPRIATION TO BE] wholly or partially forfeited an appropriation,  
10          and shall revoke the certificate of appropriation in whole or in part  
11          if the [AN] appropriator voluntarily fails or neglects, without suffi-  
12          cient cause, to make use of all or a part of the [HIS] appropriated  
13          water for a period of five successive years.

14          (c) Failure to use beneficially, for five successive years, all  
15          or part of the water granted in a certificate of appropriation raises  
16          a rebuttable presumption that the appropriator has abandoned or for-  
17          feited the right to use the unused quantity of water, and shifts to  
18          the appropriator the burden to prove otherwise to the satisfaction of  
19          the commissioner.

20          (d) A state agency may not abandon or forfeit a certificate of  
21          appropriation in whole or in part except after public notice.

22          (e) If the commissioner revokes a certificate in whole or in  
23          part, that portion of the certificate covered by the revocation re-  
24          verts to the state and the water becomes unappropriated water.

25          \* Sec. 4. AS 46.15.145(f) is amended to read:

26          (f) At least once each 10 years the commissioner shall review  
27          each reservation under this section to determine whether the purpose  
28          described in (a) of this section for which the certificate reserving  
29          water was issued and the findings described in (c) of this section

1 still apply to the reservation. If the commissioner determines that  
2 the purpose, or part or all of the findings, no longer apply to the  
3 reservation, the commissioner [RE] may revoke or modify the certifi-  
4 cate reserving the water after notice, hearing when appropriate, and a  
5 written determination that the revocation or modification is in the  
6 best interests of the state [IN ACCORDANCE WITH AS 46.15.140(b)].

7 \* Sec. 5. AS 46.15 is amended by adding new sections to read:

8 Sec. 46.15.165. ADMINISTRATIVE ADJUDICATIONS. (a) The commis-  
9 sioner may, by order, initiate an administrative adjudication to  
10 quantify and determine the priority of all water rights and claims in  
11 a drainage basin, river system, ground water aquifer system, or other  
12 identifiable and distinct hydrologic regime, including any hydrologi-  
13 cally interrelated surface and ground water systems.

14 (b) In the order initiating an administrative adjudication, the  
15 commissioner shall describe the appropriate geographic and hydrologic  
16 boundaries of the adjudication area. During the adjudication, the  
17 commissioner may adjust the boundaries to insure the efficient admin-  
18 istration of water appropriations among users.

19 (c) Upon initiation of the adjudication, the commissioner shall

20 (1) serve the order on each applicant, certificate holder,  
21 or permittee listed in the department's records within the adjudica-  
22 tion area;

23 (2) serve the order on any agency of the federal, state, or  
24 local government with management authority over land or water within  
25 the adjudication area;

26 (3) serve the order on any person who owns land within the  
27 adjudication area if the land is held in trust by the United States or  
28 if the patent or deed to the land contains a restriction on alienation  
29 imposed under 25 U.S.C. sec. 334 (Indian General Allotment Act of

1 February 8, 1887; 24 Stat. 389, as amended and supplemented), 25  
2 U.S.C. sec. 372 (the Allotment Act of June 25, 1910, 36 Stat. 855), or  
3 43 U.S.C. secs. 270-1, 270-2 (the Allotment Act of May 17, 1906, 34  
4 Stat. 197), and on the United States on behalf of any such person;

5 (4) serve the order on the United States and the appropriate  
6 governing body of the Annette Island Reserve established by 25  
7 U.S.C. sec. 495 (the Act of March 3, 1891, 26 Stat. 1101) if the land  
8 or water of the reserve, or hydrologically interconnected water, is  
9 within the adjudication area; and

10 (5) publish the order once each week during four consecutive  
11 weeks in a newspaper of general circulation in the adjudication  
12 area.

13 (d) Service of the order under (c)(1) of this section is sufficient  
14 if mailed by certified mail, return receipt requested, to the  
15 last known address that the applicant, certificate holder, or  
16 permittee has given to the division of the department responsible for  
17 administration of water rights. A person served under (c)(1) -- (4)  
18 of this section who fails to appear in a timely manner and assert a  
19 claim as prescribed by the commissioner is estopped from subsequently  
20 asserting any objection to the adjudication of that person's water  
21 rights within the adjudication area, unless the person is entitled to  
22 a federal reserved water right and has failed to consent under (i) of  
23 this section.

24 (e) In an adjudication under this section, the commissioner may  
25 appoint an impartial qualified person as a master to preside over the  
26 adjudication; to hold hearings; to take testimony; to collect evidence;  
27 to propose to the commissioner an order adjudicating the validity  
28 of, quantifying, and determining the priority of all water rights;  
29 and to take other action the commissioner decides is necessary. The

1 master may be an employee of the state.

2 (f) Any division of the department, or other departments, may  
3 provide support during the adjudication, in the form of documentary  
4 and testimonial evidence; research; and scientific analysis. If  
5 funding permits, the commissioner may obtain similar support from  
6 sources outside government. Any state agency may assert a water right  
7 on behalf of the state in the adjudication.

8 (g) In managing an adjudication, the commissioner may take such  
9 action as is necessary for the efficient and fair administration and  
10 use of the state's water, including but not limited to

11 (1) determining indispensable, necessary, and convenient  
12 parties to the adjudication;

13 (2) classifying applicants, certificate holders, per-  
14 mittees, and claimants in groups that share similar interests, such as  
15 by the amount of water used or the type of use, and restricting their  
16 active participation in the adjudication by appointing group represen-  
17 tatives for the purposes of receiving notices, examining witnesses,  
18 and other adjudicatory functions;

19 (3) entering such interlocutory orders as may be appropri-  
20 ate to dispose of all or part of the issues in the adjudication, and  
21 designating these orders as final ones for the purpose of any appeal  
22 to superior court under (j) of this section; and

23 (4) allocating to a participant any extra costs that the  
24 state has incurred in conducting the adjudication because the partici-  
25 pant has in bad faith asserted a claim to water wholly without merit  
26 or has unreasonably delayed the proceeding.

27 (h) For the purposes of asserting a water right in an adjudica-  
28 tion, a certificate issued under this chapter is prima facie evidence  
29 of the water right and its priority date.

1 (i) If the commissioner has initiated the adjudication, and the  
2 federal government or a private person who has been served under  
3 (c)(2) -- (4) of this section asserts a federal reserved water right  
4 but fails to consent in writing to the adjudication, then the commis-  
5 sioner shall exclude the federal government or that person, respec-  
6 tively, as participants in the adjudication. The commissioner may  
7 negotiate the terms of the written consent.

8 (j) A person adversely affected by a final order of the commis-  
9 sioner adjudicating water rights under this section may appeal to the  
10 superior court within 30 days after the decision is mailed or de-  
11 livered to the person.

12 (k) The commissioner may adopt regulations setting out proce-  
13 dures for administrative adjudications under this section.

14 Sec. 46.15.166. JUDICIAL ADJUDICATIONS. (a) Instead of initi-  
15 ating an adjudication under AS 46.15.165, the commissioner may, with  
16 the concurrence of the attorney general, file on behalf of the state a  
17 complaint in superior court to initiate a judicial adjudication con-  
18 sistent with 43 U.S.C. sec. 666 to quantify and determine the priority  
19 of all water rights in a drainage basin, river system, ground water  
20 aquifer system, or other identifiable and distinct hydrologic regime,  
21 including any hydrologically interrelated surface and ground water  
22 systems. The commissioner may initiate an adjudication under this  
23 section only if a federal reserved water right has been or might be  
24 asserted

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

26 (2) by or on behalf of a person whose patent or deed to  
27 land contains a restriction on alienation imposed by a federal statute  
28 cited in AS 46.15.165(c)(3) or (4), or whose land is held in trust by  
29 the United States.

1 (b) Venue is proper if a complaint under this section is filed  
2 in a judicial district in which all or a part of the hydrologic regime  
3 is located.

4 (c) In an action brought under (a) of this section, the court  
5 may initially appoint a designee of the commissioner as a master to  
6 hold hearings, take testimony, collect evidence, and make recommenda-  
7 tions to the court regarding the scope and content of a proposed  
8 judicial decree that would finally adjudicate the validity of water  
9 rights, quantify them, and determine priorities among the water right  
10 appropriations in the adjudication area. The master may be an employ-  
11 ee of the state. In managing the action, the master may, with the  
12 court's permission, take such action as the commissioner would be  
13 authorized to take in an administrative adjudication under AS 46.15.-  
14 165.

15 (d) In an adjudication under this section, the court may incor-  
16 porate in any order or judgment any final orders of the commissioner  
17 previously issued under AS 46.15.165.

18 (e) Proceedings under this section are conducted without a jury.

19 Sec. 46.15.167. EFFECT OF DECISION. A final order of the com-  
20 missioner under AS 46.15.165, or a final judgment of a court under  
21 AS 46.15.166, is binding on all parties to the adjudication and on all  
22 persons who subsequently make an application for a water right. The  
23 court or the commissioner may retain continuing jurisdiction for the  
24 periods of time necessary to implement any adjudication order or  
25 judgment and to provide for any subsequent water appropriations.

26 Sec. 46.15.168. OTHER ACTIONS. (a) The state may timely inter-  
27 vene as a party in a superior court action potentially involving a  
28 determination of the validity, quantity, use, reservation, or priority  
29 of water rights.

1 (b) The commissioner may accept a remand from a state or federal  
2 court of a water rights dispute, and may administratively adjudicate  
3 it under AS 46.15.165.

4 (c) The commissioner may enter into arbitration with a private  
5 person or the federal government to resolve a water rights issue.

6 (d) The commissioner may incorporate a decree apply as binding upon  
7 the parties to an administrative adjudication under AS 46.15.165 any  
8 federal court decree concerning the state hydrologic regime involved  
9 in the adjudication.

10 Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. Nothing in  
11 AS 46.15 is an admission by the State of Alaska that a federal re-  
12 served water right exists in the state.

13 \* Sec. 6. AS 46.15 is amended by adding new sections to read:

14 Sec. 46.15.255. ENFORCEMENT. (a) In addition to a penalty that  
15 may be imposed under AS 46.15.180 for violation of an order issued  
16 under AS 46.15, the department may

17 (1) remove or abate unpermitted works of appropriation,  
18 diversion, impoundment, or withdrawal;

19 (2) install corrective controls or control works; and

20 (3) seek enforcement of the order by filing an action in  
21 the superior court.

22 (b) A person who violates an order issued under AS 46.15.180 is  
23 liable for all costs of removal, abatement or installation, and for  
24 any related court costs and attorney fees incurred by the state in  
25 seeking enforcement of the order.

26 Sec. 46.15.256. DATA COLLECTION AUTHORITY. To carry out the  
27 provisions of this chapter, the department may

28 (1) inspect books, records, meters, ganges, well logs,  
29 works of appropriation, diversion, impoundment, withdrawal, or

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control; and any other relevant information or physical condition;

(2) enter private property at all reasonable times, after first obtaining a search warrant from an appropriate judicial officer if the owner refuses consent to entry; and

(3) compel the production of relevant information by an administrative subpoena signed by the commissioner if the commissioner reasonably believes the information is necessary to carry out the purposes of this chapter.

\* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

## SB 150 cont'd

Governor's transmittal letter dated February 12:

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the adjudication of water rights and making miscellaneous amendments to the Alaska Water Use Act (AS 46.15). The bill comes as a result of the Alaska Water Resources Board resolution 84-5, dated March 15, 1984, recommending the adoption of specific statutory procedures for the administrative and judicial adjudication of water rights, particularly federal reserved water rights.

A federal reserved water right is one created by implication when the federal government withdraws land for a specific purpose, such as for a national forest, Indian reservation, or national monument. The United States Supreme Court first recognized federal reserved water rights in Winters v. United States, 207 U.S. 564 (1902), an Indian reservation case. Since that time, court cases have extended the doctrine to many other types of federal withdrawals. Since a federal reserved water right is created by implication, no specific quantity of water and no priority date for the water right is established until the court does so by decree. To facilitate the ascertainment of the existence of a federal reserved water right, its quantity, and its priority date, Congress passed the McCarran Amendment, 43 U.S.C. sec. 666, allowing water adjudication suits to be brought against the federal government in state courts. The statute requires the adjudication of all rights within a hydrologic basin where a federal reserved water right may exist. This has created lawsuits involving literally thousands of defendants in some of the western states, where there are many appropriators and not enough water. The complexity and expense of such litigation has prompted many western states to enact specific adjudication legislation to facilitate the determination of water rights. The attached bill accordingly draws from the experience of other states and their adjudication statutory schemes.

Section 1 of the bill amends AS 46.15.040 to add a disclaimer to the Water Use Act, asserting that a right to appropriate water which the state grants is not a state guarantee of a particular water quality, volume, or pressure, or that water may be withdrawn at a particular cost. Appropriators in adjudications in other western states have raised this "guarantee" argument. While courts that have reached the issue have rejected the argument, nonetheless it would serve the expeditious resolution of water disputes in Alaska if the lack of guarantee were specified in the Water Use Act.

## SB 150 cont'd

Section 2 of the bill adds a new subsection to AS 46.15.065, the current statute setting out the procedures for handling individual declarations of water rights existing before July 1, 1966. Under AS 46.15.065(b)(1), the commissioner of natural resources set the deadline for filing those declarations, and approximately 15 are pending. This new subsection makes clear the relationship between the procedures for handling those declarations and the proposed procedures (AS 46.15.165 and 46.15.166 in the bill) for handling basinwide water rights adjudications.

Section 3 of the bill amends AS 46.15.140 to clarify the existing abandonment and forfeiture provisions and to create a rebuttable presumption that if an appropriator does not beneficially use the water covered under a certificate for a period of five successive years, it is the appropriator's obligation to prove to the commissioner that the appropriation has not been abandoned.

Section 4 of the bill clarifies how the commissioner may terminate an in-stream flow reservation.

Section 5 contains the body of the adjudication provisions. It first creates a new AS 46.15.165, which would allow the commissioner of the Department of Natural Resources to initiate an administrative adjudication to quantify and determine the priority of all water rights and claims in a particular hydrologic basin. Under AS 46.15.165, the commissioner would give notice to all relevant appropriators and landowners, including governmental agencies. When the hydrologic basin includes land or water held in trust by the United States for Alaska Natives, such as the Annette Island Reserve, notice would also be sent to relevant authorities in order to protect the Natives' interests, if any, in a federal reserved water right. A person or entity claiming a federal reserved water right who is served with notice, but who fails to consent to an administrative adjudication, would be excluded as a participant. Under AS 46.15.165 the commissioner would have authority to adopt procedural regulations and to appoint a master to preside over the adjudication; to hold hearings; to take testimony; to collect evidence; and to make recommendations to the commissioner. Any final determination of water rights the commissioner makes would be subject to an administrative appeal to superior court. Section 5 also creates a new AS 46.15.166 providing that when a federal reserved water right may be involved, and the claimant refuses to consent to an administrative adjudication, the commissioner could initiate the adjudication in superior court, consistent with the McCarran Amendment, 43 U.S.C. sec. 666. In that instance, the bill gives the superior court authority to appoint a designee of the commissioner as a master to perform the same functions a master would in an administrative adjudication, but under the court's supervision.

February 12, 1985

SB 150 cont'd

While the design of the adjudication bill is to provide a procedure for the adjudication of both non-federal and federal reserved water rights, a new AS 46.15.165 makes clear that nothing in the Alaska Water Use Act is to be construed as an admission against the State of Alaska that a federal reserved water right exists in any particular context.

Section 6 of the bill adds a new AS 46.15.255 and 46.15.256, to clarify the Department of Natural Resources' authority to take action to remove unsafe, as well as unpermitted, works of appropriation if the appropriator refuses to do so, and to inspect records of an appropriator pertinent to the permitted or certificated use of water under the Water Use Act.

Given the experience of states other than Alaska in adjudicating water rights and the large number of federal reservations in Alaska, a sound statutory system for adjudication is imperative. Therefore, I urge your prompt action on this bill.

Sincerely,

Bill Sheffield  
Governor

SB 151

SENATE BILL NO. 151 by the Rules Committee by request of the Governor, entitled:

"An Act amending the controlled substance, imitation controlled substance, and forfeiture laws."

was read the first time and referred to the Health, Education and Social Services Committee and the Judiciary Committee.

Department of Corrections fiscal note is zero. Department of Law fiscal note with analysis: "This bill would streamline and standardize forfeiture procedures, making it easier to execute forfeitures. The bill would also slightly increase the number of controlled substances and imitation controlled substance cases the department can successfully prosecute by correcting omissions, ambiguities, contradictions, and an overbreadth problem which exists in portions of our current laws. Although there will be a slight increase in the number of cases handled, this increase will be more than offset by the efficiencies that will be realized by streamlining current laws."

February 12, 1985

SB 151 cont'd

Governor's transmittal letter dated February 12:

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which makes several changes in Alaska's laws regarding controlled substances and imitation controlled substances. These changes are needed to eliminate ambiguities, contradictions, omissions, and an overbreadth problem which exist in current law, and to improve the state's ability to forfeit property which has been used in violation of the drug laws.

A section-by-section analysis of the bill, explaining in detail the effect of and reasons for the proposed changes, appears at the end of this letter. In brief summary, sec. 1 of the bill consolidates most state forfeiture procedures in a single new article added to AS 09. This consolidation of state forfeiture procedures will minimize the possibilities of unintended inconsistencies in coverage and reduce the volume of laws that are required whenever forfeiture is authorized.

Section 2 of the bill provides that anyone who attempts to obtain possession of a controlled substance through fraud or other deceptive techniques commits the same class of crime and faces the same penalty as someone who successfully obtains possession of a controlled substance through fraud or other deception.

Section 3 adds the commissioner of corrections to the nine member Controlled Substances Advisory Committee. Sections 4 and 7 add necessary cross-references to other statutes. Section 5 is a minor amendment which clears up a drafting oversight and potential overbreadth problem in the existing definition of an "imitation controlled substance."

Section 6 of the bill broadens the description of property which is subject to forfeiture to the state, and will eliminate some difficult proof problems caused by the language of the current law. Section 8 defines "violation" of the drug laws to include attempts and solicitations to violate the law. Section 9 repeals statutes replaced by the provisions contained in sec. 1 of the bill.

In order to allow more effective enforcement of our criminal and civil laws against drug abuse in Alaska, I urge your prompt and favorable action on this bill.

Section-by-section Analysis of Bill

Section 1:

This section of the bill has two related purposes. First, it specifies the procedures applicable to the forfeiture of property authorized by AS 11.73.060 and AS 17.30.110.

Introduced: 2/12/85  
Referred: Resources and Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

SENATE BILL NO. 150

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act making miscellaneous amendments to the Alaska  
7 Water Use Act (AS 46.15); establishing procedures for  
8 administrative and judicial adjudication of water  
9 rights under that Act; and providing for an effective  
10 date."

11

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

12

\* Section 1. AS 46.15.040 is amended by adding a new subsection to  
13 read:

14

(d) A right to appropriate water granted under this chapter may  
15 not be construed against the state as a guarantee of a particular  
16 water level or volume, except as provided in AS 46.15.145, as a guar-  
17 antee of a particular artesian pressure or water quality, or as a  
18 guarantee that water may be withdrawn or diverted at a particular  
19 cost.

20

\* Sec. 2. AS 46.15.065 is amended by adding a new subsection to read:

21

(f) The adjudication process for a declaration filed under (a)  
22 of this section, which is pending before the commissioner on the  
23 effective date of this Act, is to continue under the procedures set  
24 out in this section until the commissioner finally determines whether  
25 the declarant is entitled to a certificate. If a certificate is  
26 issued under this section, the certificate holder may be included as a  
27 participant in an adjudication under the procedures set out in AS 46.-  
28 15.165 or 46.15.166.

29

\* Sec. 3. AS 46.15.140 is amended to read:

1           Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF APPRO-  
2 PRIATIONS. (a) The commissioner may declare an appropriation to be  
3 wholly or partially abandoned and revoke the certificate of appropria-  
4 tion in whole or in part if an appropriator, with intention to aban-  
5 don, does not make beneficial use of all or a part of the [HIS] appro-  
6 priated water. [AN APPROPRIATION SO FORFEITED AND ABANDONED REVERTS  
7 TO THE STATE AND THE WATER BECOMES UNAPPROPRIATED WATER.]

8           (b) The commissioner may declare that an appropriator has [AN  
9 APPROPRIATION TO BE] wholly or partially forfeited an appropriation,  
10 and shall revoke the certificate of appropriation in whole or in part  
11 if the [AN] appropriator voluntarily fails or neglects, without suffi-  
12 cient cause, to make use of all or a part of the [HIS] appropriated  
13 water for a period of five successive years.

14           (c) Failure to use beneficially, for five successive years, all  
15 or part of the water granted in a certificate of appropriation raises  
16 a rebuttable presumption that the appropriator has abandoned or for-  
17 feited the right to use the unused quantity of water, and shifts to  
18 the appropriator the burden to prove otherwise to the satisfaction of  
19 the commissioner.

20           (d) A state agency may not abandon or forfeit a certificate of  
21 appropriation in whole or in part except after public notice.

22           (e) If the commissioner revokes a certificate in whole or in  
23 part, that portion of the certificate covered by the revocation re-  
24 verts to the state and the water becomes unappropriated water.

25 \* Sec. 4. AS 46.15.145(F) is amended to read:

26           (f) At least once each 10 years the commissioner shall review  
27 each reservation under this section to determine whether the purpose  
28 described in (a) of this section for which the certificate reserving  
29 water was issued and the findings described in (c) of this section

1 still apply to the reservation. If the commissioner determines that  
2 the purpose, or part or all of the findings, no longer apply to the  
3 reservation, the commissioner [HE] may revoke or modify the certifi-  
4 cate reserving the water after notice, hearing when appropriate, and a  
5 written determination that the revocation or modification is in the  
6 best interests of the state [IN ACCORDANCE WITH AS 46.15.140(b)].

7 \* Sec. 5. AS 46.15 is amended by adding new sections to read:

8 Sec. 46.15.165. ADMINISTRATIVE ADJUDICATIONS. (a) The commis-  
9 sioner may, by order, initiate an administrative adjudication to  
10 quantify and determine the priority of all water rights and claims in  
11 a drainage basin, river system, ground water aquifer system, or other  
12 identifiable and distinct hydrologic regime, including any hydrologi-  
13 cally interrelated surface and ground water systems.

14 (b) In the order initiating an administrative adjudication, the  
15 commissioner shall describe the appropriate geographic and hydrologic  
16 boundaries of the adjudication area. During the adjudication, the  
17 commissioner may adjust the boundaries to insure the efficient admin-  
18 istration of water appropriations among users.

19 (c) Upon initiation of the adjudication, the commissioner shall

20 (1) serve the order on each applicant, certificate holder,  
21 or permittee listed in the department's records within the adjudica-  
22 tion area;

23 (2) serve the order on any agency of the federal, state, or  
24 local government with management authority over land or water within  
25 the adjudication area;

26 (3) serve the order on any person who owns land within the  
27 adjudication area if the land is held in trust by the United States or  
28 if the patent or deed to the land contains a restriction on alienation  
29 imposed under 25 U.S.C. sec. 334 (Indian General Allotment Act of

1 February 8, 1887, 24 Stat. 389, as amended and supplemented), 25  
2 U.S.C. sec. 372 (the Allotment Act of June 25, 1910, 36 Stat. 855), or  
3 43 U.S.C. secs. 270-1, 270-2 (the Allotment Act of May 17, 1906, 34  
4 Stat. 197), and on the United States on behalf of any such person;

5 (4) serve the order on the United States and the appropri-  
6 ate governing body of the Annette Island Reserve established by 25  
7 U.S.C. sec. 495 (the Act of March 3, 1891, 26 Stat. 1101) if the land  
8 or water of the reserve, or hydrologically interconnected water, is  
9 within the adjudication area; and

10 (5) publish the order once each week during four consecu-  
11 tive weeks in a newspaper of general circulation in the adjudication  
12 area.

13 (d) Service of the order under (c)(1) of this section is suffi-  
14 cient if mailed by certified mail, return receipt requested, to the  
15 last known address that the applicant, certificate holder, or  
16 permittee has given to the division of the department responsible for  
17 administration of water rights. A person served under (c)(1) -- (4)  
18 of this section who fails to appear in a timely manner and assert a  
19 claim as prescribed by the commissioner is estopped from subsequently  
20 asserting any objection to the adjudication of that person's water  
21 rights within the adjudication area, unless the person is entitled to  
22 a federal reserved water right and has failed to consent under (i) of  
23 this section.

24 (e) In an adjudication under this section, the commissioner may  
25 appoint an impartial qualified person as a master to preside over the  
26 adjudication; to hold hearings; to take testimony; to collect evi-  
27 dence; to propose to the commissioner an order adjudicating the valid-  
28 ity of, quantifying, and determining the priority of all water rights;  
29 and to take other action the commissioner decides is necessary. The