

# Federal Water Rights Training: Reservations of Water in Alaska

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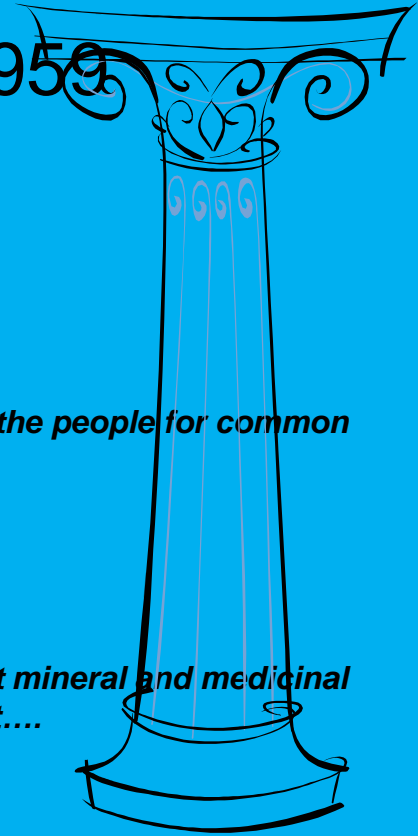


# Facts:

- 586,412 Square Miles of Land Area
- 43 % of the Alaska is wetlands
- Over 3 Million Lakes > 1 acre
- 167,000+ “rivers” in Alaska
- More Coastline than the rest of the Continental US. Almost 34,000 miles
- With the extension of the [Aleutian Islands](#) into the eastern hemisphere, it is technically both the westernmost and easternmost state in the United States, as well as also being the northernmost

# Summary of Alaska's Water Law

- Alaska's Constitution – public resource 1959
  - Article VIII, Sections 3 & 13
    - Sec 3: Common Use
      - *Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.*
    - Sec 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....*
- Alaska Water Use Act (AS 46.15) 1966
- Reservation of Water Amendment (AS 46.15.145) 1980



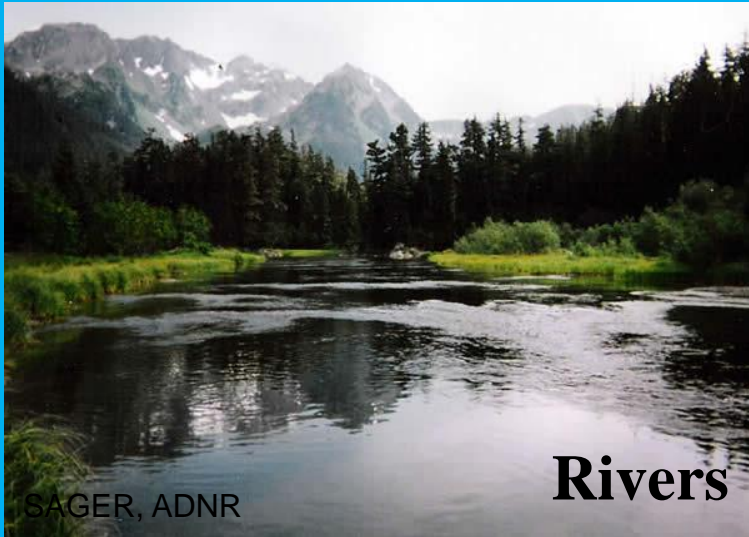
# WHAT IS A RESERVATION OF WATER?

A reservation of water means:

To appropriate water for the purpose of maintaining a specified instream flow or level of water at a specified point on a stream or water body or in a specified part of a stream or water body for specified periods of time and for one or more permissible purposes.

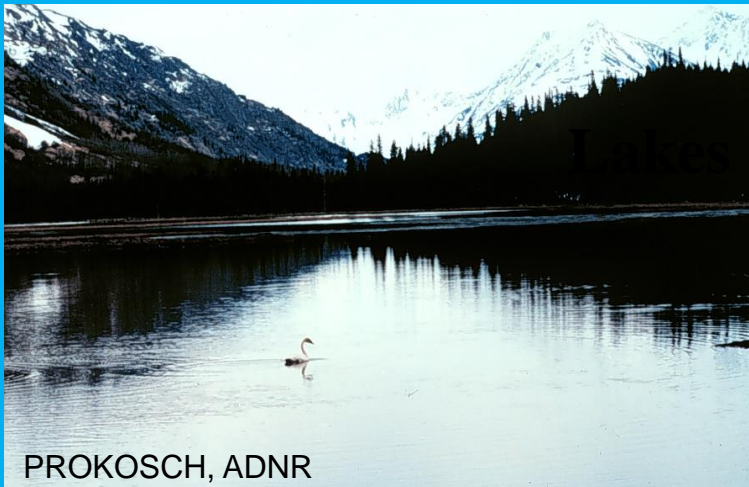
## **OR IN A NUTSHELL:**

A reservation of water is a water right that leaves water in the river or lake in order to protect specific water use(s).



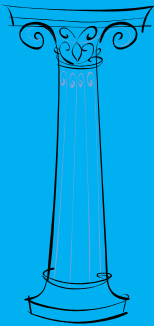
SAGER, ADNR

**Rivers**

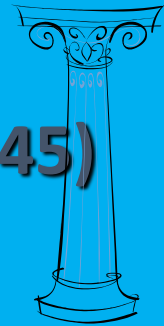


PROKOSCH, ADNR

**Lake**



## Reservation of Water (AS 46.15.145)



- Set forth procedure for obtaining water rights for instream use or lake level. (see also 11 AAC 93.141- .147)
- Allows any person or entity to apply for reservations of water in rivers or lakes
- Allows up to 3 years after filing to quantify proposed reservation with possible 2 year extension, if granted by DNR, to support analysis to substantiate amount of water required.

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.

# 10-Year Review of Certificate of Reservation

11 AAC 93.147 (b)



(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,



Sec. 46.15.145. Reservation of water.

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.**

# 4 Categories of Instream Flow Uses



John Hyde ADF&G

Fish and Wildlife



Robert Angell, AK Div. Of Tourism



Recreation/Aesthetics

(USGS 1996)



Navigation

Terry Schwarz, ADNR



Water Quality

# Instream vs. Out-of-Stream Uses of Water

## **Instream:**

Water needed in the system (river or lake) to carry out vital functions

- Fish and Wildlife
- Recreation/Aesthetics
- Navigation
- Water Quality

## **Out of Stream:**

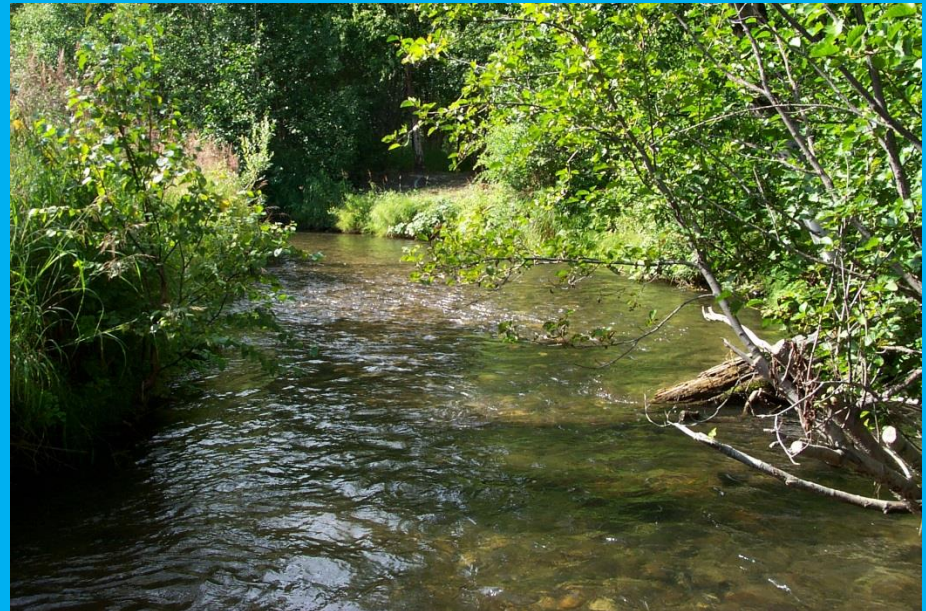
Water removed from the system or flow regime is altered

- Power Generation
- Domestic/Industrial
- Irrigation
- Mining
- Recreational (snowmaking)

# Reservation of Water

An application is submitted to DNR and must contain supporting data and analyses which provides a scientific basis for the requested flows or lake levels

**Adjudication** – administrative determination of the validity and amount of water right, including the settlement of conflicting claims among competing appropriators (Estes 1998).

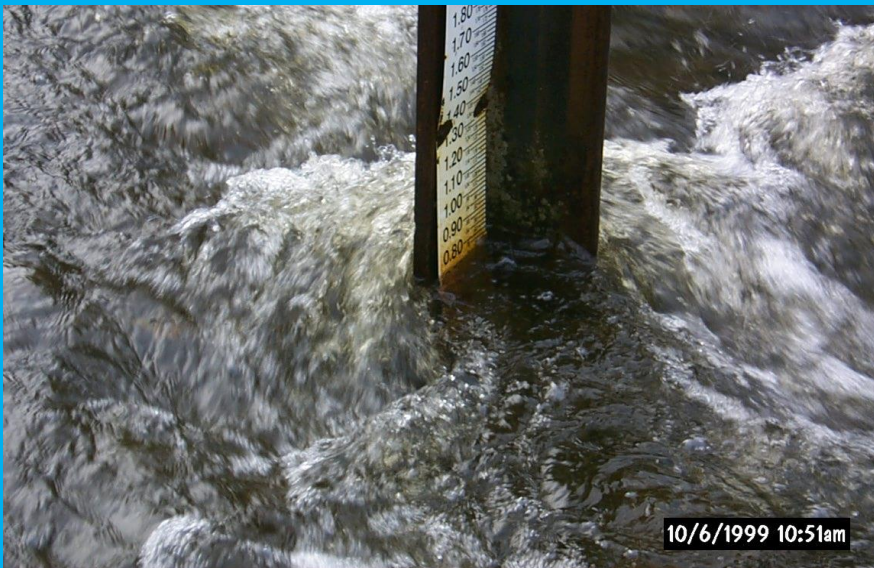


(Albert 2001)



# Measuring Stream Discharge/Water Level

- Stream gaging stations collect discharge (flow) data which are compiled and published.
- This data is the most comprehensive source of information on the amount of discharge in a stream and water levels.



USGS

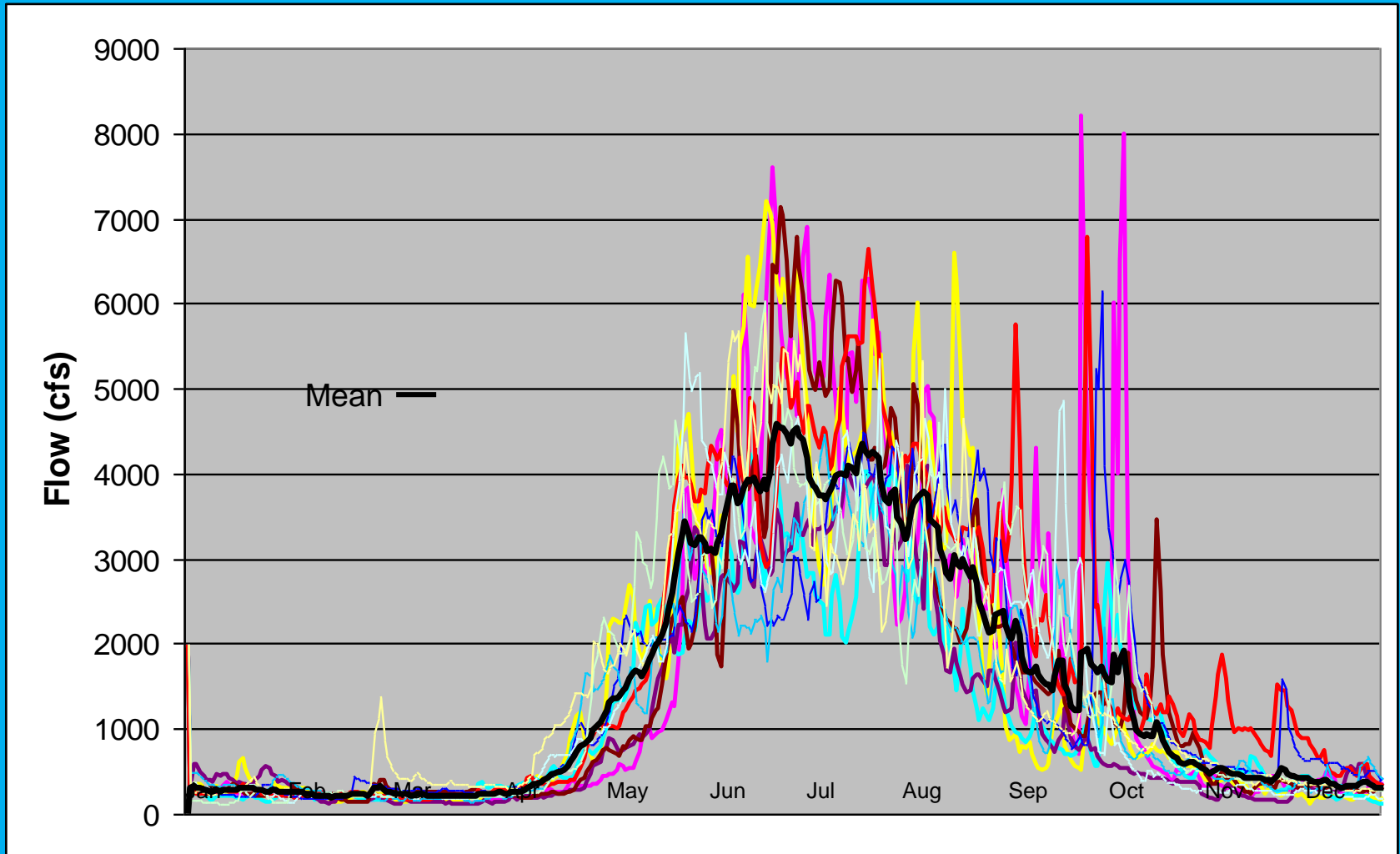


ADNR

# Key Components of the Natural Flow Regime

(colors represent different years)

**Magnitude**   **Frequency**   **Duration**   **Timing**   **Rate of change**



# Fish Species Information

(Presence/absence, life phase, distribution, timing)

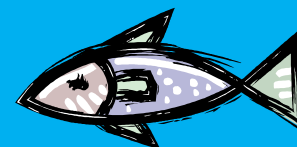
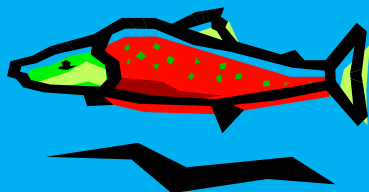
## Example Fish Periodicity Table

### Coho Salmon

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Smolt Passage				XXXX	XXXX	XX						
Adult Passage							XXXX	XXXX	XXXX	XXXX		
Spawning								XXXX	XXXX	XXXX	X	
Incubation	XXXX	XXXX	XXXX	XXXX				XXXX	XXXX	XXXX	XXXX	XXXX
Rearing	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX


### Pink Salmon

Smolt Passage				XXXX	XXXX	X						
Adult Passage							XX	XXXX	XXXX			
Spawning							X	XXXX	XXXX			
Incubation	XXXX	XXXX	XXXX	XXXX			X	XXXX	XXXX	XXXX	XXXX	XXXX
Rearing												



# Application Submittal

- Application is submitted with supporting information to DNR for adjudication.
- Application receives a priority date when received by DNR.

DIVISION OF MINING, LAND AND WATER WATER RESOURCES SECTION <a href="http://www.dnr.state.ak.us/mlw/water/index.htm">www.dnr.state.ak.us/mlw/water/index.htm</a>			 Alaska Department of <b>NATURAL RESOURCES</b>
Anchorage Office 550 West 7 <sup>th</sup> Avenue, Suite 1020 Anchorage, AK 99501-3552 (907) 269-8588 Fax: (907) 269-8947			For ADNR Use Only Date/Time Stamp
For ADNR Use Only LAS #	For ADNR Use Only CID #	For ADNR Use Only Receipt Type    WR	
<b>APPLICATION FOR RESERVATION OF WATER</b>			
<b>INSTRUCTIONS</b>			
<ol style="list-style-type: none"><li>1. Complete one application per stream segment or water body (incomplete applications will not be accepted).</li><li>2. Attach legible map(s) indicating all sections from the beginning to the end of stream segment or for all parts of the lake or water body.</li><li>3. Submit non-refundable fee of \$1,500.</li><li>4. Attach extra pages for each section, as needed.</li></ol>			



# ADNR Adjudication of Reservation of Water Applications

- DNR has a backlog of over 400 reservation applications. One adjudicator working on case load.
- Factors considered for deciding adjudication priorities:
  - Order of applications filed
  - Existing or potential water use conflicts
  - Importance of resource at risk
  - Availability and adequacy of data



# Public Interest Criteria

In determining the public interest,

DNR considers:

1. Benefit to the applicant
2. Effects to existing/future economic activity
3. Effect on fish & game resources/public recreational opportunities
4. Effect on public health (water quality)
5. Effect of loss of alternate water uses that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.
6. Harm to other persons
7. Intent/ability of the applicant to complete the appropriation.
8. Effect upon access to navigable or public waters.



**AS 46.15.080 (b)**

# Public Notice

11 AAC 93.080



## DNR must give Public Notice to:

1. Newspaper/general circulation within the vicinity of the water source.
2. Alaska Online Public Notice System/public place near the water source.
3. Certified mail to prior appropriators of the same source.
4. Those formally requesting notice/land owners
5. Public comment period begins the 1<sup>st</sup> day newspapers post/public posting/receipt of the notice via certified mail.

Within 15 days of publication/service of notice, any person may file written objections with DNR (AS 46.15.133 (a))

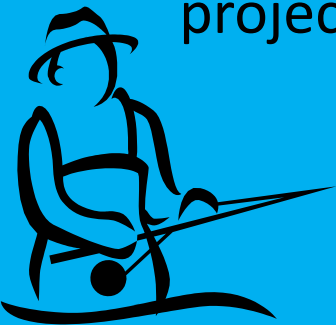
# Final Steps



- Finding of Facts & Conclusions of Law & Decision
- Certificate signed
  - Priority date: legally defensible
  - Applicant now holds the rights to the instream flows or lake level reserved under the certificate.

# Public Benefits from Reservations of Water

- Provides legal process for protecting water uses that are dependent on instream flows and water levels that are in the best public interest.
- Provides clear description of flows/water levels needed for specified instream flow purpose(s).
- Provides cost savings to future developers from not having to perform instream flow studies if proposed use is compatible with development needs.
- Decision and rationale is formalized in a legal document which is retained over time (versus project specific decisions which may not be readily accessible or possibly even overlooked during project reviews).



## For Further Information

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# THANK YOU