

Alaska

WATER RIGHTS FACT SHEET

I. Introduction to Alaska's Water Rights System

The Alaska Constitution declared water as a public resource belonging to the people of the state, subject to appropriation determined by the state for maximum benefit to the public.¹ Alaska water law is based on the doctrine of prior appropriation.² The Alaska Water Use Act was passed in 1966; however, any right acquired prior to the Act may still be valid if a claim was filed under procedures outlined in the Act.³ Though the dates vary, to prevent a right from being extinguished, the party must have filed by 1968.⁴

Water for public water supplies may be granted as a preferred use in Alaska.⁵ This means that a prior appropriation water right is not absolute, but may be subject to changes to meet public needs for public water supply.⁶ If this occurs, the water right holder must be compensated for the loss.⁷ Other types of uses can also be declared “preferred uses” when adequate water is not available from the same source to supply all lawful appropriators.⁸

The state's water law is contained in the Alaska Water Use Act, Alaska Statute 46.15. Alaska Administrative Code 11 AC 93 regulates water rights.

II. Establishing A State-Based Water Use

A. *Who Administers Water Use in Alaska?*

The Alaska Department of Natural Resources - Division of Mining, Land, and Water (the Division) administers water rights in Alaska.⁹ This agency is responsible for the appropriation and distribution of surface and ground water in the state.¹⁰

B. *Who Can Use Water?*

A water right in Alaska can be held by any “person”, meaning a water right can be held by any “individual, partnership, association, public or private corporation, state agency, political

¹ Alaska Const. Art. 8 § 13.

² Alaska Stat. § 46.15.050.

³ Alaska Stat. §§ 46.15.065; 46.15.060; Alaska Admin. Code Title 11 § 93.010.

⁴ Alaska Admin. Code Title 11 § 93.020.

⁵ Alaska Stat. § 46.15.150(a).

⁶ Alaska Stat. § 46.15.150; *see also* Alaska Stat. § 46.15.040(d).

⁷ Alaska Stat. § 46.15.150(b).

⁸ Alaska Stat. § 46.15.090; Alaska Admin. Code Title 11 §§ 93.230; 93.240.

⁹ Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, *Water Resources Program*, <http://www.dnr.state.ak.us/mlw/water/index.htm> (last visited July 26, 2010).

¹⁰ Alaska Stat. § 46.15.010.

subdivision of the state, and the United States.”¹¹ A water right in Alaska is attached to the land or place where the water is being used.¹² If the land is sold, the water right transfers with the land, unless the Division approves a severance application.¹³

C. *What Constitutes a Beneficial Use?*

Alaska defines "beneficial use" to mean 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:¹⁴

- Agriculture
- Domestic
- Fish and Wildlife
- Fish and Shellfish Processing
- Industrial
- Irrigation
- Manufacturing
- Mining
- Navigation and Transportation
- Power
- Public
- Sanitary
- Recreation Uses
- Water Quality

D. *How Are Water Uses Created?*

In order to establish a new water right in Alaska, a person or entity must file an application to appropriate water.¹⁵ The applicant is required to submit the application along with a filing fee to the Division of Mining, Land, and Water.¹⁶ The date when the application is filed is the priority date for the water right.¹⁷ Pending applications in Alaska are adjudicated in the order in which they are received. Public notice of an application is required if the proposed appropriation is over 5,000 gallons per day.¹⁸ If notice is required, notices will be placed in a newspaper of general circulation near the proposed appropriation.¹⁹ If there is no newspaper, notice will also be posted in a public place.²⁰ In addition, certified mailings are sent to current appropriators that

¹¹ Alaska Admin. Code Title 11 § 93.035(b); Alaska Stat. § 46.15.260(7).

¹² Alaska Stat. § 46.15.160(a); Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, Fact Sheet: Water Rights in Alaska (Feb. 2006) *available at* http://dnr.alaska.gov/mlw/factsht/wtr_fs/wtr_rght.pdf.

¹³ Alaska Stat. § 46.15.160(b); Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, Fact Sheet: Water Rights in Alaska (Feb. 2006) *available at* http://dnr.alaska.gov/mlw/factsht/wtr_fs/wtr_rght.pdf.

¹⁴ Alaska Stat. § 46.15.260(3).

¹⁵ Alaska Stat. § 46.15.040(b); Alaska Admin. Code Title 11 § 93.035(b).

¹⁶ Alaska Stat. § 46.15.040; Alaska Admin. Code Title 11 § 93.040.

¹⁷ Alaska Stat. § 46.15.050(b).

¹⁸ Alaska Admin. Code Title 11 § 93.080; Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, Fact Sheet: Water Rights in Alaska (Feb. 2006) *available at* http://dnr.alaska.gov/mlw/factsht/wtr_fs/wtr_rght.pdf.

¹⁹ Alaska Stat. § 46.15.133(b); Alaska Admin. Code Title 11 § 93.080(1).

²⁰ Alaska Admin. Code Title 11 § 93.080(2).

may be affected by the new application.²¹ Further, notice is also served upon the Department of Fish and Game and the Department of Environmental Conservation.²² However, notice must be given to the Departments of Fish and Game if any appropriation would come from an anadromous fish stream (one in which fish migrate upstream from the sea to breed).²³ In addition, if the water source has a high level of competition, the Director will require notice at his or her discretion.²⁴ Objections to the proposed appropriation can be directed to the Division within fifteen days of the notification, and all objections are addressed in writing prior to the issuance of a permit.²⁵

The Division shall approve an application if it meets the following criteria: rights of other appropriators are not unduly affected; the proposed means of diversion are adequate; the proposed use of water is beneficial; and the proposed appropriation is in the public interest²⁶ (see Appendix One for Criteria to Assess the Public Interest). After determining if the application meets these considerations, the Division issues a decision and grants a permit accordingly.²⁷ The permit may include less water than requested or it may contain conditions to which the applicant must adhere.²⁸ If the applicant or objecting parties disagrees with the decision, an appeal can be filed.²⁹ The appellant must file the appeal with the Superior Court within thirty days after the Division issues the decision.³⁰

When a permit is approved, a specific time period (usually two to five years) is granted within which to develop the project.³¹ A Certificate of Appropriation is granted once the system is fully developed, the total amount of beneficially used water is established, and all permit conditions have been met.³² Like the permit, the Certificate may contain conditions necessary to protect the public interest.³³ Certificates are reviewed every ten years after they have been issued.³⁴

III. Changing, Modifying, Transferring or Canceling a Point of Diversion or Water Use

In Alaska, with some exception, diversions must be returned to their original basin.³⁵ Water may not be removed from the hydrologic unit from which it was appropriated to another hydrologic unit.³⁶ Water also cannot be appropriated for the purpose of bringing it elsewhere.³⁷ The only

²¹ Alaska Stat. § 46.15.133(b); Alaska Admin. Code Title 11 § 93.080(3).

²² Alaska Stat. § 46.15.133(b).

²³ Alaska Admin. Code Title 11 § 93.100.

²⁴ Alaska Admin. Code Title 11 § 93.100 (following the provisions in Alaska Admin. Code Title 11 § 93.080).

²⁵ Alaska Stat. § 46.15.133(c); Alaska Admin. Code Title 11 § 93.090.

²⁶ Alaska Stat. § 46.15.080(a).

²⁷ Alaska Admin. Code Title 11 § 93.120(a).

²⁸ Alaska Admin. Code Title 11 § 93.120(d)-(e).

²⁹ Alaska Stat. § 46.15.133(e); Alaska Admin. Code Title 11 § 02.030.

³⁰ Alaska Stat. § 46.15.185; Alaska Stat. § 44.62.560.

³¹ Alaska Admin. Code Title 11 § 93.120(b).

³² Alaska Stat. § 46.15.120; Alaska Admin. Code Title 11 § 93.130(a).

³³ Alaska Admin. Code Title 11 § 93.130(c).

³⁴ Alaska Admin. Code Title 11 § 93.147.

³⁵ Alaska Stat. § 46.15.035(a).

³⁶ Alaska Stat. § 46.15.035(a).

exception is if the commissioner finds that there is a surplus of water in the originating hydrologic unit, and the appropriation meets the same criteria discussed above (including the public interest).³⁸ The commissioner will also issue a conservation fee for the appropriation.³⁹

With approval of the Division, a Certificate of Appropriation can be amended to change the quantity of water, the legal description for the point of diversion, the type of use, the depth of taking, or to add take points.⁴⁰ The Division reviews the proposed change to determine the impact on other water users, fish and wildlife habitat, and water quality.⁴¹ If there is no adverse impact and no significant change to the beneficial use, the Certificate is amended to include the change.⁴² The Division can issue a change permit if it finds a significant change to the beneficial use, a new use, or adverse impact on water users, fish and wildlife habitat, or water quality.⁴³ However, the Division may not issue a change permit if the change will adversely affect prior appropriators or the public interest.⁴⁴ The change permit is valid for the time period that corresponds to the maximum period of time for the category of use under which the permit to appropriate water is granted.⁴⁵ When the change permittee demonstrates timely completion of the change, the Division will amend the Certificate.⁴⁶ The Division may approve a change, in whole or part, subject to conditions necessary to avoid injury to other water users or the public interest.⁴⁷

Alaska also allows temporary uses, and the commissioner may authorize the temporary use of a significant amount of water for a period of time not to exceed five consecutive years.⁴⁸ A water right does not result from temporary use.⁴⁹ To use water temporarily, the user must apply and receive authorization from the division.⁵⁰

Water rights in Alaska can be lost through abandonment or forfeiture.⁵¹ Abandonment is voluntary by the owner, whereas forfeiture occurs through five consecutive years of non-use.⁵² Five successive years of nonuse establishes a rebuttable presumption of forfeiture.⁵³ If the Division believes a water right has been abandoned or forfeited, a notice of revocation is sent to the certificate holder (unless the holder has signed a notice of relinquishment).⁵⁴ The holder then has thirty days to file an objection after receipt of the revocation notice, and sixty days to submit

³⁷ Alaska Stat. § 46.15.035(a).

³⁸ Alaska Stat. § 46.15.035(a).

³⁹ Alaska Stat. § 46.15.035(a)-(b).

⁴⁰ Alaska Stat. § 46.15.160; Alaska Admin. Code Title 11 § 93.930(a).

⁴¹ Alaska Admin. Code Title 11 § 93.930(b).

⁴² Alaska Admin. Code Title 11 § 93.930(c).

⁴³ Alaska Admin. Code Title 11 § 93.930(d).

⁴⁴ Alaska Admin. Code Title 11 § 93.930(e).

⁴⁵ Alaska Admin. Code Title 11 § 93.930(d) (following the provisions in Alaska Admin. Code Title 11 § 93.120(b)).

⁴⁶ Alaska Admin. Code Title 11 § 93.930(g).

⁴⁷ Alaska Admin. Code Title 11 § 93.930(f).

⁴⁸ Alaska Stat. § 46.15.155(a).

⁴⁹ Alaska Admin. Code Title 11 § 93.210(b).

⁵⁰ Alaska Admin. Code Title 11 § 93.220.

⁵¹ Alaska Stat. § 46.15.140.

⁵² Alaska Stat. § 46.15.140(b).

⁵³ Alaska Stat. § 46.15.140(c).

⁵⁴ Alaska Admin. Code Title 11 § 93.940(a), (f).

proof that the appropriation was neither abandoned nor forfeited.⁵⁵ Water lost through abandonment or forfeiture reverts back to the state and is subject to future appropriation.⁵⁶

The Division may initiate proceedings to cancel a permit if the permit holder does not make use of the appropriation within the permit time period, or if the permit holder violates a term or condition of the permit.⁵⁷

IV. Other Water Resources Issues, Protections, and Restrictions

A. Basin Management

Alaska has delegated The Department of Natural Resources divisions of Mining, Land, and Water with authority to administer water rights.⁵⁸ Preference is given to the public water supply and to the most beneficial use[s] when a water source is insufficient to supply competing applications for a water source.⁵⁹ In addition to the water right administrative process, Alaska has established a Water Resources Board to “inform and advise the governor on all matters relating to the use and appropriation of waters in the state”⁶⁰ (see Appendix Two for a non exclusive list of matters the Board advises the governor on).

Alaska has also delegated the Division Commissioner with authority to designate Critical Water Management Areas for any applicable geographic or hydrologic area.⁶¹ The effect of such a designation grants the Division authority to take administrative and managerial measures to protect the water resource and its water users.⁶² The Commissioner may take steps reasonably necessary to protect the resource while trying to protect current users.⁶³ This may include preventing new applications or even conservation measures.⁶⁴ The Commissioner can designate a Critical Water Management Area upon the determination that a potential water shortage will disturb water right users because of existing or potential over-appropriation, drought, saltwater intrusion, or a chemical or toxic contamination.⁶⁵ An agency or political subdivision of the state, an agency of the United States, or twenty-five percent (or more) of a geographic area’s permittees and certificate holders may petition the Commissioner for a designation of a Critical Water Management Area.⁶⁶ The Commissioner must publish notice of the proposed designation, solicit comments, and hold a hearing in the affected area before the Commissioner can order the

⁵⁵ Alaska Admin. Code Title 11 § 93.940(b).

⁵⁶ Alaska Stat. § 46.15.140(d).

⁵⁷ Alaska Admin. Code Title 11 § 93.125; Alaska Stat. § 46.15.175.

⁵⁸ Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, *Water Resources Program*, <http://www.dnr.state.ak.us/mlw/water/index.htm> (last visited July. 26. 2010).

⁵⁹ Alaska Stat. § 46.15.090.

⁶⁰ Alaska Stat. § 46.15.190; Alaska Stat. § 46.15.210.

⁶¹ Alaska Admin. Code Title 11 § 93.500.

⁶² Alaska Admin. Code Title 11 § 93.530.

⁶³ Alaska Admin. Code Title 11 § 93.530.

⁶⁴ Alaska Admin. Code Title 11 § 93.530.

⁶⁵ Alaska Admin. Code Title 11 § 93.500(1).

⁶⁶ Alaska Admin. Code Title 11 § 93.500(2).

designation.⁶⁷ Any eligible person affected by the designation of a Critical Water Management Area may appeal the decision.⁶⁸

B. *Groundwater*

In Alaska, all types of water are publicly owned.⁶⁹ Because the Water Use Act was passed after scientists had begun to understand the connections between surface water and groundwater, they do not distinguish between these two types, and therefore they are managed under a unified system.⁷⁰

C. *Instream Flow/Non-Consumptive Use*

An instream flow amendment was added to Alaska's Water Use Act in 1980 to allow for the new appropriation of instream flows through reservations.⁷¹ An instream flow reservation may be established on any stream or body of water in Alaska that is not fully appropriated.⁷²

Upon receiving an Application for Reservation of Water, the Division must establish that there is a need for the reservation, that there will be no adverse impacts on other water right holders, and that the right is in the public interest.⁷³ An assessment is also made to confirm that water is available for the reservation.⁷⁴ Upon approval, the commissioner issues a certificate for the reservation containing terms and conditions necessary to protect the reservation, the rights of prior appropriators, and the public interest.⁷⁵ An instream flow right is reviewed every ten years to determine if the reservation is providing a beneficial use.⁷⁶ Depending upon the findings of the review, the instream flow reservation may be extended, restricted, or revoked.⁷⁷ Unlike consumptive water rights, instream rights may not be voluntarily abandoned, conveyed, transferred, assigned, or converted to another use unless required by law.⁷⁸

1. Who Can Hold A Non-Consumptive Water Use?

⁶⁷ Alaska Admin. Code Title 11 § 93.510.

⁶⁸ Alaska Admin. Code Title 11 § 93.540.

⁶⁹ Alaska Stat. § 46.15.260(9) (defining water as “all water of the state, surface and subsurface”); Barbara Tellman, *Why Has Integrated Management Succeeded in Some States but Not in Others*, http://www.ucowr.siu.edu/updates/pdf/V106_A2.pdf (last visited July. 26, 2010).

⁷⁰ Alaska Stat. § 46.15.260(9) (defining water as “all water of the state, surface and subsurface”); Barbara Tellman, *Why Has Integrated Management Succeeded in Some States but Not in Others*, http://www.ucowr.siu.edu/updates/pdf/V106_A2.pdf (last visited July. 26, 2010).

⁷¹ Alaska Stat. § 46.15.145.

⁷² Alaska Stat. § 46.15.145(c).

⁷³ Alaska Stat. § 46.15.145(c).

⁷⁴ Alaska Stat. § 46.15.145(c).

⁷⁵ Alaska Admin. Code Title 11 § 93.146(a-c).

⁷⁶ Alaska Stat. § 46.15.145(f); Alaska Admin. Code Title 11 § 93.146.

⁷⁷ Alaska Stat. § 46.15.145(f); Alaska Admin. Code Title 11 § 93.146.

⁷⁸ Alaska Admin. Code Title 11 § 93.146(c)(1).

The state, an agency or a political subdivision of the state, an agency of the United States or any "person" may apply for and hold an instream flow reservation.⁷⁹ A "person" refers to any private individual, organization, or government agency as defined above.⁸⁰

2. What Constitutes Beneficial Use and Public Uses?

In Alaska, permissible instream uses include:⁸¹

- * Protection of fish and wildlife habitat, migration, and propagation
- * Recreation and parks
- * Navigation and transportation
- * Sanitation and water quality

3. What are the Quantification Requirements and Procedures?

In order to establish an instream flow there must be a justifiable quantification based upon the particular beneficial use.⁸² There are no standard quantification requirements, however, the applicant must explain the methodology used to quantify the amount requested.⁸³ Measuring devices must be installed and maintained to monitor and report on the reserved instream flow or level of water.⁸⁴

V. Water Management and the Enforcement of Water Rights

As previously discussed, the water right administrative process, the Water Resources Board, and designation of Critical Water Management Areas all serve to manage and maintain Alaska's water resources. The Department of Natural Resources manages Alaska's water resources through enforcement of priority, forfeiture, waste prevention, and regulation of illegal use.⁸⁵ The Commissioner, state employees authorized by the Commissioner, and police officers of the state enforce Alaska's water rights.⁸⁶ In order to protect the public interest and rights of prior appropriators, the Commissioner can issue a number of stop orders on persons interfering with the administration of Alaska's water rights.⁸⁷ In addition to crimes provided by law, any unpermitted use of water, violation of an order, or false or misleading statement relating to the declaration of an existing right is a misdemeanor.⁸⁸

VI. Federal Reserved Water Rights

⁷⁹ Alaska Stat. § 46.15.145(a).

⁸⁰ Alaska Stat. § 46.15.260(7) (defining person).

⁸¹ Alaska Stat. § 46.15.145(a); Alaska Admin. Code Title 11 § 93.141.

⁸² Alaska Stat. § 46.15.145 (a); Alaska Admin. Code Title 11 § 93.141.

⁸³ Alaska Admin. Code Title 11 § 93.142(B)(6).

⁸⁴ Alaska Admin. Code Title 11 § 93.146(d)(1).

⁸⁵ Alaska Stat § 46.15.050; Alaska Stat § 46.15.140; Alaska Stat § 46.15.175.

⁸⁶ Alaska Stat § 46.15.250.

⁸⁷ Alaska Admin. Code Title 11 §§ 93.280-290.

⁸⁸ Alaska Stat. § 46.15.180.

Federal reserved water rights are included in basin wide adjudications if the federal government consents to have its federal reserved water rights administratively adjudicated by the state.⁸⁹ If the federal government does not consent to an administrative adjudication, the state may instead opt for a judicial adjudication.⁹⁰ Forty-nine percent of Alaska is federal lands (of which 26.1 million acres are BLM reserved land)⁹¹ and may have extensive federal reserved water rights.

Federal reserved water rights in Alaska are different from state appropriated water rights. They:⁹²

- * 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 foreseeable future uses of water for the primary purposes for which the land is withdrawn.

Although procedures have been established for the adjudication of federal reserved water rights,⁹³ the process has been used sparingly.⁹⁴ Because most federal reserved water rights are not quantified, the Division does not know how much water is needed or used for the primary purposes of federal land withdrawals in Alaska.⁹⁵

VII. Adjudications:

In 1986, the Alaska Water Use Act was amended to establish procedures for basin wide adjudications in order to clarify water rights.⁹⁶ Procedures were established for both administrative⁹⁷ and judicial adjudications.⁹⁸ The Division of Mining, Land, and Water commissioner conducts administrative adjudications, which results in a judicial decree that may be appealed in the superior court.⁹⁹ If the adjudication involves federal reserved water rights, the commissioner may instead initiate a judicial adjudication.¹⁰⁰

⁸⁹ Alaska Stat. § 46.15.165; Alaska Admin. Code Title 11 §§ 93.400-440.

⁹⁰ Alaska Stat. § 46.15.166. The McCarren Amendment serves as a waiver of sovereign immunity for general adjudications in federal court. 43 U.S.C. 666.

⁹¹ Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, Fact Sheet: Federal Reserved Water Rights (Jan. 2000) *available at* http://www.dnr.state.ak.us/mlw/factsht/wtr_fs/fed_rsv.pdf.

⁹² Each of these items comes from this fact sheet. Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, Federal Reserved Water Rights (Jan. 2000) *available at* <http://dnr.alaska.gov/mlw/water/fedrsrv.htm>

⁹³ Alaska Stat. § 46.15.166; Alaska Stat. § 46.15.165; Alaska Admin. Code Title 11 §§ 93.400-440.

⁹⁴ Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, Fact Sheet: Federal Reserved Water Rights (Jan. 2000) *available at* http://www.dnr.state.ak.us/mlw/factsht/wtr_fs/fed_rsv.pdf.

⁹⁵ Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, Fact Sheet: Federal Reserved Water Rights (Jan. 2000) *available at* http://www.dnr.state.ak.us/mlw/factsht/wtr_fs/fed_rsv.pdf.

⁹⁶ Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, Fact Sheet: Federal Reserved Water Rights (Jan. 2000) *available at* http://www.dnr.state.ak.us/mlw/factsht/wtr_fs/fed_rsv.pdf.

⁹⁷ Alaska Stat. § 46.15.165; Alaska Admin. Code Title 11 §§ 93.400-440.

⁹⁸ Alaska Stat. § 46.15.166(i).

⁹⁹ Alaska Stat. § 46.15.165.

¹⁰⁰ Alaska Stat. § 46.15.166.

As of 2009, there has never been a basin-wide adjudication in Alaska.¹⁰¹

VIII. BLM Specific Information

The Division of Mining, Land, and Water does not require water rights applicants to have the necessary rights-of-way approval from the BLM approved prior to approving an application.

The BLM is required to pay filing fees in Alaska. The fee for an instream flow application is \$1500 per application.¹⁰²

The Bureau of Land Management manages over 26.1 million acres in Alaska.¹⁰³ The BLM is applying for and holds federal reserved water rights for Wild and Scenic Rivers. The BLM State Office has submitted eight applications of which one is perfected and seven are pending. Apart from Wild and Scenic Rivers, the BLM does not have (and cannot apply for at this time) any other federal reserved water rights.

The relationship between the BLM and the State of Alaska (Division of Mining, Land, and Water) regarding water rights is tenuous at best. There is a good working relationship between individuals in both offices, but policy differences frustrate meaningful cooperation. Alaska is a strong proponent of states' rights and has conflicted with federal agencies over federal reserved water rights. In some cases, they do not recognize reserved rights to which federal agencies feel they are entitled. The state has even delayed in processing federal applications. These circumstances have affected the BLM to some extent, but are mainly being played out between the state and the National Fish and Wildlife Service.

Official Contact:

Division of Mining, Land and Water
Water Resources Program
550 West 7th Avenue, Suite 1070
Anchorage, AK 99501-3577
907-269-8600
<http://www.dnr.state.ak.us/mlw/water/index.htm>

Appendix One: Criteria to Assess the Public Interest

In determining the public interest, the Division of Mining, Land, and Water shall consider:¹⁰⁴

¹⁰¹ Dividing The Waters: Adjudications: State Adjudications, <http://www.judges.org/dividingthewaters/adjudications.html> (last visited July 30, 2010).

¹⁰² Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, Fact Sheet: Reserving Water for Instream Use *available at* (Feb. 2006) http://www.dnr.state.ak.us/mlw/factsht/wtr_fs/instream.pdf.

¹⁰³ Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, Federal Reserved Water Rights (Jan. 2000) *available at* <http://dnr.alaska.gov/mlw/water/fedrsrv.htm>

¹⁰⁴ Alaska Stat. § 46.15.080.

- * The benefit to the applicant resulting from the proposed appropriation.
- * The effect of the economic activity resulting from the proposed appropriation.
- * The effect on fish and game resources and on public recreational opportunities.
- * The effect on public health.
- * 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.
- * Harm to other persons resulting from the proposed appropriation.
- * The intent and ability of the applicant to complete the appropriation.
- * The effect upon access to navigable or public water.

Appendix Two: Water Board Considerations

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.¹⁰⁵

Appendix Three: Quantities and Types of Uses that do not require a Permit

A person shall file an application for a water right or for a temporary water use authorization before:

- (1) the consumptive use of more than 5,000 gallons of water from a single source in a single day;
- (2) the regular daily or recurring consumptive use of more than 500 gpd from a single source for more than 10 days per calendar year;
- (3) the non-consumptive use of more than 30,000 gpd (0.05 cubic feet per second) from a single source; or
- (4) any water use that may adversely affect the water rights of other appropriators or the public interest.

Note: A water user has no right or priority unless the user acquires a permit or certificate for the beneficial use.¹⁰⁶

Appendix Four: Types of Applications and Forms

- Alaska Dam Safety Program Project Data Sheet
- Alaska Dam Safety Program Visual Inspection Checklist
- Application to Transfer a Certificate of Approval to Operate a Dam

¹⁰⁵ Alaska Stat. §46.15.210.

¹⁰⁶ Alaska Admin. Code Title 11 § 93.035(b-c).

- Application for Certificate of Approval to Construct, Modify, Remove, or Abandon a Dam
- Application for Reservation of Water
- Application for Water Rights
- Application for Temporary Water Use
- Change of Address for Water Rights
- Change of Property Ownership for Water Rights
- Hazard Classification and Jurisdictional Review Form
- Notice of Relinquishment of Water Rights Form
- Request for Water Right Permit Extension
- Statement of Beneficial Use of Water
- Water Well Record (Driller's Well Log) Form

See <http://dnr.alaska.gov/mlw/forms/index.htm#water> for downloadable versions of these water forms.¹⁰⁷

¹⁰⁷ Alaska Dept. of Nat. Res., Div. of Mining, Land and Water, Division Forms: Water Forms *available at* <http://dnr.alaska.gov/mlw/forms/index.htm#water>.