

ALASKA LEGISLATURE COMMITTEE FILES

1993-1994

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HOUSE RESOURCES

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ALASKA

Water Supply and Use

Alaska's water supplies might appear to be unlimited because of the large quantities of precipitation received in the State (fig. 1A). Statewide average annual precipitation is about 1,050,000 Mgal/d (million gallons per day), and average annual runoff is about 989,000 Mgal/d. Alaska contains more than 40 percent of the Nation's surface-water resources. Three rivers (the Yukon, the Kuskokwim, and the Copper) are among the 10 largest in the United States. More than 3 million lakes range in area from pond size to about 1,000 mi² (square miles). Also, large amounts of water are stored within two principal aquifers. Environmental conditions, legal restrictions, and technological problems, however, limit the usability of these abundant supplies.

Alaska encompasses a land area of about 586,000 mi², or about one-fifth of the area of the conterminous United States. Climates range from frozen desert in the Arctic Slope basin to maritime rain forest in the Southeast Alaska basin. Average annual precipitation and temperatures range from about 5 inches and 10° F (degrees Fahrenheit) in the Arctic Slope basin to about 300 inches and 45° F in the Southeast Alaska basin. Much precipitation occurs as snow. Glaciers and icefields cover 28,500 mi², or nearly 5 percent of the land (Post and Mayo, 1971) and affect the timing and the quantity of runoff. Many of the rivers are silt laden, are affected by mid-winter overflow icing or ice-jam flooding at spring breakup, or are ice covered much of the year. The occurrence and the availability of ground water are limited by permafrost. The extent and thickness of the permafrost decrease southward from a continuous layer as much as several hundred feet thick in the Arctic Slope basin to areas

that are generally free of permafrost in the South Central Alaska and the Southeast Alaska basins. Because of these conditions, there is no certainty that either surface or ground water will be available at a given time and location.

Several water issues in Alaska result from this variability in the availability and occurrence of the water resource. Additionally, the legal precedents for obtaining water rights cause conflicts. Com-

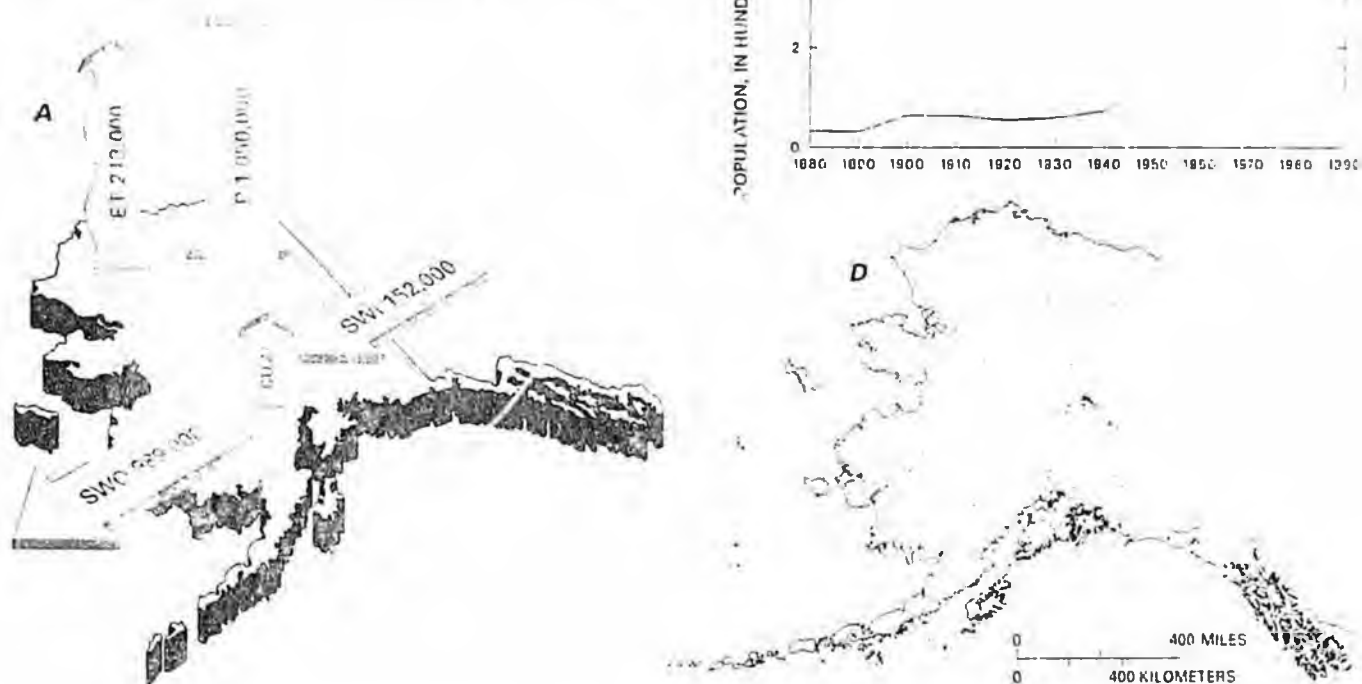


Figure 1. Water supply and population in Alaska. **A.** Water budget, in million gallons per day. **B.** Cumulative normal storage of reservoirs with at least 5,000 acre-feet capacity, 1880 to 1985. **C.** Population trend, 1880 to 1985. **D.** Population distribution, 1985, each dot on the map represents 1,000 people within a census tract. Abbreviations: CU, consumptive use; ET, evapotranspiration; P, precipitation; SWI, surface-water inflow; SWO, surface-water outflow (Sources: A, R.D. Lamke (U.S. Geological Survey, written commun., 1985). B, U.S. Army Corps of Engineers, 1981. C, D, Compiled by U.S. Geological Survey from U.S. Bureau of the Census data.)

petition for limited surface-water resources exists among industry, fish hatcheries, recreation, and fish and wildlife habitat demands. Ground-water-rights issues primarily involve public supply in basins where surface water is scarce. Currently (1987), the Arctic Slope, the South Central Alaska, and the Southeast Alaska basins are the focus of these issues.

HISTORY OF WATER DEVELOPMENT

In 1914, the first large reservoir was constructed to provide power for the mining and the timber industries in the Southeast Alaska basin. Since then, 19 additional reservoirs that have storage capacities greater than 5,000 acre-ft (acre-feet) have been built for electric power generation and public supplies. Of these 20 reservoirs, 13 are in the Southeast Alaska basin, 6 are in the South Central Alaska basin, and 1 is in the Yukon basin. These reservoirs contain a cumulative capacity of about 1.78 million acre-ft (fig. 1B).

The first significant increase of Alaska's population occurred during the gold rushes of the late 1800's (fig. 1C). Postwar migration and homesteading increased the population during the late 1940's and 1950's. Population growth during the 1960's and 1970's can be attributed to the development of oil fields in Cook Inlet and at Prudhoe Bay and the related pipeline-construction activities. The continued rapid population growth of the early 1980's can be attributed to the general economic well-being that oil production brought to the State. The population reached 558,000 in 1985; 77 percent of the inhabitants live within 5 of the 28 census districts, or county equivalents (fig. 1D). Anchorage contained 44 percent of the State's population; the next largest concentrations of population were in Fairbanks (13 percent), Kenai (8 percent), Matanuska-Susitna (7 percent), and Juneau (5 percent).

Interest in Alaska's water supplies began during the gold rushes of the late 1800's; miners washed the placer deposits to extract the gold. The population growth and the corresponding urban development, especially after 1940, placed increasing emphasis on water supply. Increasing needs for water supplies for power in the Southeast Alaska and the South Central Alaska basins, for the pulp and paper industry in the Southeast Alaska basin, and for the canneries in the Southeast Alaska and Southwest Alaska basins created demands for water-resource information. Intensive development of other natural resources began during the 1960's and continued through the 1970's. Water was critical to support the oil fields in the Arctic Slope basin and the petrochemical, the seafood, and the timber production industries in the South Central Alaska and the Southeast Alaska basins. Continued population growth, especially in the South Central Alaska basin, increased the demand for public supplies; ground water became a major source of supply. Maintaining instream flows became an issue during the late 1970's, and that concern has increased during the 1980's. Instream flow for hydroelectric power generation and fish hatcheries is an additional water issue today.

WATER USE

The State's water budget is shown diagrammatically in figure 1A. Several natural conditions limit the quantity of freshwater that can be recovered efficiently from Alaska's hydrologic environment; for example, the availability of surface water may be affected by the timing of winter freezeup and spring breakup and by the quantity and the timing of runoff derived from melting snow and glacier ice. The availability of ground water is limited by thick lenses and layers of relatively impermeable sediments and by the limited extent of coarse-grained permeable sediments. In permafrost zones, even coarse-grained sediments may be frozen. Thus, although a substantial quantity of water may be present within the State, the water may not be available when and where it is needed.

Hydroelectric powerplants used 1,480 Mgal/d to generate 18 percent, or 746 GWh (gigawatt-hours), of the electricity used statewide. About 90 percent of this power was generated in the Southeast Alaska basin. The water was used instream, and no water was considered for consumptive use.

Surface-water withdrawals supplied 82.2 percent of the water needed for offstream uses; ground water provided the remaining 17.8 percent. These values were determined by using the results of a cooperative survey conducted by the Alaska Department of Natural Resources and the U.S. Geological Survey in 1985, in which communities and industries estimated their water use. Where quantities of water use were not available, such data were estimated on the basis of similarities between communities and uses. The statewide distribution of total, surface-water and ground-water withdrawals is aggregated by county in figures 2A, 2B, and 2C, respectively. Surface-water withdrawals by principal drainage basin and ground-water withdrawals by principal aquifer are shown in figures 3A and 3B, respectively. Aquifers have been grouped informally into unconsolidated alluvium and glacial outwash aquifers and bedrock aquifers (U.S. Geological Survey, 1985, p. 129-131). Major ground-water withdrawals were from the unconsolidated aquifers.

Most withdrawals occur in three of the principal river basins—Southeast Alaska, South Central Alaska, and Yukon (fig. 3A). Withdrawals in the Southeast Alaska basin were 55 percent (221 Mgal/d) of total water use in Alaska. About 99 percent of these withdrawals was surface water. Industry and fish hatcheries were the primary users of this water. In contrast, the South Central Alaska basin accounted for about 27 percent (110 Mgal/d) of the total withdrawals during 1985. This basin withdrew about 64 percent (64 Mgal/d) of the total ground water during 1985. The large withdrawals for public supply and self-supplied domestic uses provide water to the comparatively large population of the area. Public supply, self-supplied domestic, and industry were the major water users. The Yukon basin accounted for 15 percent (41 Mgal/d) of the total withdrawals. Water used for mining and fossil-fueled powerplants was 74 percent of the 61 Mgal/d withdrawn in the Yukon basin. Surface water was used for nearly two-thirds of this quantity.

The remaining basins, the Arctic Slope, the Southwest Alaska, and the Northwest Alaska, included 8 percent of the population and used 3 percent of the total water. Public supply and self-supplied domestic and commercial uses accounted for 61.9 percent of the ground-water withdrawals within the Yukon basin.

The source, use, and disposition of Alaska's water resources are shown diagrammatically in figure 4. The quantities of water given in this figure and elsewhere in this report may not add to the totals indicated because of independent rounding. The source data indicate that total freshwater withdrawals were 406 Mgal/d, of which 334 Mgal/d was surface water and 72 Mgal/d was ground water. The use data indicate that, of total freshwater use, industry and mining accounted for 34.7 percent and agriculture accounted for 38.6 percent. The disposition data indicate that most water (93.3 percent) was returned to natural sources and was available for reuse. Estimated consumptive use was 6.7 percent (27 Mgal/d).

Alaska's water is generally of sufficient quantity and acceptable quality for most uses. However, population increases during the last decade, especially in urban areas, have strained water-distribution systems and generated concern about water availability. In Anchorage, a measurable decline in ground-water levels has been attributed to increased withdrawals. Saltwater intrusion has halted further ground-water development in Auke Bay, near Juneau. In Kenai and in the Arctic Slope basin, water supply is a concern to communities near petrochemical industry activities.

Surface- and ground-water quality problems have been caused either by natural processes or by human activities. Natural processes include suspended sediment caused by glaciers, salinity, and undesirable concentrations of iron or arsenic produced by geo-

chemical processes. Human activities include petrochemical contamination, the addition of nitrates through septic-tank systems, and the encroachment of saltwater in response to intensive ground-water withdrawal. Nevertheless, even in areas of water-supply difficulties, Alaska's water is generally satisfactory for most uses, although locally it may not be readily obtainable from the nearest or most economical source.

PUBLIC SUPPLY

Public-supply systems withdraw, treat, and distribute water to users. The total withdrawals for public-supply in Alaska were an estimated 76 Mgal/d (fig. 4), which was 18.7 percent of total withdrawals in 1985. Surface water provided 46.2 percent (35

Mgal/d) of public-supply withdrawals, and ground water provided 53.8 percent (41 Mgal/d). Of total withdrawals for public supply, 40.3 percent was delivered for commercial use, and 39.0 percent was delivered for domestic use. About 60 percent (45 Mgal/d) of public-supplied water was delivered in the South Central Alaska basin.

About 62 percent of Alaska's population was served by public water suppliers in 1985. The Municipality of Anchorage supplied water to one-half of the population served by public-supply systems. The per capita use by all public-supply customers ranged from 10 to 380 gal/d (gallons per day) in 1985. Public-supplied domestic use ranged from 6 to 170 gal/d per capita. These values reflect the different types of water-distribution systems; for example, a public-supply system in the Arctic Slope basin may consist of a water-

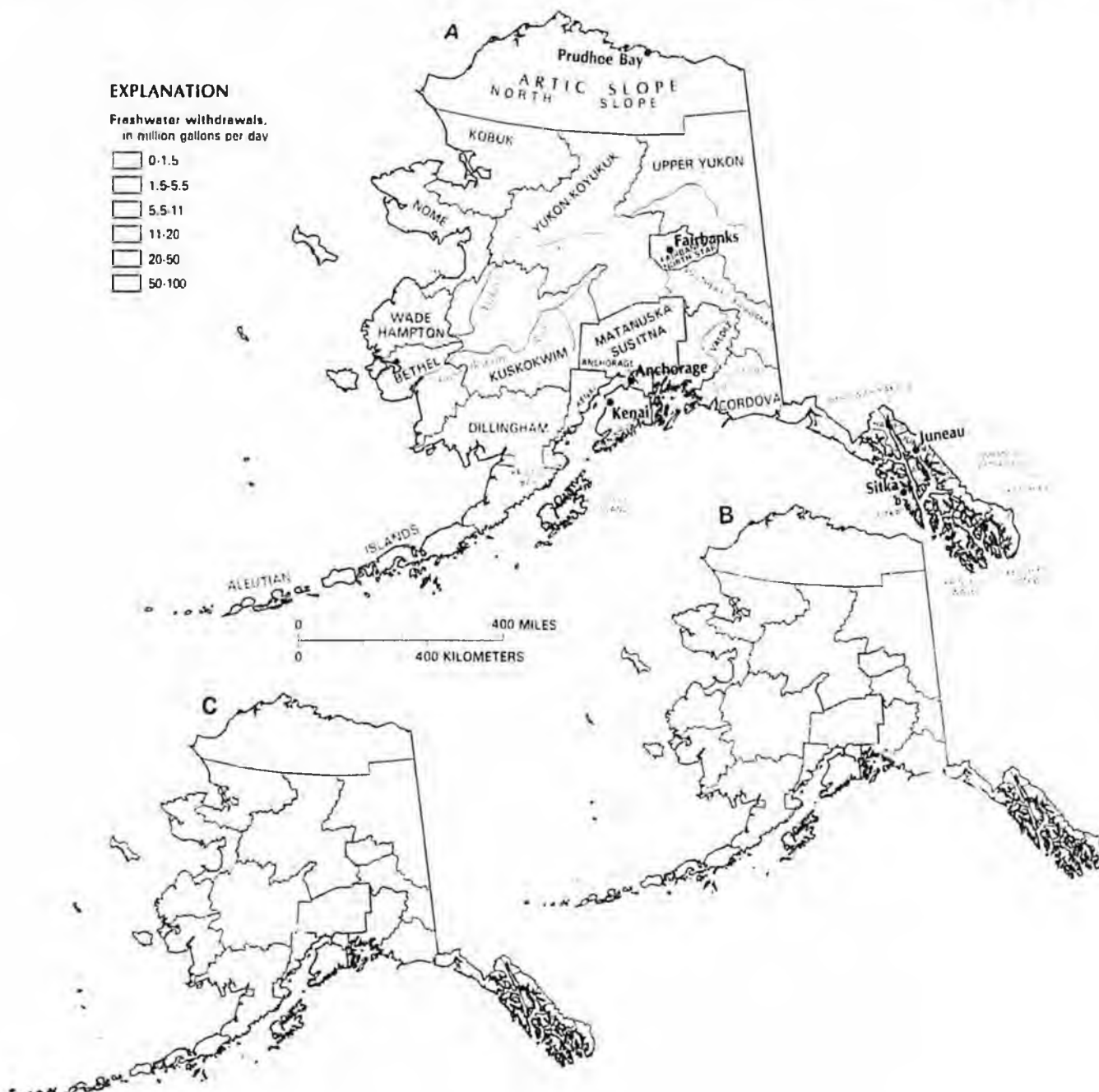
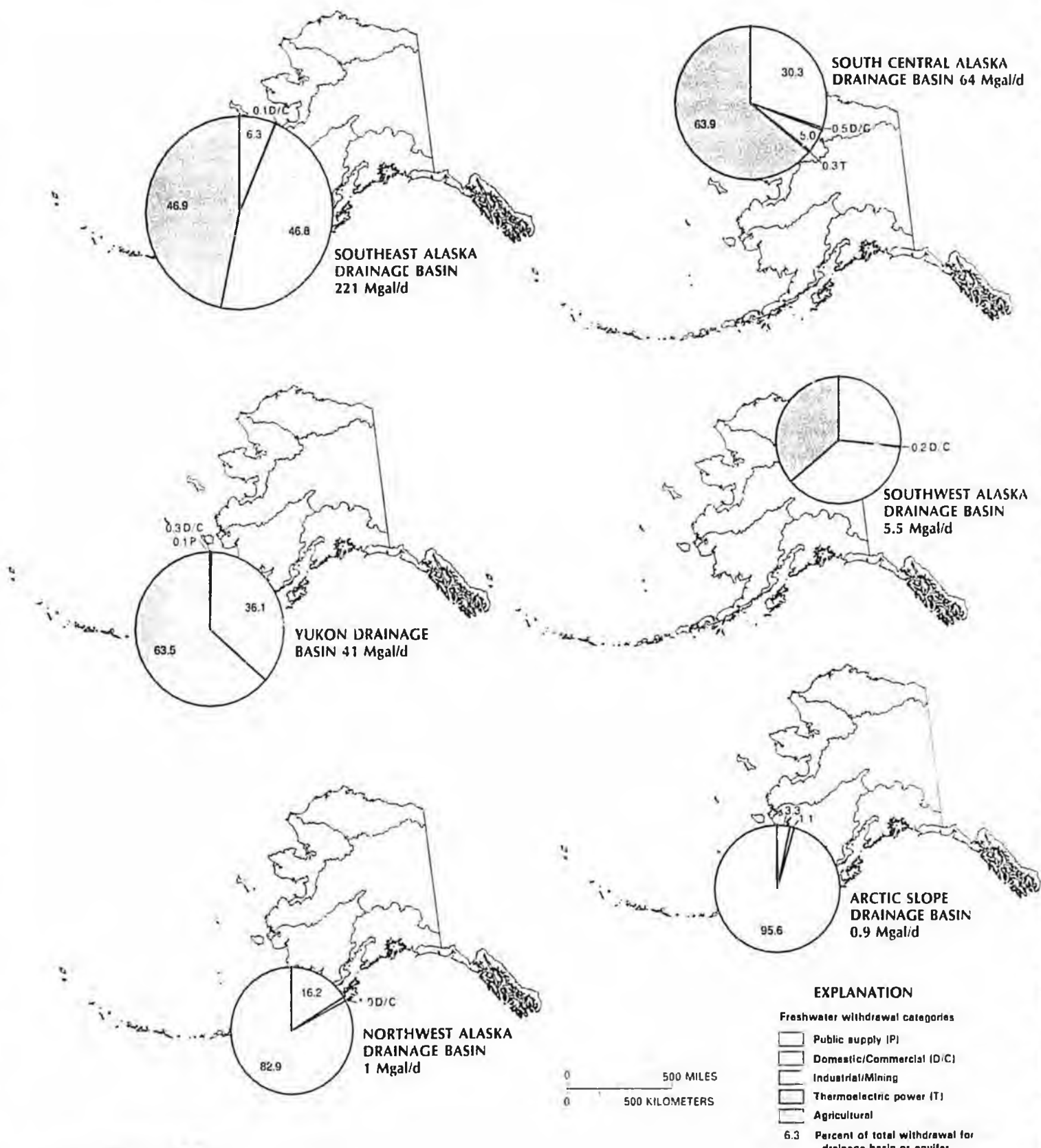


Figure 2. Freshwater withdrawals by county in Alaska, 1985. A, Total withdrawals B, Surface-water withdrawals C, Ground-water withdrawals. (Source: Data from U.S. Geological Survey National Water Data Storage and Retrieval System)



A. SURFACE WATER

Figure 3. Freshwater withdrawals by category of use and hydrologic unit in Alaska, 1985. *A*, Surface-water withdrawals by principal drainage basin. *B*, Ground-water withdrawals by principal aquifer. Abbreviation: Mgal/d is million gallons per day. (Sources: *A*, Drainage basins from Seaber and others, 1987; data from U.S. Geological Survey National Water Data Storage and Retrieval System. *B*, Data from U.S. Geological Survey files.)

delivery truck or a common well, and the primary use is domestic. In contrast, water in the Southeast Alaska basin is abundant, and distribution systems commonly are leaky; residents, commonly leave their faucets running to prevent the pipes from freezing. In addition, water-intensive industries in the Southeast Alaska basin are served by public supply.

DOMESTIC AND COMMERCIAL

Total domestic and commercial water use, including conveyance losses and consumptive use, from public-supplied and self-supplied sources was 78 Mgal/d (fig. 4). Domestic use was about 39 Mgal/d, of which 29 Mgal/d was delivered by public-supply systems and 10 Mgal/d was self-supplied. Commercial withdrawals were about 31 Mgal/d, virtually all from public-supply sources. Conveyance losses were 7.6 Mgal/d.

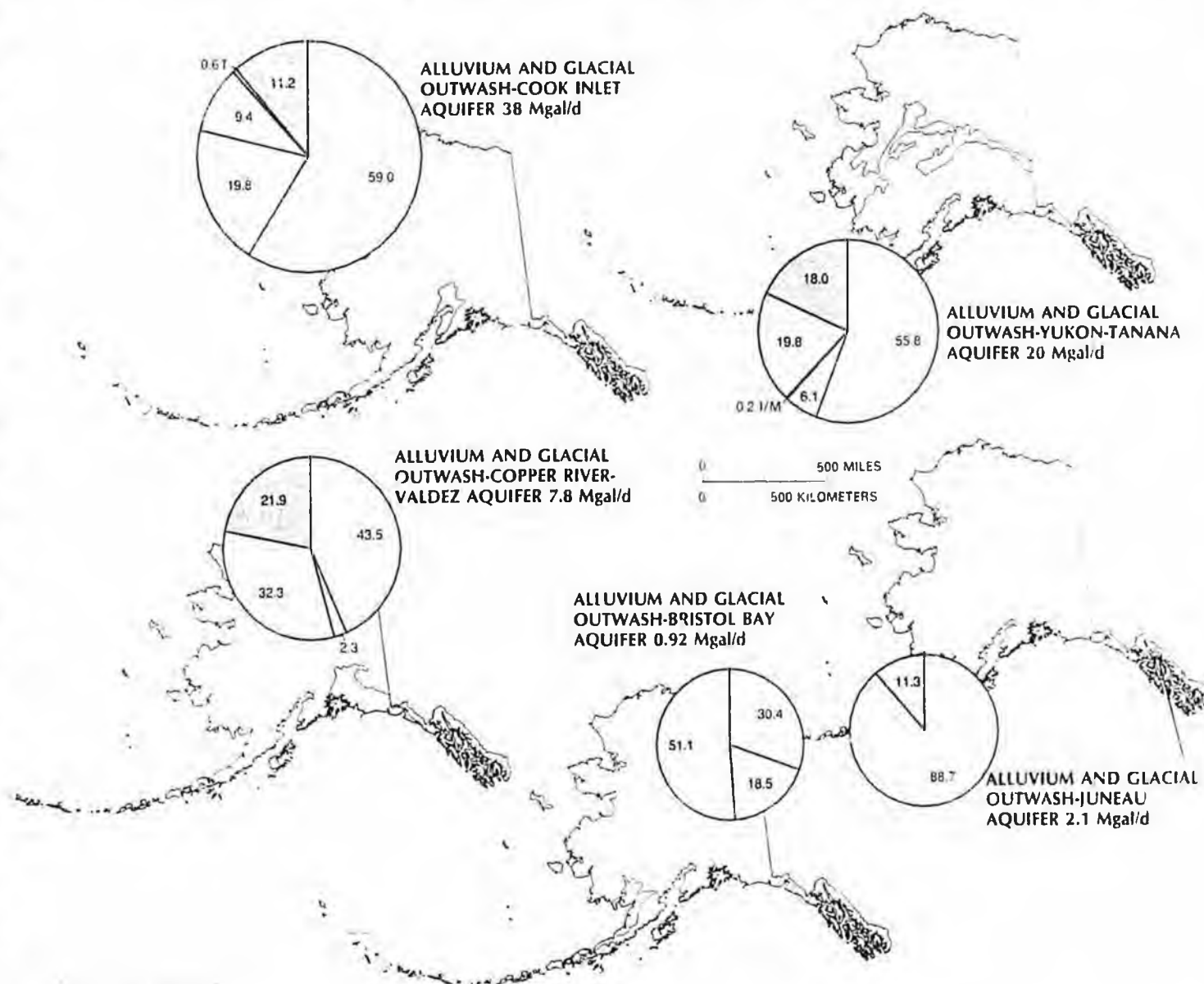
The average per capita domestic use for the population served by public supply was about twice that for the population that was self-supplied. This difference can be explained, in part, by conditions under which water is delivered to homes that use these two

types of supply. Public-supply systems typically serve a household that has standard plumbing. In contrast, many self-supplied households haul water from a lake, spring, river, or well and may have no plumbing.

INDUSTRIAL AND MINING

The estimated industrial and mining use was 141 Mgal/d in 1985. This represents 34.7 percent of total offstream water use (fig. 4). Industry used about 122 Mgal/d, of which 87 percent was self-supplied from surface-water sources. About 89 percent of the industrial water use was in the Southeast Alaska basin. Wood-pulp mills and seafood-processing industries in this basin used more than 100 Mgal/d in 1985. The petroleum industry was a major water user in the South Central basin.

Mining accounted for about 19 Mgal/d of water use. The Yukon basin had the largest area of mining activity and accounted for 76 percent of this water use. Adequate water supplies to support the exploration, development, and production in the Arctic Slope



B. GROUND WATER

Figure 3. Freshwater withdrawals by category of use and hydrologic unit in Alaska, 1985—Continued.

basin are commonly difficult to locate. Surface water is used primarily by placer-mining operations for washing sediments.

THERMOELECTRIC POWER

The fossil-fueled powerplants included in the survey used an estimated 31 Mgal/d (fig. 4) to produce 3,430 GWh of electricity during 1985. About 97 percent of the water was used by two plants in the Yukon basin, whereas 80 percent of the power produced by fossil fuel was produced by six plants in the South Central Alaska basin. These differences reflect the availability of water, the age of the powerplants, and perhaps different reporting methods. The water was used mainly for cooling purposes, and most was returned to surface-water sources.

AGRICULTURAL

Agricultural use during 1985 was an estimated 157 Mgal/d (fig. 4). Fish hatcheries dominated this category by using about 156 Mgal/d, of which 60 percent was used in the Southeast Alaska basin. Although the hatcheries in the Southeast Alaska basin exclusively use surface water, facilities elsewhere use ground water, which has a more consistent temperature and quality.

Agricultural water use for purposes other than fish hatcheries or irrigation totaled 0.21 Mgal/d, 48 percent of which was on Kodiak Island. Only 0.03 Mgal/d was used for irrigation; all of the reported irrigated farm acreage is in the Matanuska Valley, which is 40 miles north of Anchorage.

WATER MANAGEMENT

The Alaska Water Use Act (AS 46.15.010-270), which was enacted in 1966, established procedures to appropriate State water.

The Act defines the doctrine of prior appropriation ("first in time, first in right") authorized by the State Constitution and delegates administration of the Act to the Alaska Department of Natural Resources (ADNR). The Act established procedures for maintaining existing water rights and for obtaining new water rights to all surface and ground water in Alaska. Water appropriations are limited to the specific use for which an individual applies. Additionally, the ADNR issues permits authorizing development and beneficial use of water. Issuance of a certificate of appropriation by the ADNR to the applicant is the final step in the water-rights process.

The original regulations implementing the Water Use Act were amended extensively on December 29, 1979, and incorporated as 11 AAC 93, Water Management. Recent amendments to the Water Use Act relate to geothermal development, reservation of water for instream uses, and administrative and judicial basinwide water-rights adjudication.

To manage the State's water resources effectively, the ADNR's Division of Land and Water Management (DLWM) requires technical descriptions and analyses and interpretations of various hydrologic conditions. The Department's Division of Geological and Geophysical Surveys (DGGs), Water Resources Section, provides the necessary data, analyses, and interpretations. Many long-term data are collected and interpreted by the U.S. Geological Survey, in cooperation with other Federal, State, and municipal agencies. Water managers of the DLWM use this information for water appropriation and water management decisions. Additionally, the DGGs, in cooperation with the U.S. Geological Survey and other State and Federal agencies, has developed and implemented the Alaska Water Resources Evaluation Plan to coordinate water-data collection and water-resource investigations in the State (Alaska Department of Natural Resources, Division of Geological and Geophysical Surveys, and U.S. Geological Survey, 1985).

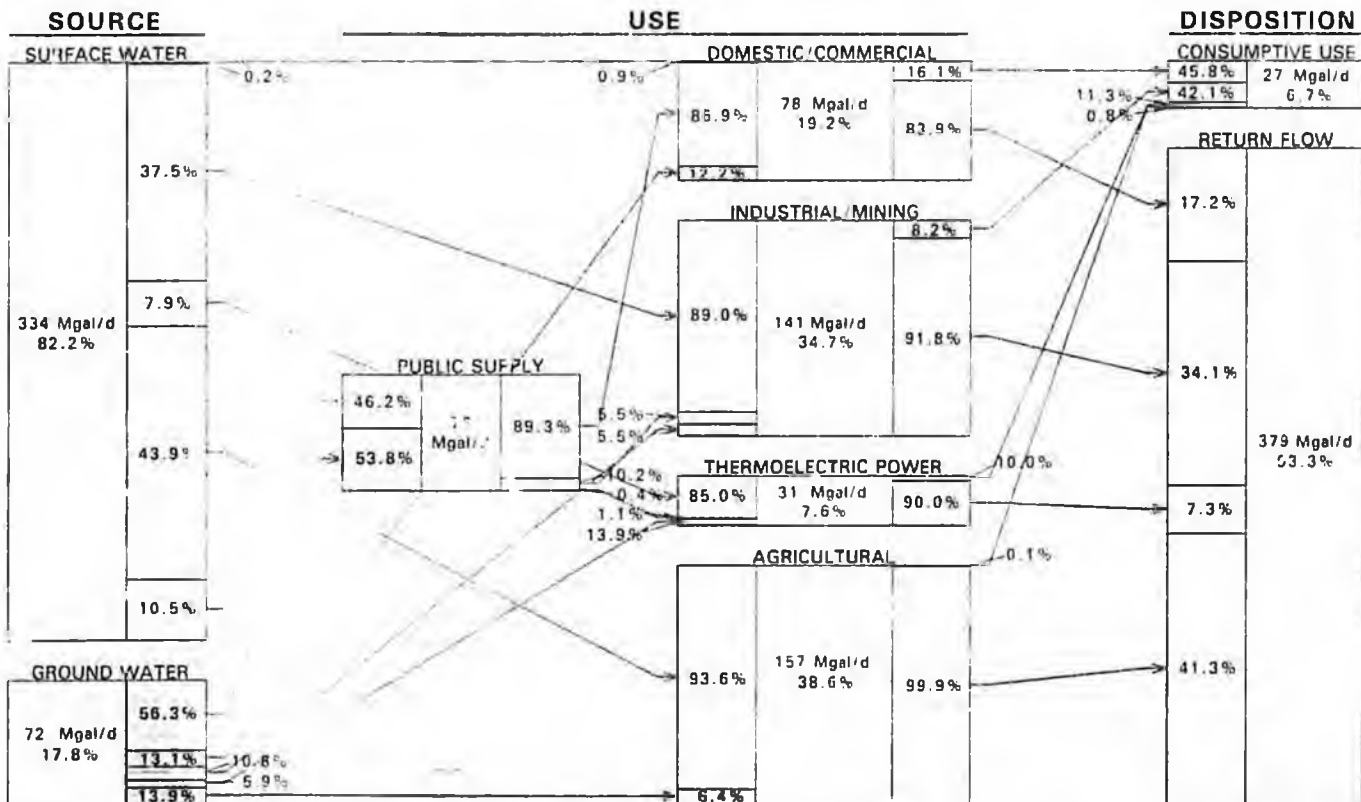


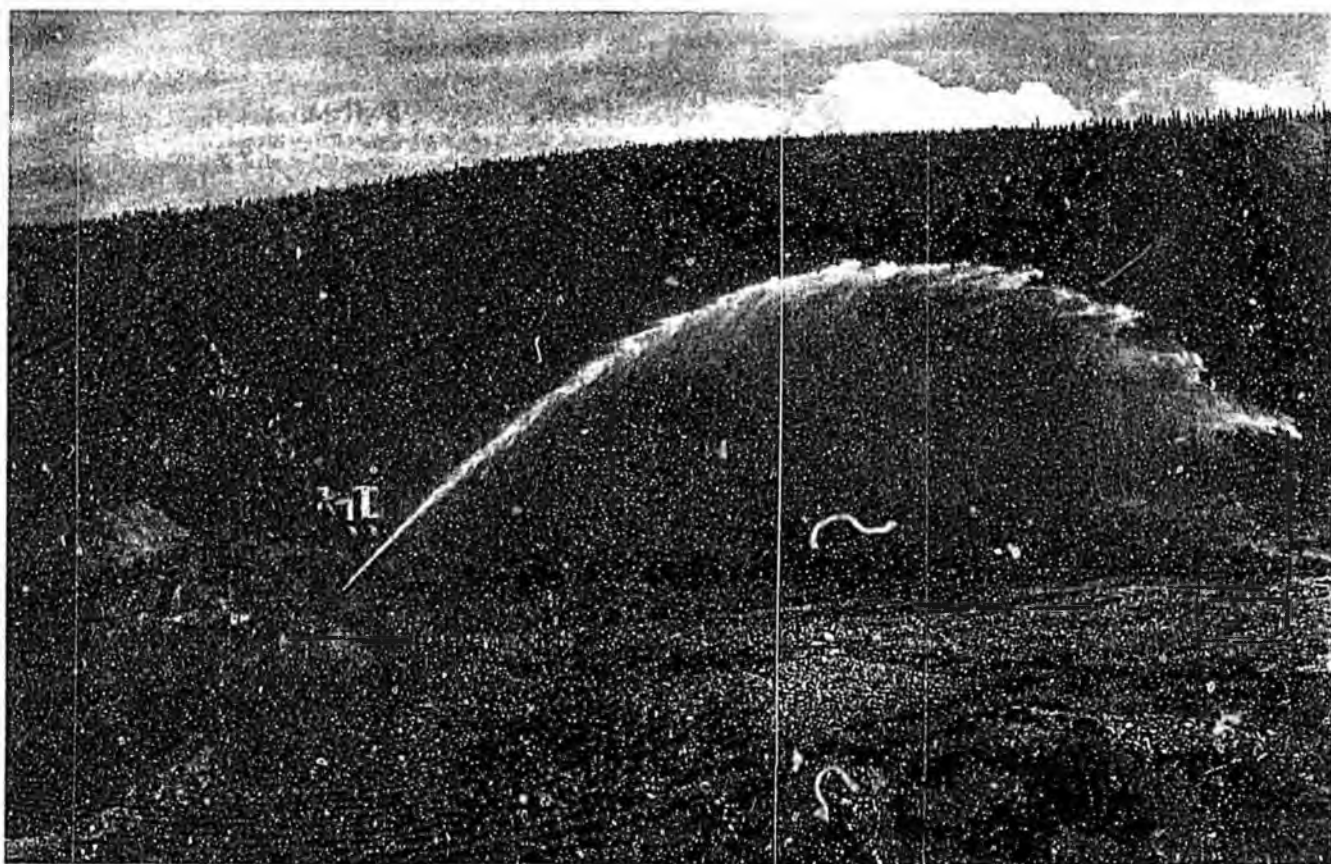
Figure 4. Source, use, and disposition of an estimated 406 Mgal/d (million gallons per day) of freshwater in Alaska, 1985. Conveyance losses in public-supply distribution systems and some public water uses, such as fire fighting, are included in the total shown for domestic and commercial use; losses in irrigation distribution systems are included in the total shown for agricultural return flow. All numbers have been rounded and values may not add to totals. Percentages are rounded to the nearest one-tenth of 1 percent (0.1%) between 0.1 and 99.9 percent. (Source: Data from U.S. Geological Survey National Water Data Storage and Retrieval System)

Although few streams in Alaska are overappropriated, potential water-use problems exist. In the event of water shortages or drought, Ship Creek at Anchorage and Indian River at Sitka could possibly be examples in which the amount of legally obtainable water may exceed the water available for use. Water issues in Alaska also include hydroelectric projects, placer mining, oil development, salmon aquaculture, and proposed mining developments in the Southeast Alaska basin.

Most ground-water shortages in Alaska currently involve water for public supply and domestic use. Some areas within the Municipality of Anchorage are experiencing great ground-water demand for public and single-family domestic water supplies. As water levels declined, domestic wells become dry. The ADNR and Municipality of Anchorage are working cooperatively to solve several water-supply and distribution problems. Another area experiencing declining ground-water levels and saltwater intrusion is the Auke Bay area near Juneau (Dearborn, 1985), where the ADNR established Alaska's first "Critical Groundwater Management Area" to restrict further water-well drilling and development of ground water.

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Hydraulic "giant" used to remove overburden and expose gold-bearing gravel north of Fairbanks, Alaska. (Photograph by Gary Prokosch, Alaska Department of Natural Resources.)

Prepared by Leslie D. Patrick and Elisabeth F. Snyder, U.S. Geological Survey, and Mary Lu Harle, Alaska Department of Natural Resources

FOR ADDITIONAL INFORMATION: District Chief, U.S. Geological Survey, 4230 University Drive, Anchorage, AK 99508-4664

Fact sheet:



Alaska Department of
**NATURAL
RESOURCES**

WATER RIGHTS IN ALASKA

Division of Water • September, 1992

What Are Water Rights?

A water right is a legal right to use surface or ground water under the Alaska Water Use Act (Alaska Statute 46.15). A water right allows a specific amount of water from a specific water source to be diverted, impounded or withdrawn for a specific use. When a water right is granted, it becomes attached to the land where the water is being used for as long as the water is used. If the land is sold, the water right transfers with the land to the new owner, unless the Department of Natural Resources approves its separation from the land. In Alaska, land owners do not have automatic rights to ground water or surface water. For example, if a farmer has a creek running through his property, he will need a water right to protect his use. Using water without a permit or certificate does not give the user a legal right to use the water.

How Do I Obtain Water Rights?

To obtain water rights in Alaska, you should submit an application for water rights to the Division of Water regional office in the area of the proposed water use. After your application is processed, you will be issued a permit to drill a well or divert the water. Once you have established the full amount of water that you use beneficially and have complied with all of the permit conditions, a Certificate of Appropriation will be issued. This is the legal document that establishes water rights.

What Costs Are Involved?

An application for water rights must be accompanied by the filing fee: \$50 for the use of 5,000 gallons per day (gpd) or less; \$100 for the use of more than 5,000 gpd but less than 30,000 gpd; \$200 for the use of 30,000 gpd or more but less than 100,000 gpd; \$300 for the use of 100,000 gpd or more but less than 500,000 gpd; \$500 for the use of 500,000 gpd or more but less than 1,000,000 gpd; \$1,000 for the use of 1,000,000 gpd or more except \$1,500 for the use of 1,000,000 gpd or more outside of the hydrologic unit from which it was removed (hydrologic units are based on the most current U.S.G.S. Hydrologic Unit Map of Alaska). To insure that the public is

notified of proposed water uses, you are required to pay the cost of a legal advertisement in at least one issue of a local newspaper in the area of the proposed water use. Public notice is required if the appropriation is over 5,000 gallons per day, if it comes from an anadromous fish stream, or if the water source has a high level of competition among water users.

Why Should I Apply For Water Rights?

1. If you have water rights, you have legal standing to assert those rights against conflicting water users who do not have water rights.
2. A person with water rights has priority to use water over persons who later file for water rights from the same source.
3. Anyone who diverts, impounds, or withdraws water, or uses a significant amount of water without a permit or certificate is guilty of a misdemeanor (AS 46.15.180). A significant amount of water is defined by 11 AAC 93.970(14) as:
 - ▶ the use of more than 5,000 gallons of water in a single day from a single water source; or,
 - ▶ the regular daily or recurring seasonal use of more than 500 gallons of water per day for 10 days or more per year from a single water source; or,
 - ▶ the non-consumptive use of more than 50,000 gallons of water per day (0.05 cubic feet per second) from a single water source; or,
 - ▶ any use of water from a water source listed in the Department of Fish and Game "Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes"; or,
 - ▶ any water use that might adversely affect the water rights of other appropriators or the public interest.

4. By filing for water rights, you provide valuable information about water use and water availability in Alaska. This information allows state water managers to estimate present uses of water, determine how much water is available from streams and aquifers in the state, protect established water rights holders, prevent over-appropriation of water sources, and manage the state's water resources.

What Other Water Resources Authorizations Are Available From the Department of Natural Resources?

Dam Safety: If your water use requires you to construct a dam that impounds 50 acre-feet of water and is at least 10 feet high, or is at least 20 feet high, or poses a threat to life and property, a certificate of approval is needed. A separate application form and the fee prescribed by 11 AAC 05 should be filed with the Division of Water.

Instream Reservation: If you do not want to remove water from its source, but want to make sure that enough water is available for a particular use, you should apply for an instream reservation to maintain a specific flow in a stream or water level in a lake. An instream flow reservation application can be made to protect fish and wildlife habitat, migration, and propagation; recreation and park purposes; navigation and transportation purposes; and sanitary and water quality purposes.

How Do I Obtain Authorization for Short-Term Water Use? (Temporary Water Use Permit)

A temporary water use permit may be needed if the amount of water to be used is a significant amount, the use continues for less than five consecutive years, and the water to be used is not already appropriated. This permit does not establish a water right but will avoid conflicts with fisheries and existing water right holders. The application fee for a temporary water use permit is the same as for a water right.

Where can I get more information?

More information about water rights is available in the Department of Natural Resources' "Water User's Handbook", and from fact sheets on Glacier Ice Harvesting, Instream Water Reservations, Dam Safety, Federal Reserved Water Rights and the Water Resources Board. Copies of this information and application forms are available at the offices listed below. Applications should be submitted to the regional office located in the area of the proposed water use.

Department of Natural Resources

Public Information Center

3601 C Street, Suite 200
P.O. Box 107005
Anchorage, AK 99510-7005
(907) 762-2261
FAX: 762-2236

Division of Water

Southcentral Region
3601 C Street, Suite 822
P.O. Box 107005
Anchorage, Ak 99510-7005
(907) 762-2575
FAX: 562-1384

Southeast Region

400 Willoughby Avenue, 4th Floor
Juneau, AK 99801
(907) 465-3400
FAX: 586-2954

Northern Region

3700 Airport Way
Fairbanks, AK 99706-2703
(907) 451-2700
FAX: 451-2751

Mat-su/Copper Basin Area

1800 Glenn Hwy., Suite 12
Palmer, AK 99645
(907) 745-7200
FAX: 745-7112

Fact sheet:

FEDERAL RESERVED WATER RIGHTS



Alaska Department of
**NATURAL
RESOURCES**

Division of Water • September, 1992

What Are Federal Reserved Water Rights?

Federal reserved water rights are created when federal lands are withdrawn from the public domain (i.e. for National Parks, Wildlife Refuges, or Forests).

Federal reserved water rights are different from state appropriated water rights. They:

- * *may apply to both instream and out-of-stream water uses*
- * *may be created without actual diversion or beneficial use*
- * *are not lost by non-use*
- * *have priority dates established as the date the land was withdrawn*
- * *are for the minimum amount of water reasonably necessary to satisfy both existing and reasonably foreseeable future uses of water for the primary purposes for which the land is withdrawn.*

Water rights for other federal purposes must be obtained under state law, AS 46.15.

How Are Federal Reserved Water Rights Adjudicated?

Federal reserved water rights are a judicial creation. The United States Supreme Court first recognized federal reserved water rights in Winters v. United States, 207 U.S. 564 (1908), an Indian reservation case. Since that time, court cases have extended the Winters Doctrine to other types of federal land withdrawals such as national parks, forests, and wildlife refuges.

Federal law, the McCarran Amendment (43 U.S.C. 666), allows judicial adjudication of federal reserved water rights in state court. However, the adjudication must include all water rights in a basin, including all claimed federal reserved water rights and all state administered water rights.

In 1986, the Alaska Legislature amended the Alaska Water Use Act to establish procedures for state court basin-wide adjudication of federal reserved water rights. The amendments also establish procedures for the Department of Natural Resources to conduct administrative basin-wide adjudications, including federal reserved water rights if the federal government consents to have its federal reserved water rights administratively adjudicated by DNR.

How Much Land in Alaska Has Federal Reserved Water Rights?

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

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

Why Are Federal Reserved Water Rights Important to You?

Federal Reserved water rights may take priority over the water rights of individuals whose application dates are established later than the date of the federal withdrawal - even if the individuals are using the water at the time of the withdrawal. If you use water in an area where there are or may be federal land withdrawals, it is especially important that you file for water rights to protect your water use. If a basin-wide adjudication is started for your area, you can then be assured of being included in the adjudication.

Why is the Department of Natural Resources Concerned About Federal Reserved Water Rights?

Because most federal reserved water rights are unquantified, the Department of Natural Resources does not know how much water is needed or used for the primary purposes of federal land withdrawals in Alaska. Water resources cannot be efficiently managed or allocated if the Department of Natural Resources does not know how much unappropriated water is available from water sources.

For the Department of Natural Resources to efficiently manage and allocate the state's water and to adjudicate water rights, it is necessary to have federal reserved water rights in Alaska inventoried and quantified by the federal land management agencies in cooperation with the State of Alaska. The state can then integrate the federal reserved water rights with state administratively adjudicated water rights and manage water sources with greater certainty.

How Can I Get More Information?

More information about water rights is available in the Department of Natural Resources' "Water User's Handbook", and from fact sheets on Water Rights, Glacier Ice Harvesting, Instream Water Reservations, Dam Safety, and the Water Resources Board. Copies of this information and application forms are available at the offices listed below.

Department of Natural Resources

Public Information Center

*3601 C Street, Suite 200
P.O. Box 107005
Anchorage, AK 99510-7005
(907) 762-2261
FAX: 762-2236*

Division of Water Southcentral Region

*3601 C Street, Suite 822
P.O. Box 107005
Anchorage, Ak 99510-7005
(907) 762-2575
FAX: 562-1384*

Southeast Region

*400 Willoughby Avenue, 4th Floor
Juneau, AK 99801
(907) 465-3400
FAX: 586-2954*

Northern Region

*3700 Airport Way
Fairbanks, AK 99706-2703
(907) 451-2700
FAX: 451-2751*

Mai-su/Copper Basin Area

*1800 Glenn Hwy., Suite 12
Palmer, AK 99645
(907) 745-7200
FAX: 745-7112*

Fact sheet:



RESERVING WATER FOR INSTREAM USE

Division of Water • September, 1992

A reservation of water for instream use is a water right that protects specific in-stream water uses, such as fish spawning or recreation. It sets aside the water necessary for these activities and keeps later water users from appropriating water that may affect the instream activity. This is an optional water right, not a required permit.

Water can be reserved for one or more permissible uses on a particular part of a stream or lake during a certain period of time. Under Alaska Statute 46.15.145, permissible instream uses include:

- ▶ protection of fish and wildlife habitat, migration, and propagation
- ▶ recreation and parks
- ▶ navigation and transportation
- ▶ sanitation and water quality

A reservation of water for one use may also allow that same water to be used or reserved for another purpose. For example, a reservation for recreation may also benefit fish spawning.

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

Who Can Apply for a Reservation of Water?

Private individuals, organizations, and government agencies may apply for a reservation of water for instream use.

Why Should I Apply for a Reservation of Water?

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

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

How Can I Apply for a Reservation of Water?

You can get an Application for Reservation of Water at any Department of Natural Resources, Division of Water regional office. Your application must be submitted to the regional office in the area where the proposed reservation of water is to occur.

Before submitting an application, you should talk with the regional office staff about the information needed in your application, including the estimation of the amount of instream water use. If your application is accepted, you will have up to three years to complete the data collection and analysis needed to justify the requested instream reservation.

When your application is complete, it will be reviewed to determine the need for the reservation of water, its impacts on other water right holders, and the public interest. An assessment will be made to determine if water is available for the reservation and if the information in the application is accurate and adequate. Public notice of the application must be given.

After this process, a Certificate of Reservation may be issued to you. A Certificate of Reservation must be reviewed by the Division of Water every ten years, but may be reviewed in less than ten years, if necessary.

What Costs Are Involved?

An Application for Reservation of Water must be accompanied by a filing fee of \$500. You will also be required to pay the cost of a legal advertisement to notify the public of the proposed reservation of water. If a certificate is issued, you may be required to install and maintain stream gages, weirs, or staff gages, and to monitor and report on the reserved instream flow or level of water. You may also be responsible for additional data collection or analysis during the certificate's review.

What Other Water Resources Authorizations Are Available From the Department of Natural Resources?

Water Appropriation: A permit or certificate of appropriation is required for diverting, impounding, or withdrawing water (including glacier ice) for use from a surface or ground water source for out-of-stream use.

Dam Safety: A certificate of approval is required if you want to construct or modify a dam that impounds 50 acre-feet of water and is at least 10 feet high, or is at least 20 feet high, or poses a threat to life and property. A separate application form and the fee listed in 11 AAC 05 should be filed with the Division of Water.

How Can I Get More Information?

Further information and application forms may be obtained from the offices listed below. Fact sheets on Water Rights, Glacier Ice Harvesting, Instream Water Reservations, Dam Safety, Federal Reserved Water Rights and the Water Resources Board are also available at these offices. Applications should be submitted to the regional office located in the area of the proposed reservation of water.

Department of Natural Resources

Public Information Center
3601 C Street, Suite 200
P.O. Box 107005
Anchorage, AK 99510-7005
(907) 762-2261
FAX: 752-2236

Division of Water
Southcentral Region
3601 C Street, Suite 822
P.O. Box 107005
Anchorage, Ak 99510-7005
(907) 762-2575
FAX: 562-1384

Southeast Region
400 Willoughby Avenue, 4th Floor
Juneau, AK 99801
(907) 465-3400
FAX: 586-2954

Northern Region
3700 Airport Way
Fairbanks, AK 99706-2703
(907) 451-2700
FAX: 451-2751

Mat-su/Copper Basin Area
1800 Glenn Hwy., Suite 12
Palmer, AK 99645
(907) 745-7200
FAX: 745-7112

Title 11
Chapter 93

Water Management
and Dam Safety

CHAPTER 93. WATER MANAGEMENT

Article

- 2. Appropriation of Water (11 AAC 93.040 — 11 AAC 93.147)
- 3. Dam Safety (11 AAC 93.150 — 11 AAC 93.190, 11 AAC 93.201)
- 4. Temporary Water Use (11 AAC 93.210 — 11 AAC 93.220)
- 5. Preferred Use (11 AAC 93.240 — 11 AAC 93.260)
- 6. Enforcement (11 AAC 93.270 — 11 AAC 93.290)
- 7. Appeals (11 AAC 93.300)
- 8. Administrative Basin-wide Adjudication (11 AAC 93.400 — 11 AAC 93.440)
- 9. Critical Water Management Areas (11 AAC 93.500 — 11 AAC 93.540)
- 10. General Provisions (11 AAC 93.910 — 11 AAC 93.970)

Article 2. Appropriation of Water

Section

- 40. Application for a water right
- 50. Incomplete applications
- 60. Water rights on state-leased land
- 65. Water rights on private leased land
- 70. Departmental investigations
- 80. Notice
- 90. Objections
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Section

- 125. Cancellation of permits
- 130. Issuance of a certificate of appropriation of water
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11 AAC 93.040. APPLICATION FOR A WATER RIGHT. (a)
Unless exempted by 11 AAC 93.920, no person may lawfully appropriate water of the state without first obtaining a permit under the provisions of 11 AAC 93.

11 AAC 93.040 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.040

(b) Application for a water right 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 include the following items:

(1) the application 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 copy of the deed or patent transferring title, leasehold agreement, or other instrument;

(3) a map identifying the section, township, range, and meridian, and showing the property boundary, for the point of water withdrawal, impoundment, or diversion; the route of water transmission; the point of water use; and, if water is to be returned to a stream or water body, the point of discharge;

(4) evidence that the applicant has obtained or is in the process of obtaining a right of access to the property where water is to be withdrawn, impounded, or diverted, and over which water is to be transported both to the point of use and to the point of discharge;

(5) proof that the owner or lessor of the property at the point of use approves of the application, if the applicant is a lessee or permittee;

(6) a legal description of the point of withdrawal, diversion, or impoundment; the point of water use; and, if water is to be returned to a stream or water body, the point of discharge; the legal description must include meridian, township, range, section, and aliquot parts, or the lot, block, and subdivision, or survey number, as appropriate;

(7) a description of the source as being either surface or ground water; the description must identify the name of the surface water source or the supply well log or well data for ground water, if available;

(8) a description of any impoundment structures, including dimensions, construction materials, plans and specifications, and operation plans, or an application to construct or modify a dam, as defined in AS 46.17.900, if 11 AAC 93.171 requires such an application;

(9) a description of the nature of the water use and times of the year during which water is to be used;

(10) a statement of the dates water use is expected to begin and when the maximum amount will be beneficially used;

(11) a statement of beneficial use, signed before a notary or postmaster, if water is already in use at the time of application;

(12) an application for a right-of-way, filed in accordance with AS 38.05.850, if access to or across state land is needed;

(13) a statement of the quantity of water requested, with documentation and calculations justifying the request if either the use or quantity is different from those listed in (d) of this section;

(14) for a water use of 100,000 gpd (0.15 cfs) or greater from a stream, a description of the mean annual flow, or mean monthly flow if available, using the best available data, or, if data are not available, an estimate of mean annual flow using acceptable hydrologic methods; and

(15) a completed coastal project questionnaire, required by 6 AAC 50, unless the water use is exempt from consistency review under 6 AAC 50.050 or the water source is not located in the coastal zone.

(d) Standard water use quantities are

- (1) single-family home, fully plumbed: 500 gpd;
- (2) single-family home, partially plumbed: 250 gpd;
- (3) single-family home, unplumbed: 75 gpd;
- (4) duplex or triplex: 1,000 gpd;
- (5) four-plex and larger housing: 250 gpd per unit;
- (6) mobile home park: 250 gpd per trailer;
- (7) motel or resort: 150 gpd per room;
- (8) cattle, other than dairy cows: 12 gpd per animal;
- (9) dairy cows: 35 gpd per animal;
- (10) horses: 15 gpd per animal;
- (11) sheep: 2 gpd per animal;
- (12) goats: 3 gpd per animal;
- (13) hogs: 4 gpd per animal;
- (14) poultry or rabbits: 0.5 gpd per animal;
- (15) dog (kennels): 1.0 gpd per animal; and
- (16) commercial irrigation: 0.5 acre feet per year per acre. (Eff. 2/8/67, Register 23; am 12/29/79, Register 72; am 1/1/86, Register 96; am 11/7/90, Register 116)

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 11 AAC 93.040 will not be accepted for filing.

(b) The commissioner will, in his or her discretion, require an applicant whose application complies with the requirements of 11 AAC 93.040, and has been accepted for filing, to provide additional information if, during the adjudication process, it is determined that the application fails to clearly present and document all aspects of the proposed project. The commissioner will identify deficiencies in the application and the applicant will be given 30 days in which to submit supplemental information, unless a longer period of time is allowed by the commissioner. The applicant's failure to submit that supplemental infor-

11 AAC 93.060 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.065

mation within the required time is grounds for rejecting the application without further notice; a request from the commissioner for additional information will contain a warning to that effect. (Eff. 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.040

11 AAC 93.060. WATER RIGHTS ON STATE-LEASED LAND. When a lessee of state land applies for a water right, water required for the use and enjoyment of the leasehold may be appropriated for the lessee's use. The lessee shall comply with the provisions of 11 AAC 93.040 — 11 AAC 93.140 in securing the appropriation. If the commissioner approves the appropriation, the appropriation will be granted to the lessee and will be for the benefit of the leased land. Upon an assignment of the lease, the water right remains for the benefit of the leased land. Upon termination of the lease or upon the expiration of the permit issued under 11 AAC 93.120, the water right is considered intentionally abandoned, 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 or assigns the water right to a state agency. The water right thus granted must be consistent with the provisions of the lease itself, this chapter, and AS 46.15. (Eff. 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.040

11 AAC 93.065. WATER RIGHTS ON PRIVATE LEASED LAND. If a lessee of privately owned land applies for a water right, water required for the use and enjoyment of the leasehold may be appropriated for the lessee's use. The lessee shall comply with the provisions of 11 AAC 93.040 — 11 AAC 93.140 in securing the appropriation. The commissioner will give notice by certified mail to the lessor that a water right has been applied for on the lessor's land. The appropriation, if granted, will be issued to the lessee and will be for the benefit of the leased land. Upon termination of the lease and nonuse of water by the lessor or subsequent lessee for five years, or upon the expiration of the permit issued under 11 AAC 93.120, the water right is considered intentionally abandoned. The water right thus granted must be consistent with the provisions of the lease itself, this chapter, and AS 46.15. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.040

11 AAC 93.070. DEPARTMENTAL INVESTIGATIONS. (a) Upon receipt of an application, the commissioner will, in his or her discretion, investigate or inspect the proposed diversion, withdrawal, or impoundment structures, the source of the water, meter records, gage data, well logs, and other competing uses for water within the area, to determine whether there is a possibility that existing 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.

(b) The commissioner will, in his or her discretion, require the applicant to

- (1) submit water well information, including well depth, pump setting, and current static water level;
- (2) drill test wells and observation wells;
- (3) conduct pump and aquifer tests;
- (4) provide test results or other hydrologic data and information necessary to better determine the effects of proposed appropriation on prior appropriators and the public interest;
- (5) provide any other information necessary to make a finding under AS 46.15.080. (EIT. 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.080
AS 46.15.256

11 AAC 93.080. NOTICE. The commissioner will provide notice of a new water right application as follows:

- (1) The applicant will be provided with a prepared request for publication that must be submitted to a newspaper of general circulation in the vicinity in which the water is to be appropriated. The applicant shall pay the newspaper for the cost of publication.
- (2) If 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) The commissioner will serve individual notice by certified mail on prior appropriators who might be taking water from the same source.
- (4) An affidavit of publication or other proof of notice must appear in the applicant's case file.
- (5) Written notice will also be provided to any known person who owns land where the water is to be withdrawn or used, or over which the water is to be transported, or whose request to receive notice is on file with the department.

11 AAC 93.090 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.110

(6) The public comment period set by AS 46.15.133(c) begins the first day the newspaper publication appears, or the first day of posting, or upon receipt of the notice as evidenced by the certified mail receipt, date stamp, or other evidence of actual service.

(7) The commissioner will, in his or her discretion, extend the notice and public comment period. (Eff. 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.133

11 AAC 93.090. OBJECTIONS. (a) If no written objection is received from any person during the public comment period, 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 public comment period.

(c) In adjudication of the application, the commissioner will, in his or her discretion, consider objections that are received by the commissioner after the close of the public comment period. (Eff. 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.133

11 AAC 93.100. EXEMPTIONS TO NOTICE. An application to appropriate 5,000 gallons of water per day (gpd) or less is exempt from the notice provisions of 11 AAC 93.080 and AS 46.15.133, except that the Department of Fish and Game will be notified of an application for a water right from an anadromous fish stream listed in the Alaska Department of Fish and Game Catalog of Water Important for Spawning, Rearing, or Migration of Anadromous Fishes or a stream identified as supporting fish in the ADF&G Habitat Regional Guides. However, in an area 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 another state or federal agency or a municipality as defined by AS 29, or to protect the public interest, the commissioner will, in his or her discretion, require public notice as provided by 11 AAC 93.080. (Eff. 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.133

11 AAC 93.110. HEARINGS. (a) If objections are received during the public comment period, the commissioner will, in his or her discretion, hold a hearing on the objections.

(b) The commissioner will, in his or her discretion, hold a hearing to acquire additional information on an application if the commissioner determines that the water rights of prior appropriators or the public interest might be adversely affected or if the commissioner determines that 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, Register 72; am 9/11/83, Register 87; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.133

11 AAC 93.115. CLOSURE OF AN APPLICATION FOR A WATER RIGHT. A pending water right application and the department's application file will, in the commissioner's discretion, be closed if

(1) the applicant informs the commissioner, in writing, or by filing a notice of relinquishment, that the applicant has abandoned plans to develop the water source or use, in which case the application will, in his or her discretion, be closed by the commissioner without further correspondence with the applicant;

(2) the applicant informs the commissioner orally that the applicant has abandoned plans to develop the water source and use, in which case the applicant will be notified in writing that the application is closed as a consequence of the oral notice;

(3) the commissioner is unable to locate the applicant by certified mail at the address on file in order to adjudicate the application, in which case the application will, in the commissioner's discretion, be closed without further correspondence by the commissioner with the applicant; or

(4) the applicant fails to provide information requested under 11 AAC 93.070 or fails to complete the newspaper notice of the proposed appropriation, in which case the applicant will be notified by certified mail that the application has been closed, noting the reason for the closure, the effective date of the closure, and any appeal process. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.133

11 AAC 93.120. ISSUANCE OF A PERMIT TO APPROPRIATE WATER. (a) The commissioner will issue a permit to appropriate water if he or she finds that the appropriation meets the requirements of AS 46.15.080.

(b) The permit will be issued for a period of time that the commissioner considers to be consistent with the public interest and adequate to finish construction and establish the full use of water. The follow-

11 AAC 93.120 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.120

ing time periods are the maximum time periods for which a permit will be issued unless the applicant proves to the satisfaction of the commissioner, or unless the commissioner independently determines, that a longer time period is required to establish the full use of water:

- (1) domestic water use: two years;
- (2) commercial irrigation: five years;
- (3) public water supply
 - (i) use of 250,000 gpd or less: five years;
 - (ii) use of over 250,000 gpd: 10 years;
- (4) industrial and commercial water use: five years;
- (5) mining water use: 10 years;
- (6) small-scale hydroelectric facilities that generate 100 kilowatts or less: five years;
- (7) large-scale hydroelectric facilities that generate over 100 kilowatts: 10 years.

(c) The permit time period begins on the date the permit is issued by the department, except that for a permit issued for water use exempted under 11 AAC 93.920 the time period begins on the date the application is accepted by the department for filing.

(d) The permit will, in the commissioner's discretion, authorize development and beneficial water use during all or part of the year and vary the quantities of water use, depending on need and water availability during any given month or season of the year.

(e) The commissioner will, in his or her discretion, issue a permit subject to conditions considered necessary to protect the public interest. The conditions

(1) will include

(A) the condition that no certificate will be issued until proof is presented to the commissioner of the acquisition of adequate easements or other means necessary for completion of the appropriation including the condition that the applicant obtain right of access to the property where water is to be withdrawn, impounded, or diverted and over which water is to be transported;

(B) conditions that require the permittee to meter the water use and report water use information to the division:

(i) for any use of 30,000 gpd of water or more, except that water use for mining purposes and for hydroelectric power generation of less than 50 kilowatts will, in the commissioner's discretion, be exempt from this condition;

(ii) for any use of water for irrigation of 40 acres or more of land;

(2) might include

(A) conditions to maintain a specific quantity of water at a given 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:

- (i) protection of fish and wildlife habitat;
- (ii) recreational purposes;
- (iii) navigation;
- (iv) sanitation and water quality;
- (v) protection of prior appropriators;
- (vi) any other purpose the commissioner determines, in his or her discretion, is in the public interest and should be taken into account under AS 46.15;

(B) conditions that ensure that the proposed means of impoundment, withdrawal, diversion, or construction are adequate, including the specification of engineering and design standards, requirements for maintaining, enlarging, modifying, abandoning, or removing impoundment structures, approved location of points of withdrawal or diversion, or approved location of points of return flow;

(C) conditions that require the permittee to meter the water use and report water use information to the division if the commissioner considers it necessary in order to protect the water rights of prior appropriators and the public interest;

(D) a condition that if a mineral location, claim, or lease to which the water right is appurtenant ceases to be in good standing, is abandoned, is found invalid, or is otherwise terminated and not legally re-established, then the water right will be considered intentionally abandoned.

(f) Upon the commissioner's receipt of a written request from the permittee showing diligent effort toward completing the appropriation, the permit will, in the commissioner's discretion, be extended for a period of time not to exceed the relevant maximum time period listed in (b) of this section. The request for a permit extension must be accompanied by the fee prescribed by 11 AAC 05.010.

(g) A permit extension granted under (f) of this section will, in the commissioner's discretion, be subject to additional conditions that the commissioner considers necessary to protect prior appropriators and the public interest.

(h) 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, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.010 AS 46.15.100
 AS 46.15.020 AS 46.15.140
 AS 46.15.080

11 AAC 93.125. CANCELLATION OF PERMITS. A permit will, in the commissioner's discretion, be cancelled, and the case file closed, if the permittee (1) does not develop and make use of the appro-

11 AAC 93.130 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.130

priation within the permit time period, or (2) as provided in AS 46.15.175, violates a term or condition of the permit. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.110
AS 46.15.175

11 AAC 93.130. ISSUANCE OF A CERTIFICATE OF APPROPRIATION OF WATER. (a) The commissioner will issue a certificate of appropriation to the permit holder for the quantity of water beneficially used, which might be equal to or less than that granted under the permit, if

(1) the permit holder submits a statement of beneficial use stating that the means necessary for the taking of water have been developed and the permit holder is beneficially using the quantity of water to be certificated; and

(2) the permit holder has substantially complied with all permit conditions.

(b) Before issuing a certificate of appropriation, the commissioner will, in his or her discretion, conduct field inspections or inspect books, records, meter records, gages, well logs, diversion, impoundment, withdrawal, or control structures, and other relevant information, to verify that the appropriation has been developed and water is being used in accordance with the terms and conditions of the permit.

(c) The commissioner will, in his or her discretion, issue a certificate subject to conditions considered necessary to protect the public interest. The conditions will, in the commissioner's discretion, include

(1) conditions to maintain a specific quantity of water at a given point on a stream or water body, 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) protection of recreation.

(C) protection of navigation.

(D) protection of sanitation and water quality.

(E) protection of prior appropriators, or

(F) any other purpose the commissioner determines is in the public interest;

(2) a condition that requires the certificate holder to meter water use and report water use information to the division;

(3) conditions to ensure that the means for impounding, withdrawing, or diverting water are adequate, which might include requirements for maintaining, enlarging, modifying, abandoning, or removing impoundment structures. (Eff. 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.010
AS 46.15.020

AS 46.15.120
AS 46.15.256

11 AAC 93.140. WATER WELL DATA. (a) For each drilled, driven, jetted, or augered well constructed, the water well contractor or a person who constructs the well shall file a report within 45 days after completion with both the property owner and the commissioner. The report must contain the following information as applicable: the method of construction, type of fluids used for drilling, 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, height of the casing above ground, the depth and type of grouting, the depth of any screens, casing diameter, casing material, depth of perforation or opening in the casing, well development method, the total depth of the well, the depth of the static water level, anticipated use of the well, the maximum well yield, and the results of any well yield, aquifer, or drawdown test that was conducted. If the water well contractor or person who constructs the well 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 sanitary seal and a readily accessible means provided to allow for monitoring of the static water level in the well.

(c) A hand-dug well that is 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, bentonite grout, 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 steel plate to the top of the casing or by sealing the well at the surface with a concrete plug.

(e) If the commissioner believes that an encounter of oil, gas, or other hazardous substance is likely to result from well drilling, the commissioner will notify the Alaska Oil and Gas Conservation Commission, and the provisions of AS 31.05.030(g) might apply.

(f) The commissioner will notify the Department of Environmental Conservation of any permanently abandoned well that might contaminate water of the state under the provisions of 18 AAC 80.

(g) Information required by (a) of this section is required for any water well that has been deepened, modified, or abandoned, and for any water supply well or water well that is used for monitoring, observation, or aquifer testing, including a dry or low-yield water well that is not used. (Eff. 12/29/79, Register 72; am 11/7/90, Register 116)

11 AAC 93.141 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.142

Authority: AS 38.05.020
AS 38.05.035
AS 46.15.020

11 AAC 93.141. APPLICATION FOR A RESERVATION OF WATER. As provided in AS 46.15.145(a), 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, if applicable, drinking water standards under 18 AAC 80, or to maintain the naturally occurring water quality conditions. (Eff. 9/11/83, Register 87; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.145

11 AAC 93.142. CONTENT OF APPLICATION. (a) An 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 purposes 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 the most detailed United States Geological Survey map for the area, identified by section, township, range, meridian, and river mile index if available, showing either the point on a water body at

which, 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) specify the time period required to fully quantify the proposed reservation, which may be no longer than three years after the date the application is accepted by the department for filing;

(5) specify the times of the year and purposes for which the reservation is proposed;

(6) identify and explain the methodology to be used to quantify the proposed reservation, including

(A) existing data to be used, if available;

(B) the method of any new data collection;

(C) the type of new data to be collected; and

(D) a description of how the data will be analyzed;

(7) state the estimated quantity of water, stage, or elevation proposed to be reserved, measured in cubic feet per second for an instream flow rate or measured in cubic feet, acre feet, or an elevation relative to a permanent bench mark for a surface elevation, with documentation and calculations justifying the request;

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

(9) 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.

(d) At the applicant's written request, submitted at least 30 days before the end of the time period specified under (b)(4) of this section, the commissioner will, in his or her discretion, grant an extension of the time period of up to two years for good cause shown.

(e) When the applicant completes the quantification of the proposed reservation of water, the applicant shall notify the commissioner in writing and shall submit any information that changes, adds, or deletes information presented in the original application. (Eff. 9/11/83, Register 87; am 1/1/86, Register 96; am 11/7/90, Register 110)

Authority: AS 46.15.020
AS 46.15.040

AS 46.15.080
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 or her discretion, require an applicant whose application complies with the requirements of 11 AAC 93.142 and has been accepted for filing to provide additional informa-

11 AAC 93.144 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.145

tion if, during the adjudication process under 11 AAC 93.145, the commissioner determines that the application fails to clearly present and document all aspects of 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 without further notice; a request for additional information will contain a warning to that effect. (Eff. 9/11/83, Register 87; am 11/7/90, Register 116)

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 a reservation of water, the commissioner will, in his or her discretion, investigate any aspect of the application, including the source of the water and other uses or demands for water within the area, to determine whether there is a possibility that the rights of prior appropriators or the public interest will be adversely affected by the proposed reservation.

(b) Failure of the applicant to cooperate in the investigation will result in the rejection of the application. (Eff. 9/11/83, Register 87; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.145
AS 46.15.256

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 Departments of Fish and Game and Environmental Conservation, to any federal or state agency responsible for managing land in the vicinity, 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 objections received following notice of an application for a reservation of water will be considered in accordance with 11 AAC 93.090.

(c) Hearings 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, Register 87; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.080

AS 46.15.133
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 the commissioner finds that the reservation meets the requirements of AS 46.15.145.

(b) The certificate of reservation will be issued to the applicant. 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 will, in the commissioner's discretion, 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 the date the application was accepted by the department for filing.

(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, Register 87; am 11/7/90, Register 116)

Authority: AS 46.15.010
AS 46.15.020
AS 46.15.080

AS 46.15.120
AS 46.15.145

11 AAC 93.147. REVIEW OF RESERVATION OF WATER.

(a) The commissioner will review a reservation of water at least once each 10 years after the date of issuance of the certificate of reservation. The commissioner will, in his or her discretion, review a reservation of water in fewer than 10 years if circumstances warrant a review. These circumstances might include

(1) a condition on the certificate of reservation requiring an earlier review, under 11 AAC 93.146(d)(2);

(2) a significant change affecting the water resource;

(3) a subsequent applicant's protest of the justification for the reservation of water if water might be unavailable to both maintain the reservation of water and to grant the applicant's request; 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) repealed 11/7/90;

(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;

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

(c) The commissioner will, in his or her 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 a 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 state. If the certificate holder desires expedited review, the commissioner will, in his or her discretion, require the certificate holder to bear the costs.

(d) The commissioner will provide written notice, as provided in 11 AAC 93.145(a), of a review of a reservation of water in order to solicit information that might be pertinent to the review. The commissioner will, in his or her discretion, hold a hearing on the review of a reservation of water.

(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 or her 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 the findings in granting the reservation no longer apply to the reservation, the commissioner will, in his or her discretion, amend the certificate of reservation or revoke all or part of it in accordance with AS 46.15.145(f) 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. The commissioner will record any amended certificate of reservation in the appropriate recorder's office. (Eff. 9/11/83, Register 87; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.140
AS 46.15.145

Article 3. Dam Safety

Section	Section
150. (Repealed)	170. (Repealed)
151. Applicability	171. Dam construction, modification, removal, or abandonment
153. Barrier measurement	173. Terms and conditions in certificate of approval
157. Hazard classification	174. Transfer of certificate of approval
159. Owner's periodic safety inspections; commissioner's orders	175. Records
160. (Repealed)	180. (Repealed)
161. State inspections	190. (Repealed)
163. Emergency action	201. Definitions
165. (Repealed)	
167. Certification of existing dams	

11 AAC 93.150. DAM SAFETY. Repealed 8/16/89.

11 AAC 93.151. APPLICABILITY. The provisions of 11 AAC 93.151 — 11 AAC 93.201 apply to all dams located in Alaska, except dams owned or operated by the federal government or regulated by the Federal Energy Regulatory Commission. (Eff. 8/16/89, Register 111)

Authority: AS 46.17.010
AS 46.17.030
AS 46.17.100

11 AAC 93.153. BARRIER MEASUREMENT. For the purpose of determining whether a barrier is a dam under AS 46.17.900, the height of the barrier will be measured as either

(1) the maximum vertical distance from the natural bed of the watercourse at the upstream or downstream toe of the barrier,

11 AAC 93.157 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.159

whichever yields the greater measurement, to the top of the barrier,
or

(2) if the barrier is not across a watercourse, the maximum vertical distance from the lowest elevation of the outside limit of the barrier to the top of the barrier. (Eff. 8/16/89, Register 111)

Authority: AS 46.17.010
AS 46.17.030
AS 46.17.900

11 AAC 93.157. HAZARD CLASSIFICATION. In order to determine the frequency with which a dam must be inspected under 11 AAC 93.151 — 11 AAC 93.201, and to determine design, operating, and maintenance criteria for the dam, the commissioner will periodically review and classify each dam as to the potential hazard it might pose to life or property, according to one of the following classifications:

(1) Class I for a dam whose failure would, in the opinion of the commissioner, result in probable loss of life, serious hazard to public health, or serious damage to homes, high-value industrial or commercial properties, or major public utilities;

(2) Class II for a dam whose failure would, in the opinion of the commissioner, result in a possible health hazard, probable loss of high-value property, probable damage to major highways, railroads, or other public utilities, or probable damage to or loss of important salmon spawning habitat as identified by the commissioner of the Department of Fish and Game, but not result in loss of human life;
or

(3) Class III for a dam whose failure would, in the opinion of the commissioner, result in property losses restricted mainly to rural land and buildings and local roads, and would not result in loss of human life or hazard to health. (Eff. 8/16/89, Register 111)

Authority: AS 46.17.010 AS 46.17.050
AS 46.17.030 AS 46.17.070

11 AAC 93.159. OWNER'S PERIODIC SAFETY INSPECTIONS; COMMISSIONER'S ORDERS. (a) The owner of a Class I or Class II dam shall provide for a safety inspection of the dam at least once every three years. The owner of a Class III dam shall provide for a safety inspection of the dam at least once every five years. The commissioner will, in his or her discretion, order a dam owner to provide for a periodic safety inspection more often than otherwise required by this subsection if the commissioner determines that the dam might be unsafe. All inspections required by this section are at the owner's sole expense, and must meet the guidelines for inspections that the commissioner periodically establishes.

(b) The periodic safety inspections required by this section must be performed by an engineer with sufficient experience in dam design, construction, and safety appropriate for the type of dam inspected. Before an inspection, the owner shall submit to the commissioner the written qualifications of the engineer, for the commissioner's review and approval. The commissioner will supply to the approved engineer written guidelines under which the inspection must be accomplished.

(c) Upon completion of a periodic safety inspection required by this section, the dam owner is responsible for submission of the safety inspection report to the commissioner on a form provided by the commissioner, with as many copies as the commissioner requires. The engineer must, in the report, certify to the commissioner that the commissioner's guidelines have been followed in making the inspection.

(d) In response to a safety inspection report, the commissioner will, in his or her discretion, issue an order, including an order requiring the owner to perform additional inspections, studies, or analyses or to submit further data that the commissioner determines is necessary to adequately assess the safety of the dam. The commissioner will, in his or her discretion, also issue a construction, repair, maintenance, or shutdown order that the commissioner considers necessary to protect against dam failure.

(e) If the owner fails or refuses to perform a periodic safety inspection required under this section, then the commissioner will, in his or her discretion, perform the inspection, after giving the owner the notice required by AS 46.17.060. The owner shall reimburse the state for its costs incurred in making the inspection. (Eff. 8/16/89, Register 111)

Authority: AS 46.17.010 AS 46.17.060
 AS 46.17.030 AS 46.17.070
 AS 46.17.050

11 AAC 93.160. GENERAL REQUIREMENTS. Repealed 8/16/89.

11 AAC 93.161. STATE INSPECTIONS. If the commissioner determines that a condition might exist that might affect the safety of a dam, or determines that an owner inspection required by 11 AAC 93.159 is inadequate, the commissioner will, in his or her discretion, inspect the dam after giving the notice required by AS 46.17.060. If, because of the potential danger to life and property posed by the condition of a dam, there is insufficient time, in the commissioner's opinion, to give the two-week notice required by AS 46.17.060, then the commissioner will give the owner as much notice as is reasonable under the circumstances. The owner shall reimburse the state for its costs incurred in making the inspection. (Eff. 8/16/89, Register 111)

11 AAC 93.163 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.167

Authority: AS 46.17.010 AS 46.17.050
 AS 46.17.030 AS 46.17.060

11 AAC 93.163. EMERGENCY ACTION. (a) If (1) in the opinion of the commissioner the condition of a dam is sufficiently dangerous so as not to allow adequate time for the issuance of an order to the owner under 11 AAC 93.159(d) relative to the maintenance or operation of the dam, (2) actual or potential flooding threatens the condition of the dam, or (3) the owner will not voluntarily comply with an order or does not have the present means to comply with an order, then the commissioner will, in the commissioner's discretion, take remedial action that the commissioner determines is necessary to protect life and property from the risks posed by the dam's operation or potential failure.

(b) In taking remedial action under this section, the commissioner will, in the commissioner's discretion, take supervisory control of the dam from the owner, over the owner's objection if necessary, until the emergency passes. During such supervision, the owner, agents, and employees of the owner shall comply with all of the commissioner's orders.

(c) The owner shall reimburse the state for the costs of any reasonably necessary remedial action taken under this section. (Eff. 8/16/89, Register 111)

Authority: AS 46.17.010 AS 46.17.060
 AS 46.17.030 AS 46.17.070
 AS 46.17.050

11 AAC 93.165. DAM MEASUREMENT. Repealed 8/16/89.

11 AAC 93.167. CERTIFICATION OF EXISTING DAMS. (a) Not later than December 31, 1989, the owner of a dam that was constructed before May 31, 1987, shall file a complete application, on a form provided by the commissioner, for a certificate of approval to operate the dam, along with the applicable fee under 11 AAC 05.010. Unless the owner has filed an application under this section, no dam existing before May 31, 1987, may be operated after December 31, 1989.

(b) An application for a certificate of approval under this section must include

- (1) as-built plans for the dam, prepared by a qualified engineer;
- (2) a detailed maintenance plan;
- (3) a detailed operation plan;
- (4) for Class I and Class II dams, a detailed emergency action plan; and
- (5) a plan for routine safety inspections of the dam in addition to the periodic safety inspections required by 11 AAC 93.159.

(c) Within 90 days after its submission, the commissioner will review, and either approve or disapprove, an application filed under this section. If the application is approved, the commissioner will issue a certificate of approval to the owner allowing the owner to operate the dam under the conditions imposed by the certificate.

(d) Nothing in this section relieves the owner of a dam of the responsibility to secure the appropriate additional state, federal, or local regulatory permits or licenses. (Eff. 8/16/89, Register 111)

Authority: AS 46.17.010
AS 46.17.030

AS 46.17.040
AS 46.17.050

11 AAC 93.170. CONSTRUCTION OF LARGE DAMS. Repealed 8/16/89.

11 AAC 93.171. DAM CONSTRUCTION, MODIFICATION, REMOVAL, OR ABANDONMENT. (a) No person or entity may (1) operate a dam constructed after May 30, 1987, but before 8/16/89, or (2) abandon a dam, remove a dam, begin the construction, or modification of a dam, without first applying for the commissioner's permission on a form provided by the commissioner, paying the applicable fees under 11 AAC 05.010, and receiving a certificate of approval from the commissioner for the proposed action. The commissioner will require the following information, if applicable, to be provided with the application:

(1) proof that the applicant has applied for any water use permit required under AS 46.15, or otherwise has any permit or water use certificate required under AS 46.15;

(2) complete plans, specifications, and engineering reports for the proposed action, that must be prepared by or under the direction of an engineer with appropriate experience in the design, construction, and safety of dams, and that must include

(A) a topographic map of the dam site showing the location of the dam, the reservoir area at normal and maximum water storage levels, and the location of the spillways, outlet works, borings, test pits, and material sites;

(B) a profile along the dam axis showing the elevation of the crest of the dam, location and elevation of spillways and outlet works, and geological investigation information; and

(C) cross-sections, including the maximum cross-section of the dam, indicating elevation and width of the crest, location and elevation of spillways and outlet works, the slopes of upstream and downstream faces, the thickness of erosion control structures, and the location of cutoff and bonding trenches.

(b) Engineering reports required under (a)(2) of this section must contain sufficient information to justify the design assumptions and

11 AAC 93.171 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.171

criteria used, and must contain the information necessary for the commissioner to make a safety determination when reviewed in conjunction with the plans and specifications. Information supplied in engineering reports must contain all the analyses and data necessary for the size, type, and proposed hazard classification of dam involved.

(c) In addition to the information required under (a) and (b) of this section, the commissioner will, in his or her discretion, require additional information that the commissioner considers necessary, including

(1) formulas and assumptions used in the design criteria and test results;

(2) hydrologic data used in the development of the project design flood hydrograph for the dam;

(3) physical analyses and permeability analyses of the materials used in the dam;

(4) an evaluation of the stability of the dam and foundation, including a seismic stability analysis of the dam and foundation using the appropriate seismic zone criteria from the U.S. Army Corps of Engineers' publication ER 1110-2-1806, dated May 16, 1983, or other criteria acceptable to the commissioner;

(5) a complete seepage analysis for the dam and foundation;

(6) design criteria, calculations, and rating curves for the spillways and outlet works;

(7) a geological investigation of the dam site, reservoir area, spillways, outlet works, appurtenant works, and material sites that must include geological maps, locations and logs of borings and test pits, geological cross-sections, material analyses, and other necessary site-specific information;

(8) a storage-versus-depth curve and a storage-versus-area curve for the reservoir;

(9) a construction schedule for the dam construction, which must be revised and presented to the commissioner for approval if the construction is not pursued according to the approved schedule;

(10) a water diversion plan for the construction, including cofferdam plans and specifications, cofferdam stability analysis under normal and appropriate probable flood conditions, hydrologic data, hydraulic analyses, and stability analyses for conduits or spillways used for diversion during construction; plans for controlling seepage and pumping of seepage; and plans for removal of cofferdams, conduits, spillways, and other temporary structures used for water diversion during construction;

(11) an erosion control plan documenting measures to be used during construction to limit erosion during construction, both within the construction site and in the stream channel; and

(12) for the removal or abandonment of a dam:

(A) a description of the method of dewatering the reservoir, including a description of the equipment to be used;

(B) a description of the method of breaching the dam, including a description of the equipment to be used;

(C) a description of the means to be used to control erosion at the site during and after the breach or removal;

(D) a description of the means of controlling sediment transport from the reservoir;

(E) a description of the means of restoring the reservoir bed and channel through the reservoir;

(F) a description of the means to maintain the breach area, upstream and downstream channel, and reservoir bed after the breach;

(G) a time schedule for the operation;

(H) a description of the steps that have been taken with regard to abandoning any water rights issued under AS 46.15.

(d) Upon the issuance of a certificate of approval for the construction, modification, removal, or abandonment of a dam, the proposed action with respect to the dam may begin. During the action, and until it is completed,

(1) the owner may not deviate from the terms of the certificate or from approved plans and specifications without the commissioner's prior written approval;

(2) an engineer with appropriate experience in the construction, modification, removal, or abandonment of dams shall supervise compliance with the approved plans and specifications; and

(3) upon 24 hours' notice to the owner, the commissioner will, in the commissioner's discretion, inspect the dam.

(e) Upon completion of the construction, modification, removal, or abandonment of a dam, the owner of the dam shall provide the commissioner with a completion report, prepared by the supervising engineer described in (d)(2) of this section, that must include

(1) a description of how the plans and specifications were followed or deviated from;

(2) a description of unexpected conditions encountered;

(3) inspection reports, test analyses, compaction tests, pressure tests, and all other tests undertaken;

(4) photographs documenting construction or demolition progress;

(5) as-built drawings for removed, modified, or newly constructed dams;

(6) a post-construction operations and maintenance plan; and

(7) for Class I or Class II dams to be operated, an emergency action plan including inundation maps, consistent with guidelines established by the commissioner, and a routine safety inspection plan.

11 AAC 93.173 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.174

(f) Once all necessary and complete reports are filed, the commissioner will, in the commissioner's discretion, issue a certificate of approval to operate a newly constructed or modified dam.

(g) A certificate of approval issued under (f) of this section is valid only for the period of time specified in the certificate. No action allowed under the certificate may continue beyond the certificate's expiration date without the issuance of a new certificate of approval. No water may be impounded behind a newly constructed dam, or additional water impounded behind a modified dam, until a certificate of approval is issued under (f) of this section.

(h) Nothing in this section relieves the owner of the responsibility to secure the appropriate additional state, federal, or local regulatory permits or licenses. (Eff. 8/16/89, Register 111)

Authority: AS 46.17.010 AS 46.17.050
AS 46.17.030 AS 46.17.060
AS 46.17.040 AS 46.17.070

Editor's notes. — Copies of the U.S. Land and Water Management. Dam
Army Corps of Engineers' publication ER Safety Office, P.O. Box 107005, Anchorage, AK 99510-7005, or from any regional
1110-2-1806, adopted by reference in 11 office of that division.
AAC 93.171(c), are available from the
Dept. of Natural Resources, Division of

11 AAC 93.173. TERMS AND CONDITIONS IN CERTIFICATE OF APPROVAL. A certificate of approval for a dam that was built before May 31, 1987, or that is constructed, modified, removed, or abandoned after that date, will, in the commissioner's discretion, contain terms and conditions that the commissioner determines are necessary for public safety, including

(1) maximum or minimum filling rates and other conditions to ensure proper loading of the dam during the initial filling of the reservoir;

(2) normal maximum reservoir water elevation;

(3) dates for routine and periodic safety inspections;

(4) specified operation procedures;

(5) specified maintenance procedures; and

(6) any other terms and conditions necessary, in the commissioner's judgment, to ensure the safe operation and maintenance of the dam. (Eff. 8/16/89, Register 111)

Authority: AS 46.17.010 AS 46.17.050
AS 46.17.030 AS 46.17.060
AS 46.17.040 AS 46.17.070

11 AAC 93.174. TRANSFER OF CERTIFICATE OF APPROVAL. An owner may not assign or otherwise transfer a certificate of approval issued under 11 AAC 93.167 or 11 AAC 93.171 with-

out obtaining the written permission of the commissioner and paying the applicable fees under 11 AAC 05.010. The commissioner will, in his or her discretion, impose terms and conditions on the transfer that the commissioner determines are necessary to ensure that the dam is operated and maintained in a safe manner. (Eff. 8/16/89, Register 111)

Authority: AS 46.17.010
AS 46.17.030
AS 46.17.040

11 AAC 93.175. RECORDS. (a) The owner of a dam shall maintain on file, either at the location of the dam or at the owner's regular place of business in the state, all records pertaining to the safety of the dam, including:

- (1) construction plans and specifications;
- (2) engineering reports;
- (3) as-built plans;
- (4) all completion reports;
- (5) construction inspection reports;
- (6) material test analyses;
- (7) reports of routine safety inspections performed under 11 AAC 93.167(b)(5) or 11 AAC 93.171(e)(7);
- (8) periodic safety inspection reports required under 11 AAC 93.159; and
- (9) all other information and documents that might contain data relevant to the safety of the dam.

(b) All records that the owner is required to retain under this section must be open to the commissioner's inspection and copying during the owner's regular business hours, or, in the event of an emergency, at any time the commissioner considers necessary.

(c) The commissioner will, in his or her discretion, seek an administrative subpoena requiring the owner, or the owner's agents, contractors, or employees, to produce, within seven days, records that the owner is required to retain under this section. If the party refuses to comply with the subpoena, the commissioner will, in his or her discretion, seek to enforce the subpoena by filing an appropriate action in superior court. (Eff. 8/16/89, Register 111)

Authority: AS 46.17.010 AS 46.17.050
AS 46.17.030 AS 46.17.060
AS 46.17.040 AS 46.17.080

11 AAC 93.180. CONSTRUCTION OF MEDIUM-SIZED DAMS. Repealed 8/16/89.

11 AAC 93.190. CONSTRUCTION OF SMALL DAMS. Repealed 8/16/89.

11 AAC 93.201 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.201

11 AAC 93.201. DEFINITIONS. In 11 AAC 93.151 — 11 AAC 93.201.

(1) "as-built plans" means plans that show the final configuration of a dam, including its reservoir and other appurtenant works;

(2) "commissioner" includes an authorized representative of the commissioner;

(3) "dam" means the same as in AS 46.17.900;

(4) "emergency action plan" means a plan that details what measures will be taken to protect public safety when a condition at a dam, including its reservoir and other appurtenant works, is a threat to public safety;

(5) "engineer" means a civil engineer currently licensed to practice in the state under AS 08.48;

(6) "inundation map" means a topographic map that indicates the extent of flooding below a dam after failure under both the normal operating level and the project design flood;

(7) "maintenance plan" means a plan that details what measures will be taken to maintain a dam, including its reservoir and other appurtenant works;

(8) "modification" includes enlargement, alteration, and repair;

(9) "operation plan" means a plan that details how a dam, including its reservoir and other appurtenant works, will be operated;

(10) "periodic safety inspection" means a dam safety inspection performed on a regular basis as required by 11 AAC 93.159, or as specified by the commissioner under 11 AAC 93.159;

(11) "project design flood" means the maximum design inflow of water to a dam based on the dam's hazard classification and size;

(12) "repair" is as defined in AS 46.17.900, but does not include routine maintenance;

(13) "routine maintenance" means any work performed on a dam, including its appurtenant works and reservoir, that is generally of a housekeeping nature and that does not affect or have the potential to affect the safety of the dam or reservoir; and

(14) "routine safety inspection" means a dam safety inspection performed on a regular basis as part of maintenance and operation of a dam, at intervals determined by the commissioner based on the type, size, hazard classification, and condition of the dam. (Eff. 8/16/89, Register 111)

Authority: AS 46.17.010
AS 46.17.030
AS 46.17.900

Article 4. Temporary Water Use**Section**

210. Temporary water use

220. Simplified procedure for temporary
water use

11 AAC 93.210. TEMPORARY WATER USE. (a) Simplified procedures to authorize the temporary use of water, as provided in 11 AAC 93.220, will be followed if the amount of water is not a significant amount as defined by 11 AAC 93.970(14), the use continues for less than five 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 11 AAC 93.220. Water so used is subject to appropriation by others. (Eff. 2/8/67, Register 23; am 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.040
AS 46.15.133

11 AAC 93.220. SIMPLIFIED PROCEDURE FOR TEMPORARY WATER USE. (a) Application for a temporary water use permit must be made in writing to the commissioner.

(b) An application must include

- (1) the application fee prescribed by 11 AAC 05.010;
- (2) a map identifying the section, township, range, and meridian, and indicating the location, of the property, the point of withdrawal, diversion, or impoundment, and the point of use;
- (3) the quantity of water to be used, with documentation and calculations justifying the request;
- (4) the nature of the water use;
- (5) the time period during which water is to be used; and
- (6) the type and size of equipment used to withdraw the water.

(c) The commissioner will notify the Alaska Departments of Fish and Game and Environmental Conservation of a proposed temporary water use and will, in his or her discretion, provide notice to any federal or state agency responsible for managing land in the vicinity, and to any local government in whose jurisdiction the proposed withdrawal or diversion for temporary water use would occur. At the applicant's expense, the commissioner will, in his or her discretion, give additional notice by posting or by publication in the local newspaper if the proposed water use is likely to affect the water rights of other persons or the public interest.

(d) The commissioner will, in his or her discretion, consider any other pertinent information in deciding whether to issue or deny a temporary water use permit. The reason for the decision will be fur-

11 AAC 93.240 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.250

nished 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 include

- (1) the quantity of water to be used;
- (2) the legal description of the point of water withdrawal or diversion;
- (3) a project description;
- (4) an expiration date;
- (5) the daily duration and months of use; and
- (6) the point or area of water use, if applicable.

(f) The commissioner will, in his or her discretion, issue a temporary water use permit subject to conditions including suspension or termination, considered necessary to protect the water rights of other persons or the public interest.

(g) Denial of an application under this section does not preclude the applicant from applying for a permit under 11 AAC 93.040. (Eff. 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020 AS 46.15.100
 AS 46.15.040 AS 46.15.133

Article 5. Preferred Use

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

11 AAC 93.240. APPLICATION FOR PREFERRED USE STATUS. An applicant for preferred use status shall submit the fee prescribed by 11 AAC 05.010 and 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 that serves the general public as defined by AS 42.05.720(3) and AS 42.05.720(4);
- (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, Register 23; am 12/29/79, Register 72; am 11/7/90, Register 116)

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, the com-

missioner will, in his or her discretion, require the submission of additional evidence, hold hearings, or require investigative studies.

(b) Denial of an application for preferred use status does not preclude the applicant from applying for other water rights under 11 AAC 93.040 — 11 AAC 93.140. (Eff. 2/8/67, Register 23; am 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020 AS 46.15.065
 AS 46.15.040 AS 46.15.090
 AS 46.15.060 AS 46.15.150

11 AAC 93.260. ISSUANCE OF A PERMIT TO APPROPRIATE FOR PREFERRED USE. (a) If the commissioner grants an applicant preferred use status under 11 AAC 93.250, the commissioner will issue a permit to appropriate for preferred use when

(1) notice has been given under 11 AAC 93.080; 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 limited water availability has resulted in the need for immediate action, the commissioner will:

(1) order the applicant to post a bond or certificate of deposit, in the name of the department and the applicant, in an amount the commissioner considers 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 by established priority.

(c) An order issued under (b) of this section continues in effect until an agreement on compensation is arrived at as provided in (a) of this section or until the limited water condition is over. (Eff. 2/78/67, Register 23; am 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020
 AS 46.15.150

Article 6. Enforcement

Section

270. Enforcement

280. Emergency actions

Section

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 11 AAC

11 AAC 93.280 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.290

93.280 — 11 AAC 93.290. (Eff. 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020 AS 46.15.180
 AS 46.15.100 AS 46.15.255

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 the right of a prior appropriator, or, with the exception of changes in water quality, to the resource itself, the commissioner will, in his or her 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, Register 72; am 11/07/90, Register 116)

Authority: AS 46.15.020 AS 46.15.180
 AS 46.15.080 AS 46.15.255

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

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

(2) a stop 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 stop order to any person substantially interfering with the appropriation of water to which a right was granted under the provisions of this chapter;

(4) a stop order to any person appropriating water without a permit, including uses exempted by 11 AAC 93.920;

(5) an order requiring the submittal of books, records, meters, gauges, well logs, and other hydrologic information relevant to an adjudication or action; or

(6) an order to remove or abate unpermitted works of appropriation.

(b) If the commissioner considers it necessary to prevent or rectify a violation of this chapter, the commissioner will, in his or her discretion,

(1) give notice and hold a hearing in order to gather additional information, evidence, or testimony; or

(2) obtain a search warrant or court order authorizing the commissioner to enter onto the property, seize, or remove structures or works of appropriation, or directing the violator to take other action required to protect against damage to persons and property. (Eff. 12/29/79, Register 72; am 9/11/83, Register 87; am 11/7/90, Register 116)

Authority: AS 46.15.010
AS 46.15.020
AS 46.15.180

AS 46.15.255
AS 46.15.256

Article 7. Appeals

Section
300. Appeals

11 AAC 93.300. APPEALS. A person adversely affected by a decision issued under this chapter may appeal that decision in accordance with 11 AAC 02. (Eff. 2/8/67, Register 23; am 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.070(e)

AS 46.15.135
AS 46.15.180

Article 8. Administrative Basin-wide Adjudication

Section	Section
400. Boundaries of the adjudication area	420. Notice procedures
410. Initiating an administrative basin-wide adjudication	430. Federal reserved water rights claims
	440. Commissioner's orders

11 AAC 93.400. BOUNDARIES OF THE ADJUDICATION AREA. (a) Before initiating an adjudication under AS 46.15.165, the commissioner will identify in writing the geographic and hydrologic boundaries and the hydrologic resources of the adjudication area. The written identification will

(1) describe the interaction and hydrologic communication between the surface water drainage systems and the ground water flow systems;

(2) identify the surface water topographic drainage divide and the boundaries of ground water aquifer systems on the most detailed United States Geological Survey map available for the basin;

11 AAC 93.410 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.410

(3) describe the geographic and hydrologic boundary and the area in square miles;

(4) describe how the boundary and area size were determined;

(5) collect and summarize available stream discharge and ground water data and determine, where possible, mean monthly and annual stream discharge, high and low flows, duration curves, current water use, and the aquifer's yield; and

(6) summarize ongoing and planned hydrologic or hydrogeologic investigations in the area.

(b) The commissioner will, in his or her discretion, alter the boundaries identified in (a) of this section as needed after an adjudication is initiated under 11 AAC 93.410. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.165

11 AAC 93.410. INITIATING AN ADMINISTRATIVE BASIN-WIDE ADJUDICATION. The commissioner will, in his or her discretion, initiate an administrative basin-wide adjudication by issuing an order that will, in the commissioner's discretion, contain some or all of the following information:

(1) a written consent by the federal government to participate in the administrative adjudication and to have its claim to federal reserved water rights adjudicated in the process;

(2) a reference to the authorizing statute, AS 46.15.165, and statement of intent to adjudicate all water rights claims, including federal reserved water rights, pending, permitted, or certified in the area;

(3) a description of the purpose of the basin-wide adjudication;

(4) a description of the geographic and hydrologic area under adjudication;

(5) a description of the surface water bodies and ground water aquifer systems, including names if possible;

(6) a legal description of the adjudication area, including meridian, township, range, section, and aliquot parts;

(7) a notice that public and private water utilities will represent water users purchasing water from the utilities;

(8) a description of the time period during which the federal government or any other person may file a claim to have federal reserved water rights adjudicated;

(9) a notice that new water rights applications in the adjudication area will be accepted and included in the adjudication if filed within a stated period of time after the close of the newspaper publication period;

(10) a notice that the adjudication will not preclude the filing of future applications for water rights under AS 46.15, but that such

rights will be junior in priority to those adjudicated under these proceedings; and

(11) the address and office location to obtain further information. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.165

11 AAC 93.420. NOTICE PROCEDURES. (a) Notice of the adjudication will be served on those persons listed in AS 46.15.165(c) and in the manner described in AS 46.15.165(e).

(b) Notice to the agencies of the federal government having management or trust responsibility over lands within the adjudication area will be served on

- (1) the chief officer of the federal agency's Alaska regional office;
- (2) the manager of the specific federal land reservation, if any;
- (3) the U.S. Attorney General; and
- (4) the U.S. Attorney for the District of Alaska.

(c) Notice will be given to the Alaska Departments of Fish and Game and Environmental Conservation, the division of governmental coordination within the Governor's Office, and an affected coastal resource district with an approved program.

(d) Newspaper notice will be published once a week for four consecutive weeks in a newspaper of general circulation in the area to be adjudicated. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.165

11 AAC 93.430. FEDERAL RESERVED WATER RIGHTS CLAIMS. (a) A claim by the federal government or other person claiming federal reserved water rights within the adjudication area must be filed in writing with the commissioner.

(b) A claim to federal reserved water rights must contain the following information:

- (1) the name of the agency, person, or agent representing the person making the claim, and the representative's phone number and address;
- (2) the claimed priority date;
- (3) the claimed primary purpose of the federal reserved water right;
- (4) a list of statutes, proclamations, orders, or other documents establishing the federal withdrawal or reservation of land;
- (5) the amount of water claimed and data supporting the quantification of the claim;
- (6) the daily duration and months of the year during which water is claimed;

11 AAC 93.440 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.500

(7) the water source, including name if possible;

(8) the most detailed USGS topographic map available for the area showing the location and the legal descriptions for the points of water withdrawal, diversion, or impoundment and water use, or river reach for instream use, including meridian, township, range, section, and aliquot parts;

(9) all documents that establish each land withdrawal or reservation and support the claimed priority date, claimed primary purpose, and quantities;

(10) well logs, aquifer test data, and well construction data for diversions from ground water sources; and

(11) any available water use data. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.165
AS 46.15.169

11 AAC 93.440. COMMISSIONER'S ORDERS. In performing the adjudication under this chapter, the commissioner will, in his or her discretion, issue further orders as necessary, including

(1) designating an impartial qualified person as a master to preside over the adjudication;

(2) establishing hearing times and places;

(3) establishing appropriate rules of evidence and procedures for use in connection with a hearing. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.165

Article 9. Critical Water Management Areas

Section	Section
500. Initiating designation proceedings	530. Effect of the order
510. Public notice and hearing	540. Appeals
520. Department order	

11 AAC 93.500. INITIATING DESIGNATION PROCEEDINGS. The commissioner will, in his or her discretion, initiate proceedings to designate a particular geographic or hydrologic area, including surface and ground water, as a critical water management area if

(1) the commissioner determines that there is or might be an imminent water shortage in the area, for all or part of the year, affecting a substantial number of permittees or certificate holders of record so that their ability to reasonably acquire water has been or will be affected by existing or potential overappropriation, drought, saltwater intrusion, or a chemical or toxic contamination rendering the water source unusable;

(2) an agency or political subdivision of the state, or an agency of the United States, petitions for the designation of the area as a critical water management area and demonstrates that a condition in (1) of this section exists; or

(3) 25 percent or more of the permittees and certificate holders of record in a geographic or hydrologic area petition for the designation of a critical water management area and demonstrate that at least one condition in (1) of this section exists. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.010
AS 46.15.020

11 AAC 93.510. PUBLIC NOTICE AND HEARING. Before the commissioner designates a geographic or hydrologic area as a critical water management area, or revokes or amends a designation, the department will

(1) publish a notice of the proposed designation, revocation, or amendment in a newspaper of general circulation in the area affected once a week for four consecutive weeks, soliciting public comment and announcing the date, time, and place of a public hearing;

(2) solicit comments on the proposed designation, revocation, or amendment by certified mail, return receipt requested, from appropriators and property owners of record within the area; affected federal, state, and local agencies, including the Departments of Fish and Game and Environmental Conservation; and any affected regional or village corporation; and

(3) hold a public hearing in the affected area to take written and oral comments on the proposed designation, revocation, or amendment; the department will accept additional written comments submitted up to 30 days after the hearing date. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.010
AS 46.15.020

11 AAC 93.520. DEPARTMENT ORDER. The decision to designate a geographic or hydrologic area as a critical water management area, or revoke or amend a designation, will be in writing, and will, as appropriate,

(1) state the reasons for the designation, revocation, or amendment;

(2) define the boundaries of the area or amendment;

(3) predict the likelihood of an imminent or continued water shortage or contamination problem;

11 AAC 93.530 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.540

(4) state how additional appropriations would affect the rights of permittees or certificate holders of record, or the public interest under AS 46.15.080; and

(5) state whether, after a specific date, applications for water rights will be accepted or adjudicated. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.010
AS 46.15.020

11 AAC 93.530. EFFECT OF THE ORDER. (a) Within 30 days after signing a department order to designate a geographic or hydrologic area as a critical water management area, or revoke or amend a designation, the commissioner will announce the decision by publishing the order in a newspaper of general circulation in the affected area once a week for four consecutive weeks. The order will also be mailed to permittees or certificate holders of record and property owners of record in the area; affected federal, state, and local agencies, and affected regional and village corporations.

(b) After that, the commissioner will, in his or her discretion, take the following actions:

(1) restricting or denying the acceptance of applications for new water appropriations or applications for additional quantities for existing appropriators of record, until the order is amended or revoked;

(2) seeking voluntary agreement among permittees and certificate holders to limit the quantity of their water use on an equitably apportioned basis during all or part of the year;

(3) fixing a time limit for accepting new applications for water rights for existing water uses;

(4) designating all water uses as significant and eliminating the exemptions under 11 AAC 93.920;

(5) requiring notice of all applications;

(6) requiring conservation measures;

(7) taking any other actions necessary to fully inform the public of the order; or

(8) enforcing actions under 11 AAC 93.280, 11 AAC 93.290, AS 46.15.255, and AS 46.15.256. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.010 AS 46.15.250
AS 46.15.020 AS 46.15.255
AS 46.15.180 AS 46.15.256

11 AAC 93.540. APPEALS. A person adversely affected by a decision under 11 AAC 93.520 — 11 AAC 93.530 may appeal as provided in 11 AAC 02. (Eff. 11/7/90, Register 116)

Authority: AS 46.15.010

AS 46.15.020
AS 46.15.185

Article 10. General Provisions

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

11 AAC 93.910. CHANGE OF ADDRESS. (a) All water right applicants, permit holders, and certificate holders shall promptly notify the commissioner of any change of ownership or 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 11 AAC 93.040 — 11 AAC 93.260 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, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.010
AS 46.15.020

11 AAC 93.920. EXEMPTIONS. (a) Any person using less than a significant amount of water, as defined in 11 AAC 93.970, 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 11 AAC 93.040 — 11 AAC 93.140. 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.

(b) Any use of seawater, as defined in 11 AAC 93.970, or the emergency use of water for protection of life or property, is exempt from the provisions of this chapter unless the commissioner determines, in his or her discretion, that the use should be regulated in the public interest. (Eff. 2/8/67, Register 23; am 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.010
AS 46.15.020
AS 46.15.180

11 AAC 93.930. PROCEDURE FOR THE TRANSFER AND CHANGE OF APPROPRIATIONS. (a) A person with a water right

11 AAC 93.940 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.940

permit or certificate who desires to change the location of the point of water withdrawal, diversion, or impoundment, depth of taking, nature of use, or place of use, or add points of withdrawal, diversion, or impoundment, shall apply in writing for permission to make the change and include the fee prescribed by 11 AAC 05.010.

(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. The commissioner will, in his or her discretion, provide for notice, receive written comments, and hold a hearing as provided in 11 AAC 93.080 — 11 AAC 93.110.

(c) If the commissioner determines that the proposed change will not adversely affect the water rights of other persons or the public interest, a permit will be issued for a period of one year. A permit will not be issued if it is proven to the satisfaction of the commissioner that the change will adversely affect the water rights of permit holders and certificate holders of record, or if the commissioner finds that the proposed change might adversely affect or impair the public interest or that the appropriation proposed to be changed has been abandoned or forfeited. A change will, in the commissioner's discretion, be granted in whole or in part, and is subject to conditions that the commissioner considers necessary in order to avoid injury to the water rights of other persons or to the public interest.

(d) If a person files a written objection during the one-year permit period in (c) of this section, claiming to be injured by the change, the commissioner will, in his or her discretion, if it appears necessary to protect the water rights of other persons or the public interest, temporarily suspend the permit. After notice and hearing, the commissioner will confirm, modify, or rescind the decision allowing the change.

(e) If no objection is filed within the one-year permit period in (c) of this section, the change becomes permanent and the commissioner will issue an amended permit or certificate to represent the water right as changed. The commissioner will record any amended certificate in the appropriate recorder's office. (Eff. 12/29/79, Register 72; am 11/7/90, Register 116)

Authority: AS 46.15.020
AS 46.15.160

11 AAC 93.940. PROCEDURE ON ABANDONMENT AND FORFEITURE. (a) Except as provided in (f) of this section, if the commissioner has reason to believe that all or part of an appropriation has been abandoned or forfeited, the certificate holder will be notified that the commissioner intends to revoke the certificate for nonuse, to the extent of the nonuse. The revocation notice will be sent by certified mail, return receipt requested, to the last known address on record with the department.

(b) If the certificate holder desires to retain the appropriation, the certificate holder must file an objection within 30 days after receipt of the revocation notice. The certificate holder has 60 days after the date the objection is filed to submit proof that the appropriation has been neither abandoned nor forfeited. The proof must be in writing, and may include statements or affidavits, sworn testimony of witnesses, documents, and other relevant evidence. The commissioner will, in his or her discretion, hold a hearing in order to gather additional information, evidence, or testimony on the proposed revocation.

(c) If the proof substantiates that the appropriation has not been abandoned or forfeited, the commissioner will rescind the revocation notice. The holder will be notified of the decision by certified mail.

(d) If the proof does not substantiate that the appropriation has been neither abandoned nor forfeited, the commissioner will declare the appropriation abandoned or forfeited and revoke the certificate in whole or in part depending on the extent of nonuse. The commissioner will record the decision, and any amended certificate, in the appropriate recording office. In addition, the commissioner will, in his discretion, secure a court order for the removal of the works of appropriation.

(e) If necessary, the commissioner will, in his or her discretion, require a record of use to be submitted on a specified regular basis.

(f) If a certificate holder voluntarily relinquishes his or her water right by submitting a notice of relinquishment or a signed, notarized letter stating that all or part of the water right is being relinquished and stating the amount being relinquished, the notice requirement under (a) does not apply and the water right will be considered abandoned. The certificate will be revoked in whole or in part, and a copy of the revocation decision will be sent to the certificate holder. Any amended certificate will be recorded by the commissioner in the appropriate recorder's office. (Eff. 12/29/79, Register 72; am 9/11/83, Register 87; am 11/7/90, Register 116)

Authority: AS 46.15.020 AS 46.15.145
 AS 46.15.140 AS 46.15.160

11 AAC 93.950. RECORDING OF INSTRUMENTS. The holder of a certificate issued under this chapter shall record the certificate in the appropriate recorder's office. (Eff. 12/29/79, Register 72; am 9/11/83, Register 87; am 11/7/90, Register 116)

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

11 AAC 93.970 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 93.970

for any claims arising out of activities conducted under a permit or certificate issued under this chapter, brought by the holder or owner of it or any third party. Neither this chapter nor any permit or certificate issued under it is intended as a waiver of sovereign immunity or of the state's immunity under the 11th amendment to the United States Constitution. (Eff. 12/29/79, Register 72; am 11/7/90, Register 116)

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 appropriators 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) deleted 11/7/90;

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

(5), (6) deleted 11/7/90;

(7) "declaration of appropriation" or "grandfather right" means a formal claim to a water right acquired under law or custom 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 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 more than 5,000 gallons of water in a single day from a single source, or the

regular daily or recurring seasonal use of more than 500 gallons of water per day for 10 days or more per year from a single source, or the non-consumptive use of more than 30,000 gallons of water per day (0.05 cfs) from a single source, or any use of water from a source or sources listed in the Alaska Department of Fish and Game "Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes," or any water use that might adversely affect the water rights of other appropriators or the public interest;

(15), (16) deleted 11/7/90;

(17) "well" means an artificial opening or artificially altered natural opening by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn, but does not include a hole or shaft 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 the amount of water flowing past a given point during one second;

(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, that is supplied from drainage, upwellings, springs, or groundwater;

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

(24) "afy" means acre feet per year;

(25) "appropriators of record" means applicants for, and permittees and certificate holders of, water rights;

(26) "appurtenant" means that a permit or certificate to appropriate is legally attached to the land or place where the water is beneficially used, unless the water right is severed under AS 46.15.160;

(27) "aquifer" means any geologic formation that will yield water to a well in sufficient quantity for beneficial use;

(28) "aquifer system" means a heterogeneous body of interlayered permeable and poorly permeable material that functions regionally as a water-yielding hydraulic unit and comprises two or more permeable beds (aquifers) separated at least locally by acuitards (confining units) that impede ground water movement but do not greatly affect the regional hydraulic continuity of the system;

11 AAC 95.060 ADMINISTRATIVE CODE SUPPLEMENT 11 AAC 95.060

(29) "cfs" means cubic feet per second;

(30) "drainage basin" means a natural, distinct, and independent hydrologic area; surface or subsurface or both; confined or unconfined;

(31) "gpd" means gallons of water per day;

(32) "gpm" means gallons of water per minute;

(33) "non-consumptive water use" means the instream use of water, or the diversion of water where the quantity of water diverted is not diminished except by evaporation or transpiration and the water is returned to its original source at the original point of diversion immediately after its use;

(34) "reasonably acquire" means that a permittee or certificate holder can acquire adequate water to fulfill the purposes of the appropriation from the source of water for which the water right is permitted or certificated, even though changes in the condition of water occurrence have taken place as a result of the withdrawal of water by later appropriators;

(35) "seawater" means water, taken from the sea or ocean, with a salinity of 35 parts per thousand or greater;

(36) "statement of beneficial use" means a notarized statement of the actual quantity of water being used from a permitted source of water for a specific purpose;

(37) "water source" means a water body, lake, stream, aquifer, or ice. (Eff. 2/8/67, Register 23; am 12/29/79, Register 72; am 9/11/83, Register 87; am 11/7/90, Register 116)

Authority: AS 46.15.020 AS 46.15.080
 AS 46.15.040 AS 46.15.133
 AS 46.15.050 AS 46.15.145

SENATE CS FOR CS FOR HOUSE BILL NO. 596 (FINANCE) am S
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 5/15/92
Offered: 5/15/92

Sponsor(s): HOUSE FINANCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

"An Act relating to the powers, duties, and operations of certain state agencies, including those of the Alaska Science and Technology Foundation, fees and charges collected by agencies, the disposal or leasing of state land or interests in state land, the management of public recreational land and the management of state parks and recreation areas, vehicle registration, state procurements, the employment assistance and training program fund, contracts relating to prisoner, and the recording of public document; and providing for an effective date."

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

(Although this bill contained many sections addressing a wide spectrum of issues this section has been excerpted to reduce duplication costs)

* Sec. 30. AS 46.15.020(b) is amended to read:

(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

HB0596e

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New Text Underlined (DELETED TEXT BRACKETED)

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 the commissioner's 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 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:

(5) before February 1 of each year, submit a report to the legislature describing the activities of the commissioner under AS 46.15.035 and 46.15.037; the report must include

(A) information on the number of applications and appropriations for the removal of water from one hydrological unit to another that were requested and that were granted and on the amount of water involved;

(B) information on the number and location of sales of water conducted by the commissioner and on the volume of water sold;

(C) recommendations of the commissioner for changes in state water law; and

(D) a description of state revenue and expenses related to activities under AS 46.15.035 and 46.15.037.

* **Sec. 31.** AS 46.15 is amended by adding new sections to read:

Sec. 46.15.035. APPROPRIATION OR REMOVAL OF WATER OUT OF HYDROLOGIC UNITS TO OTHER HYDROLOGIC UNITS; WATER CONSERVATION FEE; RESERVATION OF WATER FOR FISH. (a) Water may not be removed from the hydrologic unit from which it was appropriated to another hydrologic unit, inside or outside the state, without being returned to the hydrologic unit from which it was appropriated nor may water be appropriated for removal from the hydrologic unit from which the appropriation is sought to another hydrologic unit, inside or outside the state, without the water being returned to the hydrologic unit from which it is to be appropriated, unless the commissioner

(1) finds that the water to be removed or appropriated for removal is surplus to needs within the hydrologic unit from which the water is to be removed or appropriated for removal, including fishing, mining, timber, oil and gas, agriculture, domestic water supply, and other needs as determined by the commissioner;

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

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

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

(c) Except as provided in AS 46.15.090, and in addition to the requirements of (a) of

this section, the commissioner may approve an application for removal or permit an appropriation for removal under (a) of this section of water from a lake, river, or stream that is used by fish for spawning, incubation, rearing, or migration, or ground water that significantly influences the volume of water in a lake, river, or stream that is used by fish for spawning, incubation, rearing, or migration, only if the commissioner reserves a volume of water in the lake or an instream flow in the river or stream for the use of fish and to maintain habitat for fish. The commissioner may adjust the volume of water reserved under this subsection if the commissioner, after public notice and opportunity to comment and with the concurrence of the commissioner of fish and game, finds that the best interests of the state are served by the adjustment. A reservation under this subsection

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

(2) for fish from a lake, river, or stream, identified under AS 16.05.0870 or identified in a Department of Fish and Game regional guide as being used by fish for spawning, incubation, rearing, or migration on or before the effective date of this section, has a priority date as of the effective date of this section;

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

(4) is not subject to AS 46.15.145;

(5) of water does not apply to appropriations of ground water of 5,000 gallons or less a day unless the commissioner, in consultation with the Department of Fish and

Game, determines that the appropriation may adversely affect fish habitat in a lake, river, or stream; the commissioner shall consider multiple appropriations of water for a single related use as a single appropriation for the purposes of this subsection.

(d) With respect to rivers and streams described in (c) of this section, the instream flow reservation shall be limited to the portion of the stream, including tributaries to the stream, at and downstream of the point of diversion or withdrawal. With respect to lakes described in (c) of this section, the reservation shall be limited to the lake from which the diversion or withdrawal is made, and the outlet and tributaries to the outlet flowing downstream.

(e) In this section,

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

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

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

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

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

(2) the commissioner determines that

(A) the water is surplus to needs within the hydrologic unit from which it was appropriated, including fishing, mining, timber, oil and gas, agriculture, domestic water supply, and other needs as determined by the commissioner;

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

and

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

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

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

(1) of a volume of water or an instream flow for the use of fish and to maintain

habitat for fish that is reserved under this section is withdrawn from appropriation;

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

(3) is not subject to AS 46.15.145;

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

(d) With respect to rivers and streams described in (c) of this section, the instream flow reservation shall be limited to the portion of the stream, including tributaries to the stream, at and downstream of the point of diversion or withdrawal. With respect to lake described in (c) of this section, the reservation shall be limited to the lake from which the diversion or withdrawal is made, and the outlet and tributaries to the outlet flowing downstream.

(e) In this section,

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

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

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

* **Sec. 32.** AS 46.15.133 is amended to read:

Sec. 46.15.133 NOTICES; OBJECTIONS. (a) If the commissioner proposes a sale of water or receives [UPON RECEIPT OF] an application for appropriation or removal, the commissioner shall prepare notice containing the location and extent of the proposed sale, appropriation, or removal, the name and address of the applicant, if applicable and other information the commissioner considers pertinent. The notice shall state that within 15 days of publication or service of notice, persons may file with the director written objections, stating the name and address of the objector, and any facts tending to show that rights of the objector or the public interest would be adversely affected by the proposed sale, appropriation, or removal.

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

(c) Within 15 days of publication or service of notice, an interested person may file an

objection. The commissioner may hold hearings upon giving due notice and shall grant, deny, or condition the proposed sale or application for appropriation or removal in whole or in part within 30 days of receipt of the last objection, or if the commissioner elects to hold hearings, within 180 days of receipt of the last objection. Notice of the order or decision shall be served personally or mailed to any person who has filed an objection.

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

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

(f) The commissioner may, by regulation, designate types of appropriations that are exempt from this section and provide simplified procedures for ruling on the applications, The commissioner may not exempt under this subsection appropriations for removal under AS 46.15.035, appropriations by the state for sale or sales by the state under AS 46.15.037, or removals of water under AS 46.15.035 and 46.15.037.

Briefing - DNR

Select. Land -

AK Statehood

Act - 1-9-94

STATUS OF STATE ENTITLEMENT

TOTAL LAND ENTITLEMENT (all grants)	106 MILLION ACRES
RECEIVED TO DATE	89 MILLION ACRES
AMOUNT OF LAND STILL OWED TO THE STATE	17 MILLION ACRES

AMOUNT OF LAND CURRENTLY SELECTED	40 MILLION ACRES
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- currently conveyable	- 21 million acres
- allowed selections (17m x 1.25)	- 21.25 million acres
- not conveyable (topfiled)	- 19 million acres
- ANCSA selections	- 14 million acres
- Military Bases	- 2 million acres
- Utility Corridor	- 2.5 million acres
- other withdrawals	- .5 million acres

RESOURCE VALUES OF THE 40 MILLION ACRES OF SELECTIONS (Preliminary)

Oil and Gas	- high value	5.0 million acres
	- moderate value	2.6 million acres
Minerals	- high value	10.6 million acres
	- moderate values	11.2 million acres
Surface Resources	- high value	15.9 million acres
Access Corridors	- high value	3.6 million acres

total acreage exceeds 40 million due to overlapping resource values on some land

STATE SELECTION ENTITLEMENTS

<u>GRANT</u>	<u>LAW GRANTING ENTITLEMENT</u>	<u>LAND ENTITLEMENT</u>	
General	PL85-508, Sec 6(b)	102,550,000	
Community	PL85-508, Sec 6(a)	400,000	
Comm Nat'l Forest	PL85-508, Sec 6(a)	400,000	
ANILCA School	PL96-487, Sec 906(b)	75,000	
University	Title 48, Sec 354(a)	100,000	
Mental-Health	PL84-830	1,000,000	
School	Title 48, Sec 353	*	(105,113)
Univ-Tanana	Title 48, Sec 353	*	(11,211)
Klukwan Bill	PL94-456, Sec 2	265	
Territorial	PL85-265	3930	
Federal	PL94-204, App F	4,895	
Federal	PL94--204, App DI & DII	525,312-622.080	
Federal	PL94-204, App E	<u>599,040</u>	
	TOTALS	105,755,210	(116,324)

* In place lands surveyed and approved

	<u>YEAR</u>	<u>TA ACREAGE</u>	<u>PATENT ACREAGE</u>	<u>TOTAL CUMULATIVE ACREAGE</u>
Pre Statehood-	1963	7,491,856	1,108,584	8,600,440
	1964	10,400,252	1,472,384	11,872,636
	1965	9,332,674	2,908,294	12,240,968
	1966	10,142,910	5,054,096	15,197,006
	1967	8,134,534	5,423,058	13,557,592
	1968	8,139,273	5,594,647	13,733,920
	1969	7,945,893	5,828,949	13,774,842
	1970	7,900,064	5,829,925	13,729,989
	1971	7,877,761	5,890,382	13,768,143
	1972	7,613,657	6,165,791	13,779,448
	1973	7,667,255	6,190,856	13,858,111
	1974	9,648,324	10,148,961	19,797,285
	1975	16,073,582	13,998,046	30,071,628
	1976	16,300,961	20,684,071	36,985,032
	1977	15,348,866	21,097,664	36,446,530
	1978	15,293,865	21,100,600	36,394,465
	1979	16,824,045	21,238,054	38,062,099
	1980	26,443,866	21,791,006	48,234,872
	1981	33,100,676	22,016,412	55,117,088
	1982	44,983,318	22,134,333	67,117,651
	1983	54,215,791	22,361,894	76,577,685
	1984	57,104,997	23,443,675	80,548,672
	1985	54,092,039	27,666,293	81,758,332
	1986	53,233,924	29,102,202	82,336,126
	1987	52,102,123	31,210,894	83,313,017
	1988	49,876,635	34,314,381	84,191,016
	1989	49,790,855	35,100,396	84,891,251
	1990	49,465,757	35,486,916	84,952,673
	1991	49,494,283.45	36,183,384.70	85,677,667.15
	1992	49,163,683.10	36,871,025.87	86,034,708.97
	1993	51,309,853.00	37,445,062.00	83,757,165.00

Note: This acreage does not reflect land acquired under our Other State Land (OSL) program from exchanges, purchases or gifts, nor submerged land acquired at Statehood. Additionally, the majority of the acreage is for both land and mineral estates but in some cases only a portion of the minerals were acquired or only a portion of certain minerals were acquired without the land estate. Any combination is possible.

LANDS CONVEYED TO THE STATE - 1993

