



MEMORANDUM

STATE OF ALASKA

Department of Natural Resources, Office of the Commissioner

DATE: April 9, 2021

TO: Department Order files and Division of Mining, Land, and Water

FROM: Corri A. Feige, Commissioner

RE: Department Order #153- Critical Water Management Area Designation, Community of Moose Creek

PURPOSE OF ORDER

In accordance with AS 46.15.020, 11 AAC 93.500 and 11 AAC 93.520 – .530, and at the request of the United States Air Force (USAF) the undersigned Commissioner of the Department of Natural Resources (DNR) hereby designates the area generally described as the community of Moose Creek, Alaska as a Critical Water Management Area (CWMA) with respect to groundwater. Pursuant to the same statute and regulations, the Commissioner additionally designates the same area as a CWMA with respect to surface water. The USAF's November 26, 2019 request letter is Attachment A to DNR's Decision in Support of CWMA Order (Decision). The Decision and all attachments can be accessed on DNR's website at <http://dnr.alaska.gov/mlw/water/cwma> or by contacting DNR at 550 W. 7th Ave, Suite 1020, Anchorage, AK 99501-3557.

This CWMA designation enables DNR to impose restrictions and take other action necessary to protect public health, safety and welfare in response to contamination migrating from Eielson Air Force Base (EAFB) into the waters within the CWMA. The contamination has rendered the waters unsafe for human consumption and household use (cooking, cleaning, bathing, washing) at all times of the year. The continued outdoor use of water (gardening, car washing, and other outdoor activities) could contribute to the further spread and discharge of contamination.

Consistent with 11 AAC 93.530, this CWMA designation restricts future water appropriations and pending applications for water rights within the CWMA. This designation does not affect water uses already established under a valid permit or certificate however, a property owner within the CWMA who continues to use water subject to a valid permit or certificate does so at the risk of exposure to or spreading of harmful contamination as described in this Order.

LEGAL DESCRIPTION

The CWMA is located as follows:

A critical water management area known as Moose Creek, located near North Pole, Alaska, and more particularly described as follows:

Township 2 South, Range 2 East, Fairbanks Meridian

Section 23: That portion of the E1/2 located Southerly of the ordinary high-water line on the Southerly bank of Chena Slough and Southeasterly of the Southerly railroad right-of-way line;

Section 24: E1/2,

That portion of the W1/2 located Southerly and Easterly of the following described line:

Beginning at the intersection of the west boundary of Section 24 with the ordinary high-water line on the Southerly bank of Chena Slough; thence Easterly along the ordinary high-water line on the Southerly bank of Chena Slough to its intersection with the Southerly railroad right-of-way line; thence Southeasterly along the Southerly railroad right-of-way line to its intersection with the Northwesterly edge of the Chena River Lakes Flood Control Dike; thence Northeasterly along the Northwesterly edge of the Chena River Lakes Flood Control Dike to its intersection with the Southwesterly right-of-way line of the Richardson Highway; thence Northwesterly along the Southwesterly right-of-way line of the Richardson Highway to the Northwest corner of Fairbanks North Star Borough (FNSB) Tax Lot TL-2429, identical with the Northeast corner of Tax Lot TL-2423 as shown in the FNSB GIS, and described in Document No. 2017-018002-0, Fairbanks Recording District; thence Northeasterly across the right-of-way of the Richardson Highway to the former Southwest corner of Lot 10, Block A, Easy Living Estates Phase Three Subdivision, Plat No. 2002-45 Fairbanks Recording District (FRD), which is now a corner on the Southerly boundary of Lot 10A, Block A, Easy Living Estates Phase Three, as shown on Plat No. 2007-26 FRD; thence Easterly along the Southerly boundaries of Lots 10A, 11, 13, 14, and 15, Block A, Easy Living Estates Phase Three Subdivision, to the Southeast corner of Lot 15, Block A, Easy Living Estates Phase Three Subdivision; thence Easterly along the Southerly boundary of Tax Lot 2413 as shown in the FNSB GIS to the North-South centerline of Section 24.

Section 25: All;

Section 26: That portion located Easterly of the ordinary high-water line on the right bank of the Tanana River;

Section 27: That portion of the SE1/4 located Easterly of the ordinary high-water line on the right bank of the Tanana River.

Township 2 South, Range 3 East, Fairbanks Meridian

Sections 19, 20, 21, 28, 29, and 30: All;

Section 22: W1/2, W1/2E1/2;

Section 27: W1/2.

This CWMA will be recorded in the Fairbanks Recorder's Office on properties within the CWMA boundaries. A map of the CWMA boundaries is Attachment B to the Decision.

DISCUSSION

Water quality monitoring performed by USAF has established that the subject waterbodies have been contaminated with per- and polyfluoroalkyl substances (PFAS), which consist of perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). Within the CWMA boundaries, PFOS and PFOA are present at levels above the U.S. Environmental Protection Agency (EPA) lifetime combined health advisory level of 70 parts per trillion. The use of the contaminated water would likely negatively affect human health, spread contamination, and threaten the public interest. The Decision further describes the threat posed by the contamination identified within proposed CWMA boundaries, and the reasons for this CWMA designation.

ORDER DETAILS

Pursuant to 11 AAC 93.500 and 11 AAC 93.520 – .530, Corri A. Feige, Commissioner of the Department of Natural Resources, hereby designates the area described above as a CWMA with respect to groundwater and surface water. This Order:

1. Applies to the groundwater and surface water within the specified area.
2. Restricts the acceptance of new water right and temporary water use authorization (TWUA) applications within the specified area as follows:
 - a. Effective 45-days after this order is signed, DNR will no longer accept new water right applications. Applications received prior to the 45-day deadline will not be adjudicated unless and until DNR revokes or amends this CWMA designation.
 - b. Effective 45-days after this order is signed, DNR will no longer accept and adjudicate new TWUA applications, except for those that seek to use water for necessary water quality monitoring, mitigation, construction dewatering, and related activities. Applications received prior to the 45-day deadline that seek to use water for purposes other than water quality monitoring, mitigation, construction dewatering, and related activities will not be adjudicated unless and until DNR revokes or amends this CWMA designation.
3. With respect to applications already accepted but not adjudicated as of the date this Order is signed, restricts the establishment of new water rights or other uses to those seeking to use water for purposes other than necessary water quality monitoring, mitigation, construction dewatering, and related activities.

4. Designates all water use quantities within the CWMA boundaries as “significant use” under 11 AAC 93.530(b)(4) and 11 AAC 93.035(b)(4), subject to the following conditions:
 - a. This “significant use” designation will take effect immediately upon the first publication and mailing of this Order in accordance with 11 AAC 93.530(a) and (b).
 - b. This significant use designation is necessary to put the public on immediate notice that all users (regardless of water volume) not already holding valid water use permits or certificates will be required to apply under 11 AAC 93.035. DNR will only accept and adjudicate applications as described in Section 2.
5. Creates the following temporary exemptions for property owners using government-furnished filtration systems while awaiting connection to the City of North Pole’s Water Utility System (CONP Water).

A property owner within the CWMA who:

- a. currently uses a government-furnished filtration system to treat contaminated well or surface water, and
 - b. has agreed to accept CONP Water, and
 - c. has signed an Environmental Covenant pursuant to AS 46.04.300 – 46.04.390, and
 - d. has (if applicable) agreed to relinquish any valid water right permits or certificates held pursuant to 11 AAC 93.120 or .130, may continue to use water for purposes and quantities consistent with the owner’s current use until the CONP Water connection is available to the property owner.
6. Advises that anyone using water within this designated area without a valid permit, certificate of appropriation, or authorization may be subject to prosecution under AS 46.15.180. If necessary DNR may pursue enforcement under AS 46.15.255 and 11 AAC 93.270 – 290.
 7. Allows the Department of Natural Resources to establish additional conditions on diversions, withdrawals, or uses of water to insure against the further deterioration of water resources or spread of contamination.

Pursuant to 11 AAC 93.920(b), the emergency use of water for protection of life or property is exempt from this Order unless DNR determines that the use should be regulated in the public interest.

Pursuant to 11 AAC 93.540 and 11 AAC 02.010, a person affected by this Order or the Decision in Support of this Order may request reconsideration. Pursuant to 11 AAC 02.040, requests for reconsideration must be received by the Commissioner’s office within 20 calendar days after the issuance of this Order and the Decision. Requests for reconsideration may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska,

99501; faxed to 907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. If no request for reconsideration is filed by the deadline, this Order and the Decision become a final administrative order and decision of DNR on the 31st calendar day after issuance. An eligible person must first request reconsideration in accordance with 11 AAC 02 before appealing to superior court. A copy of 11 AAC 02 may be obtained from any regional information office of DNR.



Corri A. Feige
Commissioner, Department of Natural Resources

May 24, 2021

Date