

Sec. 46.15.010. Determination of water rights.

The Department of Natural Resources shall determine and adjudicate rights in the water of the state, and in its appropriation and distribution.

Sec. 46.15.020. Authority and duties of the commissioner.

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

(1) subject to [AS 36.30](#) (State Procurement Code), enter into contractual agreements necessary to carry out the provisions of this chapter including agreements with federal, state, and local agencies;

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

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

(b) The commissioner shall

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

(2) develop and maintain a standardized procedure for processing applications and the issuance of authorizations, permits, and certifications under this chapter; shall keep a public record of all applications for permits and certificates and other documents filed in the commissioner's office; shall record all permits and certificates and amendments and orders affecting them and shall index them in accordance with the source of the water and the name of the applicant or appropriator; shall require that temporary water use authorizations are valid only to the extent that the water withdrawal and use complies with applicable requirements of [AS 16.05.871](#); and shall make the record of applications, including temporary water use applications under [AS 46.15.155](#) that have been accepted as complete, authorizations, permits, certificates, amendments, and orders affecting them available to the public on the Internet;

(3) cooperate with, assist, advise, and coordinate plans with the federal, state, and local agencies, including local soil and water conservation districts, 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 consistent with [AS 37.10.050](#) – 37.10.058, except that the department may charge under regulations adopted by the department an annual \$50 administrative service fee to maintain the water management program and a water conservation fee under [AS 46.15.035](#);

(5) before February 1 of each year, prepare a report describing the activities of the commissioner under [AS 46.15.035](#) and 46.15.037; the commissioner shall notify the legislature that the report is available; 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 amounts 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.

Article 2. Appropriation and Use of Water.

Sec. 46.15.030. Water reserved to the people.

Wherever occurring in a natural state, the water is reserved to the people for common use and is subject to appropriation and beneficial use and to reservation of instream flows and levels of water, as provided in this chapter.

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 16.05.871](#) 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 July 1, 1992, has a priority date as of July 1, 1992;

(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" means a hydrologic subregion established by the United States Department of the Interior, Geological Survey, on the "Hydrologic Unit Map-1987, State of Alaska"; "hydrologic unit" includes the water of an ocean that is adjacent to a hydrologic subregion of the state.

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 the 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 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, 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 16.05.870](#) 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 July 1, 1992, has a priority date as of July 1, 1992;

(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 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. 46.15.040. Right to appropriate.

(a) A right to appropriate water can be acquired only as provided in this chapter. A right to the use of water either appropriated or unappropriated may not be acquired by adverse use or possession.

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

(c) All applications to the commissioner for a permit to appropriate water, filed subsequent to July 1, 1966, shall be considered as having been simultaneously filed with the Department of Fish and Game under [AS 16](#) and the Department of Environmental Conservation under [AS 46.03](#).

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

Sec. 46.15.050. Priority.

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

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

(c) Priority of appropriation perfected before July 1, 1966, shall be determined as provided in [AS 46.15.065](#).

Sec. 46.15.060. Existing rights.

A water right acquired by law before July 1, 1966 or a beneficial use of water on July 1, 1966, or made within five years before July 1, 1966, or made in conjunction with works under construction on July 1, 1966, under a lawful common law or customary appropriation or use, is a lawful appropriation under this chapter. The appropriation is subject to applicable provisions of this chapter and regulations adopted under this chapter.

Sec. 46.15.065. Determination of existing rights.

(a) A claimant of an existing right under [AS 46.15.060](#) shall file a declaration of appropriation with the commissioner as set out in this section. The declaration shall be considered correct until a certificate of appropriation is issued or denied. Priority of the right dates from the day work was begun on the appropriation if due diligence was used in completing the work; otherwise, from the day water was applied for the beneficial use.

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

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

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

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

(c) The commissioner shall make investigations as necessary of rights asserted by declarations filed under this section and shall determine each existing appropriation and mail a summary of the determination to each person who has filed a declaration with respect to the specified area or source. Any person adversely affected by a determination may file with the commissioner a request for a hearing within 20 days of the date the notice is mailed. If a hearing is requested, the commissioner shall, after consulting with the office of administrative hearings ([AS 44.64.010](#)), send a notice of the time and place of the hearing to each person who has filed a declaration.

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

(e) A person aggrieved by the action of the commissioner may appeal to the superior court within 30 days of the date on which that action is final.

(f) The adjudication process for a declaration filed under (a) of this section that is pending before the commissioner on June 10, 1986, continues under the procedures set out in this section until the commissioner finally determines whether the declarant is entitled to a certificate. If a certificate is issued under this section, the certificate holder may be included as a participant in an adjudication under [AS 46.15.165](#) or 46.15.166.

Sec. 46.15.070. [Renumbered as [AS 46.15.133.](#)]

Sec. 46.15.080. **Criteria for issuance of permit.**

(a) The commissioner shall issue a permit if the commissioner finds that

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

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

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

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

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

(4) the effect on public health;

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

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

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

(8) the effect upon access to navigable or public water.

Sec. 46.15.090. **Preference in granting permits.**

When there are competing applications for water from the same source, and the source is insufficient to supply all applicants, the commissioner shall give preference first to public water supply and then to the use that alone or in combination with other foreseeable uses will constitute the most beneficial use.

Sec. 46.15.100. Terms of permit.

The commissioner may issue a permit for less than the amount of water requested, but in no case for more water than can be beneficially used for the purposes stated in the application. The commissioner may require modification of plans and specifications for the appropriation. The commissioner may issue a permit subject to terms, conditions, restrictions, and limitations necessary to protect the rights of others, and the public interest. However, the permit shall be subject to termination only as provided in this chapter.

Sec. 46.15.110. Time for construction and completion.

A permit may place a time limit for beginning construction and perfecting appropriation. Reasonable extensions of time shall be permitted for good cause shown.

Sec. 46.15.120. Certificates.

Upon completion of construction of the works and commencement of use of water, the permit holder shall notify the commissioner that the appropriator has perfected the appropriation. If the commissioner determines that the appropriation has been perfected in substantial accordance with the permit, the commissioner shall issue the permit holder a certificate of appropriation. The certificate shall set out any condition that the commissioner may prescribe by regulation, including conditions that are necessary to protect the prior rights of other persons and the public interest.

Sec. 46.15.130. [Renumbered as AS 46.15.050.]

Sec. 46.15.133. Notices; objections.

(a) If the commissioner proposes a sale of water or receives an application for appropriation or removal, the commissioner shall prepare a 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 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

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](#).

Sec. 46.15.135. [Renumbered as [AS 46.15.065](#).]

Sec. 46.15.140. **Abandonment, forfeiture, and reversion of appropriations.**

(a) The commissioner may declare an appropriation to be wholly or partially abandoned and revoke or amend the certificate of appropriation as to the unused quantity of water if an appropriator, with intention to abandon, does not make beneficial use of all or a part of the appropriated water.

(b) The commissioner may declare that an appropriator has wholly or partially forfeited an appropriation, and shall revoke the certificate of appropriation in whole or in part if the appropriator voluntarily fails or neglects, without sufficient cause, to make use of all or a part of the appropriated water for a period of five successive years. A person who has a permit to develop a use of water including but not limited to residential, agricultural, industrial, or mining use, but has not developed that property to the point of water use before permit expiration, may file a request for permit extension with the commissioner.

(c) Failure to use beneficially for five successive years all or part of the water granted in a certificate of appropriation raises a rebuttable presumption that the appropriator has abandoned or forfeited the right to use the unused quantity of water and shifts to the

appropriator the burden to prove otherwise to the satisfaction of the commissioner.

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

Sec. 46.15.145. Reservation of water.

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

(1) protection of fish and wildlife habitat, migration, and propagation;

(2) recreation and park purposes;

(3) navigation and transportation purposes; and

(4) sanitary and water quality purposes.

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

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

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

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

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

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

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

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

(f) At least once each 10 years the commissioner shall review each reservation under this section to determine whether the purpose described in (a) of this section for which the certificate reserving water was issued and the findings described in (c) of this section still apply to the reservation. If the commissioner determines that the purpose, or part or all of the findings, no longer apply to the reservation, the commissioner may revoke or modify the certificate reserving the water after notice, hearing when appropriate, and a written determination that the revocation or modification is in the best interests of the state.

Sec. 46.15.147. [Renumbered as AS 46.15.175.]

Sec. 46.15.150. Preferred use.

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

(b) To be entitled to a preference an applicant must show that the applicant's use will be prevented or substantially interfered with by a prior appropriation; the use is a preferred use; the applicant agrees to compensate a permit or certificate holder for the prior appropriation for any damages sustained by the preferred use; and other information that the commissioner requires by regulation.

Sec. 46.15.155. Authorization for temporary use of water.

(a) Notwithstanding any contrary provision of this chapter, the commissioner may authorize the temporary use of a significant amount of water, as determined by the department by regulation, for a period of time not to exceed five consecutive years, if the water applied for has not been appropriated in accordance with this chapter.

(b) Notwithstanding any contrary provision of this chapter, an authorization for a temporary use of less than a significant amount of water is not required under this section unless the commissioner has determined by regulation that the use may have an adverse effect on other water uses and that an authorization must be obtained from the department.

(c) The issuance of an authorization for temporary use of water under this section does not establish a right to appropriate water. The temporary use of water under an authorization remains subject to appropriation under this chapter.

(d) Notwithstanding any contrary provision of this chapter, the commissioner is not required to provide public notice under AS 46.15.133 of a proposed authorization for temporary use of water; however, the commissioner shall request comment on an application for temporary use of water from the Department of Fish and Game and the Department of Environmental Conservation.

(e) The provisions of AS 46.15.080 do not apply to the issuance under this section of an authorization for temporary use of water.

(f) The commissioner may impose reasonable conditions or limitations on an authorization for temporary use of water to protect the water rights of other persons or to protect fish and wildlife habitat, human health, or other public interests.

(g) Upon approval by the department, an authorization under this section may be transferred to another person under the same conditions and limitations under which the authorization was issued.

(h) A person to whom an authorization for temporary use of water was issued under this section may allow another person to use the authorization, consistent with the conditions and limitations of the authorization.

AUTHORIZATION.

(i) The commissioner may modify, suspend, or revoke an authorization issued under this section if the commissioner determines it necessary to protect the water rights of other persons or the public interest.

Sec. 46.15.160. Transfer and change of appropriations.

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

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

Sec. 46.15.165. Administrative adjudications.

(a) The commissioner may, by order, initiate an administrative adjudication to quantify and determine the priority of all water rights and claims in a drainage basin, river system, ground water aquifer system, or other identifiable and distinct hydrologic regime, including any hydrologically interrelated surface and ground water systems.

(b) In the order initiating an administrative adjudication, the commissioner shall describe the appropriate geographic and hydrologic boundaries of the adjudication area. During the adjudication, the commissioner may adjust the boundaries to ensure the efficient administration of water appropriations among users.

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

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

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

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

United States on behalf of the person;

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

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

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

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

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

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

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

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

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

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

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

(2) classifying applicants, certificate holders, permittees, and claimants in groups that share similar interest, such as by the amount of water used or the type of use, and restricting their active

participation in the adjudication by appointing group representatives for the purposes of receiving notices, examining witnesses, and other adjudicatory functions;

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

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

(j) For the purpose of asserting a water right in an adjudication, a certificate issued under this chapter is prima facie evidence of the water right and its priority date.

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

(l) A person adversely affected by a final order of the commissioner adjudicating water rights under this section may appeal to the superior court within 30 days after the decision is mailed or delivered to the person.

(m) The commissioner may adopt regulations setting out procedures for administrative adjudications under this section.

Sec. 46.15.166. Judicial adjudications.

(a) Instead of initiating an adjudication under [AS 46.15.165](#), the commissioner may, with the concurrence of the attorney general, if a federal reserved water right has been or might be asserted by an agency of the United States on its own behalf or on behalf of a person described in [AS 46.15.165\(c\)\(3\) – \(6\)](#), file on behalf of the state a complaint in superior court to initiate a judicial adjudication consistent with 43 U.S.C. 666 to quantify and determine the priority of all water rights in a drainage basin, river system, ground water aquifer system, or other identifiable and distinct hydrologic regime, including any hydrologically interrelated surface and ground water systems.

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

(c) In a complaint brought under (a) of this section, the court may appoint an impartial, qualified person as a master to hold hearings, take testimony, collect evidence, and make recommendations to the court regarding the scope and content of a proposed judicial decree that would finally adjudicate the validity of water rights, quantify them, and determine priorities among the water right appropriations in the adjudication area. Employment by a federal, state, or local government agency does not disqualify an individual from appointment as master under this subsection if the court determines that the individual is

otherwise impartial and qualified to act as master. The master may, with the court's permission, take action that the commissioner would be authorized to take in an administrative adjudication under [AS 46.15.165](#).

(d) In an adjudication under this section, the court may incorporate in an order or judgment final orders of the commissioner previously issued under [AS 46.15.165](#).

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

Sec. 46.15.167. Effect of decision.

The final order of the commissioner under [AS 46.15.165](#) and the final judgment of a court under [AS 46.15.166](#) are binding on each party to the adjudication and on each person who subsequently makes an application for a water right. The court or the commissioner may retain jurisdiction for a period of time necessary to implement an adjudication order or judgment and to provide for subsequent water appropriations.

Sec. 46.15.168. Other actions.

(a) The state may timely intervene as a party in a superior court action potentially involving a determination of the validity, quantity, use, reservation, or priority of water rights.

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

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

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

Sec. 46.15.169. Federal reserved water rights.

This chapter does not represent a commitment by the state to a specific federal reserved water right.

Sec. 46.15.170. Effect of recording.

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

and recorded under AS 46.15.160(b).

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

Sec. 46.15.175. Termination of permit for violation.

(a) If the commissioner has reason to believe that a person who holds an appropriation permit under this chapter is wilfully violating or has wilfully violated a term, condition, restriction, or limitation of the permit, the commissioner may commence proceedings to terminate the appropriation permit under AS 44.62.330 – 44.62.630 (Administrative Procedure Act).

(b) When an appropriation permit is terminated under this section, the appropriation of water made by the permit reverts to the state and becomes unappropriated water.

Sec. 46.15.180. Crimes.

(a) A person may not

(1) construct works for an appropriation, or divert, impound, withdraw, or use a significant amount of water from any source without a permit, certificate of appropriation, or authorization issued under this chapter;

(2) violate an order of the commissioner to cease and desist from preventing any water from moving to a person having a prior right to use it;

(3) disobey an order of the commissioner requiring the person to take steps to cause the water to move to a person having a prior right to use it;

(4) fail or refuse to install meters, gauges, or other measuring devices or control works;

(5) violate an order establishing corrective controls for an area or for a source of water;

(6) knowingly make a false or misleading statement in a declaration of existing right.

(b) A person who violates this section is guilty of a misdemeanor.

(c) Crimes under this section are in addition to any other crimes provided by law.

Sec. 46.15.185. Appeals.

Appeals to the superior court under this chapter are subject to AS 44.62.560 – 44.62.570 (Administrative Procedure Act).

Article 3. Water Resources Board.

Sec. 46.15.190. The Water Resources Board.

There is created the Water Resources Board composed of seven members having a general knowledge of the use and requirements for use of the water of the state and the conservation and protection of it. The commissioner of environmental conservation or a designee shall serve as an additional, ex officio member serving without a vote. The commissioner of natural resources shall act as the executive secretary of the board, and shall provide clerical staff for the board. Members of the board are appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session.

Sec. 46.15.200. Term of office.

The term of office for members of the board is four years. If a vacancy occurs, the governor shall fill it by appointment for the unexpired term, subject to [AS 39.05.080](#)(4). The appointment shall be submitted to the legislature for confirmation at the next regular session.

Sec. 46.15.210. Duties of the board.

The board shall inform and advise the governor on all matters relating to the use and appropriation of water in the state, including, but not limited to,

- (1) the effect and adequacy of state laws and regulations governing the establishment of water rights;
- (2) the multi-purpose uses of water;
- (3) the prevention of pollution and the protection of fish and game;
- (4) studies of the state's water supplies and plans for future requirements;
- (5) development of water resources;
- (6) participation of local governmental units in the management of water resources;
- (7) land that is or may be needed for dams, reservoirs, flood dams, flood ways, canals, or ditches for the impoundment, storage, flow, and control of water.

Sec. 46.15.220. Board meetings.

The board shall hold one regular meeting annually at the state capital and one or more additional meetings at the time and place in the state the board selects for the transaction of business.

THE BOARD SELECTS FOR THE TRANSACTION OF BUSINESS.

Sec. 46.15.230. Public meetings.

The board may hold and conduct public meetings at any time or any place in the state in order to obtain public opinion on a water use problem or proposal and it may, by majority vote of all members, formally or informally delivered, authorize one or more of its members to hold and conduct a public meeting.

Sec. 46.15.240. Compensation of board members.

Each member of the board is entitled to travel expenses and per diem as authorized for state boards by [AS 39.20.180](#) while traveling to or from, or in attendance at, regular or special meetings or conferences authorized by the board.

Article 4. General Provisions.

Sec. 46.15.250. Enforcement authority.

The following persons are peace officers of the state and they shall enforce this chapter:

- (1) a state employee authorized by the commissioner;
- (2) a police officer of the state.

Sec. 46.15.255. Enforcement and costs.

(a) In addition to a penalty imposed under [AS 46.15.180](#) for violation of an order issued under this chapter, the commissioner may

- (1) remove or abate unpermitted works of appropriation, diversion, impoundment, or withdrawal;
- (2) install corrective controls or control works; and
- (3) seek enforcement of the order by filing an action in the superior court.

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

Sec. 46.15.256. Data collection authority.

To carry out the provisions of this chapter, the commissioner may

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

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

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

Sec. 46.15.260. Definitions.

In this chapter, unless the context otherwise requires,

(1) “appropriate” means to divert, impound, or withdraw a quantity of water from a source of water, for a beneficial use or to reserve water under [AS 46.15.145](#);

(2) “appropriation” means the diversion, impounding, or withdrawal of a quantity of water from a source of water for a beneficial use or the reservation of water under [AS 46.15.145](#);

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

(4) “commissioner” means the commissioner of natural resources;

(5) “director” means the director of the division of lands, Department of Natural Resources;

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

(B) geothermal fluid, as defined in [AS 41.06.060](#);

(7) “person” includes an individual, partnership, association, public or private corporation, state agency, political subdivision of the state, and the United States;

(8) “source of water” means a substantial quantity of water capable of being put to beneficial use;

(9) “water” means all water of the state, surface and subsurface, occurring in a natural state, except mineral and medicinal water.

Sec. 46.15.270. Short title.

This chapter may be cited as the Alaska Water Use Act.

