

SUBJECT INDEX
AND
INDEX TO THE PROCEEDINGS
OF THE
ALASKA CONSTITUTIONAL CONVENTION
ON
ARTICLE VIII, NATURAL RESOURCES, AND
RELATED PROVISIONS

OF THE
CONSTITUTION OF THE STATE OF ALASKA
(November 8, 1955 - February 6, 1956)

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Corrections and additions to these indexes are appreciated.

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SOURCES

Minutes of the Daily Proceedings - Alaska Constitutional Convention, 1955 - 1956 (PROCEEDINGS), 6 Parts, Alaska Legislative Council, Juneau, Alaska March 1965.

Commentary on Article on State Lands and Natural Resources, dated January 16, 1956 (COMMENTARY), In PROCEEDINGS Part 6, Appendix V, pages 98 - 103.

Letter from William A. Egan to all wildlife officials, dated January 28, 1956 (LETTER), 3 pages, on file Legislative Reference Library, Legislative Affairs Agency, Juneau, Alaska.

TERMS, prepared by Committee on Resources, Alaska Constitutional Convention, undated, 7 pages, on file Legislative Reference Library, Legislative Affairs Agency, Juneau, Alaska.

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TERMS

APPROPRIATION - mining

The term "appropriation" in mining law means the posting of notice at or near the point where the ledge is exposed; next the marking of the boundaries. (Ricketts, Am. Mining Law)

APPROPRIATION - water

An appropriation of water consists in the capture, impounding, or diversion of it from its natural course or channel and its actual application to some beneficial use private or personal to the appropriator, . . . exclusion to the extent of the water appropriated of all other persons, to constitute a valid appropriation, there must be an intent to apply the water to some beneficial use existing at the time or contemplated in the future, a diversion from the natural channel by means of a ditch or canal, or some other open physical act of taking possession of the water, and an actual application of it within reasonable time to some useful or beneficial purpose. (Black's Legal Dictionary)

Elements of valid appropriation of water are:

- (1) an intent to apply it to some beneficial use, existing or contemplated,
- (2) a diversion from a natural stream (or source),
- (3) an application of it within a reasonable time to some useful ends. (long line of Western cases).

BENEFICIAL USE

In both water and mining law a condition of the retention of a right is continued beneficial use. Beneficial use involves

making use, continuing active utilization or work.

In the laws of many states certain uses of water including the disposal of wastes and the preservation of scenic features are not recognized as beneficial uses and therefore not subject to appropriation for those purposes. Those uses that are beneficial and subject to appropriations may then be ordered in their importance so that a higher use can prevail over a lower use through eminent domain proceedings allowing for just compensation to the lower user for his rights and improvements. (V.O.)

Federal grazing permit on natural forests held to be sufficient "beneficial use" to support condemnation of defendants' land for access thereto (126 P2d 481)

Reservoir to hold water in reserve for use only if necessary held a sufficient beneficial use to defeat forfeiture through non-use and that Company could recover from U. S. for construction of the Friant Dam on San Joaquin River which cut off its reservoir source. (76 Fed Sup 836)

Summer resorts' use of a waterfall for its esthetic purposes in attracting patronage has been held a beneficial use sufficient to preclude diversion from above for purposes of generating electric power.

Cases hold irrigation and the generation of electric power to be among the many instances of the beneficial use of water. Where legal title is in one person and the right to beneficial use is in another (as in the case of a homesteader who has complied fully with requirements for patent) he is deemed the beneficial owner of the property pending issuance of patent.

CLASSIFICATION OF LANDS

Classification is characterization through the selection of some quality or feature, and therefore lands may be classified as pasture, grazing, timber, arable or mineral. It is determined by surface indications. Minerals may be hidden under any surface but a surveyor is not expected to explore for them that he may include or exclude reference to them in his reports. (8F Sup 407).

A surveyor's report that lands if cleared should be suitable for grazing, but at the time of the report were more valuable for timber, is, when accepted by the land office, a classification of the lands as non-mineral. (16 USCA 91 244 US 90).

GAME

Migratory fish in navigable waters of a state, like game within

its borders, are classified as animals ferae naturae, the title to which so far as susceptible to assertion before possession is obtained, is held by the state in its sovereign capacity, in trust for all its citizens. As an incident of the assumed ownership the state may protect the species from extinction by exhaustive measures of capture. (95 P 803)

INTEREST IN LAND

An interest in land is the legal concern of a person in the thing or property or in the right to some of the benefits or uses from which the property is inseparable. (273 Nw121)

An appropriator's right pending determination of his application to use public lands was an "interest in real property" which he could protect by suit to determine conflicting claims. (119 P 34)

A right to take water from a well by reason of occupation of a dwelling house, and for the more convenient occupation thereof, is an interest in land. (22 WP)

Most cases hold a mortgage not to be an interest in land but mere security until foreclosure.

A conveyance of an interest in the oil, gas and minerals in and under a tract of land is a conveyance of an interest in the land. (220 SW623)

Whether such right resides in lessee or lessor, as royalty, it is an interest in land (49F (2nd) 76)

Fractional mineral rights constitute an interest in land (73 P692)

A leasehold interest constitutes an interest in land; a contract for sale of land has been held an interest in land,

as has been a written option to purchase; standing timber is an interest in the land which the state may convey, but upon conveyance of stumpage, to be removed at once, such stumpage becomes personal property as distinguished from an interest in land. An agreement to sell forest products is an interest in land.

NATURAL WATERS

Navigable waters within the meaning of 5 Stat. 726 giving District Courts jurisdiction over contracts and torts pertaining to vessels navigating between different ports in different states and ports upon the lakes and waters connecting said lakes is not to be understood in the same sense as natural waters but includes artificial waterways as well. (21 Fed Cas. 851, No. 12549)

NAVIGABLE WATERS

Actually navigable in fact.

Capacity for navigation or capable of being navigated to float boats, ships, or produce of the country.

RESERVED TO THE PEOPLE FOR COMMON USE.

Ancient traditions in property rights have never recognized that a private right and title can be acquired by a private person to wildlife in their natural state or to water in general. The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition. Rather rights to use are secured by the general laws of the state. In all

English and American legal systems ownership of water cannot be asserted, rights acquire only to the use of water. Once wildlife is captured and removed from their natural state possessory right accrues to the captor, provided that the wildlife was captured in conformity with provisions of law. (V.O.)

SEVERAL RIGHT

A several fishery is an exclusive right to fish which is derived from the owner of the soil. (39 W&P 89)

The right may attach as well to an arm of the sea where the tide ebbs and flows as to fresh water. (60 NY 56)

"Sole and exclusive fishery" were, after verdict, equivalent to a description of a several fishery. (3QB 426)

SUSTAINED YIELD PRINCIPLE

As to forests, timber volume, rate of growth, and acreage of timber type can be determined with some degree of accuracy. For fish, for wildlife, and for some other replenishable resources such as huckleberries, as an example, it is difficult or even impossible to measure accurately the factors^{by} which a calculated sustained yield could be determined. Yet the term "sustained yield principle" is used in connection with management of such resources. When so used it denotes conscious application insofar as practicable of principles of management intended to sustain the yield of the resource being managed. That broad meaning is the meaning of the term as used in the Article.

WHITE ACT PROVISION 48 U.S.C.A. 222

That every such regulation made by the Secretary shall be of general application within the particular area to which it applies, and that no exclusive or general right of fishery

shall be granted therein, nor shall any citizen of the U. S. be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary.

With respect to traps, applications for sites within areas which the Secretary finds consistent with proper conservation, should be allotted in order of priority of time in applications among qualified applicants.

The word "exclusive" forbids not only a grant to a single person or corporation, but to any special group or number of people. (Hynes-Grimes Karluck Reservation)