

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4245 SRES SB 150

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1 (master may be an employee of the state.) *out*

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
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 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

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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).

DRAFT

Bradley ✓
01/20/86

CIRCLED SECTIONS
SHOW CHANGES FROM
ORIGINAL BILL

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 150 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act 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 pressure¹ 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 that is pending before the commissioner on the effec-
23 tive date of this Act continues under the procedures set out in this
24 section until the commissioner finally determines whether the declar-
25 ant is entitled to a certificate. If a certificate is issued under
26 this section, the certificate holder may be included as a participant
27 in an adjudication under AS 46.15.165 or 46.15.166.

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

29 Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF

1 APPROPRIATIONS. (a) The commissioner may declare an appropriation to
2 be wholly or partially abandoned and revoke or amend the certificate
3 of appropriation as to the unused quantity of water if an appropri-
4 ator, with intention to abandon, does not make beneficial use of all
5 or a part of the [HIS] appropriated water. [AN APPROPRIATION SO
6 FORFEITED AND ABANDONED REVERTS TO THE STATE AND THE WATER BECOMES
7 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 * Sec. 4. AS 46.15.140 is amended by adding new subsections to read:

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

21 (d) A state agency or a municipality may not abandon or forfeit
22 an appropriation in whole or in part except after public notice.

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

26 * Sec. 5. AS 46.15.145(f) is amended to read:

27 (f) At least once each 10 years the commissioner shall review
28 each reservation under this section to determine whether the purposes
29 described in (a) of this section for which the certificate reservoir

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

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

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

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

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

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

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

27 (3) serve the order on any person who owns land within the
28 adjudication area if the land is held in trust by the United States or
29 if the patent or deed to the land contains a restriction on alienation

*Attachment to permit
of how to include
water rights*

*requirements
be part of hearing
properly adjudicated
approved*

mining act

1 imposed under 25 U.S.C. 334 (Indian General Allotment Act of February
2 8, 1887, 24 Stat. 389, as amended and supplemented), 25 U.S.C. 372
3 (the Allotment Act of June 25, 1910, 36 Stat. 855), or 43 U.S.C.
4 270-1, 270-2 (the Allotment Act of May 17, 1906, 34 Stat. 197), and on
5 the United States on behalf of any such person;

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

11 (5) serve the order on any other person claiming a federal
12 reserved water right;

13 (6) serve the regional corporation and village corporation
14 established under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement
15 Act) whose land is located within the adjudication area; and

16 (7) publish the order once each week during four consecu-
17 tive weeks in a newspaper of general circulation in the adjudication
18 area.

19 (d) Service of an order under (c) of this section does not
20 constitute an admission by the state that the person served with the
21 order has a water right.

22 (e) Service of the order under (c)(1) of this section is suffi-
23 cient if mailed by certified mail, return receipt requested, to the
24 last known address that the applicant, certificate holder, or permit-
25 tee has given to the division of the department responsible for admin-
26 istration of water rights. A person served under (c)(1) - (4) of this
27 section who fails to appear in a timely manner and assert a claim as
28 prescribed by the commissioner is estopped from subsequently asserting
29 an objection to the adjudication of that person's water rights within

1 the adjudication area, unless the person is entitled to a federally
2 reserved water right and has failed to consent under (k) of this
3 section.

4 (f) In an adjudication under this section, the commissioner may
5 appoint an impartial qualified person as a master to preside over the
6 adjudication, to hold hearings, to take testimony, to collect evi-
7 dence, to propose to the commissioner an order adjudicating the valid-
8 ity of, quantifying, and determining the priority of all water rights,
9 and to take other action the commissioner decides is necessary.

10 Employment by a federal, state or local governmental agency does not
11 disqualify an individual from appointment as master under this sub-
12 section if the commissioner determines that the individual is other-
13 wise impartial and qualified to act as master.

14 (g) A state agency may assert a water right on behalf of the
15 state in the adjudication.

16 (h) A division of the department or another state agency may
17 provide documentary and testimonial evidence, research, and scientific
18 analysis during the adjudication. The commissioner may provide evi-
19 dence, research, or analysis from sources outside government.

20 (i) In conducting an adjudication, the commissioner may take
21 action necessary for the efficient and fair administration and use of
22 the state's water including

23 (1) determining indispensable, necessary, and convenient
24 parties to the adjudication;

25 (2) classifying applicants, certificate holders, permit-
26 tees, and claimants in groups that share similar interests, such as by
27 the amount of water used or the type of use, and restricting their
28 active participation in the adjudication by appointing group represen-
29 tatives for the purposes of receiving notices, examining witnesses,

1 and other adjudicatory functions;

2 (3) entering interlocutory orders appropriate to a disposal
3 of all or part of the issues in the adjudication, and designating the
4 orders as final for the purposes of an appeal to the superior court
5 under (1) of this section; and

6 (4) allocating to a participant the extra costs that the
7 state has incurred in conducting the adjudication because the partici-
8 pant has in bad faith asserted a claim to water wholly without merit
9 or has unreasonably delayed the proceeding.

10 (j) For the purposes of asserting a water right in an adjudica-
11 tion, a certificate issued under this chapter is prima facie evidence
12 of the water right and its priority date.

13 (k) If the commissioner has initiated the adjudication and the
14 federal government or a private person who has been served under
15 (c)(2) - (4) of this section asserts a federally reserved water right
16 but fails to consent in writing to the adjudication, then the commis-
17 sioner (may) exclude the federal government or the person, respectively,
18 as participants in the adjudication. The commissioner may negotiate
19 the terms of the written consent.

20 (l) A person adversely affected by a final order of the commis-
21 sioner adjudicating water rights under this section may appeal to the
22 superior court within 30 days after the decision is mailed or de-
23 livered to the person.

24 (m) The commissioner may adopt regulations setting out proce-
25 dures for administrative adjudications under this section.

26 Sec. 46.15.166. JUDICIAL ADJUDICATIONS. (a) Instead of initi-
27 ating an adjudication under AS 46.15.165, the commissioner may, with
28 the concurrence of the attorney general, if a federally reserved water
29 right has been or might be asserted by an agency of the United States

1 on its own behalf or on behalf of a person described in
2 AS 46.15.165(c)(3) - (6), file on behalf of the state a complaint in
3 superior court to initiate a judicial adjudication consistent with 43
4 U.S.C. 666 to quantify and determine the priority of all water rights
5 in a drainage basin, river system, ground water aquifer system, or
6 other identifiable and distinct hydrologic regime, including any
7 hydrologically interrelated surface and ground water systems.

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

11 (c) In a complaint brought under (a) of this section, the court
12 may appoint an impartial, qualified person as a master to hold hear-
13 ings, take testimony, collect evidence, and make recommendations to
14 the court regarding the scope and content of a proposed judicial
15 decree that would finally adjudicate the validity of water rights,
16 quantify them, and determine priorities among the water right appro-
17 priations in the adjudication area. Employment by a federal, state,
18 or local government agency does not disqualify an individual from
19 appointment as master under this subsection if the court determines
20 that the individual is otherwise impartial and qualified to act as
21 master. The master may, with the court's permission, take action that
22 a commissioner would be authorized to take in an administrative
23 adjudication under AS 46.15.165.

24 (d) In an adjudication under this section, the court may incor-
25 porate in an order or judgment final orders of the commissioner previ-
26 ously issued under AS 46.15.165.

27 (e) Proceedings under this section shall be conducted without a
28 jury.

29 Sec. 46.15.167. EFFECT OF DECISION. The final order of the

1 commissioner under AS 46.15.165 and the final judgment of a court
2 under AS 46.15.166 are binding on each party to the adjudication and
3 on each person who subsequently makes an application for a water
4 right. The court or the commissioner may retain jurisdiction for a
5 period of time necessary to implement an adjudication order or
6 judgment and to provide for subsequent water appropriations.

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

11 (b) The commissioner may accept a remand from a state or federal
12 court of a water rights dispute and may administratively adjudicate
13 the dispute under AS 46.15.165.

14 (c) The commissioner may enter into arbitration to resolve a
15 water rights dispute.

16 (d) The commissioner may incorporate and apply as binding upon
17 the parties to an administrative adjudication under AS 46.15.165 any
18 court decree concerning the state hydrologic regime involved in the
19 adjudication.

20 Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. This chapter
21 does not represent a commitment by the state to a specific federal re-
22 served water right.

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

24 Sec. 46.15.255. ENFORCEMENT. (a) In addition to a penalty
25 imposed under AS 46.15.180 for violation of an order issued under this
26 chapter, the commissioner may

27 (1) remove or abate unpermitted works of appropriation
28 diversion, impoundment, or withdrawal;

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

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

3 (b) A person who violates an order issued under AS 46.15.180 is
4 liable for all costs of removal, abatement or installation and for
5 court costs and attorney fees incurred by the state in seeking
6 enforcement of the order.

7 Sec. 46.15.256. DATA COLLECTION AUTHORITY. To carry out the
8 provisions of this chapter, the commissioner may

9 (1) inspect books, records, meters, gauges, well logs,
10 works of appropriation, diversion, impoundment, withdrawal, or control
11 and other relevant information or physical condition;

12 (2) enter private property at all reasonable times after
13 obtaining a search warrant from a judicial officer if the owner re-
14 fuses consent to entry; and

15 (3) compel the production of relevant information by a
16 subpoena or subpoena duces tecum signed by the commissioner if the
17 commissioner reasonably believes the information is necessary to carry
18 out the purposes of this chapter.

19 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
20 10.070(c).

Offered: 3/10/86
Referred: Rule'

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 150 (Judiciary) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL
6 For an Act entitled: "An Act 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) The commissioner's issuance of a permit under AS 46.15.080
15 or of a certificate under AS 46.15.065 or 46.15.120 does not represent
16 a guarantee by the state to the permittee or certificate holder that
17 water will be available for appropriation at a certain volume, quali-
18 ty, artesian pressure, or cost. This subsection does not, however,
19 alter the right a permittee or certificate holder may have against a
20 later appropriator, including a government agency.

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

22 (f) The adjudication process for a declaration filed under (a)
23 of this section that is pending before the commissioner on the effec-
24 tive date of this Act continues under the procedures set out in this
25 section until the commissioner finally determines whether the declar-
26 ant is entitled to a certificate. If a certificate is issued under
27 this section, the certificate holder may be included as a participant
28 in an adjudication under AS 46.15.165 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 or amend the certificate of
4 appropriation as to the unused quantity of water if an appropriator,
5 with intention to abandon, does not make beneficial use of all or a
6 part of the [HIS] appropriated water. [AN APPROPRIATION SO FORFEITED
7 AND ABANDONED REVERTS TO THE STATE AND THE WATER BECOMES UNAPPROPRI-
8 ATED WATER.]

9 (b) The commissioner may declare that an appropriator has [AN
10 APPROPRIATION TO BE] wholly or partially forfeited an appropriation,
11 and shall revoke the certificate of appropriation in whole or in part
12 if the [AN] appropriator voluntarily fails or neglects, without suffi-
13 cient cause, to make use of all or a part of the [HIS] appropriated
14 water for a period of five successive years. A property owner who has
15 a water right, whether for residential, agricultural, industrial, or
16 mining use, but has not developed that property to the point of water
17 use, may file a notice of intention to retain that water right with
18 the commissioner.

19 * Sec. 4. AS 46.15.140 is amended by adding new subsections to read:

20 (c) Failure to use beneficially for five successive years all or
21 part of the water granted in a certificate of appropriation raises a
22 rebuttable presumption that the appropriator has abandoned or for-
23 feited the right to use the unused quantity of water and shifts to the
24 appropriator the burden to prove otherwise to the satisfaction of the
25 commissioner.

26 (d) If the commissioner ~~revokes~~ a certificate in whole or in
27 part, the portion of the certificate covered by the revocation reverts
28 to the state and the water becomes unappropriated water.

29 * Sec. 5. AS 46.15.145(f) is amended to read:

1 (f) At least once each 10 years the commissioner shall review
2 each reservation under this section to determine whether the purpose
3 described in (a) of this section for which the certificate reserving
4 water was issued and the findings described in (c) of this section
5 still apply to the reservation. If the commissioner determines that
6 the purpose, or part or all of the findings, no longer apply to the
7 reservation, the commissioner [hE] may revoke or modify the certifi-
8 cate reserving the water after notice, hearing when appropriate, and a
9 written determination that the revocation or modification is in the
10 best interests of the state [IN ACCORDANCE WITH AS 46.15.140(b)].

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

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

18 (b) In the order initiating an administrative adjudication, the
19 commissioner shall describe the appropriate geographic and hydrologic
20 boundaries of the adjudication area. During the adjudication, the
21 commissioner may adjust the boundaries to ensure the efficient admin-
22 istration of water appropriations among users.

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

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

27 (2) serve the order on any agency of the federal, state, or
28 a local government with management authority over land or water within
29 the adjudication area;

1 (3) serve the order on any person who owns or claims land
2 within the adjudication area if the land is held in trust by the
3 United States for the person or if the patent, deed, or certificate to
4 the land from the United States was issued under 25 U.S.C. 334 (Indian
5 General Allotment Act of February 8, 1887, 24 Stat. 389, as amended
6 and supplemented), 25 U.S.C. 372 (the Allotment Act of June 25, 1910,
7 36 Stat. 855), 43 U.S.C. 270-1, 270-2 (the Allotment Act of May 17,
8 1906, 34 Stat. 197), any other allotment act, or the Alaska Native
9 Townsite Act of May 25, 1926, 44 Stat. 629, and serve the order on the
10 United States on behalf of the person;

11 (4) serve the order on the United States and the appropri-
12 ate governing body of the Annette Island Reserve established by 25
13 U.S.C. 495 (the Act of March 3, 1891, 26 Stat. 1101) if the land or
14 water, including hydrologically interconnected water, of the Annette
15 Island Reserve is within the adjudication area;

16 (5) serve the order on any other person claiming a federal
17 reserved water right within the adjudication area;

18 (6) serve the regional corporation and village corporation
19 established under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement
20 Act) that has a pending land selection or has acquired ownership to
21 land under that act that is located within the adjudication area; and

22 (7) serve the order on each mining claimant of record with
23 the United States and the state within the adjudication area as of the
24 date of the order initiating the administrative adjudication.

25 (d) Service of an order under (c) of this section does not
26 constitute an admission by the state that the person served with the
27 order has a water right.

28 (e) Service of the order under (c)(1) of this section is suffi-
29 cient if mailed by certified mail, return receipt requested, to the

1 last known address that the applicant, certificate holder, permittee,
2 or claimant has given to the division of the department responsible
3 for administration of water rights. A person served under (c)(1) -
4 (7) of this section who fails to appear in a timely manner and assert
5 a claim as prescribed by the commissioner is estopped from subsequent-
6 ly asserting an objection to the adjudication of that person's water
7 rights within the adjudication area, unless the person is entitled to
8 a federal reserved water right and has failed to consent under (2) of
9 this section.

10 (f) In an adjudication under this section, the commissioner may
11 appoint an impartial qualified person as a master to preside over the
12 adjudication, to hold hearings, to take testimony, to collect evi-
13 dence, to propose to the commissioner an order adjudicating the valid-
14 ity of, quantifying, and determining the priority of all water rights,
15 and to take other action the commissioner decides is necessary.

16 (g) A state agency may assert a water right on behalf of the
17 state in the adjudication.

18 (h) A division of the department or another state agency may
19 provide documentary and testimonial evidence, research, and scientific
20 analysis during the adjudication. The commissioner may provide evi-
21 dence, research, or analysis from sources outside government.

22 (i) In conducting an adjudication, the commissioner may take
23 action necessary for the efficient and fair administration and use of
24 the state's water including

25 (1) determining indispensable, necessary, and convenient
26 parties to the adjudication;

27 (2) classifying applicants, certificate holders, permit-
28 tees, and claimants in groups that share similar interests, such as by
29 the amount of water used or the type of use, and restricting their

1 active participation in the adjudication by appointing group represen-
2 tatives for the purposes of receiving notices, examining witnesses,
3 and other adjudicatory functions;

4 (3) entering interlocutory orders appropriate to a disposal
5 of all or part of the issues in the adjudication, and designating the
6 orders as final for the purposes of an appeal to the superior court
7 under (1) of this section; and

8 (4) allocating to a participant the extra costs that the
9 state has incurred in conducting the adjudication because the partici-
10 pant has in bad faith asserted a claim to water wholly without merit
11 or has unreasonably delayed the proceeding.

12 (j) For the purposes of asserting a water right in an adjudica-
13 tion, a certificate issued under this chapter is prima facie evidence
14 of the water right and its priority date.

15 (k) If the commissioner has initiated the adjudication and the
16 federal government or a private person who has been served under
17 (c)(2) - (4) of this section asserts a federal reserved water right
18 but fails to consent in writing to the adjudication, then the commis-
19 sioner may exclude the federal government or the person, respectively,
20 as participants in the adjudication. The commissioner may negotiate
21 the terms of the written consent.

22 (l) A person adversely affected by a final order of the commis-
23 sioner adjudicating water rights under this section may appeal to the
24 superior court within 30 days after the decision is mailed or de-
25 livered to the person.

26 (m) The commissioner may adopt regulations setting out proce-
27 dures for administrative adjudications under this section.

28 Sec. 46.15.166. JUDICIAL ADJUDICATIONS. (a) Instead of initi-
29 ating an adjudication under AS 46.15.165, the commissioner may, with

1 the concurrence of the attorney general, if a federal reserved water
2 right has been or might be asserted by an agency of the United States
3 on its own behalf or on behalf of a person described in AS 46.15.-
4 165(c)(3) - (6), file on behalf of the state a complaint in superior
5 court to initiate a judicial adjudication consistent with 43 U.S.C.
6 666 to quantify and determine the priority of all water rights in a
7 drainage basin, river system, ground water aquifer system, or other
8 identifiable and distinct hydrologic regime, including any hydrologi-
9 cally interrelated surface and ground water systems.

10 (b) The venue for an action filed under (a) of this section
11 shall be established by rule of the supreme court under AS 22.10.030.

12 (c) In a complaint brought under (a) of this section, the court
13 may appoint an impartial, qualified person as a master to hold hear-
14 ings, take testimony, collect evidence, and make recommendations to
15 the court regarding the scope and content of a proposed judicial
16 decree that would finally adjudicate the validity of water rights,
17 quantify them, and determine priorities among the water right appro-
18 priations in the adjudication area. Employment by a federal, state,
19 or local government agency does not disqualify an individual from
20 appointment as master under this subsection if the court determines
21 that the individual is otherwise impartial and qualified to act as
22 master. The master may, with the court's permission, take action that
23 the commissioner would be authorized to take in an administrative
24 adjudication under AS 46.15.165.

25 (d) In an adjudication under this section, the court may incor-
26 porate in an order or judgment final orders of the commissioner previ-
27 ously issued under AS 46.15.165.

28 (e) Proceedings under this section shall be conducted without a
29 jury.

1 Sec. 46.15.167. EFFECT OF DECISION. The final order of the com-
2 missioner under AS 46.15.165 and the final judgment of a court under
3 AS 46.15.166 are binding on each party to the adjudication and on each
4 person who subsequently makes an application for a water right. The
5 court or the commissioner may retain jurisdiction for a period of time
6 necessary to implement an adjudication order or judgment and to pro-
7 vide for subsequent water appropriations.

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

12 (b) The commissioner may accept a remand from a state or federal
13 court of a water rights dispute and may administratively adjudicate
14 the dispute under AS 46.15.165.

15 (c) The commissioner may enter into arbitration to resolve a
16 water rights dispute.

17 (d) The commissioner may incorporate and apply as binding upon
18 the parties to an administrative adjudication under AS 46.15.165 any
19 court decree concerning the state hydrologic regime involved in the
20 adjudication.

21 Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. This chapter
22 does not represent a commitment by the state to a specific federal re-
23 served water right.

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

25 Sec. 46.15.255. ENFORCEMENT. (a) In addition to a penalty
26 imposed under AS 46.15.180 for violation of an order issued under this
27 chapter, the commissioner may

28 (1) remove or abate unpermitted works of appropriation,
29 diversion, impoundment, or withdrawal;

1 (2) install corrective controls or control works; and
2 (3) seek enforcement of the order by filing an action in
3 the superior court.

4 (b) A person who violates an order issued under AS 46.15.180 is
5 liable for all costs of removal, abatement or installation and for
6 court costs and attorney fees incurred by the state in seeking en-
7 forcement of the order.

8 Sec. 46.15.256. DATA COLLECTION AUTHORITY. To carry out the
9 provisions of this chapter, the commissioner may

10 (1) inspect books, records, meters, gauges, well logs,
11 works of appropriation, diversion, impoundment, withdrawal, or control
12 and other relevant information or physical condition;

13 (2) enter private property at all reasonable times after
14 obtaining a search warrant from a judicial officer if the owner re-
15 fuses consent to entry; and

16 (3) compel the production of relevant information by a
17 subpoena or subpoena duces tecum signed by the commissioner if the
18 commissioner reasonably believes the information is necessary to carry
19 out the purposes of this chapter.

20 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

Offered: 5/6/86
Referred: Judiciary

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 150 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act 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 46.15.049 is amended by adding a new subsection to
13 read:

14 (d) The commissioner's issuance of a permit under AS 46.15.080
15 or of a certificate under AS 46.15.065 or 46.15.120 does not represent
16 a guarantee by the state to the permittee or certificate holder that
17 water will be available for appropriation at a certain volume, quali-
18 ty, artesian pressure, or cost. This subsection does not, however,
19 alter the right a permittee or certificate holder may have against a
20 later appropriator, including a government agency.

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

22 (f) The adjudication process for a declaration filed under (a)
23 of this section that is pending before the commissioner on the effec-
24 tive date of this Act continues under the procedures set out in this
25 section until the commissioner finally determines whether the declar-
26 ant is entitled to a certificate. If a certificate is issued under
27 this section, the certificate holder may be included as a participant
28 in an adjudication under AS 46.15.165 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 or amend the certificate of
4 appropriation as to the unused quantity of water if an appropriator,
5 with intention to abandon, does not make beneficial use of all or a
6 part of the [HIS] appropriated water. [AN APPROPRIATION SO FORFEITED
7 AND ABANDONED REVERTS TO THE STATE AND THE WATER BECOMES UNAPPROPRI-
8 ATED WATER.]

9 (b) The commissioner may declare that an appropriator has [AN
10 APPROPRIATION TO BE] wholly or partially forfeited an appropriation,
11 and shall revoke the certificate of appropriation in whole or in part
12 if the [AN] appropriator voluntarily fails or neglects, without suffi-
13 cient cause, to make use of all or a part of the [HIS] appropriated
14 water for a period of five successive years. A person who has a
15 permit to develop a use of water including but not limited to
16 residential, agricultural, industrial, or mining use, but has not
17 developed that property to the point of water use before permit
18 expiration, may file a request for permit extension with the commis-
19 sioner.

20 * Sec. 4. AS 46.15.140 is amended by adding new subsections to read:

21 (c) Failure to use beneficially for five successive years all or
22 part of the water granted in a certificate of appropriation raises a
23 rebuttable presumption that the appropriator has abandoned or for-
24 feited the right to use the unused quantity of water and shifts to the
25 appropriator the burden to prove otherwise to the satisfaction of the
26 commissioner.

27 (d) If the commissioner revokes a certificate in whole or in
28 part, the portion of the certificate covered by the revocation reverts
29 to the state and the water becomes unappropriated water.

1 * Sec. 5. AS 46.15.145(f) is amended to read:

2 (f) At least once each 10 years the commissioner shall review
3 each reservation under this section to determine whether the purpose
4 described in (a) of this section for which the certificate reserving
5 water was issued and the findings described in (c) of this section
6 still apply to the reservation. If the commissioner determines that
7 the purpose, or part or all of the findings, no longer apply to the
8 reservation, the commissioner [HE] may revoke or modify the certifi-
9 cate reserving the water after notice, hearing when appropriate, and a
10 written determination that the revocation or modification is in the
11 best interests of the state [IN ACCORDANCE WITH AS 46.15.140(b)].

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

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

19 (b) In the order initiating an administrative adjudication, the
20 commissioner shall describe the appropriate geographic and hydrologic
21 boundaries of the adjudication area. During the adjudication, the
22 commissioner may adjust the boundaries to ensure the efficient admin-
23 istration of water appropriations among users.

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

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

28 (2) serve the order on any agency of the federal, state, or
29 a local government with management authority over land or water within

1 the adjudication area;

2 (3) serve the order on any person who owns or claims land
3 within the adjudication area if the land is held in trust by the
4 United States for the person or if the patent, deed, or certificate to
5 the land from the United States was issued under 25 U.S.C. 334 (Indian
6 General Allotment Act of February 8, 1887, 24 Stat. 389, as amended
7 and supplemented), 25 U.S.C. 372 (the Allotment Act of June 25, 1910,
8 36 Stat. 855), 43 U.S.C. 270-1, 270-2 (the Allotment Act of May 17,
9 1906, 34 Stat. 197), any other allotment act, or the Alaska Native
10 Townsite Act of May 25, 1926, 44 Stat. 629, and serve the order on the
11 United States on behalf of the person;

12 (4) serve the order on the United States and the appropri-
13 ate governing body of the Annette Island Reserve established by 25
14 U.S.C. 495 (the Act of March 3, 1891, 26 Stat. 1101) if the land or
15 water, including hydrologically interconnected water, of the Annette
16 Island Reserve is within the adjudication area;

17 (5) serve the order on any other person claiming a Federal
18 reserved water right within the adjudication area;

19 (6) serve the regional corporation and village corporation
20 established under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement
21 Act) that has a pending land selection or has acquired ownership to
22 land under that act that is located within the adjudication area; and

23 (7) serve the order on each mining claimant of record with
24 the United States and the state within the adjudication area as of the
25 date of the order initiating the administrative adjudication.

26 (d) Service of an order under (c) of this section does not
27 constitute an admission by the state that the person served with the
28 order has a water right.

29 (e) Service of the order under (c)(1) of this section is suffi-

1 cient if mailed by certified mail, return receipt requested, to the
2 last known address that the applicant, certificate holder, permittee,
3 or claimant has given to the division of the department responsible
4 for administration of water rights. A person served under (c)(1) -
5 (7) of this section who fails to appear in a timely manner and assert
6 a claim as prescribed by the commissioner is estopped from subsequent-
7 ly asserting an objection to the adjudication of that person's water
8 rights within the adjudication area, unless the person is entitled to
9 a federal reserved water right and has failed to consent under (k) of
10 this section.

11 (f) In an adjudication under this section, the commissioner may
12 appoint an impartial qualified person as a master to preside over the
13 adjudication, to hold hearings, to take testimony, to collect evi-
14 dence, to propose to the commissioner an order adjudicating the valid-
15 ity of, quantifying, and determining the priority of all water rights,
16 and to take other action the commissioner decides is necessary.

17 (g) A state agency may assert a water right on behalf of the
18 state in the adjudication.

19 (h) A division of the department or another state agency may
20 provide documentary and testimonial evidence, research, and scientific
21 analysis during the adjudication. The commissioner may provide evi-
22 dence, research, or analysis from sources outside government.

23 (i) In conducting an adjudication, the commissioner may take
24 action necessary for the efficient and fair administration and use of
25 the state's water including

26 (1) determining indispensable, necessary, and convenient
27 parties to the adjudication;

28 (2) classifying applicants, certificate holders, permit-
29 tees, and claimants in groups that share similar interests, such as by

1 the amount of water used or the type of use, and restricting their
2 active participation in the adjudication by appointing group represen-
3 tatives for the purposes of receiving notices, examining witnesses,
4 and other adjudicatory functions;

5 (3) entering interlocutory orders appropriate to a disposal
6 of all or part of the issues in the adjudication, and designating the
7 orders as final for the purposes of an appeal to the superior court
8 under (1) of this section; and

9 (4) allocating to a participant the extra costs that the
10 state has incurred in conducting the adjudication because the partici-
11 pant has in bad faith asserted a claim to water wholly without merit
12 or has unreasonably delayed the proceeding.

13 (j) For the purposes of asserting a water right in an adjudica-
14 tion, a certificate issued under this chapter is prima facie evidence
15 of the water right and its priority date.

16 (k) If the commissioner has initiated the adjudication and the
17 federal government or a private person who has been served under
18 (c)(2) - (4) of this section asserts a federal reserved water right
19 but fails to consent in writing to the adjudication, then the commis-
20 sioner may exclude the federal government or the person, respectively,
21 as participants in the adjudication. The commissioner may negotiate
22 the terms of the written consent.

23 (l) A person adversely affected by a final order of the commis-
24 sioner adjudicating water rights under this section may appeal to the
25 superior court within 30 days after the decision is mailed or de-
26 livered to the person.

27 (m) The commissioner may adopt regulations setting out proce-
28 dures for administrative adjudications under this section.

29 Sec. 46.15.166. JUDICIAL ADJUDICATIONS. (a) Instead of initi-

1 ating an adjudication under AS 46.15.165, the commissioner may, with
2 the concurrence of the attorney general, if a federal reserved water
3 right has been or might be asserted by an agency of the United States
4 on its own behalf or on behalf of a person described in AS 46.15.-
5 165(c)(3) - (6), file on behalf of the state a complaint in superior
6 court to initiate a judicial adjudication consistent with 43 U.S.C.
7 666 to quantify and determine the priority of all water rights in a
8 drainage basin, river system, ground water aquifer system, or other
9 identifiable and distinct hydrologic regime, including any hydrologi-
10 cally interrelated surface and ground water systems.

11 (b) The venue for an action filed under (a) of this section
12 shall be established by rule of the supreme court under AS 22.10.030.

13 (c) In a complaint brought under (a) of this section, the court
14 may appoint an impartial, qualified person as a master to hold hear-
15 ings, take testimony, collect evidence, and make recommendations to
16 the court regarding the scope and content of a proposed judicial
17 decree that would finally adjudicate the validity of water rights,
18 quantify them, and determine priorities among the water right appro-
19 priations in the adjudication area. Employment by a federal, state,
20 or local government agency does not disqualify an individual from
21 appointment as master under this subsection if the court determines
22 that the individual is otherwise impartial and qualified to act as
23 master. The master may, with the court's permission, take action that
24 the commissioner would be authorized to take in an administrative
25 adjudication under AS 46.15.165.

26 (d) In an adjudication under this section, the court may incor-
27 porate in an order or judgment final orders of the commissioner previ-
28 ously issued under AS 46.15.165.

29 (e) Proceedings under this section shall be conducted without a

1 jury.

2 Sec. 46.15.167. EFFECT OF DECISION. The final order of the com-
3 missioner under AS 46.15.165 and the final judgment of a court under
4 AS 46.15.166 are binding on each party to the adjudication and on each
5 person who subsequently makes an application for a water right. The
6 court or the commissioner may retain jurisdiction for a period of time
7 necessary to implement an adjudication order or judgment and to pro-
8 vide for subsequent water appropriations.

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

13 (b) The commissioner may accept a remand from a state or federal
14 court of a water rights dispute and may administratively adjudicate
15 the dispute under AS 46.15.165.

16 (c) The commissioner may enter into arbitration to resolve a
17 water rights dispute.

18 (d) The commissioner may incorporate and apply as binding upon
19 the parties to an administrative adjudication under AS 46.15.165 any
20 court decree concerning the state hydrologic regime involved in the
21 adjudication.

22 Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. This chapter
23 does not represent a commitment by the state to a specific federal re-
24 served water right.

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

26 Sec. 46.15.255. ENFORCEMENT. (a) In addition to a penalty
27 imposed under AS 46.15.180 for violation of an order issued under this
28 chapter, the commissioner may

29 (1) remove or abate unpermitted works of appropriation,

1 diversion, impoundment, or withdrawal;

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

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

5 (b) A person who violates an order issued under AS 46.15.180 is
6 liable for all costs of removal, abatement or installation and for
7 court costs and attorney fees incurred by the state in seeking en-
8 forcement of the order.

9 Sec. 46.15.256. DATA COLLECTION AUTHORITY. To carry out the
10 provisions of this chapter, the commissioner may

11 (1) inspect books, records, meters, gauges, well logs,
12 works of appropriation, diversion, impoundment, withdrawal, or control
13 and other relevant information or physical condition;

14 (2) enter private property at all reasonable times after
15 obtaining a search warrant from a judicial officer if the owner re-
16 fuses consent to entry; and

17 (3) compel the production of relevant information by a
18 subpoena or subpoena duces tecum signed by the commissioner if the
19 commissioner reasonably believes the information is necessary to carry
20 out the purposes of this chapter.

21 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
22 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.

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 appropri-
4 ation 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

*in AS
Section*

*in AS
Section*

*move to
Section F.*

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

*Want
Native
Corp.*

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
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 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

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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).

Bradley
1/16/86

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 150 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act 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 that is pending before the commissioner on the effec-
23 tive date of this Act continues under the procedures set out in this
24 section until the commissioner finally determines whether the declar-
25 ant is entitled to a certificate. If a certificate is issued under
26 this section, the certificate holder may be included as a participant
27 in an adjudication under AS 46.15.165 or 46.15.166.

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

29 Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF

1 APPROPRIATIONS. (a) The commissioner may declare an appropriation to
2 be wholly or partially abandoned and revoke or amend the certificate
3 of appropriation as to the unused quantity of water if an appropri-
4 ator, with intention to abandon, does not make beneficial use of all
5 or a part of the [HIS] appropriated water. [AN APPROPRIATION SO
6 FORFEITED AND ABANDONED REVERTS TO THE STATE AND THE WATER BECOMES
7 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 * Sec. 4. AS 46.15.140 is amended by adding new subsections to read:

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

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

24 * Sec. 5. AS 46.15.145(f) is amended to read:

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

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

6 * Sec. 6. AS 46.15.145 is amended by adding a new subsection to read:

7 (g) A state agency may not abandon or forfeit an appropriation
8 in whole or in part except after public notice.

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

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

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

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

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

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

28 (3) serve the order on any person who owns land within the
29 adjudication area if the land is held in trust by the United States or

1 if the patent or deed to the land contains a restriction on alienation
2 imposed under 25 U.S.C. 334 (Indian General Allotment Act of February
3 8, 1887, 24 Stat. 389, as amended and supplemented), 25 U.S.C. 372
4 (the Allotment Act of June 25, 1910, 36 Stat. 855), or 43 U.S.C.
5 270-1, 270-2 (the Allotment Act of May 17, 1906, 34 Stat. 197), and on
6 the United States on behalf of any such person;

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

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

15 (d) Service of an order under (c) of this section does not
16 constitute an admission by the state that the person served with the
17 order has a water right.

18 (e) Service of the order under (c)(1) of this section is suffi-
19 cient if mailed by certified mail, return receipt requested, to the
20 last known address that the applicant, certificate holder, or permit-
21 tee has given to the division of the department responsible for admin-
22 istration of water rights. A person served under (c)(1) - (4) of this
23 section who fails to appear in a timely manner and assert a claim as
24 prescribed by the commissioner is estopped from subsequently asserting
25 an objection to the adjudication of that person's water rights within
26 the adjudication area, unless the person is entitled to a federally
27 reserved water right and has failed to consent under (k) of this
28 section.

29 (f) In an adjudication under this section, the commissioner may

1 appoint an impartial qualified person as a master to preside over the
2 adjudication, to hold hearings, to take testimony, to collect evi-
3 dence, to propose to the commissioner an order adjudicating the valid-
4 ity of, quantifying, and determining the priority of all water rights,
5 and to take other action the commissioner decides is necessary.
6 Employment by a federal, state or local governmental agency does not
7 disqualify an individual from appointment as master under this sub-
8 section if the commissioner determines that the individual is other-
9 wise impartial and qualified to act as master.

10 (g) A state agency may assert a water right on behalf of the
11 state in the adjudication.

12 (h) A division of the department or another state agency may
13 provide documentary and testimonial evidence, research, and scientific
14 analysis during the adjudication. The commissioner may provide evi-
15 dence, research, or analysis from sources outside government.

16 (i) In conducting an adjudication, the commissioner may take
17 action necessary for the efficient and fair administration and use of
18 the state's water including

19 (1) determining indispensable, necessary, and convenient
20 parties to the adjudication;

21 (2) classifying applicants, certificate holders, permit-
22 tees, and claimants in groups that share similar interests, such as by
23 the amount of water used or the type of use, and restricting their
24 active participation in the adjudication by appointing group represen-
25 tatives for the purposes of receiving notices, examining witnesses,
26 and other adjudicatory functions;

27 (3) entering interlocutory orders appropriate to a disposal
28 of all or part of the issues in the adjudication, and designating the
29 orders as final for the purposes of an appeal to the superior court

1 under (l) of this section; and

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

6 (j) For the purposes of asserting a water right in an adjudica-
7 tion, a certificate issued under this chapter is prima facie evidence
8 of the water right and its priority date.

9 (k) If the commissioner has initiated the adjudication and the
10 federal government or a private person who has been served under
11 (c)(2) - (4) of this section asserts a federally reserved water right
12 but fails to consent in writing to the adjudication, then the commis-
13 sioner may exclude the federal government or the person, respectively,
14 as participants in the adjudication. The commissioner may negotiate
15 the terms of the written consent.

16 (l) A person adversely affected by a final order of the commis-
17 sioner adjudicating water rights under this section may appeal to the
18 superior court within 30 days after the decision is mailed or de-
19 livered to the person.

20 (m) The commissioner may adopt regulations setting out proce-
21 dures for administrative adjudications under this section.

22 Sec. 46.15.166. JUDICIAL ADJUDICATIONS. (a) Instead of initi-
23 ating an adjudication under AS 46.15.165, the commissioner may, if a
24 federally reserved water right has been or might be asserted by an
25 agency of the United States on behalf of a person whose patent or deed
26 to land contains a restriction on alienation imposed by a federal
27 statute cited in AS 46.15.165(c)(3) or (4) or whose land is held in
28 trust by the United States, with the concurrence of the attorney
29 general, file on behalf of the state a complaint in superior court to

1 initiate a judicial adjudication consistent with 43 U.S.C. 666 to
2 quantify and determine the priority of all water rights in a drainage
3 basin, river system, ground water aquifer system, or other identifi-
4 able and distinct hydrologic regime, including any hydrologically
5 interrelated surface and ground water systems.

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

9 (c) In a complaint brought under (a) of this section, the court
10 may appoint an impartial, qualified person as a master to hold hear-
11 ings, take testimony, collect evidence, and make recommendations to
12 the court regarding the scope and content of a proposed judicial
13 decree that would finally adjudicate the validity of water rights,
14 quantify them, and determine priorities among the water right appro-
15 priations in the adjudication area. Employment by a federal, state,
16 or local government agency does not disqualify an individual from
17 appointment as master under this subsection if the court determines
18 that the individual is otherwise impartial and qualified to act as
19 master. The master may, with the court's permission, take action that
20 the commissioner would be authorized to take in an administrative
21 adjudication under AS 46.15.165.

22 (d) In an adjudication under this section, the court may incor-
23 porate in an order or judgment final orders of the commissioner previ-
24 ously issued under AS 46.15.165.

25 (e) Proceedings under this section shall be conducted without a
26 jury.

27 Sec. 46.15.167. EFFECT OF DECISION. The final order of the com-
28 missioner under AS 46.15.165 and the final judgment of a court under
29 AS 46.15.166 are binding on each party to the adjudication and on each

1 person who subsequently makes an application for a water right. The
2 court or the commissioner may retain jurisdiction for a period of time
3 necessary to implement an adjudication order or judgment and to pro-
4 vide for subsequent water appropriations.

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

9 (b) The commissioner may accept a remand from a state or federal
10 court of a water rights dispute and may administratively adjudicate
11 the dispute under AS 46.15.165.

12 (c) The commissioner may enter into arbitration to resolve a
13 water rights dispute.

14 (d) The commissioner may incorporate and apply as binding upon
15 the parties to an administrative adjudication under AS 46.15.165 any
16 court decree concerning the state hydrologic regime involved in the
17 adjudication.

18 Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. This chapter
19 does not represent a commitment by the state to a specific federal re-
20 served water right.

21 * Sec. 8. AS 46.15 is amended by adding new sections to read:

22 Sec. 46.15.255. ENFORCEMENT. (a) In addition to a penalty
23 imposed under AS 46.15.180 for violation of an order issued under this
24 chapter, the commissioner may

25 (1) remove or abate unpermitted works of appropriation,
26 diversion, impoundment, or withdrawal;

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

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

1 (b) A person who violates an order issued under AS 46.15.180 is
 2 liable for all costs of removal, abatement or installation and for
 3 court costs and attorney fees incurred by the state in seeking en-
 4 forcement of the order.

5 Sec. 46.15.256. DATA COLLECTION AUTHORITY. To carry out the
 6 provisions of this chapter, the commissioner may

7 (1) inspect books, records, meters, gauges, well logs,
 8 works of appropriation, diversion, impoundment, withdrawal, or control
 9 and other relevant information or physical condition;

10 (2) enter private property at all reasonable times after
 11 obtaining a search warrant from a judicial officer if the owner re-
 12 fuses consent to entry; and

13 (3) compel the production of relevant information by a
 14 subpoena or subpoena duces tecum signed by the commissioner if the
 15 commissioner reasonably believes the information is necessary to carry
 16 out the purposes of this chapter.

17 * Sec. 9. This Act takes effect immediately in accordance with AS 01.-
 18 10.070(c).

Bradley
1-27-86

Amendment

Attn. J. Homa

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 150 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act 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) The commissioner's issuance of a permit under AS 46.15.080
15 or of a certificate under AS 46.15.065 or 46.15.120 does not represent
16 a guarantee by the state to the permittee or certificate holder that
17 water will be available for appropriation at a certain volume,
18 quality, artesian pressure, or cost. This subsection does not,
19 however, alter the right a permittee or certificate holder may have
20 against a later appropriator, including a government agency.

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

22 (f) The adjudication process for a declaration filed under (a)
23 of this section that is pending before the commissioner on the effec-
24 tive date of this Act continues under the procedures set out in this
25 section until the commissioner finally determines whether the declar-
26 ant is entitled to a certificate. If a certificate is issued under
27 this section, the certificate holder may be included as a participant
28 in an adjudication under AS 46.15.165 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 or amend the certificate of
4 appropriation as to the unused quantity of water if an appropriator,
5 with intention to abandon, does not make beneficial use of all or a
6 part of the [HIS] appropriated water. [AN APPROPRIATION SO FORFEITED
7 AND ABANDONED REVERTS TO THE STATE AND THE WATER BECOMES
8 UNAPPROPRIATED WATER.]

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

15 * Sec. 4. AS 46.15.140 is amended by adding new subsections to read:

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

22 (d) A state agency or a municipality may not abandon or forfeit
23 an appropriation in whole or in part except after public notice.

24 (e) If the commissioner revokes a certificate in whole or in
25 part, the portion of the certificate covered by the revocation reverts
26 to the state and the water becomes unappropriated water.

27 * Sec. 5. AS 46.15.145(f) is amended to read:

28 (f) At least once each 10 years the commissioner shall review
29 each reservation under this section to determine whether the purpose

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

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

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

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

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

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

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

28 (3) serve the order on any person who owns or claims land
29 within the adjudication area if the land is held in trust by the

1 United States for the person or if the patent, deed, or certificate to
2 the land from the United States was issued under 25 U.S.C. 334 (Indian
3 General Allotment Act of February 8, 1887, 24 Stat. 389, as amended
4 and supplemented), 25 U.S.C. 372 (the Allotment Act of June 25, 1910,
5 36 Stat. 855), 43 U.S.C. 270-1, 270-2 (the Allotment Act of May 17,
6 1906, 34 Stat. 197), any other allotment act, or the Alaska Native
7 Townsite Act of May 25, 1926, 44 Stat. 629, and serve the order on the
8 United States on behalf of the person;

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

14 (1) (5) serve the order on any other person claiming a federal
15 reserved water right; *(within the adjudication area.)*

16 (6) serve the regional corporation and village corporation
17 established under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement
18 Act) that has a pending land selection or has acquired ownership to
19 land under that act that is located within the adjudication area; and

20 (7) serve the order on each mining claimant of record with
21 the United States and the state ^{*within the adjudication area*} as of the date of the order initiating
22 the administrative adjudication. ~~failure of the commissioner to notify~~
23 a mining claimant under this subsection does not prevent the
24 commissioner from adjudicating the rights of parties in the
25 adjudication.

26 (d) Service of an order under (c) of this section does not
27 constitute an admission by the state that the person served with the
28 order has a water right.

29 (e) Service of the order under (c)(1) of this section is

1 sufficient if mailed by certified mail, return receipt requested, to
2 the last known address that the applicant, certificate holder, permit-
3 tee, or claimant has given to the division of the department
4 responsible for administration of water rights. A person served under
5 (c)(1) - (7) of this section who fails to appear in a timely manner
6 and assert a claim as prescribed by the commissioner is estopped from
7 subsequently asserting an objection to the adjudication of that
8 person's water rights within the adjudication area, unless the person
9 is entitled to a federal reserved water right and has failed to
10 consent under (k) of this section.

11 (f) In an adjudication under this section, the commissioner may
12 appoint an impartial qualified person as a master to preside over the
13 adjudication, to hold hearings, to take testimony, to collect evi-
14 dence, to propose to the commissioner an order adjudicating the valid-
15 ity of, quantifying, and determining the priority of all water rights,
16 and to take other action the commissioner decides is necessary.

17 3 Employment by a federal, state or local governmental agency does not
18 disqualify an individual from appointment as master under this sub-
19 section if the commissioner determines that the individual is other-
20 wise impartial and qualified to act as master.]

21 (g) A state agency may assert a water right on behalf of the
22 state in the adjudication.

23 (h) A division of the department or another state agency may
24 provide documentary and testimonial evidence, research, and scientific
25 analysis during the adjudication. The commissioner may provide evi-
26 dence, research, or analysis from sources outside government.

27 (i) In conducting an adjudication, the commissioner may take
28 action necessary for the efficient and fair administration and use of
29 the state's water including

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

3 (2) classifying applicants, certificate holders, permit-
4 tees, and claimants in groups that share similar interests, such as by
5 the amount of water used or the type of use, and restricting their
6 active participation in the adjudication by appointing group represen-
7 tatives for the purposes of receiving notices, examining witnesses,
8 and other adjudicatory functions;

9 (3) entering interlocutory orders appropriate to a disposal
10 of all or part of the issues in the adjudication, and designating the
11 orders as final for the purposes of an appeal to the superior court
12 under (1) of this section; and

13 (4) allocating to a participant the extra costs that the
14 state has incurred in conducting the adjudication because the partici-
15 pant has in bad faith asserted a claim to water wholly without merit
16 or has unreasonably delayed the proceeding.

17 (j) For the purposes of asserting a water right in an adjudica-
18 tion, a certificate issued under this chapter is prima facie evidence
19 of the water right and its priority date.

20 (k) If the commissioner has initiated the adjudication and the
21 federal government or a private person who has been served under
22 (c)(2) - (4) of this section asserts a federal reserved water right
23 but fails to consent in writing to the adjudication, then the commis-
24 sioner may exclude the federal government or the person, respectively,
25 as participants in the adjudication. The commissioner may negotiate
26 the terms of the written consent.

27 (l) A person adversely affected by a final order of the commis-
28 sioner adjudicating water rights under this section may appeal to the
29 superior court within 30 days after the decision is mailed or

1 delivered to the person.

2 (m) The commissioner may adopt regulations setting out proce-
3 dures for administrative adjudications under this section.

4 Sec. 46.15.166. JUDICIAL ADJUDICATIONS. (a) Instead of initi-
5 ating an adjudication under AS 46.15.165, the commissioner may, with
6 the concurrence of the attorney general, if a federal reserved water
7 right has been or might be asserted by an agency of the United States
8 on its own behalf or on behalf of a person described in AS 46.15.-
9 165(c)(3) - (6), file on behalf of the state a complaint in superior
10 court to initiate a judicial adjudication consistent with 43 U.S.C.
11 666 to quantify and determine the priority of all water rights in a
12 drainage basin, river system, ground water aquifer system, or other
13 identifiable and distinct hydrologic regime, including any hydrologi-
14 cally interrelated surface and ground water systems.

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

18 (c) In a complaint brought under (a) of this section, the court
19 may appoint an impartial, qualified person as a master to hold hear-
20 ings, take testimony, collect evidence, and make recommendations to
21 the court regarding the scope and content of a proposed judicial
22 decree that would finally adjudicate the validity of water rights,
23 quantify them, and determine priorities among the water right appro-
24 priations in the adjudication area. Employment by a federal, state,
25 or local government agency does not disqualify an individual from
26 appointment as master under this subsection if the court determines
27 that the individual is otherwise impartial and qualified to act as
28 master. The master may, with the court's permission, take action that
29 the commissioner would be authorized to take in an administrative

1 adjudication under AS 46.15.165.

2 (d) In an adjudication under this section, the court may incor-
3 porate in an order or judgment final orders of the commissioner previ-
4 ously issued under AS 46.15.165.

5 (e) Proceedings under this section shall be conducted without a
6 jury.

7 Sec. 46.15.167. EFFECT OF DECISION. The final order of the com-
8 missioner under AS 46.15.165 and the final judgment of a court under
9 AS 46.15.166 are binding on each party to the adjudication and on each
10 person who subsequently makes an application for a water right. The
11 court or the commissioner may retain jurisdiction for a period of time
12 necessary to implement an adjudication order or judgment and to pro-
13 vide for subsequent water appropriations.

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

18 (b) The commissioner may accept a remand from a state or federal
19 court of a water rights dispute and may administratively adjudicate
20 the dispute under AS 46.15.165.

21 (c) The commissioner may enter into arbitration to resolve a
22 water rights dispute.

23 (d) The commissioner may incorporate and apply as binding upon
24 the parties to an administrative adjudication under AS 46.15.165 any
25 court decree concerning the state hydrologic regime involved in the
26 adjudication.

27 Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. This chapter
28 does not represent a commitment by the state to a specific federal re-
29 served water right.

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

2 Sec. 46.15.255. ENFORCEMENT. (a) In addition to a penalty
3 imposed under AS 46.15.180 for violation of an order issued under this
4 chapter, the commissioner may

5 (1) remove or abate unpermitted works of appropriation,
6 diversion, impoundment, or withdrawal;

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

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

10 (b) A person who violates an order issued under AS 46.15.180 is
11 liable for all costs of removal, abatement or installation and for
12 court costs and attorney fees incurred by the state in seeking en-
13 forcement of the order.

14 Sec. 46.15.256. DATA COLLECTION AUTHORITY. To carry out the
15 provisions of this chapter, the commissioner may

16 (1) inspect books, records, meters, gauges, well logs,
17 works of appropriation, diversion, impoundment, withdrawal, or control
18 and other relevant information or physical condition;

19 (2) enter private property at all reasonable times after
20 obtaining a search warrant from a judicial officer if the owner re-
21 fuses consent to entry; and

22 (3) compel the production of relevant information by a
23 subpoena or subpoena duces tecum signed by the commissioner if the
24 commissioner reasonably believes the information is necessary to carry
25 out the purposes of this chapter.

26 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
27 10.070(c).

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 150 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act 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) The commissioner's issuance of a permit under AS 46.15.080
15 or of a certificate under AS 46.15.065 or 46.15.120 does not represent
16 a guarantee by the state to the permittee or certificate holder that
17 water will be available for appropriation at a certain volume, quali-
18 ty, artesian pressure, or cost. This subsection does not, however,
19 alter the right a permittee or certificate holder may have against a
20 later appropriator, including a government agency.

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

22 (f) The adjudication process for a declaration filed under (a)
23 of this section that is pending before the commissioner on the effec-
24 tive date of this Act continues under the procedures set out in this
25 section until the commissioner finally determines whether the declar-
26 ant is entitled to a certificate. If a certificate is issued under
27 this section, the certificate holder may be included as a participant
28 in an adjudication under AS 46.15.165 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 or amend the certificate of
4 appropriation as to the unused quantity of water if an appropriator,
5 with intention to abandon, does not make beneficial use of all or a
6 part of the [HIS] appropriated water. [AN APPROPRIATION SO FORFEITED
7 AND ABANDONED REVERTS TO THE STATE AND THE WATER BECOMES UNAPPROPRI-
8 ATED WATER.]

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

15 * Sec. 4. AS 46.15.140 is amended by adding new subsections to read:

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

22 (d) A state agency or a municipality may not abandon or forfeit
23 an appropriation in whole or in part except after public notice.

24 (e) If the commissioner revokes a certificate in whole or in
25 part, the portion of the certificate covered by the revocation reverts
26 to the state and the water becomes unappropriated water.

27 * Sec. 5. AS 46.15.145(f) is amended to read:

28 (f) At least once each 10 years the commissioner shall review
29 each reservation under this section to determine whether the purpose

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

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

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

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

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

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

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

28 (3) serve the order on any person who owns or claims land
29 within the adjudication area if the land is held in trust by the

1 United States for the person or if the patent, deed, or certificate to
2 the land from the United States was issued under 25 U.S.C. 334 (Indian
3 General Allotment Act of February 8, 1887, 24 Stat. 389, as amended
4 and supplemented), 25 U.S.C. 372 (the Allotment Act of June 25, 1910,
5 36 Stat. 855), 43 U.S.C. 270-1, 270-2 (the Allotment Act of May 17,
6 1906, 34 Stat. 197), any other allotment act, or the Alaska Native
7 Townsite Act of May 25, 1926, 44 Stat. 629, and serve the order on the
8 United States on behalf of the person;

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

14 (5) serve the order on any other person claiming a federal
15 reserved water right within the adjudication area;

16 (6) serve the regional corporation and village corporation
17 established under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement
18 Act) that has a pending land selection or has acquired ownership to
19 land under that act that is located within the adjudication area; and

20 (7) serve the order on each mining claimant of record with
21 the United States and the state within the adjudication area as of the
22 date of the order initiating the administrative adjudication.

23 (d) Service of an order under (c) of this section does not
24 constitute an admission by the state that the person served with the
25 order has a water right.

26 (e) Service of the order under (c)(1) of this section is suffi-
27 cient if mailed by certified mail, return receipt requested, to the
28 last known address that the applicant, certificate holder, permittee,
29 or claimant has given to the division of the department responsible

1 for administration of water rights. A person served under (c)(1) -
2 (7) of this section who fails to appear in a timely manner and assert
3 a claim as prescribed by the commissioner is estopped from subsequent-
4 ly asserting an objection to the adjudication of that person's water
5 rights within the adjudication area, unless the person is entitled to
6 a federal reserved water right and has failed to consent under (k) of
7 this section.

8 (f) In an adjudication under this section, the commissioner may
9 appoint an impartial qualified person as a master to preside over the
10 adjudication, to hold hearings, to take testimony, to collect evi-
11 dence, to propose to the commissioner an order adjudicating the valid-
12 ity of, quantifying, and determining the priority of all water rights,
13 and to take other action the commissioner decides is necessary.

14 (g) A state agency may assert a water right on behalf of the
15 state in the adjudication.

16 (h) A division of the department or another state agency may
17 provide documentary and testimonial evidence, research, and scientific
18 analysis during the adjudication. The commissioner may provide evi-
19 dence, research, or analysis from sources outside government.

20 (i) In conducting an adjudication, the commissioner may take
21 action necessary for the efficient and fair administration and use of
22 the state's water including

23 (1) determining indispensable, necessary, and convenient
24 parties to the adjudication;

25 (2) classifying applicants, certificate holders, permit-
26 tees, and claimants in groups that share similar interests, such as by
27 the amount of water used or the type of use, and restricting their
28 active participation in the adjudication by appointing group represen-
29 tatives for the purposes of receiving notices, examining witnesses,

1 and other adjudicatory functions;

2 (3) entering interlocutory orders appropriate to a disposal
3 of all or part of the issues in the adjudication, and designating the
4 orders as final for the purposes of an appeal to the superior court
5 under (1) of this section; and

6 (4) allocating to a participant the extra costs that the
7 state has incurred in conducting the adjudication because the partici-
8 pant has in bad faith asserted a claim to water wholly without merit
9 or has unreasonably delayed the proceeding.

10 (j) For the purposes of asserting a water right in an adjudica-
11 tion, a certificate issued under this chapter is prima facie evidence
12 of the water right and its priority date.

13 (k) If the commissioner has initiated the adjudication and the
14 federal government or a private person who has been served under
15 (c)(2) - (4) of this section asserts a federal reserved water right
16 but fails to consent in writing to the adjudication, then the commis-
17 sioner may exclude the federal government or the person, respectively,
18 as participants in the adjudication. The commissioner may negotiate
19 the terms of the written consent.

20 (l) A person adversely affected by a final order of the commis-
21 sioner adjudicating water rights under this section may appeal to the
22 superior court within 30 days after the decision is mailed or de-
23 livered to the person.

24 (m) The commissioner may adopt regulations setting out proce-
25 dures for administrative adjudications under this section.

26 Sec. 46.15.166. JUDICIAL ADJUDICATIONS. (a) Instead of initi-
27 ating an adjudication under AS 46.15.165, the commissioner may, with
28 the concurrence of the attorney general, if a federal reserved water
29 right has been or might be asserted by an agency of the United States

1 on its own behalf or on behalf of a person described in AS 46.15.-
2 165(c)(3) - (6), file on behalf of the state a complaint in superior
3 court to initiate a judicial adjudication consistent with 43 U.S.C.
4 666 to quantify and determine the priority of all water rights in a
5 drainage basin, river system, ground water aquifer system, or other
6 identifiable and distinct hydrologic regime, including any hydrologi-
7 cally interrelated surface and ground water systems.

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

11 (c) In a complaint brought under (a) of this section, the court
12 may appoint an impartial, qualified person as a master to hold hear-
13 ings, take testimony, collect evidence, and make recommendations to
14 the court regarding the scope and content of a proposed judicial
15 decree that would finally adjudicate the validity of water rights,
16 quantify them, and determine priorities among the water right appro-
17 priations in the adjudication area. Employment by a federal, state,
18 or local government agency does not disqualify an individual from
19 appointment as master under this subsection if the court determines
20 that the individual is otherwise impartial and qualified to act as
21 master. The master may, with the court's permission, take action that
22 the commissioner would be authorized to take in an administrative
23 adjudication under AS 46.15.165.

24 (d) In an adjudication under this section, the court may incor-
25 porate in an order or judgment final orders of the commissioner previ-
26 ously issued under AS 46.15.165.

27 (e) Proceedings under this section shall be conducted without a
28 jury.

29 Sec. 46.15.167. EFFECT OF DECISION. The final order of the

1 commissioner under AS 46.15.165 and the final judgment of a court
2 under AS 46.15.166 are binding on each party to the adjudication and
3 on each person who subsequently makes an application for a water
4 right. The court or the commissioner may retain jurisdiction for a
5 period of time necessary to implement an adjudication order or judg-
6 ment and to provide for subsequent water appropriations.

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

11 (b) The commissioner may accept a remand from a state or federal
12 court of a water rights dispute and may administratively adjudicate
13 the dispute under AS 46.15.165.

14 (c) The commissioner may enter into arbitration to resolve a
15 water rights dispute.

16 (d) The commissioner may incorporate and apply as binding upon
17 the parties to an administrative adjudication under AS 46.15.165 any
18 court decree concerning the state hydrologic regime involved in the
19 adjudication.

20 Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. This chapter
21 does not represent a commitment by the state to a specific federal re-
22 served water right.

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

24 Sec. 46.15.255.* ENFORCEMENT. (a) In addition to a penalty
25 imposed under AS 46.15.180 for violation of an order issued under this
chapter, the commissioner may

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

(2) install corrective controls or control works; and

Mary Lou Haile
762-4317 -DNR-

DRAFT

Homan

Bradley ✓
01/20/86

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 150 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act 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:

rewrite State
(d)

14 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.

Same

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 that is pending before the commissioner on the effec-
23 tive date of this Act continues under the procedures set out in this
24 section until the commissioner finally determines whether the declar-
25 ant is entitled to a certificate. If a certificate is issued under
26 this section, the certificate holder may be included as a participant
27 in an adjudication under AS 46.15.165 or 46.15.166.

Same

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

29 Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF

1 APPROPRIATIONS. (a) The commissioner may declare an appropriation to
2 be wholly or partially abandoned and revoke or amend the certificate
3 of appropriation ^(in whole or in part) as to the unused quantity of water if an appropri-
4 ator, with intention to abandon, does not make beneficial use of all
5 or a part of the [HIS] appropriated water. ([AN APPROPRIATION SO
6 FORFEITED AND ABANDONED REVERTS TO THE STATE AND THE WATER BECOMES
7 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. *An annual notice of
assessment for a municipality
shall be considered
proof of non-abandonment.*

14 * Sec. 4. AS 46.15.140 is amended by adding new subsections to read:

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

21 (d) A state agency ^(new) or a municipality may not abandon or forfeit
22 an appropriation in whole or in part except after public notice.

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

26 * Sec. 5. AS 46.15.145(f) is amended to read:

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

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

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

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

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

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

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

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

27 (3) serve the order on any person who owns land within the
28 *Same* adjudication area if the land is held in trust by the United States or
29 if the patent or deed to the land contains a restriction on alienation

③ Notice to mining claims
④ BIA rewrite

BIA
21,000

1 imposed under 25 U.S.C. 334 (Indian General Allotment Act of February
2 8, 1887, 24 Stat. 389, as amended and supplemented), 25 U.S.C. 372
3 (the Allotment Act of June 25, 1910, 36 Stat. 855), or 43 U.S.C.
4 270-1, 270-2 (the Allotment Act of May 17, 1906, 34 Stat. 197), and on
5 the United States on behalf of any such person;

Same

6 (4) serve the order on the United States and the appropri-
7 ate governing body of the Annette Island Reserve established by 25
8 U.S.C. 495 (the Act of March 3, 1891, 20 Stat. 1101) if the land or
9 water, including hydrologically interconnected water, of the Annette
10 Island Reserve is within the adjudication area;

Same

11 (5) serve the order on any other person claiming a federal
12 reserved water right; *(within the adjudication area)*

new

13 (6) *rewrite add selected & conveyed* serve the regional corporation and village corporation
14 established under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement
15 Act) whose land is located within the adjudication area; and

new

16 *X MINING CLAIMS* (7) publish the order once each week during four consecu-
17 tive weeks in a newspaper of general circulation in the adjudication
18 area.

19 (d) Service of an order under (c) of this section does not
20 constitute an admission by the state that the person served with the
21 order has a water right.

new

22 (e) Service of the order under (c)(1) of this section is suffi-
23 cient if mailed by certified mail, return receipt requested, to the
24 last known address that the applicant, certificate holder, or permit-
25 *OR CLAIMANT* tee has given to the division of the department responsible for admin-
26 *-1* istration of water rights. A person served under (c)(1) - *(6)* of this
27 section who fails to appear in a timely manner and assert a claim as
28 prescribed by the commissioner is estopped from subsequently asserting
29 an objection to the adjudication of that person's water rights within

X
X
Same

1
2
3 the adjudication area, unless the person is entitled to a federally reserved water right and has failed to consent under (k) of this section.

4 (f) In an adjudication under this section, the commissioner may
5 appoint an impartial qualified person as a master to preside over the
6 adjudication, to hold hearings, to take testimony, to collect evi-
7 dence, to propose to the commissioner an order adjudicating the valid-
8 ity of, quantifying, and determining the priority of all water rights,
9 and to take other action the commissioner decides is necessary.

10 Employment by a federal, state or local governmental agency does not
11 disqualify an individual from appointment as master under this sub-
12 section if the commissioner determines that the individual is other-
13 wise impartial and qualified to act as master.

14 (g) A state agency may assert a water right on behalf of the
15 state in the adjudication.

16 (h) A division of the department or another state agency may
17 provide documentary and testimonial evidence, research, and scientific
18 analysis during the adjudication. The commissioner may provide evi-
19 dence, research, or analysis from sources outside government.

20 (i) In conducting an adjudication, the commissioner may take
21 action necessary for the efficient and fair administration and use of
22 the state's water including

23 (1) determining indispensable, necessary, and convenient
24 parties to the adjudication;

25 (2) classifying applicants, certificate holders, permit-
26 tees, and claimants in groups that share similar interests, such as by
27 the amount of water used or the type of use, and restricting their
28 active participation in the adjudication by appointing group represen-
29 tatives for the purposes of receiving notices, examining witnesses

1 and other adjudicatory functions;

2 (3) entering interlocutory orders appropriate to a disposal
3 of all or part of the issues in the adjudication, and designating the
4 orders as final for the purposes of an appeal to the superior court
5 under (1) of this section; and

same

6 (4) allocating to a participant the extra costs that the
7 state has incurred in conducting the adjudication because the partici-
8 pant has in bad faith asserted a claim to water wholly without merit
9 or has unreasonably delayed the proceeding.

same

10 (j) For the purposes of asserting a water right in an adjudica-
11 tion, a certificate issued under this chapter is prima facie evidence
12 of the water right and its priority date.

same

13 (k) If the commissioner has initiated the adjudication and the
14 federal government or a private person who has been served under
15 (c)(2) - (4) of this section asserts a federally reserved water right
16 but fails to consent in writing to the adjudication, then the commis-
17 sioner may exclude the federal government or the person, respectively,
18 as participants in the adjudication. The commissioner may negotiate
19 the terms of the written consent.

(*) →

same

20 (l) A person adversely affected by a final order of the commis-
21 sioner adjudicating water rights under this section may appeal to the
22 superior court within 30 days after the decision is mailed or de-
23 livered to the person.

same

24 (m) The commissioner may adopt regulations setting out proce-
25 dures for administrative adjudications under this section.

same

26 Sec. 46.15.166. JUDICIAL ADJUDICATIONS. (a) Instead of initi-
27 ating an adjudication under AS 46.15.165, the commissioner may, with
28 the concurrence of the attorney general, if a federally reserved water
29 right has been or might be asserted by an agency of the United States

same but rewrite

(*)

1 on its own behalf or on behalf of a person described in
2 AS 46.15.165(c)(3) - (6), ^{same} file on behalf of the state a complaint in
3 superior court to initiate a judicial adjudication consistent with 43
4 U.S.C. 666 to quantify and determine the priority of all water rights
5 in a drainage basin, river system, ground water aquifer system, or
6 other identifiable and distinct hydrologic regime, including any
7 hydrologically interrelated surface and ground water systems.

8 *Same but rewrite* (b) Venue is proper in a complaint filed under (a) of this
9 section if the complaint is filed in a judicial district in which all
10 or a part of the hydrologic regime is located.

11 *act instead* (c) In a complaint brought under (a) of this section, the court
12 may appoint an impartial, qualified person as a master to hold hear-
13 ings, take testimony, collect evidence, and make recommendations to
14 the court regarding the scope and content of a proposed judicial
15 decree that would finally adjudicate the validity of water rights,
16 quantify them, and determine priorities among the water right appro-
17 priations in the adjudication area. Employment by a federal, state,
18 or local government agency does not disqualify an individual from
19 appointment as master under this subsection if the court determines
20 that the individual is otherwise impartial and qualified to act as
21 master. The master may, with the court's permission, take action that
22 the commissioner would be authorized to take in an administrative
23 adjudication under AS 46.15.165.

24 *Same* (d) In an adjudication under this section, the court may incor-
25 porate in an order or judgment final orders of the commissioner previ-
26 ously issued under AS 46.15.165.

27 *Same* (e) Proceedings under this section shall be conducted without a
28 jury.

29 *Same* Sec. 46.15.167. EFFECT OF DECISION. The final order of the

1 commissioner under AS 46.15.165 and the final judgment of a court
2 under AS 46.15.166 are binding on each party to the adjudication and
3 on each person who subsequently makes an application for a water
4 right. The court or the commissioner may retain jurisdiction for a
5 period of time necessary to implement an adjudication order or
6 judgment and to provide for subsequent water appropriations.

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

11 (b) The commissioner may accept a remand from a state or federal
12 court of a water rights dispute and may administratively adjudicate
13 the dispute under AS 46.15.165.

14 (c) The commissioner may enter into arbitration to resolve a
15 water rights dispute.

16 (d) The commissioner may incorporate and apply as binding upon
17 the parties to an administrative adjudication under AS 46.15.165 any
18 court decree concerning the state hydrologic regime involved in the
19 adjudication.

20 Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. This chapter
21 does not represent a commitment by the state to a specific federal re-
22 served water right.

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

24 Sec. 46.15.255. ENFORCEMENT. (a) In addition to a penalty
25 imposed under AS 46.15.180 for violation of an order issued under this
26 chapter, the commissioner may

27 (1) remove or abate unpermitted works of appropriation,
28 diversion, impoundment, or withdrawal;

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

1 *Same* (3) seek enforcement of the order by filing an action in
2 the superior court.

3 (b) A person who violates an order issued under AS 46.15.180 is
4 *Same* liable for all costs of removal, abatement or installation and for
5 court costs and attorney fees incurred by the state in seeking en-
6 forcement of th order.

7 Sec. 46.15.256. DATA COLLECTION AUTHORITY. To carry out the
8 provisions of this chapter, the commissioner may

9 *Same* (1) inspect books, records, meters, gauges, well logs,
10 works of appropriation, diversion, impoundment, withdrawal, or control
11 and other relevant information or physical condition;

12 (2) enter private property at all reasonable times after
13 *Same* obtaining a search warrant from a judicial officer if the owner re-
14 fuses consent to entry; and

15 (3) compel the production of relevant information by a
16 *Same* subpoena or subpoena duces tecum signed by the commissioner if the
17 commissioner reasonably believes the information is necessary to carry
18 out the purposes of this chapter.

19 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
20 10.070(c).
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