

“What’s needed to obtain water rights for FERC and Non-FERC hydroelectric projects.”

Carl Reese,
Statewide Hydroelectric Coordinator
Department of Natural Resources
Division of Mining, Land, and Water
Water Resources Section.



Public Interest and Dams

- Compare Public Interest determinations for adjudicating permits to appropriate water for non-FERC and FERC projects.
- This presentation focuses on the decision criteria in AS 46.15.080 for issuance of a permit to appropriate water, however a complete Application for Water Right is needed to begin the adjudication process.



Alaska Water Use Act

AS 46.15.080(b) of the Alaska Water Use Act contains eight factors that DNR considers in finding that a proposed appropriation (of water) is in the public interest. DNR “shall issue” a permit to appropriate water if the proposed appropriation is found to be in the public interest and the other three findings in AS 46.15.080(a) are made. The Public Interest Determination addresses environmental and economic issues. The process works somewhat differently for non-FERC projects because DNR drives the process to a greater degree. However, in both FERC and non-FERC projects, DNR adjudicates rights to Alaska’s water resources, including making a Public Interest Determination.



Salmon Creek Dam Under Construction ~ 1913. 1st constant angle variable radius dam in world.

Compare and Contrast Adjudication

For a state regulated dam project.

For a FERC project.



The Public Interest

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.

(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.

Prior Appropriation in Alaska

(1) rights of a prior appropriator will not be unduly affected;



Bradley Lake

Dam Safety

Non-FERC/Not Federal Owned or Operated

(2) the proposed means of diversion or construction are adequate;

Contact Charlie Cobb at DNR



Nugget Creek Dam, completed 1915

DNR makes this determination Non-FERC

(3) the proposed use of water is beneficial; and



There are eight factors considered

(4) the proposed appropriation is in the public interest.



How does it benefit the applicant?

(1) the benefit to the applicant resulting from the proposed appropriation;



Nugget Creek Powerhouse, circa 1920, Juneau

Economic Considerations

(2) the effect of the economic activity resulting from the proposed appropriation;



Sockeye Salmon, Sweetheart Creek

Recreation and Fish & Game Resources



(3) the effect on fish and game resources and on public recreational opportunities;

Health

(4) the effect on public health;



Alternative Uses

(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;



Harm to Other Persons



(6) harm to other persons resulting from the proposed appropriation;

Crevasse, Lemon Glacier, Juneau

Can and will it be completed by the applicant?



(7) the intent and ability of the applicant to complete the appropriation; and

Access/Navigation

(8) the effect upon access to navigable or public water.



Overview

- DNR must make a public interest determination for both FERC and non-FERC projects.
- Some of the public interest factors DNR considers in FERC projects are also addressed in the FERC license process.



5th Street Douglas Dam

Questions

- Carl Reese, carl.reese@alaska.gov , 465-2533
- Charles Cobb, charles.cobb@alaska.gov , 269-8636



5th Street Douglas Dam