

Water Rights in Alaska

What are water rights?

A water right is a legal right to use surface or ground water that is granted pursuant to the Alaska Water Use Act (AS 46.15). A water right allows a specific amount of water from a specific water source to be diverted, impounded, or withdrawn for a specific use. When a water right is granted, it becomes appurtenant to the land where the water is being used for as long as the water is used. If the land is sold, the water right transfers with the land to the new owner, unless the Department of Natural Resources (DNR) approves its separation from the land. In Alaska, because water wherever it naturally occurs is a common property resource, landowners do not have automatic rights to ground water or surface water. For example, if a farmer has a creek running through his property, he will need a water right to authorize his use of a significant amount of water. Using water without a permit or certificate does not give the user a legal right to use the water.

How do I obtain a water right?

To obtain water rights in Alaska, you need to submit an application for water rights to the DNR office in the area of the water use. After your application is processed, you may be issued a permit to drill a well or divert the water. Once you have established the full amount of water that you use beneficially and have complied with all of the permit conditions, a certificate of appropriation may be issued. This is the legal document that establishes water rights.

What costs are involved?

An application for water rights must be accompanied by the appropriate filing fee as determined by 11 AAC 05.260:

- \$100 for one single-family residence or duplex, or for water use associated with one single-family residence or duplex.
- \$1,500 for up to 60 hours of staff time, for activities related to oil and gas and associated substances.
- \$1,500 for up to 60 hours of staff time, for activities related to locatable mining.
- \$1,500 for up to 60 hours of staff time, for hydroelectric power generation capacity greater than 100 kilowatts.
- \$1,500 for up to 60 hours of staff time, for water removal out of a hydrologic unit under AS 46.15.035 or 46.15.037.
- \$250 for 5,000 gallons per day (gpd) or less for a use not listed above.
- \$565 for greater than 5,000 gpd and no more than 30,000 gpd for a use not listed above.
- \$690 for greater than 30,000 gpd and no more than 100,000 gpd for a use not listed above.
- \$1,125 for greater than 100,000 gpd for a use not listed above.

To ensure that the public is notified of proposed water uses, you may be required to pay the cost of a legal advertisement in at least one issue of a local newspaper in the area of the proposed water use. Public notice is required if the application amount is greater than 5,000 gpd. Public notice may be required for uses of 5,000 gpd or less if the water source is an anadromous fish stream or the water source has a high level of competition among water users. In addition, permit, certificate, and authorization holders are subject to an annual \$50 administrative service fee. Water appropriations of 500 gpd or less for any use, appropriations of 1,500 gpd or less for a single-family residence or duplex, and reservations of water for public benefit are exempt from the annual fee.

Why should I apply for water rights?

1. If you have water rights, you have legal standing to assert those rights against conflicting water users who do not have water rights.
2. A person with water rights has priority to use water over persons who later file for water rights from the same source.
3. Anyone who diverts, impounds, withdraws or uses a significant amount of water, without a permit, certificate, or authorization is guilty of a misdemeanor (AS 46.15.180). A significant amount of water is defined by 11 AAC 93.035(a) and (b) as:

- the consumptive use of more than 5,000 gallons of water from a single source in a single day;
 - the regular daily or recurring consumptive use of more than 500 gpd from a single source for more than 10 days per calendar year;
 - the non-consumptive use of more than 30,000 gpd (0.05 cubic feet per second) from a single source; or
 - any water use that may adversely affect the water rights of other appropriators or the public interest.
4. By filing for water rights, you provide valuable information about water use and water availability in Alaska. Water right records are updated and maintained in an online database. This system contains data on customers, water right status, water source (well depth or water body name), type of water use, water quantity, period of water use, water right priority date, and property description (meridian, township, range, section, quarter sections, latitude and longitude, subdivision name or survey number, tract, block, and lot). Currently, the water right database has over 24,000 records. This information allows state water managers to estimate present uses of water, determine how much water is available from streams and aquifers in the state, protect established water right holders, prevent over-appropriation of water sources, and manage the state's water resources.

What other water resources authorizations are available from the Department of Natural Resources?

- Dam Safety: A certificate of approval is required for constructing or modifying a dam that impounds 50 acre-feet of water and is at least 10 feet high, or is at least 20 feet high, or poses a threat to life and property. An application form and the fee prescribed by 11 AAC 05.260(c)(2) should be filed with the Department of Natural Resources.
- Instream Flow: A certificate is required for maintaining a specific flow in a portion of stream or water level in a lake. An instream flow reservation can be made to protect fish and wildlife habitat, migration, and propagation; recreation and park purposes; navigation and transportation purposes; and sanitary and water quality purposes. An application form and the fee prescribed by 11 AAC 05.260 should

be filed with the Department of Natural Resources.

How do I obtain authorization for short-term water use (temporary water use authorization)

A temporary water use authorization may be needed if the amount of water to be used is a significant amount, the use continues for less than five consecutive years, and the water to be used is not appropriated. This authorization does not establish a water right but will avoid conflicts with fisheries and existing water right holders. The application fee for a temporary water use authorization is \$450 for up to 18 hours of staff time for all uses of water from up to five water sources.

Where can I get more information?

More information is available in the Department of Natural Resources' fact sheets on Administrative Service Fee, Dam Safety in Alaska, Reserving Water for Instream Use, Federal Reserved Water Rights, and Alaska Hydrologic Survey. Further information and application forms may be obtained from the following offices or visit www.dnr.alaska.gov/mlw/water/.

**Department of Natural Resources
Water Resources Section**

Anchorage Office
550 West 7th Avenue, Suite 1020
Anchorage, AK 99501-3562
Phone: (907) 269-8600
Fax: (907) 269-8904

Fairbanks Office
3700 Airport Way
Fairbanks, AK 99709-4699
Phone: (907) 451-2705
Fax: (907) 451-2703

Juneau Office
PO Box 111020
400 Willoughby Avenue, #400
Juneau, AK 99811-1020
Phone: (907) 465-3400
Fax: (907) 586-2954