

# Reservations of Water in Alaska

Association of Western State Engineers  
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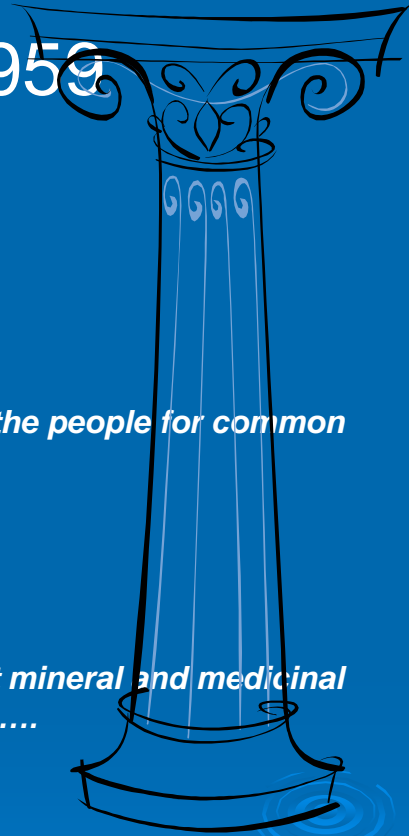


# Facts:

- 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



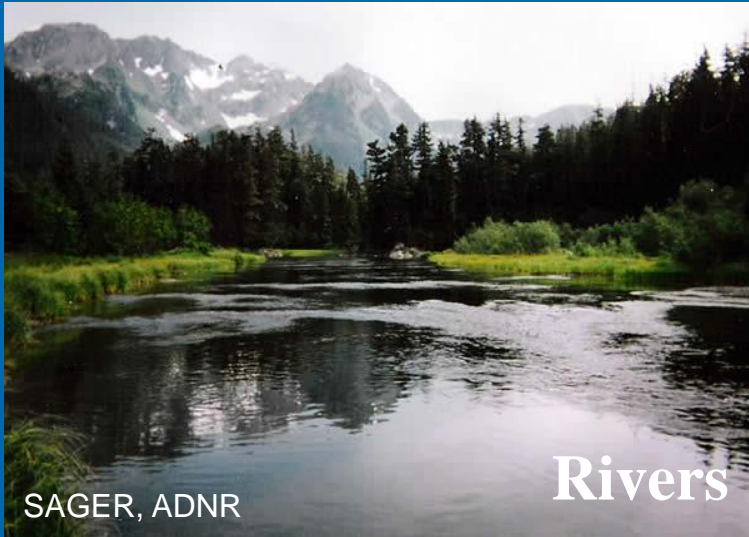
# WHAT IS A RESERVATION OF WATER?

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).



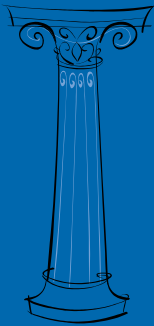
SAGER, ADNR

**Rivers**



PROKOSCH, ADNR

**Lakes**



# 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.



# 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

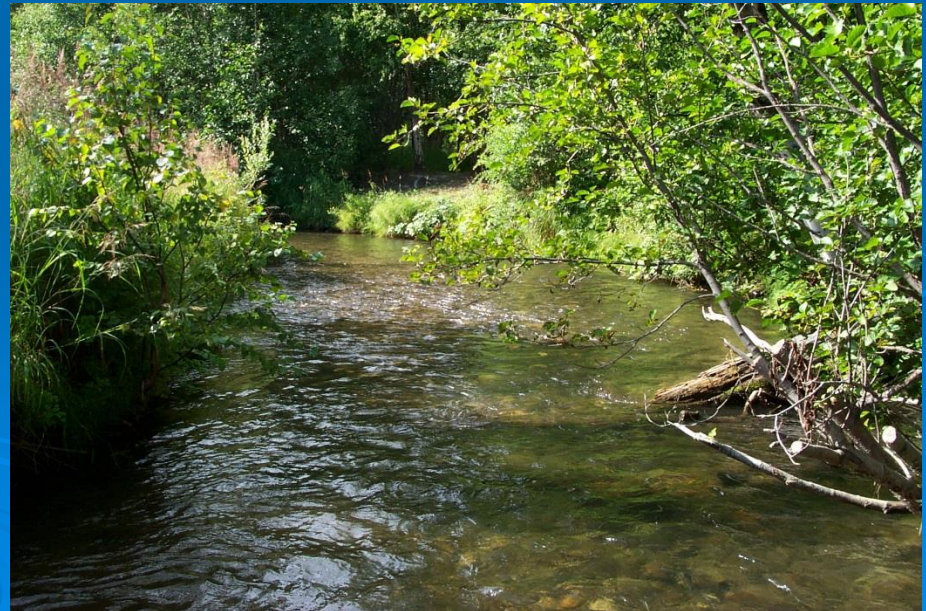
- Power Generation
- Domestic/Industrial
- Irrigation
- Mining
- Recreational (snowmaking)



# 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).

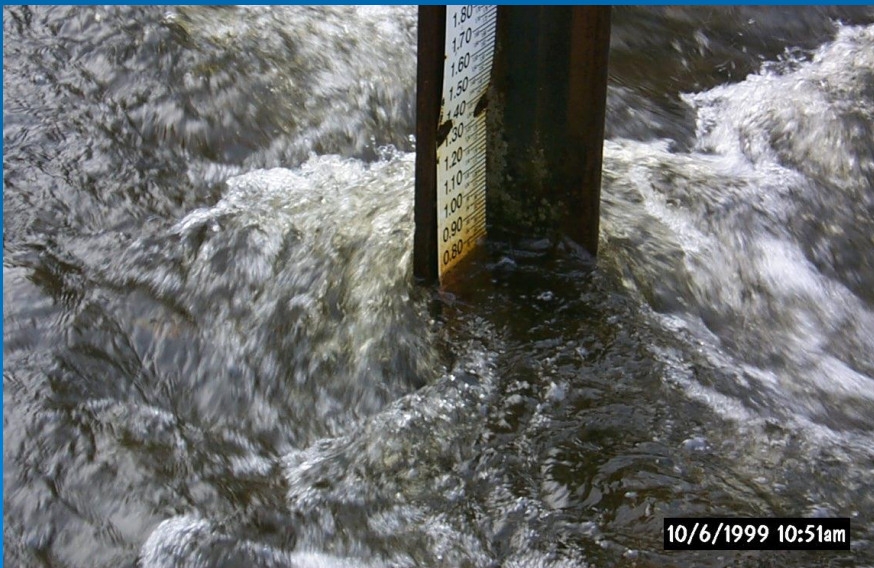


(Albert 2001)



# 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

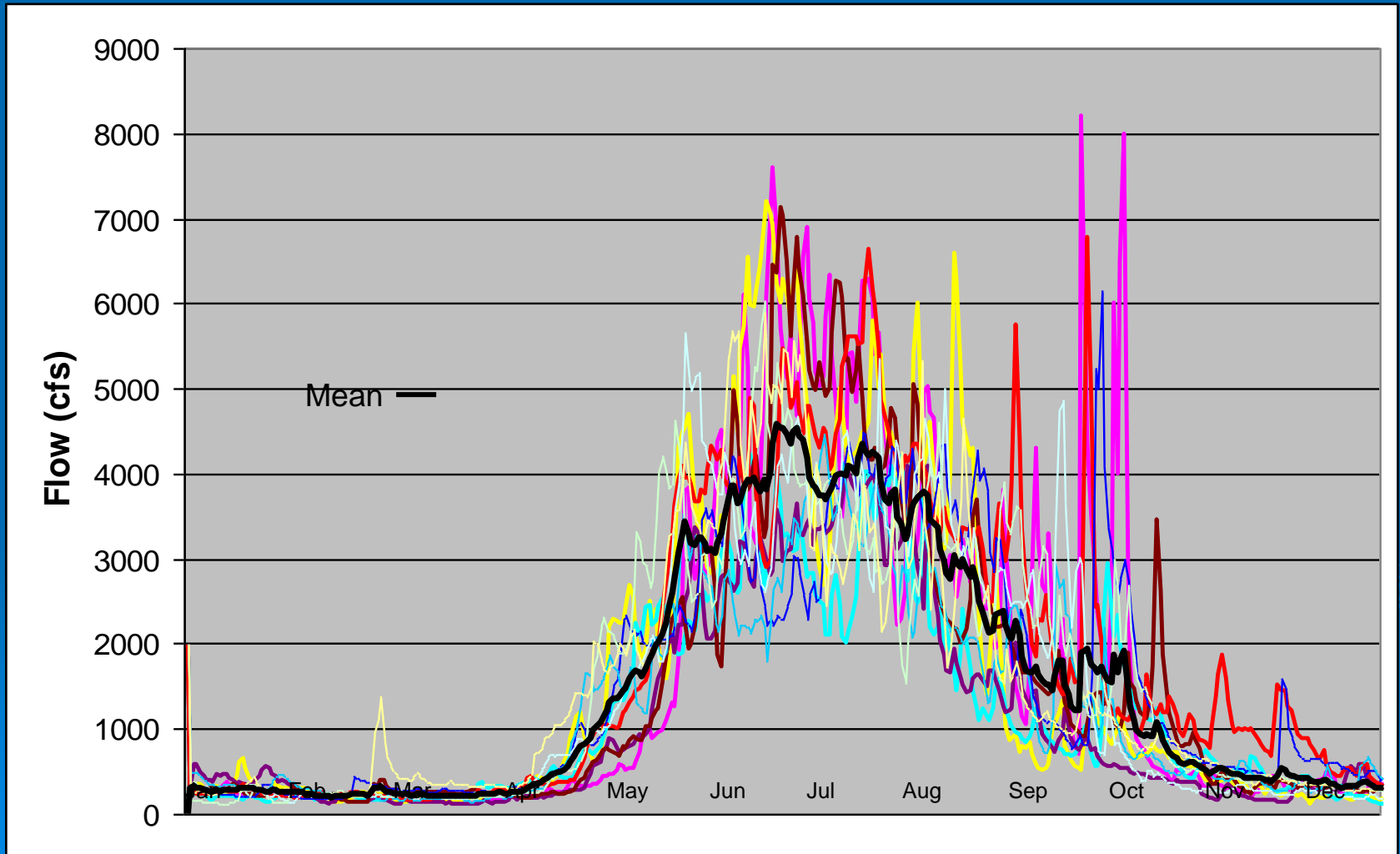


ADNR

# 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)

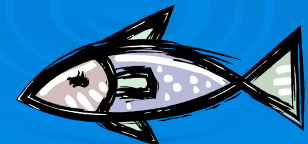
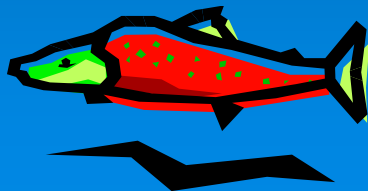
## Example Fish Periodicity Table

### 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 99501-3562 (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



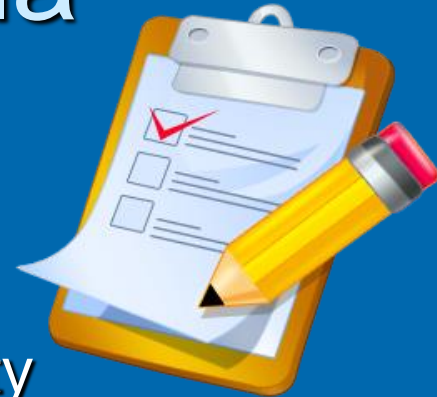
Sec. 46.15.145. Reservation of water.

- (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.***

# 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.

# 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

# 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).



Water Right	Reservation of Water	<b>TWUA</b>
Water Available	Water Unappropriated	Water Unappropriated
Beneficial Use	Rate or Level Protected	Beneficial Use
Permit / Certificate	Certificate	None
Establishes Right of Use	Establishes Right of Protection	Allows Temporary Use
Permanent*	Reviewable	Revocable (at will)
14976 Certificates** 496 Applications	131 Certificates 400 Applications	751 Authorizations 339 Applications

\* As long as beneficial use continues.

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



# For Further Information

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# THANK YOU