

Alaska DNR-Water Resources Section presentation (May 9, 2016) for AWSE Spring Workshop topic on Forfeiture of Water Rights under the Alaska Water Use Act (AS 46.15)

Alaska Statute

Sec. 46.15.140. Abandonment, forfeiture, and reversion of appropriations.

(a) 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.

(b) The commissioner may declare that an appropriator has wholly or partially forfeited an appropriation, and shall revoke the certificate of appropriation in whole or in part if the appropriator voluntarily fails or neglects, without sufficient cause, to make use of all or a part of the appropriated water for a period of five successive years. A person who has a permit to develop a use of water including but not limited to residential, agricultural, industrial, or mining use, but has not developed that property to the point of water use before permit expiration, may file a request for permit extension with the commissioner.

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

(d) If the commissioner revokes a certificate in whole or in part, the portion of the certificate covered by the revocation reverts to the state and the water becomes unappropriated water.

Alaska Administrative Code

11 AAC 93.940. Procedure on abandonment and forfeiture

(a) Except as provided in (f) of this section, if the commissioner has reason to believe that all or part of an appropriation has been abandoned or forfeited, the certificate holder will be notified that the commissioner intends to revoke the certificate for nonuse, to the extent of the nonuse. The revocation notice will be sent by certified mail, return receipt requested, to the last known address on record with the department.

(b) If the certificate holder desires to retain the appropriation, the certificate holder must file an objection within 30 days after receipt of the revocation notice. The certificate holder has 60 days after the date the objection is filed to submit proof that the appropriation has been neither abandoned nor forfeited. The proof must be in writing, and may include statements or affidavits, sworn testimony of witnesses, documents, and other relevant evidence. The commissioner will, in his or her discretion, hold a hearing in order to gather additional information, evidence, or testimony on the proposed revocation.

(c) If the proof substantiates that the appropriation has not been abandoned or forfeited, the commissioner will rescind the revocation notice. The holder will be notified of the decision by certified mail.

(d) If the proof does not substantiate that the appropriation has been neither abandoned nor forfeited, the commissioner will declare the appropriation abandoned or forfeited and revoke the certificate in whole or in part depending on the extent of nonuse. The commissioner will record the decision, and any amended certificate, in the appropriate recording office. In addition, the commissioner will, in his discretion, secure a court order for the removal of the works of appropriation.

(e) If necessary, the commissioner will, in his or her discretion, require a record of use to be submitted on a specified regular basis.

(f) If a certificate holder voluntarily relinquishes his or her water right by submitting a notice of relinquishment or a signed, notarized letter stating that all or part of the water right is being relinquished and stating the amount being relinquished, the notice requirement under (a) does not apply and the water right will be considered abandoned. The certificate will be revoked in whole or in part, and a copy of the revocation decision will be sent to the certificate holder. Any amended certificate will be recorded by the commissioner in the appropriate recorder's office.

History: Eff. 12/29/79, Register 72; am 9/11/83, Register 87; am 11/7/90, Register 116

Authority: AS 46.15.020

AS 46.15.140

AS 46.15.145

AS 46.15.160