

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4333 SRES HB 605 - HB 627 1012



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James O. Smith
Signature of Camera Operator

11/24/89
Date

HB

605



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Arliss Sturgulewski
Chair - Senate Resources Committee

FROM: Senator Fred F. Zharoff *F. Zharoff*

DATE: May 5, 1986

RE: HB 605

I wish to request that a committee substitute be prepared for CS for House Bill No. 605 (Finance), "An Act establishing the Shuyak State Game Refuge". I wish the committee substitute to be modeled after the legislation passed in 1984 creating the Shuyak State Park, AS 41.21.170 through AS 41.21.178.

It should contain language to the following effect:

"The commissioner of natural resources shall identify and offer for sale to the public 500 acres of state-owned land within the Kodiak Island Borough under AS 38 within five years of July 1, 1986. The land offered for sale under this section shall be reasonably accessible to the residents of the City of Kodiak, shall be land of good quality, shall not include land scheduled for disposal as of February 1, 1986, and shall be in addition to the land selected for disposal under the terms of the legislation establishing Shuyak State Park. The disposal shall be held in the City of Kodiak."

The committee substitute should also include language that the establishment of the Shuyak State Game Refuge does not take effect until after the land disposal has been completed.

AMENDMENT TO SETTLEMENT AGREEMENT

The State of Alaska ("the State") and the Kodiak Island Borough ("KIB") enter this Agreement on January 3, 1984, to amend the Agreement of Settlement and Consent Decree entered into by the parties on June 19, 1981 in order to achieve a better land management pattern on Shuyak Island and to implement Section 2, Chapter 167, SLA 1984 ("the Act"), which is attached to this Agreement as Exhibit A.

The parties agree as follows:

1. Within 120 days of the execution of this Agreement, the State will execute a final decision giving KIB tentative approval to the uplands listed in Section 2(a) of the Act, described in Exhibit B of this Agreement. The land will be conveyed to KIB under the Municipal Entitlement Act, AB 29.18.201-29.18.213, subject only to third party rights and interests. The final decision giving KIB tentative approval and the patent to KIB will contain a clause stating that before KIB may create any third party interests in the land, the State and KIB will identify public easements, which may not be vacated without the prior approval of the State. In the interim before creation of specific public easements, KIB will not deny the public access to and along public and navigable waterbodies located on or adjacent to the land.
2. Within 120 days of the execution of this Agreement, KIB will relinquish and convey to the State by quitclaim deed the land described in Exhibit C of this Agreement. The land will be included in the Shuyak Island State Park under Section 2(b) of the Act.
3. KIB and the State further agree to amend the 1981 Agreement of Settlement and Consent Decree to achieve a better land management pattern by the relinquishment of KIB land within Section 2 and Section 3 of Township 19 South, Range 20 West, Seward Meridian described in Exhibit D. The land will be relinquished and conveyed by KIB to the State by quitclaim deed within 120 days of the execution of this Agreement. The quitclaim deed will contain a clause restricting the use of the land for park purposes only for future inclusion in Shuyak Island State Park.
4. In the interim prior to conveyance to the State, the KIB and the State agree to manage the land described in Exhibits C and D for public park purposes as part of Shuyak Island State Park. Neither the State nor KIB will encumber or dispose of any interest in the land.
5. Land KIB relinquishes and conveys to the State, described in paragraphs 2 and 3 of this Agreement, will be credited to KIB's municipal entitlement.
6. Land retained by KIB under this Agreement in Sections 35 and 36 of Township 18 South, Range 20 West, Seward Meridian does not come under paragraphs 4 and 5 of the June 19, 1981 Settlement Agreement.

7. The KIB will support state legislation granting an appropriation for the survey of the boundary between the Shuyak Island State Park and land owned by KIB.
8. The KIB will support state legislation to the Act establishing the Shuyak Island State Park to include the land described in Exhibit D as part of the park.
9. The parties agree to execute such other documents as may be necessary to effectuate this Agreement.
10. This Agreement constitutes the entire Agreement between the parties, except for the Agreement of Settlement and Consent Decree of June 19, 1981 between the State and KIB, which is attached as Exhibit E. No party will be bound by any other terms, conditions, statements or representation, oral or written not contained in it.
11. This Agreement may be modified or amended only by written agreement of all the parties.

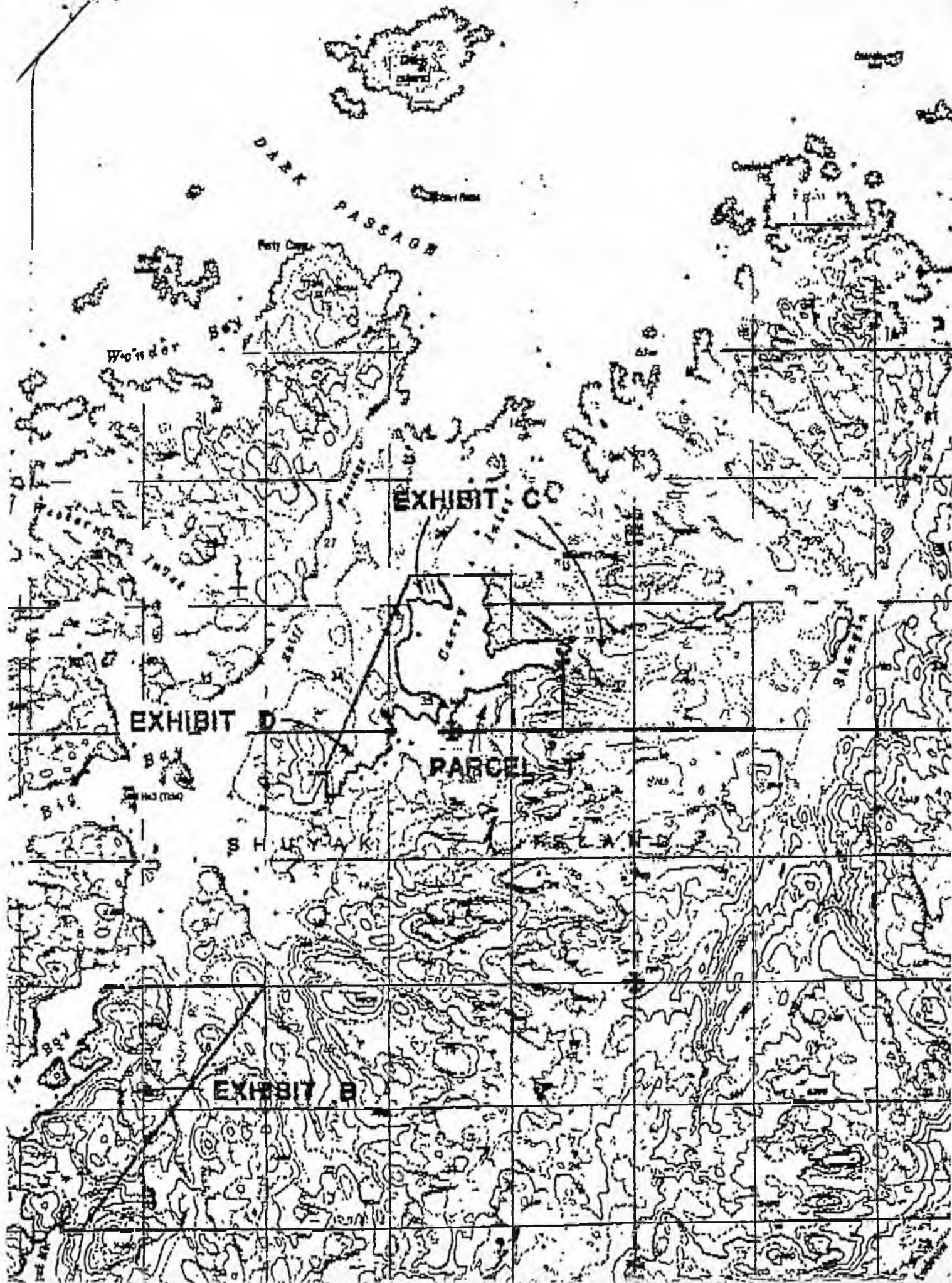
12. ^{TWP.}

The parties to this Agreement participated in its drafting; accordingly, it should be construed in order to effectuate the intent and purposes of the parties, without a preference for resolution of its terms in favor of one party or the other.

DATED this 3 day of January, 198~~4~~⁵
 STATE OF ALASKA

^{TWP.}
 KODIAK ISLAND BOROUGH
Thomas H. Rodiak
 Kodiak Island Borough

 Esther C. Wunnicks, Commissioner
 Department of Natural Resources





MEDIA RELEASE

~~SECTION: LAND AND WATER MANAGEMENT~~

~~CONTACT: PAT Beckley~~

~~EASDATE: Immediately~~

~~PHONE: 263-2312~~

~~SUBJECT: Final Decision on Kodiak Island Borough
Land Selections Issued May 4, 1982.~~

~~DATE: May 7, 1982~~

STATE ISSUES FINAL DECISION APPROVING CONVEYANCE OF LANDS TO KODIAK ISLAND BOROUGH

The State of Alaska Municipal Entitlement Program took a major step forward this week when the state issued a final decision approving selections that will eventually convey ownership of 56,500 acres to the Kodiak Island Borough.

The entitlement program, which is administered by the Department of Natural Resources (DNR), has conveyed about 317,031 acres of state land to boroughs, municipalities and cities since it went into effect in 1964.

The acreage approved for conveyance to the Kodiak Island Borough boosts the total amount approved for transfer to local governments to almost 720,000 acres or about 92 percent of all entitlements presently allowed under the program.

Much of the land that has been approved but not yet conveyed is un-surveyed. Only lands that are surveyed and patented to the state may be conveyed to local governments under the program.

Division of Parks

(MORE)

MAY 11 1982

~~After the Borough filed three judicial appeals of Administration~~
decisions rejecting selections, including lands on Woody Island and Shuyak Island, the agreement was reached in order to settle the question without further costly litigation.

The state agreed to convey to the borough as soon as possible certain lands containing about 47,000 acres. The borough in turn agreed to relinquish its interest in about 3,200 acres that had earlier been approved.

The agreement also establishes a procedure whereby the borough may exchange selected lands on Shuyak Island for lands on Kodiak Island that the state may acquire from the federal government in the future. If certain state-selected lands are determined not to be subject to conveyance under the Alaska Native Claims Settlement Act for any reason, those lands, totaling about 17,500 acres, will be conveyed to the borough.

As part of the pact, the borough also will attempt to obtain introduction and passage of state legislation for the creation of a state game refuge and state park on Shuyak Island. If the proposed state park and state game refuge are not enacted by legislation, the state will classify and manage these lands for wildlife habitat and public recreation.

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DISTRICT 27
AKHIOK
CHIGNIK
CHIGNIK LAGOON
CHIGNIK LAKE
CHINIAK
IVANOF BAY
KARLUK
KODIAK
LARSEN BAY
OLD HARBOR
OUZINKIE
PERRYVILLE
PORT LIONS
WOMENS BAY

Alaska State Legislature



Representative
Dave Thompson

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-2487
(907) 465-2498

P.O. BOX 75
KODIAK, ALASKA 99615
(H) (907) 482-4899
(LIO) (907) 486-8116

MAY 7
1986

May 7, 1986

Senator Arliss Sturgulewski
Chair, Senate Resources

Dear Arliss,

First of all, thank you for scheduling HB 605 in your resources committee at this time. The House floor sessions have been lasting far into the afternoons, so I may not be able to testify. Helen Fisher will be attending to answer questions and to present a large map of the Shuyak Island area.

I would like to have HB 605 passed out of your committee in its original form. Since Senator Zharoff wants to make some major changes on the bill please suggest he make the changes in his committee of next referral.

In answer to the letter from the mining group, there are no mining interests in the proposed Shuyak Game Refuge, and the fiscal note from Fish and Game is zero.

Thank you again for scheduling HB 605.

Sincerely,

A handwritten signature in cursive script that reads "Dave".

Dave Thompson

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 485-4907

Senate Committee on Resources

M E M O R A N D U M

May 5, 1986

TO: All Members
Senate Resources Committee

FROM: Staff, ⁷¹ Senate Resources Committee

RE: HB 605 Shuyak State Game Refuge

HB 605 would establish the Shuyak State Game Refuge on Shuyak Island north of Afognak Island near Kodiak.

The Refuge is established to protect and enhance habitat and provide opportunities for recreation and scenic values. Commercial fishing and trapping would continue.

The Kodiak Island Borough may relinquish state land for inclusion in the Refuge.

The Department of Fish and Game shall prepare and adopt a management plan for the Refuge after public hearings and in consultation with the Kodiak Island Borough. The Department of Natural Resources shall manage the surface and subsurface estate in conformity with the management plan.

The fiscal note is zero.

Enclosures:

- Fiscal note - Dept. of Fish and Game
- Fiscal note - Dept. of Natural Resources
- Bill analysis from Fish and Game
- Maps of area with description
- Letter from Senator Fred Zharoff
- Letter from Commissioner Wunnicke
- Kodiak Island Borough Resolution
- Letter from Alaska Miners Association

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST (211)

Bill Resolution NoCS HB 605 (211) "n 2
Title: An act establishing Shuyak
State Game Refuge

Sponsor: Representative Thompson
Requestor: Dept. of Fish and Game
Date of Request: _____

FISCAL DETAIL

Agency Affected: Dept. of Fish & Game
BRU: Habitat and Game Divisions

Components: Operating and Capital
Budgets

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

CAPITAL		-0-				
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REVENUE						
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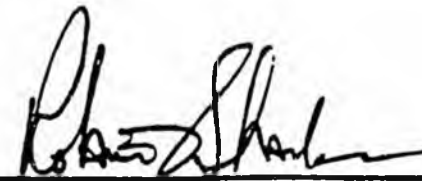
FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Roland Shanks 
Division: Commissioner's Office

Phone: 465-4100
Date: February 28, 1986

Approved by Commissioner: Orville Peterson
Agency: Department of Fish and Game

Date: 2-28-86

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST (7in)
 Bill/Resolution No. : CSHB 605 (7in) No. 1
 Title : Shuyak State Game Refuge

 Sponsor : Rep. Thompson
 Requestor : House Resources Committee
 Date of Request : March 3, 1986

FISCAL DETAIL
 Agency Affected : Natural Resources
 BRU : Land Management

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Carol Wilson Phone : 465-2400
 Division : Commissioner's Office Date : 3/4/86

Approved by Commissioner : *Ann M. Arnsperger* Date : 3/4/86
 Agency : Natural Resources

- Distribution (by Agency preparing fiscal note) :
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

Land Management



Helen Fishbe

STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER HB 605	SPONSOR Representative Thompson
DEPARTMENT POSITION Support			
PREPARED BY Habitat Division	DATE 2/25/86	COMMISSIONER'S SIGNATURE <i>Wall Callersworth</i>	DATE 2-28-86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL DNR	CONSTITUENT GROUPS AFFECTED BY BILL
ORGANIZATIONAL SUPPORT FOR BILL Administration (see attached letters)	ORGANIZATIONAL OPPOSITION TO BILL None Known

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The purpose of creating the Shuyak State Game Refuge is to provide (1) protection and enhancement to fish and wildlife habitat, (2) continued opportunity for fishing, hunting, and trapping, and (3) other recreational opportunities.

ANALYSIS OF BILL/PROGRAM EFFECTS

The bill will:

1. Establish the Shuyak State Game Refuge.
2. Provide for the addition of lands relinquished by the borough to the refuge.
3. Ensure access to private and borough holdings.
4. Direct the preparation of a refuge management plan.
5. Require surveying the refuge boundary to the extent that funds are available.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.



P

SHUYAK ISLAND

Physical Description

Shuyak Island is the northernmost and smallest of the major islands in the Kodiak Island Archipelago, which is formed by the Kodiak Mountains, a structural southwest continuation of the Kenai-Chugach Mountains. The area is characterized by an irregular coastline with many fiords and islands. Short, swift, clear streams, small lakes and numerous small ponds are widely scattered over the glacially sculptured topography. Unlike the larger islands of the group the topography of Shuyak Island is of rather low relief with elevations ranging from 0 to 660 feet above sea level with predominantly gently rolling slopes.

Shuyak Island is in a maritime climatic zone, however, climatic data for the area is sporadic. The only major recording station is on Kodiak Island, with supporting data from ship movement through the areas. The maritime climatic zone is strongly influenced by the marine environment and characterized by moderately heavy precipitation, cool temperatures, high cloud and fog frequency with little or no freezing weather. Temperature patterns are characterized by relatively cool summers and warm winters, as compared to interior land temperatures at similar latitudes. The mean high temperature for January is 32 to 36° F while the mean high temperature for July is only 56 to 62° F. Above freezing temperatures, which are common during all winter months, usually keep the snow depth from becoming excessive at low elevations. However, the warm temperatures at low elevations also result in wet heavy snow with high water content.

Severe storms with high winds are common in the area. Surface winds are more hazardous to human activities in the area than temperature or precipitation. Sustained extreme wind speeds during storms may range from 50 to 75 knots, with gusts as high as 100 knots. From June through September when the air contains the most moisture and is warmer than the water, fog is common and the principal cause of reduced visibility.

The vegetation on Shuyak Island is characterized by well developed extensive stands of large size, over-mature Sitka spruce, stands of pole size Sitka spruce, sedges and other water tolerant plants in the lowland areas, and alder and grasses in the non-timbered areas.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5259
DURING SESSION:
POUCH V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474 • 485-3844 (Labor and Commerce Committee)

Gu
cc: CW
CW
RF
MV

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

March 4, 1986

Ms. Esther Wunnicke
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

DEPARTMENT OF
NATURAL RESOURCES

MAR 4 1986

COMMISSIONER'S OFFICE
JUNEAU

Dear Commissioner Wunnicke:

I recently received a resolution from the Kodiak Island Borough Assembly requesting that a bill be introduced creating the Shuyak State Game Refuge. Enclosed with the resolution was a copy of a letter from the director of the Division of Parks, Mr. Neil Johannsen, in support of the borough assembly's resolution.

I also would be willing to support the creation of the game refuge if, as in the case of Shuyak State Park, we can find another 500 acres of "reasonably accessible" state land around Kodiak Island to make available for sale to private individuals. I do not believe we should be putting more land on Kodiak Island into "protected" status until we first take care of the needs of the residents of Kodiak Island who desire to own land. With the majority of acreage on Kodiak Island classified as a federal game refuge, I fear we would be foreclosing our future by adding even more land to a "restricted" category.

As you know, Representative David Thompson has introduced House Bill No. 605 to establish the game refuge. I cannot support this bill until more acreage is made available for private ownership. If this matter can be resolved, I would have no objection to the legislation. I look forward to working with the department on this issue.

Sincerely,

Fred F. Zharoff
Alaska State Senate

cc: Representative David Thompson
Representative Adelheid Herrmann
Mayor Jerome Selby, Kodiak Island Borough
Tom Hawkins, Division of Land
Neil Johannsen, Division of Parks

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-485-2400

March 19, 1986

The Honorable Fred F. Zharoff
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Zharoff:

I am in receipt of your March 4, 1986 letter dealing with the proposed Shuyak State Game Refuge. You offer support for the bill but condition it by requiring that the department identify and offer another 500 acres of reasonably accessible land around Kodiak Island for sale to private individuals.

I recognize and share your interest in additional land offerings in the Kodiak area. I am concerned, however, that the state simply does not have such accessible land which is currently available for sale. Land now held by the Borough and native corporations may be the most appropriate near term land offering candidate.

The department has expended a great deal of effort to identify the 500 acres of state land required for sale by 1989 under provisions of the legislation which created Shuyak State Park. This process amply demonstrated that the majority of suitable state land in the Kodiak Island area is already encumbered by third-party interests, primarily grazing leases. In addition, other suitable state land has been selected by the Kodiak Island Borough or reserved for public purposes. It seems certain that a legislative mandate requiring the department to offer additional accessible state land could not be met without amendment of existing grazing leases. Since the grazing industry and the Soil Conservation Service believe that reductions should only be contemplated over a seven year schedule the Department would be hard pressed to meet your conditions. Therefore, should this provision be added to the bill creating the Shuyak State Game Refuge, this department would have no alternative but to oppose the bill.

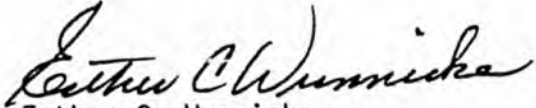
In the meantime, the department continues its best efforts to identify and offer the 500 acres required under the previous legislation. The department

The Honorable Fred F. Zharoff

page 2

has forwarded information on the areas identified for sale to your office. We are meeting with the Alaska Department of Fish & Game to further discuss Raspberry Island's potential as you requested. Your assistance in this effort is greatly appreciated.

Sincerely,



Esther C. Wunnicke
Commissioner

cc: Representative David Thompson
Representative Adelheid Herrman
Mayor Jerome Selby, Kodiak Island Borough
Norman Cohen, Department of Fish & Game
Tom Hawkins, Division of Land & Water Management
Meg Hayes, Southcentral Regional Office

KODIAK ISLAND BOROUGH
RESOLUTION NO. 86-06-R

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY REQUESTING
STATE LEGISLATION TO CREATE THE SHUYAK STATE GAME REFUGE

WHEREAS, on August 14, 1981, the Superior Court ordered the Agreement of Consent Decree to effectively dismiss the appeals the Kodiak Island Borough brought against the Alaska Department of Natural Resources with regards to its lands selections; and

WHEREAS, a condition in the Agreement of Settlement and Consent Decree is that the Kodiak Island Borough is to use its best efforts to have legislation introduced to create a state park and state game refuge on Shuyak Island for those portions not to be conveyed to the Kodiak Island Borough; and

WHEREAS, the Shuyak State Game Refuge is to be established to protect fish and wildlife habitats and population of all fish and wildlife species, particularly deer and brown bear, feeding, wintering and migration areas as well as to provide public uses of fish and wildlife in their habitat for hunting, viewing, photography, and general recreation in a high quality environment; and

WHEREAS, the Kodiak Island Borough had caused to be prepared a proposed bill entitled "An Act Creating the Aleksandr Baranov State Game Refuge" for the 1981-82 legislature; and

WHEREAS, Bill HCSSB 51, "An Act Establishing the Shuyak Island State Park; and Providing for an Effective Date" was signed by Governor Sheffield on July 11, 1984; and

WHEREAS, nothing further has been done to establish a State Game Refuge.

NOW, THEREFORE, BE IT RESOLVED by the Kodiak Island Borough Assembly that legislation entitled "An Act Creating the Shuyak State Game Refuge" be introduced and assigned a number providing for the creation of said state game refuge.

BE IT FURTHER RESOLVED by the Kodiak Island Borough Assembly that the Borough administration be directed to send this resolution to the Senator for District N, the Representative for House District 27, Governor Sheffield, the Alaska Department of Natural Resources, and the Alaska Department of Fish and Game and implore their assistance in the successful adoption of this legislation.

PASSED AND APPROVED THIS 2 DAY OF January, 1986.

KODIAK ISLAND BOROUGH

James M. Selby
Borough Mayor

James E. Walsh
Presiding Officer

ATTEST:

James E. Walsh CMC
Borough Clerk



FH

86

ALASKA MINERS ASSOCIATION, INC.

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

April 10, 1986

Senate Resources Committee
Senator Arlis Sturgelewski
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Sturgelewski:

RE: CSHB 605 "An Act establishing the Shuyak State Game Refuge"

The Alaska Miners Association, while recognizing the need and desirability of some game refuges, wishes to make the following comments.

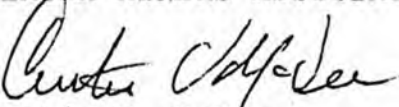
We support the provision of this proposed legislation to continue management of surface and subsurface estate by the Alaska Department of Natural Resources. The proposed legislation also states that the Shuyak Game Refuge will be managed under a management plan proposed by DNR and adopted by ADF&G. These plans average \$1,000,000 to prepare and the state cannot afford to spend money on non critical areas at this time.

We question why unique plans must be prepared for each small isolated game refuge and park in the state. Relatively few people can utilize many of these refuges and parks so existing regulations and refuge and park rules can adequately preserve and control these areas without major expenditures on planning.

Thank you for the opportunity to comment on this proposed legislation.

Sincerely,

ALASKA MINERS ASSOCIATION


Curtis V. McVee

Offered: 3/21/86
Referred: Rules

Original sponsor: Thompson

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 605 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Shuyak State Game Refuge."

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

8 * Section 1. AS 16.20 is amended by adding a new section to read:

9 Sec. 16.20.035. SHUYAK STATE GAME REFUGE. (a) The following
10 state-owned uplands and all uplands acquired by the state after the
11 effective date of this Act lying within the area described in this
12 subsection are established as the Shuyak State Game Refuge:

13 (1) Beginning at the E 1/16th corner common to Sections 23
14 and 26, T18S, R19W, S.M.; then south-southwesterly approximately 8.86
15 miles to the section corner common to Sections 31 and 32, T19S, R19W,
16 S.M., and Sections 5 and 6, T20S, R19W, S.M.; then westerly along the
17 township line between Townships 19 and 20S, Ranges 19 and 20W, S.M.,
18 approximately 2.5 miles to the 1/4 corner common to Section 35, T19S,
19 R20W, S.M., and Section 2, T20S, R20W, S.M.; then southerly along the
20 north-south centerline of Section 2, T20S, R20W, S.M., approximately
21 0.3 miles to the intersection of the mean high tide line of Shuyak
22 Strait; then meandering in a counter-clockwise direction easterly,
23 northerly, westerly, and southerly to the intersection of the mean
24 high tide with the section line common to Sections 15 and 16, T18S;
25 R19W, S.M.; then south approximately 1.25 miles to the section corner
26 common to Sections 22, 27, 28 and 21, T18S, R19W, S.M.; then east 1.75
27 miles between Sections 22 and 27, 23 and 26 to the E 1/16th corner
28 common to Sections 23 and 26, T18S, R19W, S.M.; to the point of begin-
29 ning; and

1 (2) Big Fort Island, Little Fort Island, the Perevalnie
2 Islands and all other islands, islets, pinnacles and rocks lying
3 easterly of and within one mile of the easterly shore of the lands
4 described in (1) of this subsection.

5 (b) The Shuyak State Game Refuge is established to provide the
6 following:

7 (1) protection and enhancement of habitat;

8 (2) continued opportunity for recreational uses, including
9 fishing and hunting, and continued trapping and commercial fishing;

10 (3) opportunity to view, photograph, study, and enjoy the
11 various species of plants and wildlife of the refuge.

12 (c) If the Kodiak Island Borough relinquishes to the state any
13 state land selected by the borough within the following parcels, that
14 land becomes part of the Shuyak State Game Refuge:

15 (1) Township 18 South, Range 19 West, Seward Meridian

16 Sections 26 - 28

17 Sections 33 - 35

18 (2) Township 19 South, Range 19 West, Seward Meridian

19 Section 3

20 Section 4

21 Section 6: S1/2

22 Sections 7 - 10

23 Sections 16 - 21

24 Sections 29 - 32

25 (3) Township 19 South, Range 20 West, Seward Meridian

26 Section 1: S1/2

27 Section 2: S1/2

28 Section 10: SE1/4

29 Sections 11 - 16

1 Sections 20 - 29

2 Sections 32 - 36

3 (4) Township 20 South, Range 20 West, Seward Meridian

4 Section 2

5 Section 3

6 (d) Egress and ingress to and from private and borough property
7 within or adjacent to land described in (a) of this section shall be
8 provided through the reservation by the Department of Natural Re-
9 sources of a 200-foot easement traversing Section 26, T18S, R19W,
10 S.M.; Sections 15, 16, 21, and 22 of T19S, R19W, S.M.; and Section 32,
11 T19S, R19W, S.M. The specific locations of the easements shall be
12 agreed to by the Department of Fish and Game, the Department of Natu-
13 ral Resources, and the Kodiak Island Borough. If land is conveyed to
14 the state as provided in (c) of this section, the easements shall be
15 reserved so as to continue through that land.

16 (e) Management of the surface and subsurface estate is the
17 responsibility of the Department of Natural Resources. Actions by the
18 Department of Natural Resources that affect the habitat shall conform
19 with a management plan proposed and adopted by the Department of Fish
20 and Game in accordance with the Administrative Procedure Act (AS 4.-
21 62), after public hearings and following consultation with the Kodiak
22 Island Borough.

23 (f) The Board of Fisheries and the Board of Game shall adopt
24 regulations governing the taking of fish and game within the Shuyak
25 State Game Refuge to implement (b) of this section.

26 (g) To the extent that funds are available, the commissioner of
27 natural resources shall identify the boundaries of the Shuyak State
28 Game Refuge by surveying and posting each inland boundary described in
29 (a)(1) of this section, or as added under (c) of this section, at its

A. S. Johnson
long

1 beginning and its end.

2

Offered: [REDACTED]
Referred: Rules

*Was established
in 1984*

Original sponsors: Mulcahy and V.Fischer

1 IN THE SENATE BY THE FINANCE COMMITTEE
2 HOUSE CS FOR SENATE BILL NO. 51 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Shuyak Island State Park;
7 and providing for an effective date."

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

9 * Section 1. AS 41.21 is amended by adding new sections to read:

10 Sec. 41.21.170. DECLARATION OF PURPOSE. (a) The purpose of
11 AS 41.21.170 - 41.21.178 is to establish, subject to valid existing
12 rights, the state-owned or acquired uplands and freshwater bodies
13 described in AS 41.21.172 as the Shuyak Island State Park. The pri-
14 mary purposes of establishing the Shuyak Island State Park are to
15 protect the area's recreational and scenic resources, to protect the
16 area's fish and wildlife habitat, and to preserve and enhance the
17 continued use of the area for sport and subsistence hunting and fish-
18 ing, trapping, and recreational activities.

19 (b) Under the provisions of AS 38.05.300, state land, water, or
20 land and water containing more than 640 acres may be closed to multi-
21 ple purpose use only by act of the legislature. Because the area
22 described in AS 41.21.172 exceeds 640 acres, AS 41.21.170 - 41.21.178
23 are intended to close the described land and water to multiple purpose
24 use in conformity with AS 38.05.300 and to dedicate them as a special
25 purpose site in accordance with art. VIII, sec. 7, Constitution of the
26 State of Alaska.

27 Sec. 41.21.172. DESIGNATED STATE LAND AND WATER. The uplands
28 and freshwater bodies owned or acquired by the state within the
29 following described parcel are designated as the Shuyak Island State

1 from the effective date of this Act if the Agreement of Settlement and
2 Consent Decree of June 19, 1981, is not amended as proposed in (a) and (b)
3 of this section.

4 (d) If the Agreement of Settlement and Consent Decree of June 19,
5 1981, is amended as proposed in (b) and (c) of this section, the uplands
6 within the following described lands are added to the Shuyak Island State
7 Park:

8 T19S, R20W, S.M.

9 Sec. 8, SE1/4, SE1/4, SE1/4

10 Sec. 9

11 * Sec. 3. Subject to the availability of funds, the Department of
12 Natural Resources shall construct public use cabins within the Shuyak
13 Island State Park.

14 * Sec. 4. The commissioner of natural resources shall identify the
15 boundaries of the Shuyak Island State Park by posting each inland boundary
16 described in AS 41.21.172 as enacted in sec. 1 of this Act or as added
17 under sec. 2 of this Act at its beginning and its end and not less often
18 than each one-eighth of a mile.

19 * Sec. 5. ~~The commissioner of natural resources shall identify and~~
20 ~~offer for sale to the public 500 acres of state-owned land within the~~
21 ~~Kodiak Island Borough under AS 38 within five years of the effective date~~

22 ~~of this Act.~~ The land offered for sale under this section shall be
23 reasonably accessible to residents of the City of Kodiak, shall be land of
24 good quality, and may not include land proposed as of February 1, 1984 by
25 the Department of Natural Resources for sale by the department during
26 fiscal years 1984, 1985, or 1986. The disposals of the land shall be held
27 in the City of Kodiak. The commissioner of natural resources shall submit
28 to the legislature not later than the 10th day of the Second Regular
29 Session of the Sixteenth Alaska State Legislature a report on the

1 compliance by the Department of Natural Resources with this section.

2 * Sec. 6 AS 41.21.170 - 41.21.178 enacted by sec. 1 of this Act is
3 repealed July 1, 1990. The commissioner of natural resources does not
4 report to the legislature under sec. 5 of this Act that the Department of
5 Natural Resources has identified and offered for sale 500 acres of state-
6 owned land within the Kodiak Island Borough under AS 38 within five years
7 after the effective date of this Act.

8 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
9 10.070(c).

*long
with*

Bradley
5/5/86 ✓

Original sponsor: Thompson

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 605 (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 establishing the Shuyak State Game Refuge."

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

8 * Section 1. AS 16.20 is amended by adding a new section to read:

9 Sec. 16.20.035. SHUYAK STATE GAME REFUGE. (a) The following
10 state-owned uplands and all uplands acquired by the state after the
11 effective date of this Act lying within the area described in this
12 subsection are established as the Shuyak State Game Refuge:

13 (1) Beginning at the E 1/16th corner common to Sections 23
14 and 26, T18S, R19W, S.M.; then south-southwesterly approximately 8.86
15 miles to the section corner common to Sections 31 and 32, T19S, R19W,
16 S.M., and Sections 5 and 6, T20S, R19W, S.M.; then westerly along the
17 township line between Townships 19 and 20S, Ranges 19 and 20W, S.M.,
18 approximately 2.5 miles to the 1/4 corner common to Section 35, T19S,
19 R20W, S.M., and Section 2, T20S, R20W, S.M.; then southerly along the
20 north-south centerline of Section 2, T20S, R20W, S.M., approximately
21 0.3 miles to the intersection of the mean high tide line of Shuyak
22 Strait; then meandering in a counter-clockwise direction easterly,
23 northerly, westerly, and southerly to the intersection of the mean
24 high tide with the section line common to Sections 15 and 16, T18S;
25 R19W, S.M.; then south approximately 1.25 miles to the section corner
26 common to Sections 22, 27, 28 and 21, T18S, R19W, S.M.; then east 1.75
27 miles between Sections 22 and 27, 23 and 26 to the E 1/16th corner
28 common to Sections 23 and 26, T18S, R19W, S.M.; to the point of begin-
29 ning; and

1 (2) Big Fort Island, Little Fort Island, the Perevalnie
2 Islands and all other islands, islets, pinnacles and rocks lying
3 easterly of and within one mile of the easterly shore of the lands
4 described in (1) of this subsection.

5 (b) The Shuyak State Game Refuge is established to provide the
6 following:

7 (1) protection and enhancement of habitat;

8 (2) continued opportunity for recreational uses, including
9 fishing and hunting, and continued trapping and commercial fishing;

10 (3) opportunity to view, photograph, study, and enjoy the
11 various species of plants and wildlife of the refuge.

12 (c) If the Kodiak Island Borough relinquishes to the state any
13 state land selected by the borough within the following parcels, that
14 land becomes part of the Shuyak State Game Refuge:

15 (1) Township 18 South, Range 19 West, Seward Meridian
16 Sections 26 - 28

17 Sections 33 - 35

18 (2) Township 19 South, Range 19 West, Seward Meridian

19 Section 3

20 Section 4

21 Section 6: S1/2

22 Sections 7 - 10

23 Sections 16 - 21

24 Sections 29 - 32

25 (3) Township 19 South, Range 20 West, Seward Meridian

26 Section 1: S1/2

27 Section 2: S1/2

28 Section 10: SE1/4

29 Sections 11 - 16

1 Sections 20 - 29

2 Sections 32 - 36

3 (4) Township 20 South, Range 20 West, Seward Meridian

4 Section 2

5 Section 3

6 (d) Egress and ingress to and from private and borough property
7 within or adjacent to land described in (a) of this section shall be
8 provided through the reservation by the Department of Natural Re-
9 sources of a 200-foot easement traversing Section 26, T18S, R19W,
10 S.M.; Sections 15, 16, 21, and 22 of T19S, R19W, S.M.; and Section 32,
11 T19S, R19W, S.M. The specific locations of the easements shall be
12 agreed to by the Department of Fish and Game, the Department of Natu-
13 ral Resources, and the Kodiak Island Borough. If land is conveyed to
14 the state as provided in (c) of this section, the easements shall be
15 reserved so as to continue through that land.

16 (e) Management of the surface and subsurface estate is the
17 responsibility of the Department of Natural Resources. Actions by the
18 Department of Natural Resources that affect the habitat shall conform
19 with a management plan proposed and adopted by the Department of Fish
20 and Game in accordance with the Administrative Procedure Act (AS 44.-
21 62), after public hearings and following consultation with the Kodiak
22 Island Borough.

23 (f) The Board of Fisheries and the Board of Game shall adopt
24 regulations governing the taking of fish and game within the Shuyak
25 State Game Refuge to implement (b) of this section.

26 (g) To the extent that funds are available, the commissioner of
27 natural resources shall identify the boundaries of the Shuyak State
28 Game Refuge by surveying and posting each inland boundary described in
29 (a)(1) of this section, or as added under (c) of this section, at its

1 beginning and its end.

2 * Sec. 2. The commissioner of natural resources shall identify and
3 offer for sale to the public under AS 38, 500 acres of state-owned land
4 within the Kodiak Island Borough before July 1, 1991. The land offered for
5 sale under this section must be reasonably accessible to the residents of
6 the City of Kodiak, must be land of good quality, may not be land scheduled
7 for disposal as of February 1, 1986, and is in addition to land selected
8 for disposal under ch. 167, SLA 1984, legislation establishing the Shuyak
9 State Park. The disposal shall be held in the City of Kodiak.

10 * Sec. 3. Notwithstanding AS 16.20.035, added by sec. 1 of this Act,
11 the establishment of the Shuyak State Game Refuge does not take effect
12 until the commissioner of natural resources has completed the land disposal
13 required under sec. 2 of this Act.



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

HB

627

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate Committee on Resources

TO: Senate Resource Committee Members April 18, 1986

FROM: Senate Resource Committee Staff *ME*

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

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

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

STATE OF ALASKA
THE LEGISLATURE

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

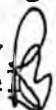
LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 16, 1986

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

TO: Senator Arliss Sturgulewski

FROM: Richard A. Bradley
Legislative Counsel 

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Arliss Sturgulewski

Page 3

April 16, 1986

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

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

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

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

If I may be of further assistance, please advise.

RAB:mkr
m4/122

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

Revision Date : _____

REQUEST

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

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

FISCAL DETAIL

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

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Garv Johnson Phone : 762-4346

Division : Land & Water Management Date : 03-18-86

Approved by Commissioner : Nel Farnsworth Date : 03-18-86

Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :

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

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

Revision Date : _____

REQUEST

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

FISCAL DETAIL

Agency Affected : Environmental Conservation
 BRU : _____
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

FUNDING : (Thousands of Dollars)

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

POSITIONS : None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

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

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

Distribution (by Agency preparing fiscal note) :

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

MEMORANDUM

TO: Representative Mike W. Miller

FROM: Staff *Jane*

DATE: 4/5/86

RE: Analysis of CSHB 627 (RULES)

Section 1

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

Section 2

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

Section 3

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

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

Section 4

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

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

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

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

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

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

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

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

**CHAPTER 93.
WATER MANAGEMENT**

Article

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

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

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

**ARTICLE 1.
EXISTING RIGHTS**

Section

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

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

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

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

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

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

Authority: AS 46.15.020
AS 46.15.060

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority: AS 46.15.020
AS 46.15.135(c)

ARTICLE 2.
APPROPRIATION OF WATER

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

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

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

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

accordance with the instructions furnished to the applicant.

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

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

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

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

Authority: AS 46.15.020
AS 46.15.040

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

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

Authority: AS 46.15.020
AS 46.15.040

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

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

Authority: AS 46.15.020
AS 46.15.040

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

Authority: AS 46.15.020
AS 46.15.080
AS 46.15.250

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

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

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

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

(4) An affidavit of publication or other proof

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

Authority: AS 46.15.020
AS 46.15.070

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

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

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

Authority: AS 46.15.020
AS 46.15.070

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

Authority: AS 46.15.020
AS 46.15.070(f)

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

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

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

Authority: AS 46.15.020
AS 46.15.133(c)

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

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

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

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

(A) protection of fish and wildlife habitat,

(B) recreational purposes,

(C) navigation,

(D) sanitation and water quality,

(E) protection of prior appropriators, and

(F) any other purpose of substantial public interest;

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

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

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

Authority: AS 46.15.010 AS 46.15.080
AS 46.15.020 AS 46.15.100

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

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

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

Authority: AS 46.15.010
AS 46.15.020
AS 46.15.120

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority: AS 46.15.020
AS 46.15.145

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

(b) Each application must

(1) identify the purpose of the proposed reservation;

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority: AS 46.15.020
AS 46.15.040
AS 46.15.145

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

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

Authority: AS 46.15.020
AS 46.15.145
AS 46.15.250

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) a significant change affecting the water resource;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority: AS 46.15.020 AS 46.15.145
AS 46.15.140 AS 46.15.250

**ARTICLE 3.
DAM SAFETY AND CONSTRUCTION**

Section

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

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

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

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

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

(c) Plans must include the following:

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

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

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

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

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

Authority: AS 46.15.020 AS 46.15.100
 AS 46.15.080 AS 46.15.180

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

Authority: AS 46.15.020

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

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

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

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

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

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

(5) a complete seepage analysis;

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

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

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

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

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

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

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

Authority: AS 46.15.020 AS 46.15.100
AS 46.15.080 AS 46.15.180

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

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

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

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

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

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

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

Authority: AS 46.15.020
AS 46.15.180

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

**ARTICLE 4.
TEMPORARY WATER USE**

Section

210. Temporary water use

220. Simplified procedure to appropriate

11 AAC 93.210. TEMPORARY WATER USE. (a) Simplified procedures to authorize the temporary use of water, as provided in sec. 220 of this chapter, will be followed if the use of water continues for less than two consecutive years and the water applied for is not otherwise appropriated.

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

Authority: AS 46.15.020
AS 46.15.040
AS 46.15.070(f)

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

(b) An application must include

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

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

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

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

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

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

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

ARTICLE 5. PREFERRED USE

Section

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

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

Authority: AS 46.15.020
AS 46.15.150

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

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

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

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

Authority: AS 46.15.020
AS 46.15.150

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

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

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

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

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

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

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

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

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

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

Authority: AS 46.15.020
AS 46.15.150

ARTICLE 6. ENFORCEMENT

Section

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

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

Authority: AS 46.15.020 AS 46.15.180
AS 46.15.100 AS 46.15.250

11 AAC 93.280. **EMERGENCY ACTIONS.**

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

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

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

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

Authority: AS 46.15.020 AS 46.15.180
AS 46.15.080 AS 46.15.250

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

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

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

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

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

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

Authority: AS 46.15.010 AS 46.15.180
AS 46.15.020 AS 46.15.250

ARTICLE 7. APPEALS

Section

300. Appeal to the commissioner

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

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

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

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

ARTICLE 8. GENERAL PROVISIONS

Section

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

11 AAC 93.910. CHANGE OF ADDRESS.

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

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

Authority: AS 46.15.020
AS 46.15.070
AS 46.15.120

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

Authority: AS 46.15.020
AS 46.15.180

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

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

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

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

Authority: AS 46.15.020
AS 46.15.160
AS 46.15.185

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

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

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

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

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

Authority: AS 46.15.020
AS 46.15.140
AS 46.15.160

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

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

Authority: AS 46.15.020
AS 46.15.160
AS 46.15.170

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

Authority: AS 46.15.010
AS 46.15.020

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 94.
TRAPPING CABIN CONSTRUCTION
PERMITS

Article

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

ARTICLE 1.
APPLICANT QUALIFICATIONS

Section

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

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

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

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

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

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

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

(6) the notarized signature of the applicant.

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

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

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

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

Sec. 46.12.500. Definitions. In this chapter

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

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

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

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

(B) energy conservation;

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

(D) the reduction of dependence on fossil fuels;

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

Chapter 15. Water Use Act.

Article

1. Administration (§§ 46.15.010 — 46.15.020)

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

4. General Provisions (§§ 46.15.550 — 46.15.270)

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

(b) The commissioner shall

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

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

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

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

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

Article 2. Appropriation and Use of Water.

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

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

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

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

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

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

Constitutionality of statutes affecting riparian rights. 66 ALR 277.

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

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

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

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

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

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

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

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

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

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

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

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

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

Applicability of rules of accretion and

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

SECTION # 1

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

natural, private, nonnavigable lake. 54 ALR2d 1450.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

purpose not in aid of navigation. 18 ALR 403.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) the effect on public health;

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

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

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

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

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

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

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

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

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

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

SECTIONS # 243

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 46.15.160. Transfer and change of appropriations. (a) The right to use water under an appropriation or permit shall be appurtenant to the land or place where it has been or is to be beneficially used, provided, that water supplied by one person to another person's property shall not be appurtenant to the property unless the parties so intend. An appurtenant water right shall pass with a conveyance of the land, or transfer, or by operation of law unless specifically exempted from the conveyance.

(b) With the permission of the commissioner, all or any part of an appropriation may be severed from the land to which it is appurtenant, may be sold, leased or transferred for other purposes or to other lands and be made appurtenant to other lands. A permit or certificate or a deed, lease, contract, assignment of permit or other instrument transferring an appropriation must be filed for record in the office of the commissioner and a certified copy of the instrument must be recorded in the recorder's office of the recording district in which the appropriation is located. (§ 1 ch 50 SLA 1966)

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

Description of land conveyed by refer-

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

Sec. 46.15.170. Effect of recording. (a) A deed, lease, contract, assignment of permit or other instrument transferring an appropriation is void as against a subsequent innocent purchaser who in good faith paid a valuable consideration for the appropriation or any portion of it and whose instrument is first filed and recorded under AS 46.15.160(b).

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

Electrical energy, gas, water, heat,

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

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

Sec. 46.15.185. Appeals. Appeals to the superior court under this chapter are subject to the provisions of the Administrative Procedure Act, AS 44.62.560 — 44.62.570. (§ 1 ch 50 SLA 1966)

Article 3. Water Resources Board.

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

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

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

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

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

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

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

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

Article 4. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) "mineral and medicinal water" means

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

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

SECTION #4

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

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

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

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

Chapter 25. Alaska State Commission of Oceanography.

Section
10 — 50. (Repealed)

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

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

Placer miner quits; cites EPA, lawsuits

By SAM BISHOP
Staff Writer

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

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

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

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

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

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

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

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

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

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



DON MAY
Moving to Alaska Range

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

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

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

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

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

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

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

Give Alaska miners realistic regulations

*distributed
By Senator
Fabienkamp*

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

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

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

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

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

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



tim bradner

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

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

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

See Page J-10, BRADNER

BRADNER: Miners need realistic water standards

Continued from Page J-1

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

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

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

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

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

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

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

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

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

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

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

Tim Bradner writes for an Alaska economic reporting service.

u/c

W

#2
COGHILL

A M E N D M E N T

Offered in the SENATE

TO: SCS CS HB 627 (Resources)

Page 1, line 18

after "WATER", delete through line 22.

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

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

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

HB 623

THE PROPOSED AMENDMENT WAS OFFERED IN SENATE
RESOURCES COMMITTEE. IT WAS DISCUSSED AT SOME
LENGTH AND ^{not adopted} REJECTED.

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

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

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

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

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

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

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

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

4-13
##

SENATE AMENDMENT

By Senator Ray

To: _____ SENATE BILL No. _____

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

PAGE: _____ LINE: _____

This is the same amendment the Senate Resources

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

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

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

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

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

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

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

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

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

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

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

PLACER MINING AND ITS BEDFELLOWS

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

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

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

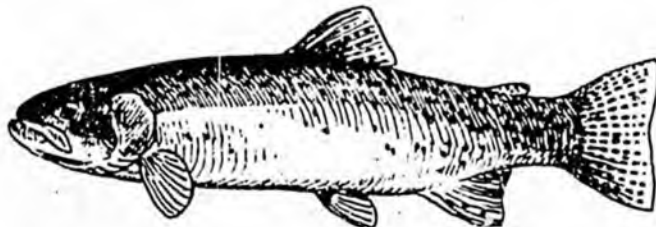
At about the same time, the federal court issued a decision in favor of plaintiffs in a case filed by environmental organizations against the Park Service and BLM for failure to follow their own agency regulations in regulating errant placer miners operating on federal lands.

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

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

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

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



How the Alaska Legislature Voted

on Conservation and the Environment

1983-84
Voting Chart



Alaska
Environmental
Lobby