

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF LAND AND WATER MANAGEMENT

BILL SHEFFIELD, GOVERNOR

POUCH 7-005  
ANCHORAGE, ALASKA 99510-7005  
PHONE (907) 561-2020

December 5, 1985

5 Dec 1985  
(7 Nov 85 summary)

Carl Yanagawa  
Regional Supervisor  
Habitat Division  
Department of Fish and Game  
333 Raspberry Rd.  
Anchorage, AK 99518

Dear Mr. Yanagawa:

Enclosed is the draft meeting summary for the November 7, 1985 meeting of the Federal Reserved Water Rights Work Group. This is being distributed to the attendees of the meeting for review and comment as was agreed to at the meeting. Also included as part of the summary is a description of amendments to Senate Bill 150 that were agreed to by the Work Group along with a marked up copy of Senate Bill 150 showing the proposed changes. Note that we have also included for your information changes proposed by Senator Rick Halford to DNR at an earlier meeting. Finally, a revised copy of the elements for our Federal Reserved Water Rights inventory is included with modifications recommended by the Work Group.

Please review the summary and associated attachments and return any comments you may have to Mary Lu Harle at the above address, telephone (907) 762-4317, by January 3, 1986. If we do not hear from you by this time, we will assume that you are satisfied with the meeting summary as drafted. We appreciate your involvement in the Federal Reserved Water Rights Work Group and look forward to continuing to work with you on this project.

Sincerely,

  
for Mary Lu Harle  
Water Resources Manager

Enclosures

ALASKA DEPT. OF  
FISH & GAME

DEC 12 1985

REGION II  
HABITAT DIVISION

accepted

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MEETING SUMMARY

FEDERAL RESERVED WATER RIGHTS - WORK GROUP

November 7, 1985 Anchorage, Alaska

State and Federal agency representatives on the Federal Reserved Water Rights Work Group (FRWR-WG) met at the Frontier Building at 9:00 a.m. to begin work on Federal Reserved Water Rights issues. These issues had been previously identified at a meeting on August 29, 1985.

Work group members present introduced themselves and made corrections to a preliminary directory of representatives that had been prepared by Alaska Department of Natural Resources (DNR). A copy of the revised directory is attached.

There was discussion, and some concern expressed by some of the members present about the completeness of the August 29, 1985 meeting summary. Group members were asked if they had any objections to the work group meetings being recorded on audio tapes to help prepare the summary. There were no objections expressed to audio taping but some members did express concern for the amount of time needed to review and transcribe the summary from tapes. It was agreed that a draft meeting summary would be circulated to attendees for review prior to finalizing the summary and results of future meetings.

Michael Frank, Anchorage Attorney General's Office, provided a section-by-section review and explanation of the proposed Senate Bill 150, which is now in the Senate Resources Committee. Enclosed is a description of the changes proposed by the Work Group along with the rationale for each proposed change. Also included in the attached description are changes to SB 150 that were recommended by Senator Halford and the Attorney General's Office at an earlier meeting with DNR. A few modifications, recommended by Assistant Attorney General Mike Frank, have been made to the language agreed upon by the Work Group.

It was recommended that the federal agencies be notified by DNR when legislative hearings are to be held on Senate Bill 150. Mary Lu Harle agreed that this will be done if DNR gets adequate advance notice of the hearings. Because of the uncertainty of advance notice, Mary Lu and Mike Frank suggested that contacts concerning SB 150 be made with the state legislators now instead of waiting for the legislative hearings.

A state agency representative asked if there was a fiscal note attached to SB 150. The group was informed by Mary Lu Harle that there was no fiscal note attached. Any additional state funds necessary to undertake basin wide adjudication under this legislation will be requested in the general operating budget on a project-by-project basis.

The work group reviewed the latest edition of the federal reserved water rights inventory forms which DNR has been working on. Several changes to these forms were recommended by the group. Recommended changes in the inventory included:

- 1) add hydrologic unit numbers;
- 2) add date of last inventory change and by whom;
- 3) list federal agency contacts by both position and name because of transfers and name changes
- 4) listing the name and title of the individual who provided the federal reservation data, for future reference;
- 5) eliminate latitude and longitude because of limited usefulness;
- 6) divide the inventory into three sections instead of two so that existing water use and ongoing water rights activities are separated;
- 7) separate consumptive use and non-consumptive use data in section two of the inventory;
- 8) add stream and stream section under non-consumptive uses.

These changes have been incorporated into a copy of the inventory forms. The revised forms are attached to this summary for review and comment.

It was agreed that DNR would provide revised inventory forms to the Federal agencies as soon as possible and the federal agencies would provide the data for the following parts of the inventory by the end of February 1986: Section One - Items I, II, IIIA, and IIIB.

SENATE BILL 150  
PROPOSED AMENDMENTS AND RATIONALE

I. Page 2, Lines 1-7

Amendment: Subsection(a) of proposed AS 46.15.140 should be rewritten as follows: "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."

Rationale: This change makes it clearer that, if necessary, part of an appropriation may be revoked for non-use, and the certificate amended to allow continued use of the quantity of water that is still being used.

Proposed by: Senator Rick Halford

II. Page 2, Lines 20-21

Amendment: Delete "a certificate of," and substitute "an."

Rationale: This change will delete the reference to "certificate of appropriation" and refer only to an appropriation, which includes an instream flow reservation.

Proposed by: Federal Reserved Water Rights (FRWR) Work Group

III. Page 2, Lines 20-21

Amendment: Move proposed subsection (d) of AS 46.15.140 to become a new subsection (g) of AS 46.15.145. Re-letter subsection "e" as "d".

Rationale: It was agreed that this subsection (d) would be more appropriately moved to become a new subsection (g) of AS 46.15.145. The point of this new subsection is to insure that a state agency does not walk away from an instream flow reservation without public notice. Through the public notice, potential water users are made aware that water is now available for consumptive beneficial uses. In addition, the members of the public interested in preserving the instream flow would have an opportunity to comment in advance.

Proposed by: Senator Rick Halford

IV. Page 4, Lines 12 & 13

Amendment: Add a new subsection (d) "Service of an order under subsection (c) is not an admission by the State of Alaska that the person served with the order has a water right." Re-letter the following subsections.

Rationale: This will make it clear that the State's notice to any person of an administrative adjudication does not represent a commitment that the person holds a water right.

Proposed by: FRWR Work Group

- V. Page 4, Line 29; Page 5, Line 1  
Amendment: Delete the sentence "The master may be an employee of the state" and substitute "Employment by a federal, state or local governmental agency does not in and of itself disqualify the person from being appointed a master under this subsection if in the opinion of the Commissioner the person is otherwise impartial and qualified to act as a master." Reletter the following subsections.  
Rationale: This broadens the pool of possible masters, and requires the Commissioner to ensure that any master is both impartial and qualified.  
Proposed by: FRWR Work Group
- VI. Page 5, Lines 6-7  
Amendment: Move the following sentence to a new subsection (e) "Any state agency may assert a water right on behalf of the state in the adjudication." Reletter the following subsections.  
Rationale: This sentence appears to be out of place and is clearer and more logically placed as a new subsection (e).  
Proposed by: FRWR Work Group
- VII. Page 6, Line 5  
Amendment: Change the word "shall" to the word "may."  
Rationale: Allows the Commissioner discretion to take this action.  
Proposed by: FRWR Work Group
- VIII. Page 7, Line 5  
Amendment: Delete the word "initially." Delete the phrase "a designee of the Commissioner as" and substitute the phrase "an impartial qualified person as."  
Rationale: "Initially" is an unnecessary word. Changing the phrase allows the court to appoint a person of its choice as master, rather than being being limited by the Commissioner, and requires that the appointed master be impartial.  
Proposed by: FRWR Work Group
- IX. Page 7, Line 10-11  
Amendment: Delete the sentence "the master may be an employee of the state" and substitute "Employment by a federal, state, or local governmental agency does not in and of itself disqualify the person from being appointed a master under this subsection if in the opinion of the Commissioner the person is otherwise impartial and qualified to act as a master."  
Rationale: This broadens the pool of possible masters, and requires the Commissioner to ensure that any master is both impartial and qualified.  
Proposed by: FRWR Work Group

FEDERAL RESERVED WATER RIGHTS WORK GROUP

<u>AGENCY</u>	<u>REPRESENTATIVE</u>	<u>TITLE</u>	<u>TELEPHONE</u>	<u>ADDRESS</u>
AK DNR	Mary Lu Harle	Water Res. Manager	672-4317	Pouch 7-005 Anc., AK 99510
	Jack Wilcock	Nat. Res. Mgr.	672-4317	
AK DEC	Dan Wilkerson	Res. Planner	274-2533	437 E. St. Suite 200 Anc. AK 99501
AK DF&G	Carl Yanagawa	Reg. Superv. Habitat Div.	267-2283	333 Raspberry Rd. Anc. AK 99518
	Christopher Estes	Instrm. Flow Coordinator	267-2142	
AK DOL	Michael Frank	Ass't. A. G.	276-3550	1031 W. 4th Ave. Suite 200 Anc. AK 99501
US BLM	Ron Huntsinger	Hydrologist	271-3349	AK State Office 701 C St. Anc. AK 99501
US NPS	Ross Kavanagh	Fishery Bio.	261-2637	AK Regional Office 2525 Gambell St. Room 107 Anc. AK 99503-2892
	Stan Ponce	Chief, Water Rts. Branch	(303) 221-5341	Fed. Bldg. Rm. 343 301 S. Howes St. Ft. Collins, CO 8152
US FWS	Keith Bayha	Dep. Ass't. Reg. Dir.	786-3537	1011 E. Tudor Rd. Anc. AK 99503
US FS	Ann Puffer	Regional Hydrologist	586-7847	P.O. Box 1628 Juneau, AK 99802
US COAE	David LaMore	Chief, Mgt. & Disp.	753-2858	P.O. Box 898 Anc. AK 99506-0898
	Bob Gilliland	Ass't. Dist. Counsel	753-2532	NPAOC P.O. Box 898
US BIA	Stan Williams		271-4696	P.O. Box 100120 Anc. AK 99510-0120
US GS	Raymond George	Assoc. Dist. Chief	271-4138	Water Resource Div. Suite 201 Anc. AK 99508-4664
	Robert Lamke	Surface Water Specialist	271-4138	
US DOJ	Bruce Landon	Trial Attny.	271-5452	

## FEDERAL RESERVED WATER RIGHTS INVENTORY

The attached inventory form is designed to provide basic information about each federal reservation within the State of Alaska. The information provided will assist the Alaska Department of Natural Resources and the federal agencies to determine what the existing and future water needs may be for that reservation.

In addition to identifying the administrative office for each reservation, this data will help to locate the reservation and cross-reference it to a map showing the geographical location of each reservation within the State. The map will help to prioritize the need for water rights adjudication.

The legal history of the federal legislation or executive action creating the reservation will provide the purposes for which the lands were withdrawn from the public domain, describe the explicit or implied water rights, and provide the priority dates for the water rights.

The second section of the inventory will consist of information on existing water rights and actions planned or underway to determine the amount of water needed for the reserved water rights for each federal reservation. This data will be entered into the inventory as the information becomes available.

The Alaska Department of Natural Resources, Division of Land & Water Management, will prepare and maintain the inventory with information provided by the federal agencies. The data will be computerized and maintained as a permanent file for use by DNR and the federal agencies.

FEDERAL RESERVED WATER RIGHTS INVENTORY

Alaska Dept. Of Natural Resources - Division of Land & Water Management

SECTION ONE

Page 1

I. Name of Federal Land Reservation

Index No: \_\_\_\_\_  
Hydro. Unit: \_\_\_\_\_

A. Current Name:

B. Previous Name(s):

II. Agency Administering the Reservation

A. Dept. & Bureau:

B. Contact Office Address:

Telephone:

C. Individual or Position to Contact:

D. Individual Providing Data (Name & Title):

III. Legal history of the Reservation

A. Original Reservation

1. Authority:

2. Date:

B. Primary Purpose(s) of the Reservation:

C. Subsequent Revisions

1. Authority:

2. Date:

3. Primary Purpose(s):



FEDERAL RESERVED WATER RIGHTS INVENTORY

SECTION ONE

Page 2

Index No: \_\_\_\_\_  
Hydro. Unit: \_\_\_\_\_

IV. Location

A. Geographic Location:

1. Hydrologic Units Involved (If More Than One):

2. DNR Region (SouthEast, SouthCentral, Northern):

C. Size (acres):

D. Boundary Revisions

1. Authority:

2. Date:

FEDERAL RESERVED WATER RIGHTS INVENTORY

SECTION TWO

Page 3

Index No: \_\_\_\_\_  
Hydro Unit: \_\_\_\_\_

I. Quantification Of Federal Reserved Water Rights - CONSUMPTIVE USES

- A. Claimed Priority Date:
- B. Claimed Purpose(s):
- C. Quantity Claimed:
- D. Place of Use (Including Legal Description):
- E. Source (Including Legal Description of the Take Point):
- F. Status of Claim (DNR Water Rights Applied For?):
- G. ADL/LAS Number(s):

II. Quantification Of Federal Reserved Water Rights - NON-CONSUMPTIVE USES

- A. Claimed Priority Date:
- B. Claimed Purpose(s):
- C. Quantity Claimed:
- D. Stream and Stream Reach:
- E. Status of Claim (DNR Water Rights Applied For?):
- F. ADL/LAS Number(s):

III. Information Available

- A. Location of Filed Data (DNR and/or Agency Files):
- B. Other Information Sources:

SECTION THREE

Index No: \_\_\_\_\_  
Hydro. Unit: \_\_\_\_\_

11-6-17 187, - 10, 2, 270, 11-2

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# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF LAND AND WATER MANAGEMENT

BILL SHEFFIELD, GOVERNOR

POUCH 7-005  
ANCHORAGE, ALASKA 99510-7005  
PHONE, (907) 561-2020

10 DEC 1985

December 10, 1985

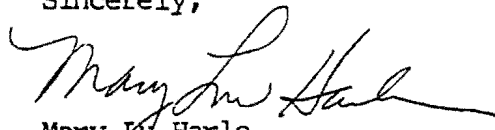
~~(5 DEC 1985 Summary)~~  
pls copy this set  
see at 956  
redaction

Carl Yanagawa  
Regional Supervisor  
Habitat Division  
Department of Fish & Game  
333 Raspberry Rd.  
Anchorage, AK 99518

Dear Carl:

Our December 5, 1985 letter transmitting the November 7th Meeting Summary for the Federal Reserved Water Rights Work Group was lacking one attachment. Enclosed is the marked up copy of Senate Bill 150 that should have been included with our letter.

Sincerely,

  
Mary Lu Harle  
Water Resources Manager

Enclosure

ALASKA DEPT. OF  
FISH & GAME

DEC 11 1985

REGION II  
HABITAT DIVISION

cc ✓

Introduced: 2/12/85  
Referred: Resources and Judiciary, Land & water mgmt

FEB 19 1985

Director's Office

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 150

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making miscellaneous amendments to the Alaska  
7 Water Use Act (AS 46.15); establishing procedures for  
8 administrative and judicial adjudication of water  
9 rights under that Act; and providing for an effective  
10 date."

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

12 \* Section 1. AS 46.15.040 is amended by adding a new subsection to  
13 read:

14 (d) A right to appropriate water granted under this chapter may  
15 not be construed against the state as a guarantee of a particular  
16 water level or volume, except as provided in AS 46.15.145, as a guar-  
17 antee of a particular artesian pressure or water quality, or as a  
18 guarantee that water may be withdrawn or diverted at a particular  
19 cost.

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

21 (f) The adjudication process for a declaration filed under (a)  
22 of this section, which is pending before the commissioner on the  
23 effective date of this Act, is to continue under the procedures set  
24 out in this section until the commissioner finally determines whether  
25 the declarant is entitled to a certificate. If a certificate is  
26 issued under this section, the certificate holder may be included as a  
27 participant in an adjudication under the procedures set out in AS 46.-  
28 15.165 or 46.15.166.

29 \* Sec. 3. AS 46.15.140 is amended to read:

1 Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF APPRO-  
2 PRIATIONS. (a) The commissioner may declare an appropriation to be  
3 wholly or partially abandoned and revoke <sup>or amend</sup> the certificate of appropria-  
4 <sup>as to the unused quantity of water</sup> ~~tion in whole or in part~~ if an appropriator, with intention to aban-  
5 don, does not make beneficial use of all or a part of the [HIS] appro-  
6 priated water. [AN APPROPRIATION SO FORFEITED AND ABANDONED REVERTS  
7 TO THE STATE AND THE WATER BECOMES UNAPPROPRIATED WATER.]

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

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

20 (d) A state agency may not abandon or forfeit <sup>an</sup> ~~a certificate of~~  
21 appropriation in whole or in part except after public notice.

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

25 \* Sec. 4. AS 46.15.145(f) is amended to read:

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

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

7 \* Sec. 5. AS 46.15 is amended by adding new sections to read:

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

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

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

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

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

26 (3) serve the order on any person who owns land within the  
27 adjudication area if the land is held in trust by the United States or  
28 if the patent or deed to the land contains a restriction on alienation  
29 imposed under 25 U.S.C. sec. 334 (Indian General Allotment Act of

February 8, 1887, 24 Stat. 389, as amended and supplemented), 25 U.S.C. sec. 372 (the Allotment Act of June 25, 1910, 36 Stat. 855), or 43 U.S.C. secs. 270-1, 270-2 (the Allotment Act of May 17, 1906, 34 Stat. 197), and on the United States on behalf of any such 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. sec. 495 (the Act of March 3, 1891, 26 Stat. 1101) if the land or water of the reserve, or hydrologically interconnected water, is within the adjudication area; and

(5) publish the order once each week during four consecutive weeks in a newspaper of general circulation in the adjudication area.

12 Add new subsection (d)  
13 Add new subsection (e)  
14 (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, or permittee has given to the division of the department responsible for administration of water rights. A person served under (c)(1) -- (4) 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 any 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 (1) of this section.

(g) 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. The

by a federal, state, or local governmental agency does not in and of itself disqualify the person from being appointed a master under this subsection if in the opinion of the commissioner the person is otherwise impartial and qualified



1 ~~master may be an employee of the state.~~

2 (h) Any division of the department, or other departments, may  
3 provide support during the adjudication, in the form of documentary  
4 and testimonial evidence; research; and scientific analysis. If  
5 funding permits, the commissioner may obtain similar support from  
6 sources outside government. (Any state agency may assert a water right  
7 on behalf of the state in the adjudication.) *move to previous page as  
new subsection(e)*

8 (i) In managing an adjudication, the commissioner may take such  
9 action as is necessary for the efficient and fair administration and  
10 use of the state's water, including but not limited to

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

13 (2) classifying applicants, certificate holders, per-  
14 mittees, and claimants in groups that share similar interests, such as  
15 by the amount of water used or the type of use, and restricting their  
16 active participation in the adjudication by appointing group represen-  
17 tatives for the purposes of receiving notices, examining witnesses,  
18 and other adjudicatory functions;

19 (3) entering such interlocutory orders as may be appropri-  
20 ate to dispose of all or part of the issues in the adjudication, and  
21 designating these orders as final ones for the purposes of any appeal  
22 to superior court under (j) of this section; and

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

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

(k)  
(j) 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 <sup>may</sup> ~~shall~~ exclude the federal government or that person, respectively, as participants in the adjudication. The commissioner may negotiate the terms of the written consent.

(j) 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)  
(k) 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, file on behalf of the state a complaint in superior court to initiate a judicial adjudication consistent with 43 U.S.C. sec. 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. The commissioner may initiate an adjudication under this section only if a federal reserved water right has been or might be asserted

- (1) by the United States or any of its component agencies;
- (2) by or on behalf of a person whose patent or deed to land contains a restriction on alienation imposed by a federal statute cited in AS 46.15.165(c)(3) or (4), or whose land is held in trust by the United States.

Insert at line 10 below.

Employment by a federal, state, or local governmental agency does not in and of itself disqualify the person from being appointed a master under this subsection if in the opinion of the Commissioner the person is otherwise impartial and qualified to act as a master.

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

4 (c) In an action brought under (a) of this section, the court  
5 may initially appoint <sup>an impartial qualified person as</sup> ~~a designee of the commissioner~~ as a master to  
6 hold hearings, take testimony, collect evidence, and make recommenda-  
7 tions to the court regarding the scope and content of a proposed  
8 judicial decree that would finally adjudicate the validity of water  
9 rights, quantify them, and determine priorities among the water right  
10 appropriations in the adjudication area. ~~The master may be an employ-~~  
11 ~~ee of the state.~~ In managing the action, the master may, with the  
12 court's permission, take such action as the commissioner would be  
13 authorized to take in an administrative adjudication under AS 46.15.-  
14 165.

15 (d) In an adjudication under this section, the court may incor-  
16 porate in any order or judgment any final orders of the commissioner  
17 previously issued under AS 46.15.165.

18 (e) Proceedings under this section are conducted without a jury.

19 Sec. 46.15.167. EFFECT OF DECISION. A final order of the com-  
20 missioner under AS 46.15.165, or a final judgment of a court under  
21 AS 46.15.166, is binding on all parties to the adjudication and on all  
22 persons who subsequently make an application for a water right. The  
23 court or the commissioner may retain continuing jurisdiction for the  
24 periods of time necessary to implement any adjudication order or  
25 judgment and to provide for any subsequent water appropriations.

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

1 (b) The commissioner may accept a remand from a state or federal  
2 court of a water rights dispute, and may administratively adjudicate  
3 it under AS 46.15.165.

4 (c) The commissioner may enter into arbitration with a ~~private~~  
5 ~~person or the federal government~~ to resolve a water rights issue.

6 (d) The commissioner may incorporate and apply as binding upon  
7 the parties to an administrative adjudication under AS 46.15.165 any  
8 ~~federal~~ court decree concerning the state hydrologic regime involved  
9 in the adjudication.

10 Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. Nothing in  
11 ~~AS 46.15 is an admission~~ <sup>represents a commitment</sup> by the State of Alaska <sup>to any specific</sup> ~~that a~~ federal re-  
12 served water right ~~exists in the state~~

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

14 Sec. 46.15.255. ENFORCEMENT. (a) In addition to a penalty that  
15 may be imposed under AS 46.15.180 for violation of an order issued  
16 under AS 46.15, the department may

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

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

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

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

26 Sec. 46.15.256. DATA COLLECTION AUTHORITY. To carry out the  
27 provisions of this chapter, the department may

28 (1) inspect books, records, meters, ganges, well logs,  
29 works of appropriation, diversion, impoundment, withdrawal, or

1 control; and any other relevant information or physical condition;

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

5 (3) compel the production of relevant information by ~~an~~  
6 ~~administrative subpoena~~ <sup>or subpoena duces tecum</sup> signed by the commissioner if the commissioner  
7 reasonably believes the information is necessary to carry out the  
8 purposes of this chapter.

9 \* Sec. 7. This Act takes effect immediately in accordance with AS 01.-  
10 10.070(c).

MEETING AGENDA

Federal Reserved Water Rights Work Group

November 7, 1985, 9:00 A.M.

Anchorage, Alaska - Frontier Bldg. - Room 800

1. Introductions and purpose of meeting Mary Lu Harle
2. Corrections, additions, or comments on 8/29/85 meeting summary Jack Wilcock
3. Section-by-section review and group recommendations on proposed SB 150 Mike Frank  
Mary Lu Harle
4. Federal reserved water rights inventory Jack Wilcock
  - A. Need for and purpose of inventory
  - B. Recommended changes or additions
    - (1) Information required in inventory
    - (2) Proposed format for inventory
  - C. Group recommendations on computer hardware/software
  - D. Schedule for submission of information to the Alaska DNR for inventory
  - E. Recommendations on mapping process to be used for the inventory
    - (1) What to use for base map
    - (2) Priority - map vs inventory
    - (3) Water basin breakdown
5. Schedule next meeting - Time, place, subjects Mary Lu Harle
6. Other topics as required