

**From:** [Lorali Simon](#)  
**To:** [Benson, Molly M \(DNR\)](#)  
**Subject:** RE: Supplemental Notice of Proposed Changes to DNR Water Regulations  
**Date:** Thursday, October 12, 2023 12:09:34 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

You don't often get email from [lorali@usibelli.com](mailto:lorali@usibelli.com). [Learn why this is important](#)

**CAUTION:** This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Molly, this email comes as quite a surprise. Can you explain why the department “is opting to postpone proposed changes relating to applications and certificates for instream flow reservations.” ?

Thank you,

Lorali



**Lorali Simon | VP External Affairs**

**Usibelli Coal Mine**  
Cell: (907) 982-6744  
Office: (907) 745-6028  
[lorali@usibelli.com](mailto:lorali@usibelli.com)

**Everyday Safety - At Work. At Home. At Play.**

---

**From:** Benson, Molly M (DNR) <[molly.benson@alaska.gov](mailto:molly.benson@alaska.gov)>  
**Sent:** Thursday, October 12, 2023 9:38 AM  
**Subject:** Supplemental Notice of Proposed Changes to DNR Water Regulations

[CAUTION External Source]

You are receiving this email because you submitted a comment in response to a prior public notice relating to Alaska Department of Natural Resources water regulations.

## SUPPLEMENTAL NOTICE OF PROPOSED CHANGES RELATING TO WATER MANAGEMENT IN THE REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES

### BRIEF DESCRIPTION

The Department of Natural Resources proposes to amend its water management regulations.

On January 15, 2021, the Department of Natural Resources publicly noticed its proposed changes to water management regulations in 11 AAC 93. The department extended the

comment period twice, on February 26, and on March 16, 2021, with a final deadline for comments on April 2, 2021. The department reviewed public comments and is opting to postpone proposed changes relating to applications and certificates for instream flow reservations. The department will move forward with the remaining regulation changes proposed in the January 2021 regulations package:

- 11 AAC 93.115 Closure of an application for a water right
- 11 AAC 93.210 Temporary water use
- 11 AAC 93.220 Procedure for temporary water use
- 11 AAC 93.510 Public notice and meeting (for Critical Water Management Areas)
- 11 AAC 93.530 Effect of the order
- 11 AAC 93.970 Definitions

Some modifications have been made to the January 2021 proposed changes after a thorough review of public comments. A copy of the proposed regulations is available for review on the Alaska Online Public Notice System; on the Division of Mining, Land and Water website at <https://dnr.alaska.gov/mlw/news/>; or by contacting the division by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov).

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments on the division's online comment portal at <https://alaskadnr.commentinput.com/?id=FiCphsA95>; by mail to Molly Benson at the Division of Mining, Land and Water, 550 W. 7th Ave., Suite 1070, Anchorage, AK 99501-3579; or by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov). The comments must be received no later than **5:00 p.m. on Monday, November 13, 2023**. Please note that all comments become public records subject to public inspection.

You may submit written questions relevant to the proposed action to the contact information provided above. The questions must be received at least 10 days before the end of the public comment period (**by 5:00 p.m. on Friday, November 3, 2023**). The division will aggregate its responses to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and on the division's website at <https://dnr.alaska.gov/mlw/news/>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Molly Benson by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov) or by phone at 269-8601 no later than Friday, November 3, 2023, to ensure that any necessary accommodation can be provided.

After the public comment period ends, the department will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. You should comment during the time allowed if their interests could be affected.

**Statutory Authority:** AS 46.15.010; AS 46.15.020; AS 46.15.040; AS 46.15.050; AS 46.15.080; AS 46.15.100; AS 46.15.133; AS 46.15.145; AS 46.15.155; AS 46.15.180; AS 46.15.250; AS 46.15.255; AS 46.15.256.

**Statutes Being Implemented, Interpreted, or Made Specific:** AS 46.15.010; AS 46.15.020; AS 46.15.040; AS 46.15.050; AS 46.15.080; AS 46.15.100; AS 46.15.133; AS 46.15.145; AS

46.15.155; AS 46.15.180; AS 46.15.250; AS 46.15.255; AS 46.15.256.

**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

The Department of Natural Resources keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the department's notices of proposed regulation changes. To be added or removed from the list, send a request to Molly Benson at the contact information provided above, providing your name and either your email or mailing address, as you prefer for receiving notices.

Individuals can also signup to receive automated notifications of all State of Alaska notices, including public notice for regulation changes, by subscribing to the Alaska Online Public Notices System: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>

**From:** [Lorali Simon](#)  
**To:** [Regulation, DNR Water \(DNR sponsored\)](#)  
**Cc:** [Deantha Skibinski \(deantha@alaskaminers.org\)](#)  
**Subject:** RE: Supplemental Notice of Proposed Changes to DNR Water Regulations  
**Date:** Thursday, October 19, 2023 3:04:09 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

Thank you, Molly. Does the department have a timeline for beginning the new scoping process?



**Lorali Simon | VP External Affairs**

**Usibelli Coal Mine**  
📞 Cell: (907) 982-6744  
📞 Office: (907) 745-6028  
✉️ [lorali@usibelli.com](mailto:lorali@usibelli.com)

**Everyday Safety - At Work. At Home. At Play.**

---

**From:** Regulation, DNR Water (DNR sponsored) <dnr.water.regulation@alaska.gov>  
**Sent:** Thursday, October 19, 2023 1:13 PM  
**To:** Lorali Simon <lorali@usibelli.com>  
**Subject:** RE: Supplemental Notice of Proposed Changes to DNR Water Regulations

[CAUTION External Source]

Hello again Lorali,

To follow up on our emails below, attached is the Question and Answer document posted on the Alaska Online Public Notice System today. It contains your question and the Division of Mining, Land and Water's response. We'll follow up with additional Question & Answer documents, should we receive additional questions.

Thank you for your inquiry,

Molly Benson  
Natural Resource Specialist  
Program Support Section  
Division of Mining, Land and Water  
Department of Natural Resources  
550 West Seventh Avenue, Suite 1070  
Anchorage, AK 99501

---

**From:** Benson, Molly M (DNR)  
**Sent:** Thursday, October 12, 2023 12:50 PM  
**To:** Lorali Simon <[lorali@usibelli.com](mailto:lorali@usibelli.com)>  
**Subject:** RE: Supplemental Notice of Proposed Changes to DNR Water Regulations

Hi Lorali,

I've forwarded your question to the Water Section. Your inquiry will be included in a questions and answers document that will be posted on the Alaska Online Public Notice System and the Division of Mining, Land and Water's website. I'll send you a copy of the document directly.

Thanks for your inquiry,

Molly Benson  
Natural Resource Specialist  
Program Support Section  
Division of Mining, Land and Water  
Department of Natural Resources

---

**From:** Lorali Simon <[lorali@usibelli.com](mailto:lorali@usibelli.com)>  
**Sent:** Thursday, October 12, 2023 12:09 PM  
**To:** Benson, Molly M (DNR) <[molly.benson@alaska.gov](mailto:molly.benson@alaska.gov)>  
**Subject:** RE: Supplemental Notice of Proposed Changes to DNR Water Regulations

You don't often get email from [lorali@usibelli.com](mailto:lorali@usibelli.com). [Learn why this is important](#)

**CAUTION:** This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Molly, this email comes as quite a surprise. Can you explain why the department "is opting to postpone proposed changes relating to applications and certificates for instream flow reservations." ?

Thank you,

Lorali



**Lorali Simon | VP External Affairs**

**Usibelli Coal Mine**  
☎ Cell: (907) 982-6744  
☎ Office: (907) 745-6028  
☎ [lorali@usibelli.com](mailto:lorali@usibelli.com)

**Everyday Safety - At Work. At Home. At Play.**

---

**From:** Benson, Molly M (DNR) <[molly.benson@alaska.gov](mailto:molly.benson@alaska.gov)>

**Sent:** Thursday, October 12, 2023 9:38 AM

**Subject:** Supplemental Notice of Proposed Changes to DNR Water Regulations

[CAUTION External Source]

You are receiving this email because you submitted a comment in response to a prior public notice relating to Alaska Department of Natural Resources water regulations.

## SUPPLEMENTAL NOTICE OF PROPOSED CHANGES RELATING TO WATER MANAGEMENT IN THE REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES

### BRIEF DESCRIPTION

The Department of Natural Resources proposes to amend its water management regulations.

On January 15, 2021, the Department of Natural Resources publicly noticed its proposed changes to water management regulations in 11 AAC 93. The department extended the comment period twice, on February 26, and on March 16, 2021, with a final deadline for comments on April 2, 2021. The department reviewed public comments and is opting to postpone proposed changes relating to applications and certificates for instream flow reservations. The department will move forward with the remaining regulation changes proposed in the January 2021 regulations package:

- 11 AAC 93.115 Closure of an application for a water right
- 11 AAC 93.210 Temporary water use
- 11 AAC 93.220 Procedure for temporary water use
- 11 AAC 93.510 Public notice and meeting (for Critical Water Management Areas)
- 11 AAC 93.530 Effect of the order
- 11 AAC 93.970 Definitions

Some modifications have been made to the January 2021 proposed changes after a thorough review of public comments. A copy of the proposed regulations is available for review on the Alaska Online Public Notice System; on the Division of Mining, Land and Water website at <https://dnr.alaska.gov/mlw/news/>; or by contacting the division by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov).

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments on the division's online comment portal at <https://alaskadnr.commentinput.com/?id=FiCphsA95>; by mail to Molly Benson at the Division of Mining, Land and Water, 550 W. 7th Ave., Suite 1070, Anchorage, AK 99501-3579; or by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov). The comments must be received no later than **5:00 p.m. on Monday, November 13, 2023**. Please note that all comments become public records subject to public inspection.

You may submit written questions relevant to the proposed action to the contact information provided above. The questions must be received at least 10 days before the end of the public comment period (**by 5:00 p.m. on Friday, November 3, 2023**). The division will aggregate its responses to substantially similar questions and make the questions and responses available

on the Alaska Online Public Notice System and on the division's website at <https://dnr.alaska.gov/mlw/news/>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Molly Benson by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov) or by phone at 269-8601 no later than Friday, November 3, 2023, to ensure that any necessary accommodation can be provided.

After the public comment period ends, the department will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. You should comment during the time allowed if their interests could be affected.

**Statutory Authority:** AS 46.15.010; AS 46.15.020; AS 46.15.040; AS 46.15.050; AS 46.15.080; AS 46.15.100; AS 46.15.133; AS 46.15.145; AS 46.15.155, AS 46.15.180; AS 46.15.250; AS 46.15.255; AS 46.15.256.

**Statutes Being Implemented, Interpreted, or Made Specific:** AS 46.15.010; AS 46.15.020; AS 46.15.040; AS 46.15.050; AS 46.15.080; AS 46.15.100; AS 46.15.133; AS 46.15.145; AS 46.15.155; AS 46.15.180; AS 46.15.250; AS 46.15.255; AS 46.15.256.

**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

The Department of Natural Resources keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the department's notices of proposed regulation changes. To be added or removed from the list, send a request to Molly Benson at the contact information provided above, providing your name and either your email or mailing address, as you prefer for receiving notices.

Individuals can also sign up to receive automated notifications of all State of Alaska notices, including public notice for regulation changes, by subscribing to the Alaska Online Public Notices System: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>

**From:** [Harold Shepherd](#)  
**To:** [Regulation, DNR Water \(DNR sponsored\)](#)  
**Cc:** [Sahir Iqbal](#)  
**Subject:** Instream Flow Water Reservation Program  
**Date:** Monday, October 23, 2023 10:25:08 AM

---

**CAUTION:** This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi DNR Water:

Thank you for the notice regarding the amended Water Regulations. I've heard a rumor that the Instream Flow Water Reservation Program has been suspended. Can you verify the current status of that program and if it has been suspended, why hasn't it been published in the Alaska Online Public notices or otherwise?

Hal Shepherd, Principal

Water Policy Consulting, LLC

P.O. Box 15332

Fritz Creek, AK 99603

[halshepherdwpc@gmail.com](mailto:halshepherdwpc@gmail.com)

[www.waterpolicyconsulting.com](http://www.waterpolicyconsulting.com)

(907)491-1355

*WPC is located in Homer, Alaska on the traditional lands of the Dena'ina, Alutiiq and Sugpiaq people of Alaska's southcentral region which have been in community here long before the occupations of settler culture, past and present.*

On Thu, Oct 12, 2023 at 9:15 AM Regulation, DNR Water (DNR sponsored) <[dnr.water.regulation@alaska.gov](mailto:dnr.water.regulation@alaska.gov)> wrote:

SUPPLEMENTAL NOTICE OF PROPOSED CHANGES RELATING TO WATER  
MANAGEMENT IN THE REGULATIONS OF THE DEPARTMENT OF NATURAL  
RESOURCES

BRIEF DESCRIPTION

The Department of Natural Resources proposes to amend its water management regulations.



On January 15, 2021, the Department of Natural Resources publicly noticed its proposed changes to water management regulations in 11 AAC 93. The department extended the comment period twice, on February 26, and on March 16, 2021, with a final deadline for comments on April 2, 2021. The department reviewed public comments and is opting to postpone proposed changes relating to applications and certificates for instream flow reservations. The department will move forward with the remaining regulation changes proposed in the January 2021 regulations package:

11 AAC 93.115 Closure of an application for a water right

11 AAC 93.210 Temporary water use

11 AAC 93.220 Procedure for temporary water use

11 AAC 93.510 Public notice and meeting (for Critical Water Management Areas)

11 AAC 93.530 Effect of the order

11 AAC 93.970 Definitions

Some modifications have been made to the January 2021 proposed changes after a thorough review of public comments. A copy of the proposed regulations is available for review on the Alaska Online Public Notice System; on the Division of Mining, Land and Water website at <https://dnr.alaska.gov/mlw/news/>; or by contacting the division by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov).

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments on the division's online comment portal at <https://alaskadnr.commentinput.com/?id=FiCphsA95>; by mail to Molly Benson at the Division of Mining, Land and Water, 550 W. 7th Ave., Suite 1070, Anchorage, AK 99501-3579; or by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov). The comments must be received no later than **5:00 p.m. on Monday, November 13, 2023**. Please note that all comments become public records subject to public inspection.

You may submit written questions relevant to the proposed action to the contact information provided above. The questions must be received at least 10 days before the end of the public comment period (**by 5:00 p.m. on Friday, November 3, 2023**). The division will aggregate its responses to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and on the division's website at <https://dnr.alaska.gov/mlw/news/>.

If you are a person with a disability who needs a special accommodation in order to

participate in this process, please contact Molly Benson by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov) or by phone at 269-8601 no later than Friday, November 3, 2023, to ensure that any necessary accommodation can be provided.

After the public comment period ends, the department will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. You should comment during the time allowed if their interests could be affected.

**Statutory Authority:** AS 46.15.010; AS 46.15.020; AS 46.15.040; AS 46.15.050; AS 46.15.080; AS 46.15.100; AS 46.15.133; AS 46.15.145; AS 46.15.155, AS 46.15.180; AS 46.15.250; AS 46.15.255; AS 46.15.256.

**Statutes Being Implemented, Interpreted, or Made Specific:** AS 46.15.010; AS 46.15.020; AS 46.15.040; AS 46.15.050; AS 46.15.080; AS 46.15.100; AS 46.15.133; AS 46.15.145; AS 46.15.155; AS 46.15.180; AS 46.15.250; AS 46.15.255; AS 46.15.256.

**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

The Department of Natural Resources keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the department's notices of proposed regulation changes. To be added or removed from the list, send a request to Molly Benson at the contact information provided above, providing your name and either your email or mailing address, as you prefer for receiving notices.

Individuals can also sign up to receive automated notifications of all State of Alaska notices, including public notice for regulation changes, by subscribing to the Alaska Online Public Notices System: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>

**From:** [Deantha Skibinski](#)  
**To:** [Program Support, DMLW \(DNR sponsored\)](#); [Benson, Molly M \(DNR\)](#)  
**Cc:** [Colles, Christianna D \(DNR\)](#); [Goodrum, Brent W \(DNR\)](#)  
**Subject:** Fwd: Supplemental Notice of Proposed Changes to DNR Water Regulations  
**Date:** Tuesday, October 31, 2023 10:30:58 AM  
**Attachments:** [Supplemental Notice \(Water Regulations\).pdf](#)  
[Proposed Water Regulations.pdf](#)

---

**CAUTION:** This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

All:

AMA would like to respectfully request an extension of the deadline for the water regulations changes published on October 12 with a deadline of this Friday.

As you are aware, AMA's Annual Convention takes place next week and over a thousand participants, including many DNR personnel, are currently preparing for the event. Planning this event takes hundreds of hours by dozens of volunteers, and we have been doing so for months. We have extremely limited bandwidth to evaluate and meaningfully comment on the proposed regulations until after our event is complete.

AMA has spent significant time and effort over many years to provide feedback on Alaska's water regulations and we would like to continue to do so.

Thank you for your consideration.

Deantha Skibinski  
Executive Director  
Alaska Miners Association  
[deantha@alaskaminers.org](mailto:deantha@alaskaminers.org)  
cell/text: 907-317-6323

Begin forwarded message:

**From:** "Benson, Molly M (DNR)" <[molly.benson@alaska.gov](mailto:molly.benson@alaska.gov)>  
**Subject:** Supplemental Notice of Proposed Changes to DNR Water Regulations  
**Date:** October 12, 2023 at 9:37:49 AM AKDT  
**To:** Undisclosed recipients;

You are receiving this email because you submitted a comment in response to a prior public notice relating to Alaska Department of Natural Resources water regulations.

SUPPLEMENTAL NOTICE OF PROPOSED CHANGES RELATING TO  
WATER MANAGEMENT IN THE REGULATIONS OF THE DEPARTMENT  
OF NATURAL RESOURCES

## BRIEF DESCRIPTION

The Department of Natural Resources proposes to amend its water management regulations.

On January 15, 2021, the Department of Natural Resources publicly noticed its proposed changes to water management regulations in 11 AAC 93. The department extended the comment period twice, on February 26, and on March 16, 2021, with a final deadline for comments on April 2, 2021. The department reviewed public comments and is opting to postpone proposed changes relating to applications and certificates for instream flow reservations. The department will move forward with the remaining regulation changes proposed in the January 2021 regulations package:

11 AAC 93.115 Closure of an application for a water right

11 AAC 93.210 Temporary water use

11 AAC 93.220 Procedure for temporary water use

11 AAC 93.510 Public notice and meeting (for Critical Water Management Areas)

11 AAC 93.530 Effect of the order

11 AAC 93.970 Definitions

Some modifications have been made to the January 2021 proposed changes after a thorough review of public comments. A copy of the proposed regulations is available for review on the Alaska Online Public Notice System; on the Division of Mining, Land and Water website at <https://dnr.alaska.gov/mlw/news/>; or by contacting the division by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov).

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments on the division's online comment portal at <https://alaskadnr.commentinput.com/?id=FiCphsA95>; by mail to Molly Benson at the Division of Mining, Land and Water, 550 W. 7th Ave., Suite 1070, Anchorage, AK 99501-3579; or by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov). The comments must be received no later than **5:00 p.m. on Monday, November 13, 2023**. Please note that all comments become public records subject to public inspection.

You may submit written questions relevant to the proposed action to the contact information provided above. The questions must be received at least 10 days before the end of the public comment period (**by 5:00 p.m. on Friday, November 3, 2023**). The division will aggregate its responses to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and on the division's website at <https://dnr.alaska.gov/mlw/news/>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Molly Benson by email at [dmlwprogramsupport@alaska.gov](mailto:dmlwprogramsupport@alaska.gov) or by phone at 269-8601 no later than Friday, November 3, 2023, to ensure that any necessary accommodation can be provided.

After the public comment period ends, the department will either adopt the

proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. You should comment during the time allowed if their interests could be affected.

**Statutory Authority:** AS 46.15.010; AS 46.15.020; AS 46.15.040; AS 46.15.050; AS 46.15.080; AS 46.15.100; AS 46.15.133; AS 46.15.145; AS 46.15.155, AS 46.15.180; AS 46.15.250; AS 46.15.255; AS 46.15.256.

**Statutes Being Implemented, Interpreted, or Made Specific:** AS 46.15.010; AS 46.15.020; AS 46.15.040; AS 46.15.050; AS 46.15.080; AS 46.15.100; AS 46.15.133; AS 46.15.145; AS 46.15.155; AS 46.15.180; AS 46.15.250; AS 46.15.255; AS 46.15.256.

**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

The Department of Natural Resources keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the department's notices of proposed regulation changes. To be added or removed from the list, send a request to Molly Benson at the contact information provided above, providing your name and either your email or mailing address, as you prefer for receiving notices.

Individuals can also sign up to receive automated notifications of all State of Alaska notices, including public notice for regulation changes, by subscribing to the Alaska Online Public Notices System: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>

**From:** [Stratton, Benjamin T](#)  
**To:** [McCutcheon, Brandon J \(DNR\)](#); [Program Support, DMLW \(DNR sponsored\)](#)  
**Subject:** Water Management Regulations Proposed Changes Questions  
**Date:** Friday, November 3, 2023 3:11:32 PM  
**Attachments:** [20231103\\_BLM\\_Questions\\_DNR\\_RegulationChanges\\_btstratton.pdf](#)

---

You don't often get email from [btstratton@blm.gov](mailto:btstratton@blm.gov). [Learn why this is important](#)

**CAUTION:** This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr McCutcheon:

Please find attached the Bureau of Land Management's questions regarding the proposed changes to water management regulations.

Please confirm receipt of these questions. It was unclear which address to direct them to. I included both the address given in the text of the notice and your address since you are listed as the contact person for the regulation. BLM appreciates the opportunity to review, question, and comment on these proposed changes.

regards,  
ben

**Benjamin T. Stratton, Hydrologist**  
*Water Resources Lead for the Aquatic Resources Program, Soils Program Lead*  
Bureau of Land Management, Alaska State Office, Division of Resources (AK-931)  
222 West 7th Avenue, #13  
Anchorage, AK 99513  
907-271-4411 (desk)/ 208-559-3528 (cell)

Brandon McCutcheon  
Alaska Department of Natural Resources  
Division of Mining, Land, and Water  
550 West 7<sup>th</sup> Avenue, Suite 1070  
Anchorage, Alaska 99501

November 3, 2023

Dear Mr. McCutcheon:

The Bureau of Land Management (BLM) received the Supplemental Notice of Proposed Changes Relating to Water Management in the Regulations of the Department of Natural Resources signed October 6, 2023. This notice informed BLM of the opportunity to comment on the water regulation revisions proposed by the Alaska Department of Natural Resources (ADNR). BLM is in the process of reviewing these proposed changes prior to the comment period deadline that has been recently extended from November 13, 2023 to November 30, 2023. As part of the review, several questions have arisen which are listed below. The ADNR responses to these questions will provide the BLM with better understanding and context for the framing of our comments.

Specific questions to the proposed regulation changes are below.

1. Page 1. **11 AAC 93.115 Closure of an application for a water right**

ADNR proposes the following changes: “(4) the applicant fails to provide information requested under 11 AAC 93.070 or fails to complete the newspaper notice of the proposed appropriation, in which case the **commissioner will notify the applicant** [WILL BE NOTIFIED] by certified mail that the application has been closed, noting the reason for **and effective date of** the closure[, THE EFFECTIVE DATE OF THE CLOSURE, AND ANY APPEAL PROCESS].

*BLM Question: Please provide the rationale for removing the text referencing the appeal process.*

2. Page 2. **11 AAC 93.210 Temporary water use**

ADNR proposed the following addition to the existing regulation: “(a) Procedures to authorize the temporary use of water, as provided in 11 AAC 93.220, will apply if the use continues for less than five consecutive years and the water applied for is not otherwise appropriated **under a permit to appropriate water, certificate of appropriation, certificate of reservation, or change permit.**”

*BLM Question: How would this proposed change account for consideration of reservation of water applications either waiting for adjudication or during adjudication, but prior to the issuing of a certificate?*

3. Page 3. **11 AAC 93.510 Public notice and meeting**

ADNR proposes adoption of the following: part (b) “(1) owners of property in the geographic area affected by the proposed designation, revocation, or amendment;”

BLM Question: How will geographic proximity be determined?

4. Page 4. **11 AAC 93.510. Public Notice and meeting**

ADNR proposes adoption of the following: part (b): “(2) appropriators of record on a water source affected by the proposed designation, revocation, or amendment; (3) existing applicants for a water right on a water source affected by the proposed designation, revocation, or amendment; (4) existing applicants for, or holders of, a temporary water use authorization on a water source affected by the proposed designation, revocation, or amendment; (5) affected federal, state, and local agencies, including the Department of Fish and Game and the Department of Environmental Conservation; and”

BLM Question: What is the rationale for exclusion of notification of existing water reservation applicants? Other water right applicants are included explicitly, but water reservation applicants are excluded.

BLM Question: How will it be determined if federal agencies will be affected? Will this determination include consideration of federal applications for water reservations affected by the proposed actions?

5. Page 6. **11 AAC 93.970(25)**

ADNR proposes the following changes: “(25) ‘appropriators of record’ means [APPLICANTS FOR, AND PERMITTEES AND CERTIFICATE] holders **of permits to appropriate water, certificates of appropriation, certificates of reservation, or change permits**[, WATER RIGHTS]

BLM Question: Please describe the needs for and the problems to be solved by the proposed definition change to “appropriators of record.”

BLM Question: How will the seniority of unadjudicated water right and reservation applications be considered in ADNR actions if they are no longer included in the definition of “appropriators of record?”

We appreciate the opportunity for BLM to submit these relevant questions for ADNR responses. If you have any questions or would like further clarification of our questions, please contact me by phone at (907) 271-4411 or by electronic mail at btstratton@blm.gov.

Sincerely,

Ben Stratton  
Water Resources Lead for the Aquatic Resources Program  
BLM Alaska





# United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE  
1011 East Tudor Road  
Anchorage, Alaska 99503-6199



In Reply Refer To:  
FWS/R7/NWRS/NR/WRB.MW

Mr. Brandon McCutcheon  
Department of Natural Resources  
Division of Mining, Land and Water  
550 West 7th Avenue, Suite 1070  
Anchorage, Alaska 99501

Dear Mr. McCutcheon:

This letter contains questions regarding the recent Alaska Department of Natural Resources (ADNR) supplemental proposal to revise regulations in Title 11 of the Alaska Administrative Code (AAC), relating to the closure of water right applications, the procedures for temporary water use, public notices and hearings on critical water management areas, and definitions.

I am seeking clarification on aspects of the proposed changes to Title 11 of the AAC prior to the submittal of comments from the U.S. Fish and Wildlife Service (Service) regarding the proposed changes. The questions and requests for clarification are listed in the order they appear in the proposed changes document and are not necessarily in the order of importance to the Service.

**Question 1: Referring to the proposed changes for 11 AAC 93.115(4), page 1:** “the applicant fails to provide information requested under 11 AAC 93.070... [AND ANY APPEAL PROCESS].

- What is the intent of not notifying an applicant of the appeal process? Is there intent or has the appeal process been eliminated?

**Question 2: Referring to the proposed changes for 11 AAC 93.210(a), page 2:**

- Will ADNR issue certificates of reservations or water rights prior to granting temporary water use permits on systems with pending reservation or water right applications? If not,
  - Will ADNR provide further clarity on the standing of applicants for a reservation of water or water right when considering a temporary water use authorization if the proposed regulations are adopted?
- Will ADNR account for the requested water in pending applications for reservations of water and water rights when considering a temporary water use authorization? If so,
  - How does ADNR intend to account for the requested water, and how will the applicants for a reservation of water or a water right be involved?
- Will ADNR please explain the implications to applications for water reservations and water rights?

**Question 3: Referring to the proposed changes for 11 AAC 93.510**, page 3-4: The new language ADNR proposes for 11 AAC 93.510 includes notification of existing applicants for a water right (b)(3) and temporary water use authorizations (b)(4). However, the proposed regulation does not specify contacting existing applicants for reservations of water.

- Why does ADNR not specify contacting existing applicants for water reservations while explicitly including applicants for water rights and temporary water use authorizations?
- What is ADNR's intent with excluding applicants for water reservations from being notified, and how does ADNR intend to recognize the standing of Reservation applicants in critical water management area decisions?
- Regarding the language "geographic area" in (b)(1): How does ADNR define "geographic area"?
- Regarding the language "affected" in both (b)(1) and (b)(5): How does ADNR define "affected"?

**Question 4: Referring to the proposed changes for 11 AAC 93.970(25)**, page 6: The new language ADNR proposes removes "applicants for" from the definition of "appropriators of record."

- How does ADNR intend to recognize the standing of applicants for a water reservation or water right that has yet to be adjudicated?

The Service requests answers to the questions herein to clarify the changes in the 11 AAC 93 prior to compiling and submitting official comments to ADNR. ADNR's response will provide the information necessary for the Service to provide clear comment on the changes to 11 AAC 93 without assumptions to the questions herein.

If you have any questions or desire further information, please contact the Service's Regional Water Rights Coordinator, Michael Winfree, by phone at 907-209-2664 or by electronic mail at michael\_winfree@fws.gov.

Sincerely,



Water Rights Coordinator

cc: John Trawicki, Chief of Water Resources  
Branch, USFWS  
Ronnie Sanchez, Chief of Alaska National  
Wildlife Refuge System (Acting), USFWS

# Walter Hanni

Dear Person I have been using a well at my residence **Private Information** as have all the other homes located on **Private Information** for over 20 years. When I attempted to file for the water rights approximately 15 years ago; your department told me not to bother that my well was in use and had been for 5 years and it wasn't necessary. My question is are I or the other home owners on **Private Information** being affected by these changes? Is there anything we need to do to preserve our water rights? Thank you for your consideration? Sincerely Walter Hanni for all **Private Information** home owners.



**File Code:** 1940  
**Date:** November 20, 2023

Mr. Brandon McCutcheon  
Director, Natural Resources  
Department of Natural Resources  
Division of Mining, Land and Water  
550 West 7th Avenue, Suite 1070  
Anchorage, Alaska 99501

Dear Mr. McCutcheon;

The Alaska Region US Forest Service would like to take this opportunity to present questions regarding the proposed revision of the Title 11 regulations in the State of Alaska Administrative Code. We are seeking clarification on aspects of the proposed changes to Title 11 of the AAC prior to the submittal of comments from the Alaska Region US Forest Service regarding the proposed changes. The questions and requests for clarification are listed in the order they appear in the proposed changes document and are not necessarily in the order of importance to the Forest Service.

Question 1: 11 AAC 93.115(4). “the applicant fails to provide information requested under 11 AAC 93.070 or fails to complete the newspaper notice of the proposed appropriation, in which case the commissioner will notify the applicant [WILL BE NOTIFIED] by certified mail that the application has been closed, noting the reason for and effective date of the closure [, THE EFFECTIVE DATE OF THE CLOSURE, AND ANY APPEAL PROCESS].”

- This could be interpreted as eliminating any potential appeal process. Is it intended to? If the intent is to keep the appeal process, what is the rationale for not notifying an applicant of the appeal process?

Question 2: 11 AAC 93.210(a) Procedures to authorize the temporary use of water, as provided in 11 AAC 93.220, will apply if the use continues for less than five consecutive years and the water applied for is not otherwise appropriated under a permit to appropriate water, certificate of appropriation, certificate of reservation, or change permit.

- The Forest Service and its partners at the Alaska Department of Fish and Game have numerous outstanding applications for reservations of water for instream flows sufficient to protect the resources therein on the Tongass and Chugach National Forests. These unadjudicated applications convey priority standing and warrants consultation on any temporary water use applications which might affect these reservations. What is the reason for not consulting with applicants of reservations of water?
- Why can DNR process a temporary use of water sooner than an instream flow reservation?
- Will any temporary water use applications consider the flow volumes requested by instream flow reservations, as if they are adjudicated?

Question 3: 11 AAC 93.510(b)1. owners of property in the geographic area affected by the proposed designation, revocation, or amendment;



- What is considered the geographic area affected by the proposed designation?

Question 4: 11 AAC 93.510(b)1-5.

- Why does the proposed language not include applicants for reservations of water? As proposed, all other parties with standing when DNR designates, revokes, or amends critical water management areas is notified of potential actions but adjudicated instream flow applicants are explicitly excluded?

Question 5: 11 AAC 93.970(25). "appropriators of record" means [APPLICANTS FOR, AND PERMITTEES AND CERTIFICATE] holders of permits to appropriate water, certificates of appropriation, certificates of reservation, or change permits [, WATER RIGHTS]

- Why does this proposed definition purposefully exclude *applicants for* reservations of water?
- Since the definition of "adjudication" (11 AAC 93.970(1)) incorporates the definition of "appropriators of record," the definition of "adjudication" is also being significantly changed. Is the intent of this rule change to remove consideration of applicants for water rights from all adjudications?
- If not all, in which adjudications would applicants for water rights not be considered, and what is the rationale for their exclusion?
- If consideration of applicants for water rights are removed from adjudications, how would this regulatory change comport with the statutory requirement in § 46.15.165 (Administrative Adjudications) to serve "each applicant, certificate holder, or permittee listed in the department's records within the adjudication area"?

We respectfully request response to our questions to clarify the proposed changes to Title II prior to compiling and submitting final comments to ADNR. ADNR's response will provide the information necessary for the Forest Service to provide relevant comments on the changes without assumptions to the questions articulated above. Since final comments are due by November 30, 2023, it is unclear if we can expect DNR responses to our questions prior to that date? We hope that DNR will allow adequate time to formulate final agency comments or otherwise provide a reasonable extension.

Sincerely,

X 

---

Signed by: BRIDGET DARR  
BRIDGET DARR  
Director of Natural Resources

cc: Randall Lockyear, Robert Parrish