

Alaska Water Rights Training Course

A Presentation on
“Water Rights in Alaska”

October 25, 2016

STATE OF ALASKA

BILL WALKER
Governor

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND & WATER

Water Resources Section



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■ Land Area 586,412 Square Miles or 375 Million Acres

- National Parks - 52 million acres
- National Wildlife Refuges - 76 million acres
- National Forests - 22 million acres
- BLM – NPRA - 23 million acres
- BLM other - 49 million acres
- Military - 2 million acres
- Alaska State Land 103 million acres
- Native Corporation Land 44 million acres
- Private 4 million acres

Note: This does not include 60 million acres of submerged lands, tidelands, and shorelands

Alaska Constitution

Article 8 - Natural Resources

§ 1. Statement of Policy

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

§ 2. General Authority

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

§ 3. Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

§ 13. Water Rights

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation.

Priority of appropriation shall give prior right.

Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Chapter 46.15. WATER USE ACT

Article 01. ADMINISTRATION

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. 46.15.030. 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.

46.15.040. Right to appropriate.

(a) *A right to appropriate water can be acquired only as provided in this chapter.*

(b) *A right to appropriate water shall be obtained by first making application to the commissioner for a permit to appropriate.*

(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..*

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. 46.15.080. 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.*

11 AAC 93.040. Application for a water right

- (a) A person may not lawfully appropriate a significant amount of water of the state without first obtaining a permit to appropriate, a certificate of appropriation, or a temporary water use authorization under this chapter.
- (b) An application for a water right must be made on a form provided by the department. The form must be completed in accordance with the instructions furnished to the applicant.
- (1) the applicable application fee prescribed in 11 AAC [05.010](#);
 - (2) evidence that the applicant has a present possessory interest in the property where the water is to be beneficially used, as shown by a copy of the deed, patent, license, leasehold agreement, mining location certificate, or other instrument, or a copy of a completed application that has been filed with the appropriate agency to acquire permission for the use of federal, state, or municipal property;
 - (3) a map identifying
 - (A) the section, township, range, and meridian, and showing the property boundary, for the point of water withdrawal, impoundment, or diversion;
 - (B) the route of water transmission;
 - (C) the point of water use; and
 - (D) if water is to be returned to a stream or water body, the point of return flow;
 - (4) evidence that the applicant has obtained or is in the process of obtaining a right of access to the property where water is to be withdrawn, impounded, or diverted, and over which water is to be transported both to the point of use and to the point of return flow;
 - (5) repealed 8/20/2004;
 - (6) a legal description of the point of withdrawal, diversion, or impoundment; the point of water use; and, if water is to be returned to a stream or water body, the point of return flow; the legal description must include meridian, township, range, section, and aliquot parts, or the lot, block, and subdivision, or survey number, as appropriate;

Sec. 46.15.080. Criteria for issuance of permit.

(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. 46.15.120. 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. 46.15.145. 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.

Sec. 46.15.145. Reservation of water.

(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.*

Sec. 46.15.145. Reservation of water.

- (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.

Sec. 46.15.145. Reservation of water.

(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. 46.15.133. 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.*

Sec. 46.15.133. Notices; objections.

(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.

AS 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.

Sec. 46.15.155. Authorization for temporary use of water.

(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.

11 AAC 93.035. Requirement to apply for the use of a significant amount of water

- (a) A significant amount of water is that amount of water for which an application for a water right or an application for a temporary water use authorization is required, as described in (b) of this section.*
- (b) A person shall file an application for a water right under 11 AAC [93.040](#) or for a temporary water use authorization under 11 AAC [93.220](#) 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.*

11 AAC 93.035. Requirement to apply for the use of a significant amount of water.

(c) A person using *less than the amount of water described in (b) of this section acquires no water right or priority* unless an application is filed and a permit or certificate is issued under 11 AAC 93.035 - 11 AAC 93.140. The use of water without a permit or certificate is subject to appropriation by others, and the use of water without a water right is subject to curtailment in order to supply water to lawful appropriators of record or to protect the public interest.

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. 46.15.255. 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.

Water Authorizations:

Water Right	Reservation of Water	TWUA
Water Available	Water Unappropriated	Water Unappropriated
Beneficial Use Permit / Certificate Establishes Right Permanent*	Rate or Level Protected Certificate Establishes Protection Reviewable	Beneficial Use None Allows Temp Use Revocable (at will)

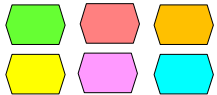
* As long as beneficial use continues.

** As of 10-31-15 These numbers can change daily.

Legend



Process Path



Event



Decision



Assignment

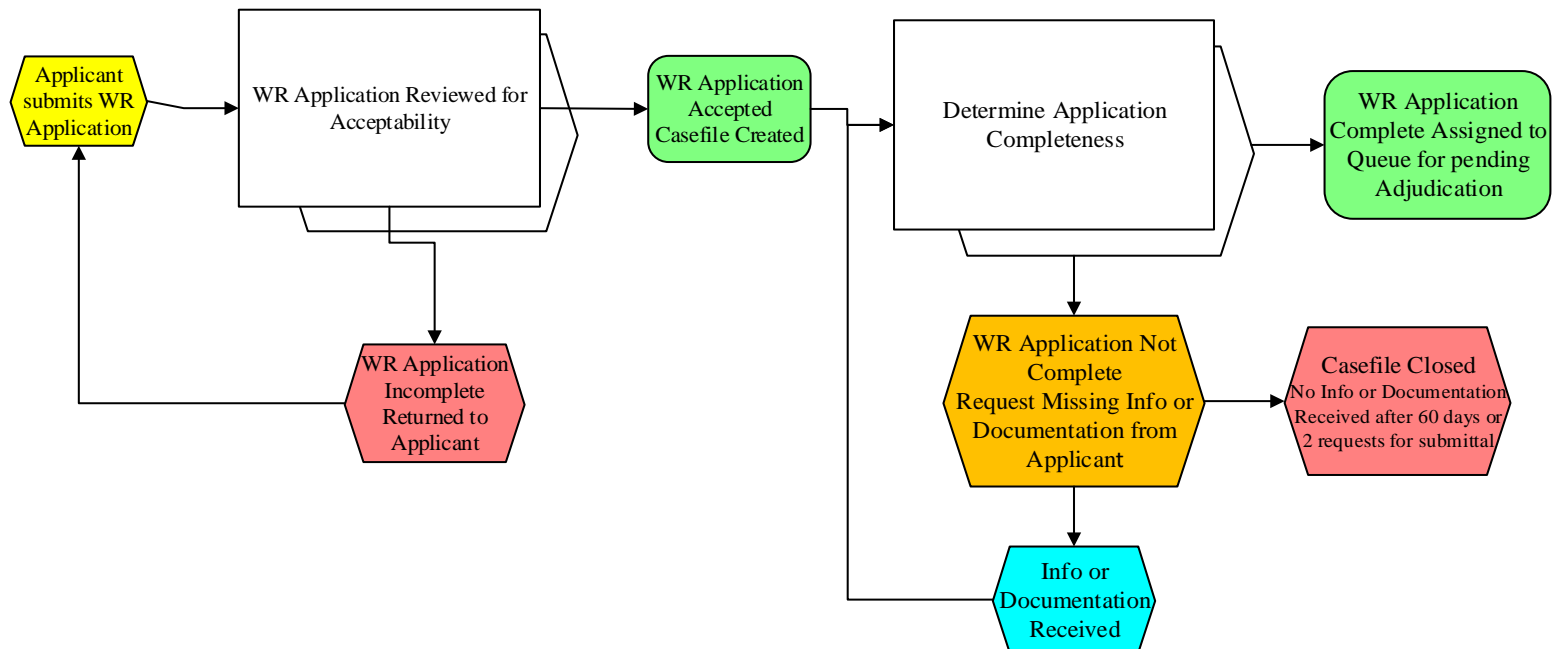


Jump to Another Process

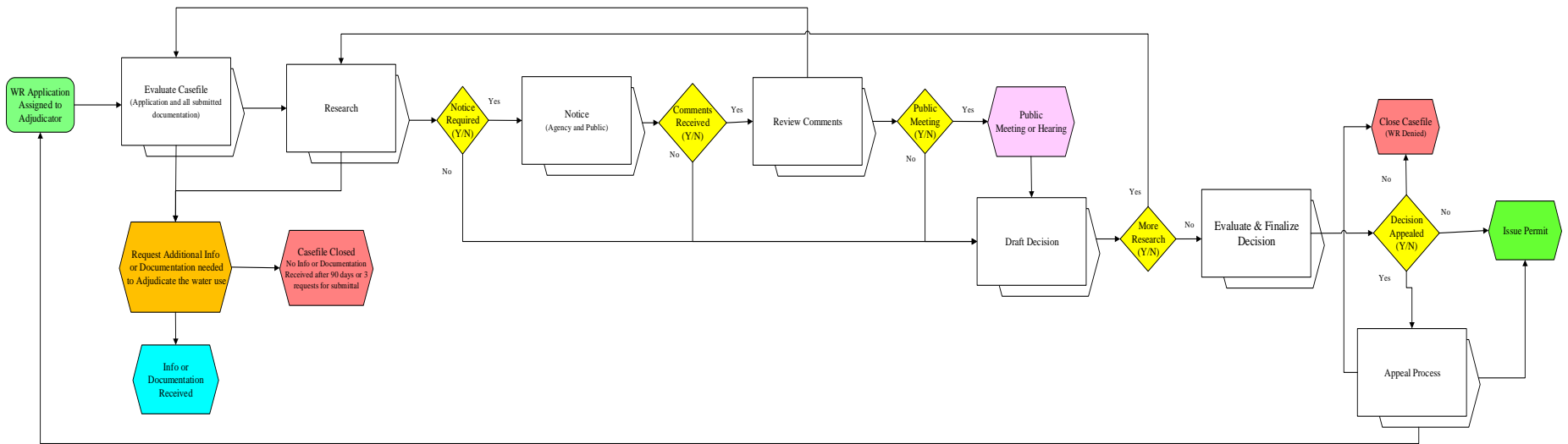
WR – Water Right

SBU – Statement of Beneficial Use

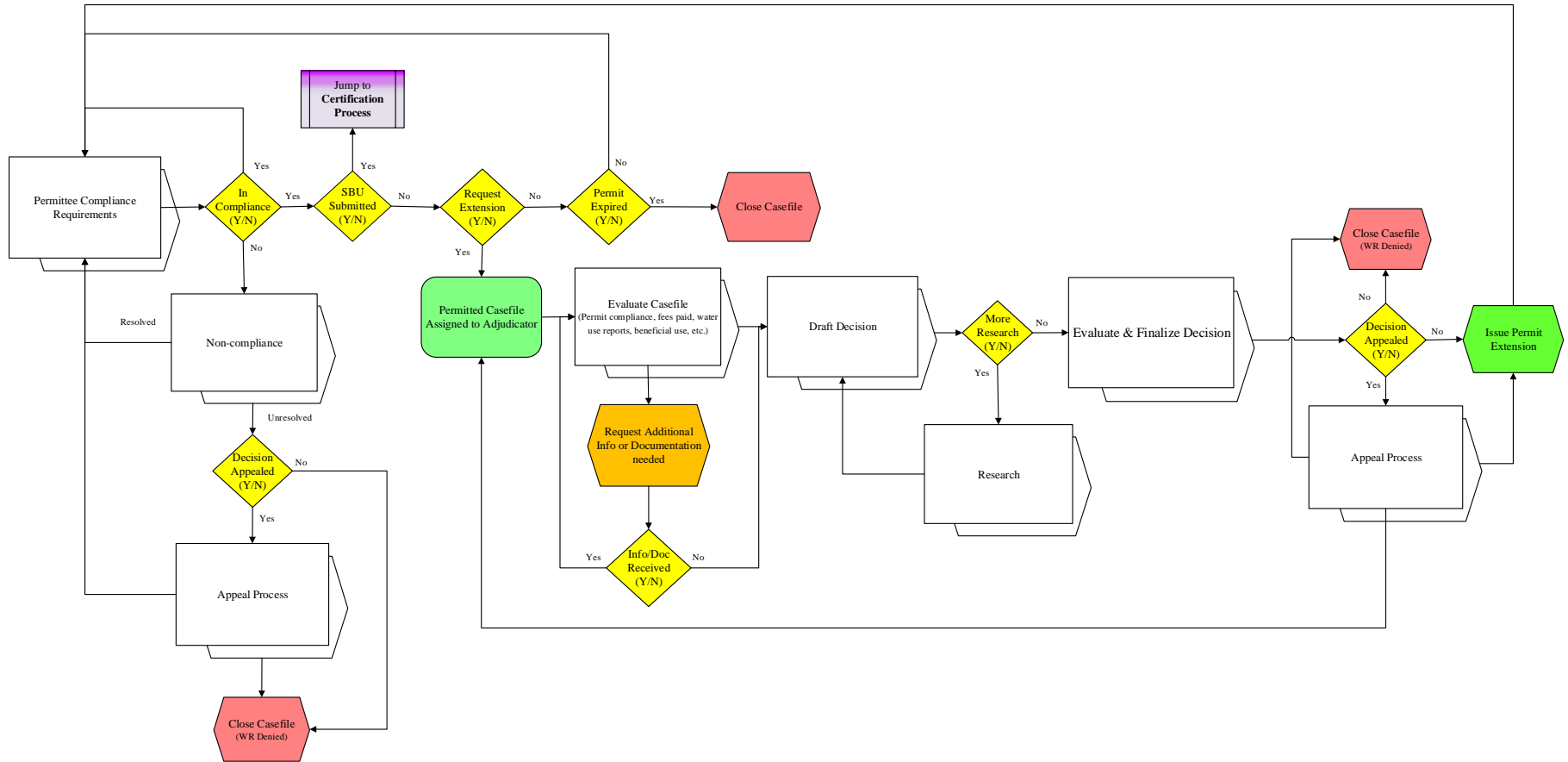
Application Complete Process



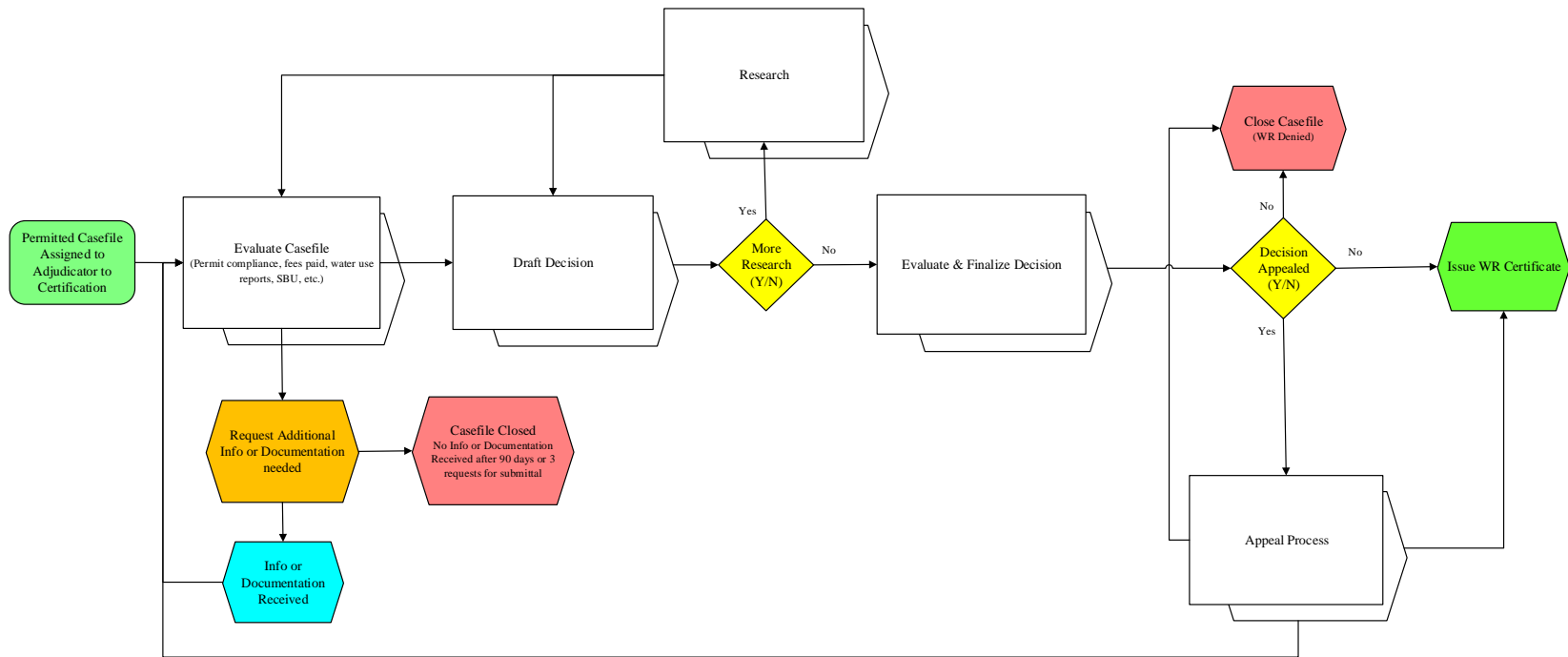
Adjudication Process



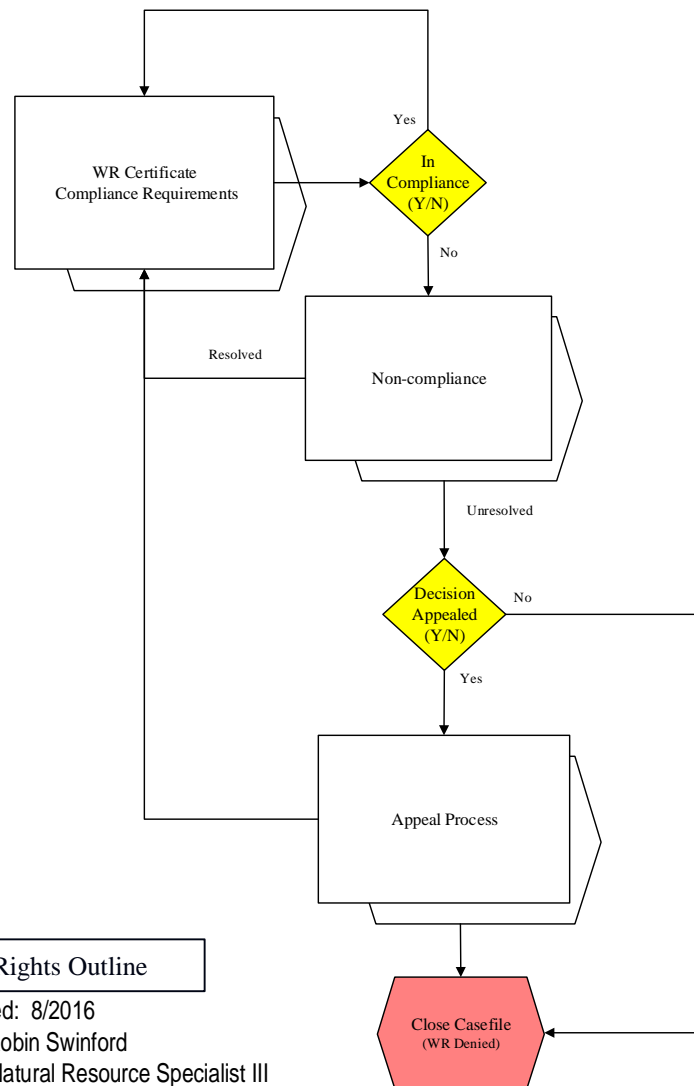
Permit Monitoring & Compliance Process



Certification Process



Certificate Monitoring & Compliance Process



Water Rights Outline

Composed: 8/2016

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