

Notes to reader:

1. Except as discussed in note 2, proposed new text that amends an existing regulation is **bolded and underlined**.
2. If the lead-in line states that a new section, subsection, paragraph, subparagraph, or clause is being added, or that an existing section, subsection, etc. is being repealed and readopted (replaced), the new (or replaced) text is not bolded or underlined.
3. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is proposed to be deleted.
4. When the word “including” is used, Alaska Statutes provide that it means “including, but not limited to.”

PROPOSED REGULATIONS – January __, 2021

11 AAC 93.115 is amended to read:

11 AAC 93.115. Closure of an application for a water right A pending water right application and the department's application file will, in the commissioner's discretion, be closed if

(1) the applicant informs the commissioner, in writing, or by filing a notice of relinquishment, that the applicant has abandoned plans to develop the water source or use, in which case the application will, in his or her discretion, be closed by the commissioner without further correspondence with the applicant;

(2) the applicant informs the commissioner orally that the applicant has abandoned plans to develop the water source and use, in which case the applicant will be notified in writing that the application is closed as a consequence of the oral notice;

(3) the commissioner is unable to locate the applicant by certified mail at the address on file in order to adjudicate the application, in which case the application will, in the

commissioner's discretion, be closed without further correspondence by the commissioner with the applicant; or

(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 applicant will be notified by certified mail that the application has been closed, noting the reason for the closure, the effective date of the closure[, AND ANY APPEAL PROCESS].

11 AAC 93.142 is amended to read:

11 AAC 93.142. Content of application (a) An application for a reservation of water must be made to the department on a form provided by the department. The form must be completed in accordance with the instructions furnished by the department to the applicant.

(b) Each application must

(1) identify the purposes of the proposed reservation;

(2) identify the name of the stream or water body in which water is proposed to be reserved, and locate the proposed reservation on the most detailed United States Geological Survey map for the area, identified by section, township, range, meridian, and river mile index if available, showing either the point on a water body at which, or two points on a stream between which, the proposed reservation is being requested;

(3) explain **the reason why the reservation is being requested and the purported need for the proposed reservation** [WHAT NEED EXISTS FOR THE PROPOSED RESERVATION, INCLUDING REASONS WHY THE RESERVATION IS BEING REQUESTED];

(4) specify the time period required to fully quantify the proposed reservation, which may be no longer than three years after the date the application is accepted by the department for filing;

(5) specify the times of the year and purposes for which the reservation is proposed;

(6) identify and explain the methodology to be used to quantify the proposed reservation, including

(A) existing data to be used, if available;

(B) the method of any new data collection;

(C) the type of new data to be collected; and

(D) a description of how the data will be analyzed;

(7) state the estimated quantity of water, stage, or elevation proposed to be reserved, measured in cubic feet per second for an instream flow rate or measured in cubic feet, acre feet, or an elevation relative to a permanent bench mark for a surface elevation, with documentation and calculations justifying the request;

(8) identify **applicable** physical, biological, water chemistry, and socio-economic data substantiating the **purported** need for and the quantity of water requested for the proposed reservation;

(9) be accompanied by the application fee prescribed by 11 AAC 05.260.

(c) At the applicant's request, the department will provide assistance in filling out the application.

(d) At the applicant's written request, submitted at least 30 days before the end of the time period specified under (b)(4) of this section, the commissioner will, in his or her discretion, grant an extension of the time period of up to two years for good cause shown.

(e) When the applicant completes the quantification of the proposed reservation of water, the applicant shall notify the commissioner in writing and shall submit any information that changes, adds, or deletes information presented in the original application. (Eff. 9/11/83, Register 87; am 1/1/86, Register 96; am 11/7/90, Register 116; am 7/1/2018, Register 227; am ___/___/___, Register ___)

Authority: AS 46.15.020 AS 46.15.080 AS 46.15.145
AS 46.15.040

11 AAC 93.146 is amended to read:

11 AAC 93.146. Issuance of a certificate of reservation of water (a) The commissioner will issue a certificate of reservation of water if the commissioner finds that the reservation meets the requirements of AS 46.15.145.

(b) The certificate of reservation will be issued to the applicant **if it is a state or federal agency or a political subdivision of the state. The Alaska Department of Natural Resources will be issued the certificate of reservation if the applicant is not a state or federal agency, or a political subdivision of the state.** The **certificate holder** [APPLICANT] is responsible for compliance with the conditions of the certificate of reservation.

(c) A certificate of reservation will contain the following conditions:

(1) The certificate of reservation may not be voluntarily abandoned, conveyed, transferred, assigned, or converted to another use, in whole or in part, unless required as a result of a review under 11 AAC 93.147; and

(2) The certificate of reservation does not authorize the certificate holder or any other person to prevent access to, on, or through the water reserved by the certificate, or to prohibit the use of the reserved water for other compatible purposes set out in AS 46.15.145(a)].

(d) The certificate of reservation will state any additional terms or condition the commissioner considers necessary to protect the prior valid rights of other appropriators and the public interest. The conditions will, in the commissioner’s discretion, include the following:

(1) measuring devices of a type and at a location approved by the commissioner must be installed and maintained to monitor and report on the reserved instream flow or level of water; and

(2) the reservation will be reviewed by the commissioner within a specified period of time, if sooner than the 10-year review under 11 AAC 93.147.

(e) **Pursuant to AS 46.15.050, the** [THE] priority of **an issued certificate of reservation of water** [A RESERVATION OF WATER] is the date the application **for such certificate** was accepted by the department for filing.

(f) Nothing in this section constitutes a waiver of the responsibility of the applicant to secure any appropriate state, federal, or local regulatory permits or licenses with regard to the stream or water body affected.

(g) The applicant for and the holder of a certificate of reservation of water issued under AS 46.15.145 each have standing to initiate or participate in any administrative or judicial proceeding regarding the department’s adjudication of the application or the management of the certificate. (Eff. 9/11/83, Register 87; am 11/7/90, Register 116; am

___/___/___, Register ___)

Authority: AS 46.15.010 AS 46.15.080 AS 46.15.145

11 AAC 93.147 is amended to read:

11 AAC 93.147. Review of reservation of water (a) The commissioner will review a reservation of water at least once each 10 years after the date of issuance of the certificate of reservation. The commissioner will, in his or her discretion, review a reservation of water in fewer than 10 years if circumstances warrant a review. These circumstances might include

(1) a condition on the certificate of reservation requiring an earlier review, under 11 AAC 93.146(d)(2);

(2) a significant change affecting the water resource;

(3) a subsequent applicant's protest of the justification for the reservation of water if water might be unavailable to both maintain the reservation of water and to grant the **subsequent** applicant's request; or

(4) a written request by the certificate holder to the department, seeking authority to abandon, convey, transfer, assign, or convert the certificate of reservation to another use; the fee required under 11 AAC 05.260 must accompany the request.

(b) Upon review of a reservation of water, the commissioner will determine

(1) if the **purposes** [PURPOSE] for the reservation still **apply** [APPLIES];

(2) if the **original** need for the reservation still exists;

(3) the effects of the reservation on prior appropriators;

(4) the effects of the reservation on the public interest;

(5) repealed 11/7/90;

(6) if additional physical, biological, water chemistry, and socio-economic data or reports concerning the reservation are available;

(7) if the quantity or level of water reserved is adequate for the purposes of the reservation;

(8) if the daily duration and months of the year of the reservation still apply; and

(9) if additional research, data collection, and analysis should be conducted, or different methodologies employed for reviewing the reservation.

(c) The commissioner will, in his or her discretion, require that additional research, data collection, and analysis be conducted or different methods used for reviewing the reservation of water. Costs of conducting additional research, data collection, and analysis, and of using a different methodology will be borne by the protestant if a protest regarding the reservation has been filed with the department. In other cases, these costs will be borne by the state. If the certificate holder desires expedited review, the commissioner will, in his or her discretion, require the certificate holder to bear the costs.

(d) The commissioner will provide written notice, as provided in 11 AAC 93.145(a), of a review of a reservation of water in order to solicit information that might be pertinent to the review. The commissioner will, in his or her discretion, hold a hearing on the review of a reservation of water.

(e) In accordance with the procedural requirements of 11 AAC 93.940₂, the commissioner will determine whether the **original** purpose for the reservation of water, and his or her original findings of fact in granting the reservation, have been significantly altered by subsequent events. If the **original** purpose of the reservation or all or part of the findings in granting the reservation no longer apply to the reservation, the commissioner will, in his or her discretion, amend the

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certificate of reservation or revoke all or part of it in accordance with AS 46.15.145(f) and 11 AAC 93.940. The commissioner's final decision to amend or revoke all or part of a certificate of reservation will be summarized by written findings of fact and conclusions of law. The commissioner will record any amended certificate of reservation in the appropriate recorder's office. (Eff. 9/11/83, Register 87; am 11/7/90, Register 116; am 2/15/2006, Register 177; am 7/1/2018, Register 227; am ___/___/____, Register ___)

Authority: AS 46.15.020 AS 46.15.140 AS 46.15.145

11 AAC 93.210 is amended to read:

11 AAC 93.210. Temporary water use (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.**

(b) A water right or priority is not established by a temporary water use authorization issued under 11 AAC 93.220. Authorized temporary water use is subject to amendment, modification, or revocation by the department if the department determines that amendment, modification, or revocation is necessary to supply water to lawful appropriators of record or to protect the public interest.

(c) Upon the commissioner's receipt of a written request from the permittee, an authorization for temporary use of water will, in the commissioner's discretion, be extended one time for good cause for a period of time not to exceed five years, **including the initial time period for which that authorization was issued.** The request for an extension of the authorization for temporary use of water must be accompanied by the fee prescribed by 11 AAC

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05.260. (Eff. 2/8/67, Register 23; am 12/29/79, Register 72; am 11/7/90, Register 116; am 9/16/92, Register 123; am 8/20/2004, Register 171; am ___/___/____, Register ___)

Authority: AS 46.15.020 AS 46.15.133 AS 46.15.155
AS 46.15.040

11 AAC 93.220 is amended to read:

11 AAC 93.220. Procedure for temporary water use (a) A person must receive authorization under this section before temporary use of a significant amount of water under 11 AAC 93.035. The application for an authorization for temporary water use must be made on a form approved by the department and completed in accordance with the instructions furnished to the applicant.

(b) An application must include

(1) the application fee prescribed by 11 AAC 05.260;

(2) a map identifying the section, township, range, and meridian, and indicating the location of the property, the point of withdrawal, diversion, or impoundment, [AND] the point of use, **and the point of discharge or return flow, if any;**

...

(Eff. 12/29/79, Register 72; am 11/7/90, Register 116; am 8/20/2004, Register 171; am 7/1/2018, Register 227; am ___/___/____, Register ___)

Authority: AS 46.15.020 AS 46.15.100 AS 46.15.155
AS 46.15.040 AS 46.15.133

11 AAC 93.510 is amended to read:

11 AAC 93.510. Public notice and meeting [HEARING]

(a) Before the commissioner designates a geographic or hydrologic area as a critical water management area, or revokes or amends a designation the department will [1] publish a notice of, **and provide an opportunity to comment on,** the proposed designation, revocation, or amendment **on the Alaska Online Public Notice System for at least 30 days**[IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA AFFECTED ONCE A WEEK FOR FOUR CONSECUTIVE WEEKS, SOLICITING PUBLIC COMMENT AND ANNOUNCING THE DATE, TIME, AND PLACE OF A PUBLIC HEARING];

(b)[(2) SOLICIT COMMENTS ON THE PROPOSED DESIGNATION, REVOCATION, OR AMENDMENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, FROM APPROPRIATORS AND PROPERTY OWNERS OF RECORD WITHIN THE AREA; AFFECTED FEDERAL, STATE, AND LOCAL AGENCIES, INCLUDING THE DEPARTMENTS OF FISH AND GAME AND ENVIRONMENTAL CONSERVATION; AND ANY AFFECTED REGIONAL OR VILLAGE CORPORATION; AND] **When required to provide notice under (a) the Department will notify by electronic mail, mail, or other means:**

(1) owners of property in the geographic area affected by the proposed designation, revocation, or amendment;

(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; and

(5) affected federal, state, and local agencies, including the Departments of Fish and Game and Environmental Conservation; and any affected regional or village corporation.

(c)[(3)] The Commissioner will, in his or her discretion

(1) hold a public meeting [HEARING] at a location within or in close proximity to the geographic area affected by the proposed designation, revocation, or amendment; [, TO TAKE WRITTEN AND ORAL COMMENTS ON THE PROPOSED DESIGNATION, REVOCATION, OR AMENDMENT. THE DEPARTMENT WILL ACCEPT ADDITIONAL WRITTEN COMMENTS SUBMITTED UP TO 30 DAYS AFTER THE HEARING DATE.]

(2) extend the public notice and comment period. The Department will post notice of any extension of the public notice and comment period on the Alaska Online Public Notice System for the time period of the extension, and will notify parties under (b) above.

11 AAC 93.530. Effect of the order

(a) Within 30 days after signing a department order to designate a geographic or hydrologic area as a critical water management area, or revoke or amend a designation, the commissioner will announce the decision by publishing the order in **the Alaska Online Public Notice System** [A NEWSPAPER OF GENERAL CIRCULATION IN THE AFFECTED AREA ONCE A WEEK FOR FOUR CONSECUTIVE WEEKS.] [THE ORDER WILL ALSO BE] **and** mailed to

permittees or certificate holders of record and property owners of record in the area; affected federal, state, and local agencies, and affected regional and village corporations.

(b) After the commissioner takes action under (a) of this section, the department may take the following actions:

- (1) restrict or deny the acceptance of applications for new water appropriations or applications for additional quantities for existing appropriators of record, until the order is amended or revoked;
- (2) seek voluntary agreement among permittees and certificate holders to limit the quantity of their water use on an equitably apportioned basis during all or part of the year;
- (3) fix a time limit for accepting new applications for water rights for existing water uses;
- (4) designate all water uses as significant;
- (5) require notice of all applications;
- (6) require conservation measures;
- (7) take any other actions necessary to fully inform the public of the order; or
- (8) enforce actions under 11 AAC 93.280, 11 AAC 93.290, AS 46.15.255, and AS 46.15.256.

(Eff. 11/7/90, Register 116; am ___/___/____, Register ___)

Authority: AS 46.15.010 AS 46.15.020

11 AAC 93.970 is amended to read:

11 AAC 93.970. Definitions

...

(9) "division" means the division of mining, land and water [MANAGEMENT] within the Department of Natural Resources;

...

(25) "appropriators of record" means [APPLICANTS FOR, AND PERMITTEES AND CERTIFICATE] holders of a permit to appropriate water, certificate of appropriation, certificate of reservation, or change permit[, WATER RIGHTS];

...

(Eff. 2/8/67, Register 23; am 12/29/79, Register 72; am 9/11/83, Register 87; am 11/7/90, Register 116; am 9/16/92, Register 123; am 8/20/2004, Register 171; am __/__/____, Register _____)

Authority:	AS 46.15.020	AS 46.15.050	AS 46.15.133
	AS 46.15.040	AS 46.15.080	AS 46.15.145