

Public notice of the proposed regulations was posted to the States Online Public Notice system on October 12, 2023, in the Anchorage Daily News on October 12, 2023, and the Division’s public website on October 12, 2023. Questions and comments were accepted via online comment portal beginning October 12, 2023 in addition to them being able to be sent to an email address. The comment period was extended beyond 30 days, by request, to November 20, 2023.

DMLW received a total of nine commentators during the open comment period. Of these, eight were received before the 5:00 pm cutoff time. All comments were read and considered. This document constitutes the record regarding the use or rejection of information (factual or substantive) that are relevant to the proposed action. In the table below, issues raised in comments are aggregated by topic for each section of the regulations where changes are proposed. For reference: BBHLT – Bristol Bay Heritage Land Trust; TU – Trout Unlimited; KSP – Katmai Service Providers; WLS LLC– Wainwright Legal Services; TFA – Trustees for Alaska; USDA FS – U.S. Forest Service; USBLM – U.S. Bureau of Land Management; USFWS – U.S. Fish and Wildlife Service; and Estes – Chalkboard LLP Christopher Estes

Item #	Name	Issue Raised in Comments	DNR Response to Comments	Proposed Change
Topic: Comments outside of scope				
1.	BBHLT	We concur with and join the comments provided to you by Trout Unlimited and The Katmai Service Providers and particularly emphasize the point raised by them that the proposed changes to the water management regulations, in combination with the DNR's failure to adjudicate applications for reservations and other instream uses elevates out-of-stream beneficial uses above instream beneficial uses when no such distinction exists in state law.	The proposed changes to water regulations have not and will not elevate out of stream uses over instream reservations. Reservation of water are not mandatory, while water rights are required by law, based on quantity/use. Because of this, the water right adjudications go quicker than adjudications for reservations of water.	NA
2.	TU/KSP	11 AAC 93.040: Any application for an out-of-stream water right must require review by the ADFG to ensure minimum water quantity and quality remains in-stream to support fish and wildlife spawning, rearing and migration.	The Alaska Department of Fish and Game (ADF&G) as well as the Alaska Department of Environmental Conservation (DEC) are notified of all applications for appropriation as required by AS 46.15.133. Similarly, ADF&G & DEC are contacted for review of applications for temporary water use authorizations.	NA

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3.	TU/KSP	11 AAC 93.120: The DNR should adopt regulations that require it to review applications in the order they are received and to issue a decision rejecting or approving any application within three years in order to ensure the application is processed in a timely manner and not, in effect, stayed indefinitely.	<p>The Department has undertaken a significant project to reduce the backlog of applications. Applications are generally processed in the order they arrive.</p> <p>Automatic rejection or approval of any application after three years, without analysis or adjudication, would eliminate the process necessary for DNR to make an informed decision and create arbitrary, inconsistent results. For all applications, the submitted documents are reviewed for being “substantially complete”, and any other required information or documents may be requested at the time of adjudication.</p>	NA
4.	WLS LLC	These regulations warrant a collaborative meeting format to have a give-and-take among those who are affected by, and have specialized knowledge about, these important state water issues. In addition, they warrant an honest report to the Legislature about the changes that DNR is proposing to adopt. It is respectfully requested that DNR hold public workshops, involve those knowledgeable about water resource matters, and accurately report to the Legislature before making these regulatory changes.	The Department has provided a scoping notice in 2016, public notice with several sets of questions and answers in 2021. In 2023 a reduced scope of regulation changes was noticed for an initial 30 days whereby questions were addressed. The notice period was extended for an additional 10 days. The Department believes this is an adequate exchange period for these regulation changes.	NA
5.	TFA	Suggested regulation wording change: (6) the public comment period shall be a minimum of 30 days, and this period begins the first day the newspaper publication appears, or the first day of posting, or upon receipt of the notice as evidenced by the certified mail receipt, date stamp, or other evidence of actual service;	The public comment period is set in statute AS 46.15.133(c) and cannot be changed by regulation.	NA

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6.	TFA	Suggested regulation wording change: (8) The department shall engage in respectful and meaningful consultation with all potentially affected Tribes on a government-to-government basis concurrent with the public comment process.	The public notice and public comment and objection procedures in AS 46.15.133(c) and 11 AAC 93.080, .090, and .110 provide means for communication with affected Tribes and other persons or entities affected by a water right or instream flow reservation application.	NA
7.	Estes	Strongly recommend the Alaska Department of Natural Resources reinstate the Alaska Water Resources Board to execute future revisions.	The Water Resources Board has been inactive since 1994.	NA
Topic: 11 AAC 93.115 Closure of an application for a water right				
8.	USDA FS	DNR noted in their response to questions that the intent was not to eliminate the appeals process and that mention of it in 93.115(4) would be repetitive with other sections of the regulations. However, some applicants may not be immediately familiar with those other sections and therefore unaware of their appeal rights. We recommend keeping this notification language to increase clarity and transparency.	The proposed revision only removes a reference to the appeals process, consistent with application closure notices that appear elsewhere in the water regulations. The revision makes the closure of a water right application consistent with the Department's process for other application closures. The appeal process itself is unaffected. Decisions issued by the Department will continue to include information on appeal rights. 11 AAC 93.300 states that an eligible person may appeal a decision in accordance with the regulations in 11 AAC 02. Because the appeal process is described elsewhere in the regulations, there is no need to repeat the information in the certified mail notice regarding the closure of an application for a water right.	NA

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9.	US BLM	BLM suggests changing 11 AAC 93.115(4) by requiring DNR to formally notify the applicant in writing and/or electronic communication to confirm that the application has been closed.	In practice applicants are notified several times in writing before closure of an application as described in the subsections of 11 AAC 93.115. The fact that the regulation only requires notification by certified mail at the address on file does not prohibit other efforts.	
10.	WLS, LLC	The proposed changes to 11 AAC 93.115(1) and (2) are confusing. It appears under the proposed language that a relinquishment in writing “may” result in the closure of an application, but a verbal relinquishment “will” result in the closure of the application (after notification to the applicant.) A request to relinquish a pending water right application should be granted by DNR whether the request is in writing or oral.	Both provisions address closure of applications by the commissioner. The distinction is whether the commissioner is required to notify the applicant of the closure. Under proposed 11 AAC 93.115(1), the commissioner may close the application without further notice because the applicant’s written communication (letter, or filed notice of relinquishment stating that the applicant has abandoned his/her plans) documents the applicant’s request. Under proposed 11 AAC 93.115(2), when the applicant only communicates orally regarding his/her abandonment of plans to develop the water source, the commissioner must provide written notice in order to document the applicant’s request.	NA
11.	WLS, LLC	Regarding 11 AAC 93.115(3) and (4), since DNR record-keeping is troubled, in order to ensure that DNR has accurate contact information for applicants, DNR should attempt to reach applicants through email, public notice or posted notice prior to closing an application, in addition to sending notice to the address “on file.” It may be that an applicant has changed addresses, and notified DNR, but that address change was not properly processed by DNR. In addition, any person that commented on the application should be notified before the application is extinguished.	Regarding 11 AAC 93.115(3) and (4), every effort is made to locate applicants. The fact that the regulation only requires notification by certified mail at the address on file does not prohibit other efforts.	NA

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12.	Estes	ADD NEW SECTION TO 11 AAC 93.115: All AS 46.15.080 public notice commenters for a specific appropriation of water (withdrawals, diversions, impoundments, and reservations) will be notified for closures for all categories of appropriations that have undergone or are in the process of public notice reviews.	The Department does not track the whereabouts of all commenters on applications. Commenters can track the status of applications for appropriations of water in LAS.	NA
Topic: 11 AAC 93.210 Temporary water use				
13.	USDA FS	DNR notes that the proposed issuance of temporary uses of water will not be issued if they conflict with an adjudicated water right. However, this still does not address the potential effects of water uses on unadjudicated or pending claims. Temporary water uses on any temporal or hydrologically relevant spatial scale may affect fish, wildlife, recreational or other resources. Complete unadjudicated applications for reservations of water are afforded priority standing and warrant consultation on any temporary water use application which may affect these reservations. We recommend standardizing consultation with affected parties for unadjudicated claims or, preferably, completing adjudications prior to the issuance of any temporary water use permit.	Existing applications for both water reservations and water rights are considered prior to issuing temporary water use authorizations. The proposed change to subsection (a) is intended to clear up any ambiguity concerning the duration of a temporary water use authorization, and to specifically list the means by which water is appropriated. The Department anticipates the proposed change to subsection (c) will clear up potential uncertainty concerning the means of prior appropriation that must be considered during the adjudication of an application for a temporary water use authorization and the maximum duration of that authorization.	NA
14.	USDA FS	DNR notes that “depending on the nature of the TWUA applied for, the department will generally not issue TWUAs that impact applied-for rights or reservations.” We appreciate this clarity and recommend that DNR include applied-for rights and reservations to the regulation to reflect this intention in order to avoid potential conflicts or adverse effects to natural resources.	Existing applications for both water reservations and water rights are considered prior to issuing temporary water use authorizations.	NA

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15.	US FWS	The proposed change creates uncertainty about the priority of pending reservation of water applications if junior temporary water users are authorized prior to the adjudication of the water reservation. The Service recommends that the state maintain the original language of 11 AAC 93.210(a) and include “applicants for reservations of water” in the list of entities that water applied for is “not otherwise appropriated under,” or issue a “certificate of reservation” at the time an application for a reservation of water is received.	As listed in 14 above, temporary water use authorizations are not appropriations of water and may only be issued for unappropriated water. The priority date of any appropriation or application is not affected by a temporary water use authorization. Existing applications for both water reservations and water rights are considered prior to issuing temporary water use authorizations.	NA
16.	US BLM	The proposed change will create uncertainty about the priority date of the applications to reserve water that have been accepted by DNR but have not yet been fully adjudicated, if junior temporary water uses are authorized before the certificate of reservation is issued. Existing regulations require DNR to protect flows requested in applications to reserve water that have been accepted and assigned a priority date by DNR. The proposed change appears to not consider requested flows that have not yet been certificated when processing junior temporary water use authorizations. More specifically, proposed changes to 11 AAC 93.210 explicitly strengthen temporary water use authorizations above unadjudicated reservations of water applications. The BLM does not support this proposed change.	As listed in 14 above, temporary water use authorizations are not appropriations of water and may only be issued for unappropriated water. The priority date of any appropriation or application is not affected by a temporary water use authorization. Existing applications for both water reservations and water rights are considered prior to issuing temporary water use authorizations.	NA
17.	TU/ KSP	Any amendment to this regulation should make clear that the procedures to authorize the temporary use of water, as provided in 11 AAC 93.220, apply only where there also is no prior unadjudicated application for appropriation, including a prior unadjudicated application to reserve water.	As listed in 14 above, temporary water use authorizations are not appropriations of water and may only be issued for unappropriated water. The priority date of any appropriation or application is not affected by a temporary water use authorization. Existing applications for both water reservations and water rights are considered prior to issuing temporary water use authorizations.	NA

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18.	BBHLT	We also concur that any amendment to 11 AAC 93.210(a) should make clear that the procedures to authorize the temporary use of water apply only where there is no prior unadjudicated application for appropriation, including a prior unadjudicated application to reserve water.	As listed in 14 above, temporary water use authorizations are not appropriations of water and may only be issued for unappropriated water. Existing applications for both water reservations and water rights are considered prior to issuing temporary water use authorizations.	NA
19.	WLS, LLC	DNR's effort to limit TWUPs to a single five-year timeframe appears to be a beneficial change but there is a question as to whether those who have already received multiple five-year permits for decades, will still be able to withdraw water for an additional five years under this regulation or whether their permit will cease upon its adoption. In any case, a five-year duration is no longer viable given the rapidly changing climate and the need for better water management. A one-year TWUP should be the maximum, with the possibility of extending an additional year provided there is public notice and government to government consultation with affected Tribes	TWUAs are limited to 5 years maximum. If a person opts to apply for an authorization for a source that was previously authorized by a TWUA the decision process starts over, considering any new appropriators of record, new appropriation applications, and any previous and new analysis from DEC and DF&G. This provides a chance to reevaluate the use of a water source. TWUAs are also revocable, so if new information becomes available during an authorized time period there is an opportunity to make a change or revoke an authorization entirely.	NA
20.	WLS, LLC	The proposed changes to 11 AAC 93.210(a) appear to provide a preference for out-of-stream private use TWUPs over an unadjudicated reservation of water applications which does not fulfill DNR's responsibility to manage the waters for the "benefit of all the people." DNR should adopt a regulation to issue certificates of reservation prior to granting a TWUP on systems with pending instream flow reservation applications. Alternatively, DNR must evaluate whether a temporary use of water may adversely affect a prior unadjudicated applications for that same water.	There is no preference for out-of-stream private use of water. There is no need for such a regulation as the Department already considers applications for appropriations of water when adjudicating applications for TWUAs.	NA

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21.	TFA	<p>Suggested regulation wording change to 11 AAC 93.210(a): (a)Procedures to authorize the temporary use of water, as provided in 11 AAC 93.220, will apply if the use continues for a total of less than five consecutive two 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.</p> <p>Suggested regulation wording change to 11 AAC 93.210(c): (c) Upon the commissioner's receipt of a written request from the permittee, the commissioner may, for good cause, extend one time an authorization for temporary use of water. However, the temporary use shall not exceed a total of two years, including the extension and 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 in 11 AAC 05.260.</p>	<p>As stated in 19 above TWUAs are limited to 5 years maximum. If a person opts to apply for an authorization for a source that was previously authorized by a TWUA the decision process starts over, considering any new appropriators of record, new appropriation applications, and any previous and new analysis from DEC and DF&G. This provides a chance to reevaluate the use of a water source. TWUAs are also revocable, so if new information becomes available during an authorized time period there is an opportunity to make a change or revoke an authorization entirely.</p>	NA
Topic: 11 AAC 93.220 Procedure for temporary water use				
22.	TU/ KSP	<p>The DNR should additionally change its regulations to require public notice and opportunity for comment before authorizing any temporary water use.</p>	<p>The Department is not proposing to add public notice requirements to the temporary water use authorization regulations. However, prior to issuing any authorization, the Department consults with both DF&G and the DEC. Public notice requirements do not apply to temporary water use authorizations because they are not appropriations of water and are revocable.</p>	NA

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23.	US BLM	The proposed change to 11 AAC 93.220. Procedure for temporary water use, part b, section2 provides clarity. BLM supports this proposed change.	(continued from #22 above)	NA
24.	TFA	<p>Suggested regulation wording change to 11 AAC 93.220(h): (h) Prior to the issuance of an initial temporary water use permit, and any amendment to or renewal of such a permit, the department shall provide public notice and a public comment period of at least 30 days. This period begins the first day the newspaper publication appears, or the first day of posting, or upon receipt of the notice as evidenced by the certified mail receipt, date stamp, or other evidence of actual service.</p> <p>Suggested regulation wording change to 11 AAC 93.220(i): (i) The department shall engage in respectful and meaningful consultation with all potentially affected Tribes on a government-to-government basis concurrent with the public comment process.</p>	<p>The Department is not proposing to add public notice requirements to the temporary water use authorization regulations. However, prior to issuing any authorization, the Department consults with both DF&G and the DEC. Public notice requirements do not apply to temporary water use authorizations because they are not appropriations of water and are revocable.</p> <p>The public notice and public comment and objection procedures in AS 46.15.133(c) and 11 AAC 93.080, .090, and .110 provide means for communication with affected Tribes and other persons or entities affected by a water right or instream flow reservation application.</p>	NA

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Topic: 11 AAC 93.510 Public notice and meeting (for Critical Water Management Areas)				
25.	USDA FS	11 AAC 93.510(b)3 We recommend that DNR update the proposed language to include applicants for a water right or reservation. In response to questions concerning the differential treatment in the proposed regulatory change between applicants for water rights and temporary water use authorizations (originally included) and applicants for water reservations (originally excluded) ADNR responded that the Department would consider updating this section to include applications for a water right or reservation. We recommend this inclusion.	The Department will consider updating this section to include applications for “appropriations,” which include water rights and reservations of water.	The Department will consider striking “water right” and add “appropriation” to 11 AAC 93.510(b)(3)
26.	US FWS	The Service recommends ADNR add language to notify existing applicants for reservations of water on a water source affected by the proposed designation, revocation, or amendment of a critical water management area. The Service also recommends adding language to the proposed language in 11 AAC 93.510(b) that ADNR will notify Alaska Native Tribes if affected by the proposed designation, revocation, or amendment of a critical water management area.	The Department makes every effort to reach affected parties within and adjacent to critical water management areas. This includes regional corporations and Alaska Native Tribes.	NA

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27.	TU/ KSP	It is unclear how the proposed changes will change the public's, a certificate holder's, or an applicant's rights or responsibilities. The DNR should seek more transparent and open decision making, allow more public input, and avail itself of outside expertise that may allow the DNR to arrive at a more informed decision that better meets the public's need. Any holder of a certificate for an instream flow reservation and any applicant for an instream flow reservation should have the same rights and responsibilities as a certificate holder or applicant for a withdrawal, impoundment, or diversion.	These proposed changes address public notice methods, not the criteria for designating critical water management areas. Therefore, this comment is outside the scope of the proposed regulations change.	NA
28.	WLS, LLC	DNR should provide notice under 11 AAC 93.510 to any person that has requested notification of actions pertaining to waterbodies in critical water management areas.	DNR encourages the public to use the Alaska Online Public Notice System to receive notifications of topics of interest. https://aws.state.ak.us/OnlinePublicNotices/Notices/Search.aspx	NA
29.	Estes	ADD: (7) any person on record that has requested notifications of actions pertaining to waterbodies in the critical water management area.	DNR encourages the public to use the Alaska Online Public Notice System to receive notifications of topics of interest. https://aws.state.ak.us/OnlinePublicNotices/Notices/Search.aspx	NA

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Topic: 11 AAC 93.530 Effect of the order				
30.	TU/ KSP	Regulations should encourage broad public notice and participation by continuing to require the DNR to publish notice in a newspaper of general circulation. Additionally, notice should be mailed to applicants and not just appropriators.	Newspaper publication is very costly for the Department and has a limited viewership. DNR will consider publishing notices in newspapers in areas with a distinct circulation in an effort to contact affected persons. DNR may add social media posts to additionally disseminate information. The suggestion to contact applicants will be considered before final adoption of regulation changes.	Consider adding applicants to 11 AAC 93.530(a)
31.	Estes	ADD “and all persons on record requesting notifications of actions pertaining to waterbodies in the critical water management area.”	DNR encourages the public to use the Alaska Online Public Notice System to receive notifications of topics of interest. https://aws.state.ak.us/OnlinePublicNotices/Notices/Search.aspx	NA

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Topic: 11 AAC 93.970 Definitions				
32.	USDA FS	We recommend not changing the definition of “appropriators of record” for two reasons. First, the change unnecessarily limits the regulatory definition of “adjudication” by making it narrower than its applications. We note that since the regulatory definition of “adjudication” (11 AAC 93.970(1)) incorporates the definition of “appropriators of record,” that definition is also being substantially changed to remove applicants for water rights. Since both regulatory and statutory (see e.g., Alaska Statute § 46.15.165) provisions contemplate consideration of applicants for water rights in adjudications, the definition should not be narrowed so as to exclude them.	The purpose of the proposed change is to make it clear that a submitted application is not yet an appropriation. An application does not fall within the definition of appropriation under AS 46.15.260(2). The proposed change conforms the regulation to the statute and does not connote that DNR will change its process for adjudicating complete applications for appropriations, or assigning priority dates. DNR will continue to adjudicate applications for all appropriations, including reservations of water. This clarifies DNR’s response in its 11/21/23 comment responses, item 5. DNR will not disregard applications merely because applicants are not appropriators of record. (response applies to lines 34 & 35 below)	NA
33.	USDA FS	Second, the definition of “appropriators of record” should not be changed in this way because the rationale for the change does not match the scope of the regulatory change. Specifically, the November 21 question and answer response stated that the intent of the proposed change was “to eliminate from consideration any applications that are incomplete or are no longer active.” But the proposed rule would eliminate consideration of all applications and not simply those that are “incomplete or are no longer active.” Any regulatory change to the definition should more closely reflect this narrower intent.		

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34.	US FWS	Recommend ADNR abandon the suggested changes to the definition of “appropriators of record”, add language such that the definition of “appropriators of record” includes complete applications for water reservations and water rights, or issue a “certificate of reservation” at the time an application for a reservation of water is received.	(continued from #'s 32 and 33 above) The purpose of the proposed change is to make it clear that a submitted application is not yet an appropriation. An application does not fall within the definition of appropriation under AS 46.15.260(2). The proposed change conforms the regulation to the statute and does not connote that DNR will change its process for adjudicating complete applications for appropriations, or assigning priority dates. DNR will continue to adjudicate applications for all appropriations, including reservations of water. This clarifies DNR’s response in its 11/21/23 comment responses, item 5. DNR will not disregard applications merely because applicants are not appropriators of record.	NA
35.	US BLM	The proposed regulatory change removes “applicants” from the definition of “appropriator of record.” This proposed change creates uncertainty for applicants awaiting permits to appropriate water and certificates of reservation. The new definition removes a senior priority standing for unadjudicated applications when other types of water use are requested. The proposed change to the definition of “appropriator of record” may significantly and negatively impact BLM’s uncertificated reservations of water. The BLM recommends the original definition be retained.		NA
36.	TU/ KSP	Because the DNR often takes many, many years to process applications and does not process applications according to the date they are received, the DNR must afford applicants of instream flow reservations the same priority and rights as certificate holders.	The proposed change does not prioritize the adjudication of one form of appropriation application over another.	NA