STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

Division of Mining, Land and Water

"Putting Alaska's resources to work - now and in the future!"

MEMORANDUM

DATE: **August 6, 2026**

TO: **Jessie Bruns – Water Resource Section Manager 3**

FROM: **Jonathan Tucker – Water Resource Section Specialist 3**

SUBJECT: **Reservation of Water Regulation Change PN Comment Review Summary**

The public comment period for the proposed changes to the reservation of water regulations (11 AAC 93) ran from May 29 to July 1, 2026. DNR received 523 comments. Of those, 366 were identical, or nearly identical, form letters. Please note that the 523 total reflects the number of comments received, not the number of commenters. Because some commenters submitted multiple comments, the number of commenters does not match the number of comments received.

DNR received comments from individuals and the following entities:

Other Government Agencies:
U.S. Forest Service
U.S. Fish and Wildlife Service
Bureau of Land Management

Alaska Native Organizations:
Native Village of Ambler Traditional Council
Chickaloon Village Traditional Council
Chilkat Indian Village (Klukwan) Tribal Council
Native Village of Kivalina IRA Council
Tyonek Tribal Conservation District
Yukon River Inter-Tribal Watershed Council
Sealaska
Tyonek Tribal Conservation District
Igiugig Village Council
Yukon River Inter-Tribal Fish Commission

Other Entities (groups, councils, NGO's, etc.)
Pacific Seafood Processors Association
Alaska Chamber
Resource Development Council
Usibelli Coal Mine
The Alliance
Alaska Miners Association
Bering Sea Fisherman's Association
Rabbit Creek Community Council
Norton Bay Watershed Council
Kachemak Bay Watershed Council
Trout Unlimited
The Nature Conservancy
Cook Inlet Keeper
Bristol Bay Heritage Land Trust
Wild Salmon Center
SalmonState
Susitna River Coalition
Kenai Watershed Forum
Alaska Marine Community Coalition
Mat-Su Basin Salmon Habitat Partnership
Southeast Alaska Conservation Council

During the comment period, DNR posted three documents to the Alaska Online Public Notice System addressing comments and questions as they were received. The final Q&A document, dated June 26, 2026, lists all questions answered and is attached to this memo as Appendix 1.

As a result of this Q&A period, comments from the U.S. Bureau of Land Management (BLM) and the U.S. Fish & Wildlife Service (FWS) warranted additional changes to the original proposal, as follows:

- 93.142(b)(6) will be updated from "to be used" to "used" as no future tense is
- needed.
- 93.142(d) and (e) will be deleted as there will now be no need for an extension period to supply additional data.

The comments from BLM and FWS have also been attached to this memo as Appendices 2 and 3. These additional changes will be added into the final proposal draft submitted to LRLR for final proofing and approval.

The most-recurring themes that appeared in the public comments are listed below, as there were over 1,500 questions/topics of concern listed in the comments received:

- 408 comments: Changes will make it harder to protect Alaska's waters.
- 387 comments: Changes favor private use (consumptive) over public interest (reservation).
- 366 comments: Commenter recommends automatic reservations for all waters of Alaska (through legislation).
- 53 comments: Requiring 5-year data, monitoring, reporting, cost-shifting will disincentivize Tribal, community, non-profit, and public-interest applicants.
- 24 comments: Change to 11 AAC 93.146(b) subverts/contradicts AS 46.15.145 and Article VIII by restricting who can hold certificate (applicant vs. holder).
- 23 comments: Request for extension to review changes and comment not granted, insufficient time to review.
- 22 comments: Change to 11 AAC 93.147(c) wrongly shifts costs of reporting data to the applicant during review processes.
- 21 comments: Changes do not acknowledge Tribal sovereignty or their abilities to manage natural resources, which would justify holdership.
- 18 comments: Alaska Native Tribes should have been consulted prior to proposing changes and should be consulted as an agency during public notice and review processes for reservations of water.
- 17 comments: Changes wrongly impose additional disproportionate obligations for applicants of reservations vs. applicants of consumptive water rights.
- 17 comments: Change to 11 AAC 93.142(b)(9) makes the application process needlessly more expensive, complex, and time-consuming.
- 15 comments: Supports requiring more robust data/research to support application.
- 14 comments: Public hearing not granted for this proposal session.
- 13 comments: Changes will further slow down the adjudication process, not speed it up, and will likely increase the backlog.
- 12 comments: DNR should focus on clearing out the backlog of unadjudicated applications, not on revising regs for future applications.
- 11 comments: The burden of demonstrating whether harm to fish habitat will occur should rest with consumptive users, not reservation applicants. Fish habitat data should be supplied by consumptive users.
- 10 comments: Supports that State and Federal natural resource agencies should hold certificates on behalf of the public interest.
- 10 comments: Data requirements should be watershed specific, not generalized.
- 9 comments: If DNR holds the certificate, they should be responsible for data collection.

- 8 comments: If DNR holds the certificate, regulations should definitively state how accountability will be handled over time.

Please note that the top three topics were primarily submitted in the 366 form letters received, but some extras were found in the 157 remaining non-form letters.

Jonathan Tucker – Natural Resource Specialist 3

8/6/2026

Date

* Appendix 1 *

Questions and Answers Regarding Proposed Water Reservation Regulations
Division of Mining, Land and Water
Department of Natural Resources
June 26, 2026

Question 1: Barry Santana **-** Why are you sending these changes?

Response: You have received this notice of proposed regulation changes because you were involved previously in the water regulations process or asked to receive information related to the regulation process.

Question 2: Barry Santana - Does this mean that I have to change my existing water reservation?

Response: Upon review, you have a water right associated with a private well on your property. These regulations do not impact water rights such as yours under AS 46.15.040.

Question 3: Jay Armstrong - Does the Department interpret Article VIII's reservation of waters to the people for common use as extending equally to corporations and other artificial entities, or does the Department distinguish between constitutional common use rights held by Alaska residents and permits, privileges, or discretionary approvals granted to corporations?

Response: This question is outside the scope of the current regulation process. However, "person" is defined under the Water Use Act under AS 46.15.260(7).

Question 4: Jay Armstrong - If the Department makes no distinction, please explain what legal authority supports treating corporations the same as Alaska residents for purposes of common use. If the Department does make a distinction, please identify the constitutional, statutory, or regulatory authority for doing so, and explain whether the Department intends to treat corporate use as a privilege subject to greater cost, conditions, or denial than resident common use.

Response: This question is outside the scope of the current regulation process.

Question 5: Shirley Fields, Francis Adams, Claudi Thompson, Sherri Lewis, Rebecca Rohena, Shelley Campbell, Bailey Williams, Jack Mosby, Father Peter Kamilos, Annalise Hangartner, Jeffrey Bindas, Constance Fredenberg, Sean McPhilamy, Steven Parker, Kendra Zamzow, Mary Ostermick, Michelle Breinholt, Sue Baker, Colin Keating, Dave Atcheson, Mary Clair McCarthy (Alaska Pacific University), Deirdre Downey, Tania Rowe, Cathryn Simon, Noah Mabon, Krystal Lapp (Northern Alaska Environmental Center) – These individuals question whether proposed changes could make it more difficult for Alaskans to protect water for salmon, wildlife, recreation, subsistence, navigation, and public use.

Response: Updating these regulations would allow a more defined explanation of what information is needed from an applicant to support their application for a reservation of water. In the past, ADNR has requested this information after receiving an application. The regulation changes would clarify the necessary information to apply for a reservation of water and ensure a more efficient adjudication process. The regulation changes would also reinforce that the applicant is responsible for installing, maintaining, and reporting gage data during the duration of the reservation of water, as they are the interested party requesting it.

Question 6: Shirley Fields, Francis Adams, Claudi Thompson, Sherri Lewis, Rebecca Rohena, Tania Rowe, Jack Mosby, Annalise Hangartner, Jeffrey Bindas, Lou Brown, Mary Claire McCarthy (Alaska Pacific University), Cathryn Simon, Krystal Lapp (Northern Alaska Environmental Center) – These individuals questioned whether requirements such as five years of monthly data, monitoring devices, reporting obligations, and possible cost-shifting will create barriers for Tribes, communities, nonprofits, and public-interest applicants working to protect water for fish and wildlife.

Response: These regulation changes are not intended to impose barriers. They are intended to improve the data requirements for adjudicating a reservation. Periodic gage data is needed to establish a baseline of information for a reservation of water. The 5-year period allows a more accurate data trend that will create more accurate reservation amounts. While this initial baseline data is sufficient to establish a reservation of water, additional data needs to be submitted periodically as the initial data ages and becomes less accurate. While continuous gage data is ideal, periodic intervals will likely be set based on current accepted ranges. Accurate reservation amounts cannot be determined if gage data is lacking or incomplete.

Question 7: Becky Long - Did ADNR create a scoping document that encapsulated a summary of the scoping comments?

Response: The DNR does have information related to scoping period on the project webpage.

Question 8: Becky Long - What is the background behind the proposed changes?

Response: These updates are intended to definitively state what information is required at the time of application for a reservation of water and define who is responsible for installing, maintaining, and reporting gage data. These updates will allow ADNR to more efficiently adjudicate both reservation of water applications and existing reservation of water 10-year reviews.

Question 9: Becky Long - Did these proposals come out of the scoping process?

Response: Yes.

Question 10: Becky Long - How will the currently held Instream Flow Reservations, the Certificates of Reservation, be impacted or changed by the proposed 11 AAC 93.146(b) Issuance of a Certificate of Reservation amendment?

Response: Currently authorized reservations of water will not be affected by the proposed updates to 11 AAC 93.146(b).

Question 11: Becky Long - Is the Alaska Department of Fish and Game, the US Fish and Wildlife Service considered a resource management agency that could still hold the certificate?

Response: Yes, both agencies are considered resource management agencies and can hold a reservation of water if they are the applicant.

Question 12: Becky Long - Will these proposed regulations help alleviate the unadjudicated reservation applications backlog?

Response: It is unknown whether the proposed regulations will alleviate the backlog.

Question 13: Becky Long - Why is there a fiscal note of zero for these regulation changes? Does this mean there will be no staff to process the Certificate of Reservation applications?

Response: No. DNR has staff position dedicated to adjudication of water reservations.

Question 14: Becky Long - Is there currently a staffing of a Reservation of Water Program?

Response: Yes. The Reservation of Water Program is currently staffed.

Question 15: Becky Long - The Ten-Year Review of LAS 13228 the Talkeetna River Reservation of Water Priority Date 3/19/1991 has happened. It was signed by the Lead Reservation of Water Program staff and the Water Resources Chief on 11/14/2022. Is this process complete and accepted according to the mandate? Was further review necessary?

Response: This question is outside the scope of this public notice process. However, an appeal was received on December 5, 2022, regarding ADNR's 10-year review decision on November 14, 2022, to continue the reservation of water with no changes. As of yet, no decision has been made regarding the appeal.

Question 16: Becky Long - These proposed amendments add considerably more application requirements. Water Right Certificates to appropriate water out of a waterbody have considerably less stringent requirements. These certificates are held by non-state agency groups and private people. Why is there this dichotomy?

Response: Reservations of water are water rights requesting a specified amount of water to remain in a given water body. These requested and potentially authorized amounts are typically

vastly larger than the amounts requested or authorized for consumptive water rights. Reservation amounts can impact the health and safety of fish and wildlife habitat, the quality and amount of recreation, navigation, and transportation that occurs, and even affect public health in and on a reserved water body. Therefore, DNR supports that more rigorous supporting documentation be submitted with applications for reservations of water than what is requested for consumptive water rights.

Question 17: Becky Long - A public comment extension of a month should happen and be publicly noticed. This is one of the busiest times of the year for the Alaskan public.

Response: At this time, DNR is not proposing an extension of time for this public notice period.

Question 18: Becky Long - A public hearing similar to the ADNR Water Section public meeting in August 2024 needs to occur. This happened during the scoping process for these regulatory changes.

Response: The scoping process is complete. DNR is not going to a hearing related to this regulation process.

Question 19: Stosh Anderson - Request for a 120-day extension for comment period for water reg changes due to the time of year of the public notice.

Response: At this time, DNR is not proposing an extension of time for this public notice period.

Question 20: Hal Shepherd (Norton Bay Watershed Council) - Please provide any rational and legal authority that applies to the proposed amendments to 11 AAC 93.142, for requiring the applicant to provide "what trade-off is being considered" and "information on property ownership upstream and downstream of the proposed reservation.".

Response: Proposed revisions to section 11 AAC 93.142 do not require the applicant to provide "what the trade-off is being considered." The authority for the proposed regulations is included in the draft regulation.

Question 21: Hal Shephard (Norton Bay Watershed Council) - Please describe how the Proposed changes to 11 AAC 93.146 which would limit the holders of certificates of reservation to state and federal resources agencies complies with Alaska Statute §46.15.145 which explicitly allows private individuals, local governments, state agencies, and federal agencies to apply for instream flow reservations.

Response: Under AS 46.15.145(a): "The state, an agency or a political subdivision of the state, an agency of the United States, or a person…" can apply for a water reservation. Proposed changes to section 11 AAC 93.146 do not change or limit who can apply for a reservation of water under this statute. While AS 46.15.145 identifies who can apply for a reservation, it does not identify who can hold a reservation when issued. The proposed revisions to 11 AAC 93.146 clarifies that a

certificate of reservation will only be issued to a state or federal resource management agency if they are the applicant. Further, it clarifies that a certificate of reservation will be held by the Department of Natural Resources (DNR) for all other applicants.

Question 22: Hal Shepherd (Norton Bay Watershed Council) - Please describe whether the Proposed changes to 11 AAC 93.146 erode the Alaska State Constitution as it applies to the public right to protect instream flow reservations. Specifically, Section 13 of Article VIII states that except "for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.".

Response: The proposed changes to 11 AAC 93.146 do not erode Article VIII, Section 13 of the Alaska Constitution. The regulations would reinforce that water is a public resource managed by the state for the benefit of the public.

Question 23: Hal Shepherd (Norton Bay Watershed Council) - The Proposed changes to 11 AAC 93.146 "requires the applicant to install measuring devices and monitor and report information at intervals approved by the Commissioner of DNR." Please describe whether, due to the substantial expense of purchasing installing, maintaining and monitoring instream flow reservation equipment especially in remote and roadless areas, whether this provision would work to exclude many tribal organizations and the general public from supporting the continued existence of an instream flow reservation.

Response: No, the proposed changes would not exclude tribal organizations or the public. The monitoring and reporting requirement ensure reliable data for effective water resource management and public interest determinations, not a barrier to participation. Approved measuring devices and periodic reporting provides essential information on actual flows and compliance. This helps confirm sufficient unappropriated water exists, protects the reservation's purpose, and supports long-term reviews under AS 46.15.145. Without current data, reservations risk being based on outdated or insufficient information, which does not serve the public interest. For non-government applicants, DNR holds the certificate; this places primary stewardship responsibility with the state while preserving the applicant's role in initiating and supporting the reservation. Furthermore, the broader regulatory updates aim for a streamlined, consistent process. Upfront data requirements and monitoring reduce future disputes, enforcement issues, and inefficient reviews. The aim is sustainable protections that align with Alaska's constitutional framework of managing water as a public resource.

Question 24: Hal Shepherd (Norton Bay Watershed Council) - Under the Proposed changes to 11 AAC 93.147 "the applicant will now be required to bear the costs of conducting additional research, data collection, and analysis for their respective certificated reservations of water." Please describe whether, due to the substantial expense of purchasing installing, maintaining and monitoring instream flow reservation equipment especially in remote and roadless areas,

whether this provision would work to exclude many tribal organizations and the general public from supporting the continued existence of an instream flow reservation.

Response: No, the proposed changes would not exclude tribal organizations or the public. These requirements would support resilient public interest determinations under AS 46.15.145, ensuring reservations are defensible and effective for fish habitat and other beneficial uses. Applicant responsibility for costs of data collection and analysis is reasonable to ensure reservations remain based on current, reliable data. These updates focus resources, encourage data-backed participation, and strengthen long-term viability of instream reservations through accountability and current data.

Question 25: Jack Reakoff - Expressed concerns that there would be significant expenses in the data collection for miners if stipulated.

Response: Miners would only be affected if they submit an Application for a Reservation of Water. These changes do not affect applicants of consumptive water rights or Temporary Water Use Authorizations.

Question 26: Vernon Adams - With all the drilling and huge drilling equipment the animals will not want to return to the birthing grounds of caribou, migratory birds and all other animals that give birth in Alaska Arctic National Wildlife Refuge. Once the water, streams, river or lakes get contaminated the animals will not return. With all the oil revenues we have drilling all over Alaska and no future for the PFD. State and the PFD department capped it at $1,000 while the State collects its share they are also robbing the citizens of Alaska from the permanent fund dividend. For over 16 years they have stolen from the PFD to support the wasteful spending of the State's budget.

Response: This question is outside the scope of the current regulation process. However, it is DNR's function to responsibly manage Alaska's natural resources.

Question 27: Shelley Campbell, Sean McPhilamy, Michelle Breinholt, Patrick Solana Walkinshaw, Lou Brown, Dave Atcheson, Mary Claire McCarthy (Alaska Pacific University), Cathryn Simon, Krystal Lapp (Northern Alaska Environmental Center) – Any measuring, monitoring, and reporting requirements should be reasonable, affordable, and appropriate for remote watersheds, and should not make public-interest water protection impossible.

Response: Existing regulation 11 AAC 93.146(d)(1) already requires an applicant to be responsible for the installation, maintenance, and monitoring of gage equipment, as a condition in any authorized reservation of water, at the discretion of the commissioner. Factors that determine the manner of gaging always includes consultation with other resources agencies knowledgeable in that process, with just a few examples being DF&G, NOAA, USGS, and USFWS.

Question 28: Shelley Campbell, Bailey Williams, Father Peter Kamilos, Constance Fredenberg, Mary Ostermick, Lou Brown, Dave Atcheson, Tom Snyder, Krystal Lapp (Northern Alaska

Environmental Center), Michelle LaRose – Any changes to 11 AAC 93 should strengthen Alaska's ability to protect instream flows for salmon, wildlife, recreation, and public use. The process should not become easier for industrial appropriation while becoming harder for public-interest reservations.

Response: These regulation changes are proposed to more comprehensively state what information is needed to apply for a reservation of water and reinforce who is responsible for installing, maintaining, and monitoring gage data. The intention is to increase the efficiency and accuracy of the adjudication, authorization, and 10-year review processes associated with reservations of water. DNR's holding of reservation certificates on behalf of non-agency applicants consolidates holdership of these specific reservations under one resource agency in the public interest. DNR's function is to responsibly manage Alaska's natural resources on behalf of the public.

Question 29: Shelley Campbell, Tania Rowe, Bailey Williams, Jeffrey Bindas, Constance Fredenberg, Steven Parker, Kendra Zamzow, Mary Ostermick, Sue Baker, Dave Atcheson, Deirdre Downey, Cathryn Simon, Noah Mabon, Krystal Lapp (Northern Alaska Environmental Center) – Water reservations are the one and only legal mechanisms that keep water in a stream for fish habitat, migration, and spawning. Salmon need water left in rivers, not only the water allocated after industrial and other consumptive uses are considered.

Response: DNR's Reservation of Water Program does just that, "protection of fish and wildlife habitat, migration, and propagation", as stated in 11 AAC 93.141(1). These proposed changes are intended to further clarify what supporting data is needed for efficient and accurate adjudication of incoming applications for reservations of water, and to have DNR hold certificates applied for by non-agency applicants to consolidate management. Please note that reservations of water are still water rights, with priority dates based on their respective dates of application submission and acknowledgment of completion. Holders of senior water rights, consumptive or non-consumptive, with older priority dates, utilizing the same water body must still be observed and respected.

Question 30: Jack Mosby, Sean McPhilamy, Noah Mabon – If DNR holds certificates for reservations filed by non-agency applicants, the regulations should clearly explain how the original applicant, affected communities, and the public can ensure the reservation is monitored, defended, and maintained over time.

Response: Under the proposed regulations, when DNR holds certificates, it ensures consistent public-interest management through 10-year mandatory reviews utilizing approved measuring devices, regular reporting, and data collection. This structure centralizes stewardship while preserving stakeholder input, aligning with AS 46.15.145.

Question 31: Father Peter Kamilos, Annalise Hangartner, Constance Fredenberg, Steven Parker, Michelle Breinholt, Patrick Solana Walkinshaw, Sue Baker, Lou Brown, Colin Keating, Deirdre Downey, Krystal Lapp (Northern Alaska Environmental Center) – DNR should engage in

meaningful government-to-government consultation with Alaska Native Tribes before adopting changes that could affect salmon, traditional waters, and protection of water.

Response: DNR is committed to meaningful consultation with all affected entities in Alaska, including Alaska Native Tribes, on matters affecting salmon, traditional uses, and water protection. We recognize Tribes' important role in stewardship of these resources. Input from all affected entities, including Tribes, received through the public process is considered before finalizing changes to 11 AAC 93.

Question 32: Susan Klock – Alaska waters are public and should not be reserved by other entities. I fish salmon and other species and boat Alaska rivers and private entities should not be given rights to public waters. Regulations strengthening protection of Alaska waters should be enacted, not weakened.

Response: By having DNR hold certificates of reservation, the regulations would clarify that applicants do not gain "private ownership" of the water. Instead, they would reinforce that water remains a public resource, with the state serving as its steward for the benefit of all Alaskans.

Question 33: Kendra Zamzow - I agree that five years of data should be collected prior to issuing a reservation of water (in-stream flow, ISF) certificate. This should include not only flow data but also temperature data. Temperature can easily be monitored for years on a frequency of every minute, every hour, or every day with a simple data logger that costs under $100. Both flow and temperature information are becoming more important as we see more extreme fluxes in temperature, snow load, and rain and as our fish populations shift and decline.

Response: High-quality, long-term data is essential for sound decisions. The proposed regulations emphasize a minimum of 5 years of monthly data to quantify reservations, and we welcome additional relevant information such as temperature data where it strengthens the application and public interest determination. Low-cost data loggers make this feasible, and DNR will continue coordinating with applicants and ADF&G to ensure the best available science supports these important public resources.

Question 34: Kendra Zamzow - I strongly disagree with DNR holding the certificate. This disincentivizes organizations and federal agencies from investing tens of thousands of dollars and years of effort into collecting the required data. And yet, in a state with remote populations and chronically underfunded state agencies, we should be adding incentives for data collection, not removing them. This legislation appears to want others to come up with the money and do the work while DNR holds the certificate.

Response: We recognize the significant investment of time and resources, and under the proposed regulations, DNR holding the certificate does not diminish that effort. Instead, it ensures long-term stewardship while preserving the applicant's role in data collection, monitoring, and review processes. This approach aligns with DNR's mission to manage water as a

public resource for all Alaskans, provide consistent enforcement and defense of reservations, and avoids fragmented private control.

Question 35: Kendra Zamzow - I did a quick survey of records available on the state of Alaska site https://gis.data.alaska.gov/datasets/SOA-DNR::reservation-of-water-1/explore?layer=2&location=60.993609%2C-149.186264%2C4&showTable=true.

Of 433 records, there are a total of 149 certificates issued, 275 have been applied for but no decision has been rendered, and 9 are on appeal.
DNR - 1 certificate held
ADFG - 143 certificates held, 40 more applied for, 1 on appeal
BLM - 1 certificate held, 16 more applied for
USFWS - 2 certificates held, 213 more applied for
Tribes - 0 held, 6 applied for
Non-profit organizations - 2 held, 8 on appeal

For those on appeal, it appears that the problem was not lack of data. They were actually approved for a certificate, but industry organizations objected. They have been on appeal for 10 years. Call me cynical but this suggests to me that people prioritized a water body for fish and wildlife that wouldn't have been studied if they had not paid for the work themselves.

There is an obvious problem that the office in DNR that processes ISF applications is understaffed and underfunded. Applications languish for years.

There is also the problem that organizations, including ADFG, can perform due diligence and be approved to hold a certificate, and be held up for years if industry objects.

If industry objects. To reserving water in a stream for use by fish and wildlife. The ISF certificate is not meant to balance the benefits of industry versus wildlife. It is there to ensure fish and wildlife can complete their life cycles. Yet DNR has left those certificates on appeal for 10 years.

That is the heart of the problem. Agencies, and even non-profit organizations, are attempting to do what the state should already prioritize -- keeping water in streams for fish and wildlife and recreation. For healthy ecosystems that then generate untold benefits to all of us.

Alaska's water belongs to the public and should be managed to benefit all Alaskans, including for habitat, subsistence, and community use.

Response: This comment is beyond the scope of this public notice process for the proposed regulation changes. However, we acknowledge the backlog and processing challenges, which the proposed updates to 11 AAC 93.142, 146, and 147 are designed to address through clearer standards, which will assist efficient adjudication, and better resource allocation. Under AS 46.15.145, reservations are a public resource tool granted only when they meet statutory

criteria; no injury to prior rights, demonstrated need, sufficient unappropriated water, and the public interest.

DNR adjudicates applications and appeals impartially, balancing all beneficial uses – including fish and wildlife habitat, subsistence, recreation, and economic development – consistent with the Alaska Constitution and statutes. Delays in appeals often stem from complex protests and legal processes, not a failure to prioritize habitat. Allowing DNR to hold certificates for non-agency applicants strengthens long-term stewardship and enforcement while fully crediting applicant data and involvement in monitoring and reviews. This reinforces that Alaska's waters belong to the public and are managed for maximum benefit to all Alaskans.

Question 36: Kendra Zamzow - The proposal to have only DNR hold certificates of water was proposed in 2024 and perhaps earlier. Until DNR gets its own house in order and is able to process the applications already on file, they should not be given the additional work of holding the certificates and ensuring that monitoring is conducted. Until we as citizens can trust the state to prioritize our streams and lakes for non-industrial uses, we should not have the agency that issues water withdrawal permits (DNR) to industry be the same one that holds certificates to ensure there is enough water for fish and wildlife.

Response: We recognize the current backlog and are actively working to improve processing efficiency through the proposed regulatory updates. Having DNR hold certificates for non-agency applicants streamlines stewardship, ensures consistent monitoring and enforcement, and avoids fragmented management – without adding undue workload, as DNR already oversees reviews, compliance, and defense under AS 46.15.145 and 11 AAC 93.147. DNR is statutorily responsible for balancing all water uses in the public interest, including fish and wildlife habitat. Consolidated state holding strengthens protections for public resources rather than creating conflicts, and we remain committed to transparent, data-backed decisions that serve all Alaskans.

Question 37: Mike Bronson – Please withdraw your proposal to toughen 11 AAC 93, instream reservations. DNR should lower the barriers for protecting fish populations. I have used the Talkeetna, Chuitna, Susitna rivers, as well as Moose, Alexander, Willow and Fish creeks for boating and fishing since 1979. I expect your department to do everything to keep them in good shape. If you finalize this bad Dunleavy proposal, we will overturn it with the new governor.

Response: The proposed changes to 11 AAC 93 aim to improve efficiency, ensure robust data-backed applications, and strengthen long-term management of reservations as a public resource under AS 46.15.145 - not to raise barriers to protecting fish habitat.

Question 38: Kenneth Widmer – These rivers need to be protected, removing water from any salmon stream should be by a permit that limits the amount and needs to be denied if it has any negative effect on the salmon/ fish in the river.

Response: The proposed regulation changes are unrelated to removal of water from salmon streams. Under AS 46.15.145, other existing processes such as consumptive water rights,

temporary water use authorizations, and reservations of water are designed to prevent negative impacts to fish and wildlife habitat. DNR evaluates applications for water withdrawals to ensure they do not injure prior rights, including reservations, or the public interest, incorporating fish and wildlife needs.

Question 39: Cathy Teich – I think that it is important to make water reservation requirements stronger instead of making them weaker. All over the United States, I see corporate America invading rural areas and destroying farm lands and sucking up valuable water resources. Some of those corporate projects are disguised in "Green Language": solar farms...also taking up valuable land for agriculture to feed ourselves and using water resources that are disappearing. In Alaska, it is important that our water stays in streams, rivers, and lakes so that our fish (one of Alaska's most valuable resources) have a healthy habitat.

Response: The proposed updates to 11 AAC 93 seek to strengthen the program by requiring more robust data for new reservation applications – ensuring they are defensible and effective – while improving efficiency, not weakening standards. This supports keeping water in streams, rivers, and lakes for fish and wildlife, consistent with AS 46.15.145 and the public interest.

Question 40: Cathy Teich - I don't feel especially comfortable with DNR holding certificates for successful applicants, as they do not have adequate staff to monitor whether or not these reservations are following the rules. I have heard that there is a 30 year back log of reservations at this time. It is my understanding that many of these reservations concerned fish and wildlife habitat, navigation and community water resources all over the state. I have concern about what will happen with all of those applications.

Response: The proposed changes to 11 AAC 93 are intended to improve efficiency in the processing of applications and long-term oversight. When DNR holds certificates, it enables consistent monitoring, compliance checks, and enforcement under AS 46.15.145 and 11 AAC 93.147 - leveraging state resources for better stewardship of these important public resources for fish habitat, navigation, and community needs.

Question 41: Tim Troll (Bristol Bay Heritage Land Trust)- I would like to request an extension of time to provide detailed comments on the proposed regulations. As I am sure the Department is aware, the month of June is a particularly busy time for Alaskans. Those who may be most affected by these changes, including myself, are now busy getting ready to get out on the water, and find it difficult to give this matter the focused attention the issue needs. It would have been much easier to respond to and comment on the proposed changes if they had been made public during the winter months of 2025/2026. I request an extension of time to at least October 1, 2026. Additional time to comment would also provide those who would like to comment the opportunity to evaluate the Department's responses to any questions submitted by June 20.

Response: At this time, DNR is not proposing an extension of time for this public notice period.

Question 42: Tim Troll (Bristol Bay Heritage Land Trust) - Please identify and provide responses to any questions that would be answered differently as a result of these proposed changes from ADNR's responses to proposed changes dated March 26, 2021.

Response: DNR is not in a position to respond to this hypothetical question. During the current public notice period, DNR is focused on questions/concerns on the current proposed changes.

Question 43: Tim Troll (Bristol Bay Heritage Land Trust) - Does the formal recognition of Federally recognized tribes as legitimate governments with the passage of HB 123 in 2021 alter any of the Department's March 26, 2021, responses to questions regarding tribes holding certificates of reservation?

Response: DNR is not in a position to revisit prior responses. During the current public notice period, DNR is focused on questions/concerns on the current proposed changes.

Question 44: Tim Troll (Bristol Bay Heritage Land Trust) - To what extent do the proposed regulations affect certificates of reservations already issued under existing law and regulations to a "person"?

Response: If adopted, the proposed regulations would not affect existing certificates of reservation.

Question 45: Tim Troll (Bristol Bay Heritage Land Trust) - To what extent do the proposed regulations affect applications for reservations from a "person" that have been perfected, submitted and approved by the Department pursuant to existing law and regulation, the approval of which has been appealed to and remains pending before the Commissioner?

Response: If adopted, the proposed regulations would not affect approved applications currently under appeal before the Commissioner.

Question 46: Tim Troll (Bristol Bay Heritage Land Trust) - To what extent do the proposed regulations affect applications for reservations by a "person" pursuant to existing law and regulation that are perfected, submitted and awaiting adjudication by the Department?

Response: If adopted, the proposed regulations would not affect applications for reservations of water currently awaiting adjudication by the department.

Question 47: Tim Troll (Bristol Bay Heritage Land Trust) - Did the Alaska Department of Fish & Game provide a fiscal note regarding the cost of implementing these regulations? If so, please provide a copy.

Response: No.

Question 48: Lou Brown, Krystal Lapp (Northern Alaska Environmental Center) – How would the original applicant remain involved if DNR holds the certificate for the reservation of water on behalf of the non-agency applicant?

Response: DNR will maintain periodic communication with the applicant to determine viable gaging equipment and processes so that accurate updated data is available when needed. The applicant may contact DNR at any time to discuss the reservation of water.

Question 49: Lou Brown, Krystal Lapp (Northern Alaska Environmental Center) – How would affected communities ensure the reservation is monitored, defended, and maintained over time if DNR holds the certificate for the reservation of water on behalf of the non-agency applicant?

Response: Affected communities, and any agencies or other parties, that were initially contacted during a reservation of water's public notice period will automatically receive a copy of the Review & Determination for Certification. Anyone can request information from DNR regarding any aspect of any water right, reservation of water or otherwise, either by contacting DNR's Water Resources Section or via a Public Records Request.

Question 50: Lou Brown, Krystal Lapp (Northern Alaska Environmental Center) – What happens if DNR's priorities shift or if future development proposals put pressure on reserved water if DNR holds the certificate for the reservation of water on behalf of the non-agency applicant?

Response: Authorized certificates for reservations of water are protected by AS 46.15 and 11 AAC 93 and are subject to those statutes and regulations set at the time of authorization. AS 46.15 cannot be modified without an act of state legislation. 11 AAC 93 cannot be modified without public input. Future modifications to either would not affect certificates for reservations of water that have already been authorized.

Question 51: Lou Brown, Krystal Lapp (Northern Alaska Environmental Center) - One of the most troubling parts of the proposal is the potential for costs to be assigned to applicants or certificate holders for additional research, data collection, analysis, or review methods. This could discourage Tribes, nonprofits, and public-interest applicants from even trying to protect water for salmon and wildlife. Alaska's water belongs to the public. The process for protecting public water should not depend on whether a community can afford years of technical studies or unexpected agency-directed costs.

Response: Under the proposed regulations, if the commissioner considers installing, maintaining, and monitoring equipment to be necessary, the responsibility will remain with the applicant as they are the interested party.

Question 52: Lou Brown - Alaska's water protections should be strengthened, not weakened. The goal of revising water reservation regulations should be to strengthen Alaska's ability to protect instream flows, salmon habitat, wildlife, recreation, navigation, water quality, and public use. The process should not become easier for industrial appropriation while becoming harder for public-

interest water protection. Alaska needs regulations that recognize the public value of water left in rivers, not only water removed from them.

Response: The proposed regulations do not relate to the removal of water. Rather, DNR's intent is to enhance the effectiveness and durability of reservations of water. The updates emphasize the collection of more robust data and efficiency, while allowing DNR to remain focused on balancing all beneficial uses while recognizing the high public value of water left in rivers.

Question 53: Lou Brown, Krystal Lapp (Northern Alaska Environmental Center) - DNR should revise the proposal to ensure that water reservation applications remain accessible to Tribes, communities, nonprofits, local governments, and individuals. Data requirements should be flexible and reasonable. Monitoring and reporting should be practical and scaled to the watershed. Cost-shifting should not prevent public-interest applicants from protecting salmon habitat. And any change to certificate ownership must include clear accountability to the original applicant, affected communities, and the public.

Response: These regulation changes are not intended to impose barriers. They are intended to improve the data requirements for adjudicating a reservation. We recognize the significant investment of time and resources, and under the proposed regulations, DNR holding the certificate does not diminish that effort. Instead, it ensures long-term stewardship while preserving the applicant's role in data collection, monitoring, and review processes. This approach aligns with DNR's mission to manage water as a public resource for all Alaskans, provide consistent enforcement and defense of reservations, and avoids fragmented private control.

Question 54: Adam Cuthriell (Fish Hound Expeditions) - I am against the proposed changes to 11 AAC 93. My whole existence and livelihood for myself and our 15 employees depends on the Su and its tributaries having water for healthy fish populations. As it says in our state constitution "water as a public resource, to be managed for the maximum benefit of the people. Water reservations help make sure water stays available for public values, not only for industrial or other consumptive uses." DNR needs to put Alaskans first, the fact that DNR is trying to impose such heavy bureaucracy on citizens, tribes, and other agencies for keeping water in the river is lunacy. It should be on the agencies, people, and entities who are trying to take water from the river to show and illustrate the whys and how's and potential outcomes for doing so.

Response: The proposed regulation changes are intended to strengthen – not weaken – reservations by requiring more robust data, ensuring they are durable and defensible. This protects public values like fish habitat while improving efficiency.

Question 55: Denis Ransy - Why is this public comment period only 30 days? It should be 90 days. And this comment period is coming during one of the busiest times of the year for the Alaskan public. This is what happened in 2024 during the scoping process. The comment period was during the busy summer. The instream flow reservation program is an important tool to

protect our rivers and fisheries from habitat degradation. PLEASE EXTEND THE PUBLIC COMMENT PERIOD TO 3 MONTHS.

Response: Under AS 44.62, the Alaska Administrative Procedure Act, agencies are required to provide a minimum 30-day public comment period for proposed regulations. The current comment period meets statutory requirements; DNR conducted extensive scoping in 2024 and is not extending the public notice period.

Question 56: Denis Ransy - Why is there no public hearing, both in-person and virtual, as there was during the scoping period? That public hearing was dealing with vague concepts of changes to the water reservation regulations. Now in this phase of the public process there are specific changes that the public can respond to. PLEASE HOLD A PUBLIC HEARING.

Response: The scoping phase for the proposed regulations has passed and DNR will not be holding additional public hearings.

Question 57: Denis Ransy - Why is there no scoping report that summarizes and details the scoping comments from 2024? ADNR has done this for other regulatory processes such as the Susitna Basin Recreation River Management Plan update. There were hundreds of scoping comments in 2024 from all around Alaska and the United States. Granted many of these were form letters. But there were over a hundred of original comments that were substantial and well thought out. Many scoping comments requested such a document. It is an onerous burden to go through all the public scoping comments that you have on the website. PLEASE PRODUCE A SCOPING COMMENT ANALYSIS DOCUMENT.

Response: DNR posted the 2024 scoping comments on its website for public review and will not be producing a formal summary report.

Question 58: Caitlin Hedberg (The Nature Conservancy) - TNC-AK respectfully requests that the Department extend the comment deadline by an additional 90 days. As the Department's proposed regulations seek to limit water reservation holders to being exclusively public agencies, the ability for non-public entities and persons to submit comments on a change that could substantively impact them is crucial. The initial 30-day public comment period conflicts directly with commercial fishing, subsistence activities, sport fishing, and seasonal work more broadly. As these activities are cornerstones of Alaska's economy, we know that many Alaskans will be otherwise focused and may not have the opportunity to comment during the current comment period, which will directly impact the Department's ability to receive feedback from a broad range of Alaskans. Further, since the Department is seeking to make substantive changes to regulations, a longer comment period is merited. This will serve the Department in that it will allow for more substantial feedback, which will ultimately better inform the Department's final regulations. Lastly, additional time will allow for the opportunity to evaluate the Department's responses to any questions that were submitted by the June 20th deadline and incorporate feedback accordingly.

Response: At this time, DNR is not proposing an extension of time for this public notice period.

Question 59: Caitlin Hedberg (The Nature Conservancy) - Given that AS 46.15.145 authorizes "a person" to apply to reserve water, what is the statutory and constitutional basis under which the Department is proposing to limit who may hold a certificate?

Response: AS 46.15.145 authorizes the state, its agencies or subdivision, federal agencies, or any person to *apply* for a reservation of water. The statute does not address or limit who may *hold* the certificate of reservation once it is issued.

Question 60: Caitlin Hedberg (The Nature Conservancy) - Under Alaska law, a reservation of water is a substantive property right. If finalized as proposed, will these new regulations impact existing instream flow rights holders that are not a state or federal resource management agency? If so, in what ways? How will this impact be addressed?

Response: No, the proposed regulations will not affect existing reservations of water.

Question 61: Caitlin Hedberg (The Nature Conservancy) - If finalized as proposed, will these regulations impact applications for reservations of water from non-agency applicants that have already been submitted? If so, how and to what extent? How will this impact be addressed?

Response: No, the proposed regulations will not affect existing applications for reservations of water.

Question 62: Caitlin Hedberg (The Nature Conservancy) - How does the Department intend to address the proposed changes to who can hold water reservations within the context of the State's formal recognition of Federally recognized Tribes in 2021? (Note that precedent exists for the explicit inclusion of Tribes in regulation; see 11 AAC 78.020.)

Response: The proposed regulations distinguish between applicants that are state or federal resource management agencies and all other applicants. Federally recognized tribes are not state or federal resource management agencies under the proposed regulations. Future certificates for tribal applications would therefore be issued to DNR, the same as for other non-agency applicants. These changes do not restrict tribes' rights to apply for a reservation of water under AS 46.15.145.

Question 63: Caitlin Hedberg (The Nature Conservancy) - What is the basis under which the Department is proposing add requirements for applicants, particularly regarding monitoring and measuring-device requirements?

Response: The proposed regulations strengthen application standards and clarify monitoring conditions to ensure reservations are based on robust, current data and that DNR receives the information needed to verify and manage protections over time. Requiring applicants to install, maintain, and report from approved measuring devices places responsibility on the party seeking

the reservation to provide necessary data for sound public-interest determinations, supporting more efficient adjudication and effective long-term stewardship.

Question 64: Matthew Varner (U.S. Bureau of Land Management-Alaska) - BLM is requesting a 60-day extension of the comment period to allow adequate time to fully consider DNR's response to the questions above and to further investigate and compose our comments on the revisions being proposed. This additional time would allow the BLM to fully consider the proposed changes, responses to our questions, and potential implications to compliance with Executive Order 14153 (Unleashing Alaska's Extraordinary Resource Potential). An area of key concern is the extended data collection period required to support water reservation applications, which may affect expedited permitting and leasing of energy and natural resource projects in Alaska. Given the rapidly approaching current deadline, please confirm or deny the extension by close of business 24 June 2026.

Response: At this time, DNR is not proposing an extension of time for this public notice period.

Question 65: Matthew Varner (U.S. Bureau of Land Management-Alaska) - How will the proposed changes affect the 498 pending applications awaiting adjudication that have been accepted by DNR under the regulations as they existed at the time of application?

Response: The proposed regulations will not affect existing applications for reservations of water.

Question 66: Matthew Varner (U.S. Bureau of Land Management-Alaska) - Will the applications be adjudicated according to the regulations as they existed when DNR accepted the applications as complete or be held to the new requirements of the latest proposed revisions?

Response: The proposed regulations will not affect existing applications for reservations of water.

Question 67: Matthew Varner (U.S. Bureau of Land Management-Alaska) - If revisions are made to 11 AAC 93.142(b)(9)(B) requiring fish population estimates will existing pending applications now require additional information to be adjudicated?

Response: The proposed regulations will not affect existing applications for reservations of water.

Question 68: Matthew Varner (U.S. Bureau of Land Management-Alaska) - Will applications still be accepted prior to completion of data collection and synthesis or will applications now need to be fully supported by the 5 years of collected or synthesized data at the time of application?

Response: Under the proposed regulations, applications must include a minimum of five years of monthly data to quantify the proposed reservation at the time of filing. This replaces the prior language that allowed a post-filing data collection period. The change is intended to ensure applications are supported by sufficient data from the outset, improving efficiency and quality of adjudication. Incomplete applications lacking the required data will not be accepted as complete.

Question 69: Ben Meyer & Trent Dodson (Kenai Watershed Forum) - Kenai Watershed Forum respectfully requests a 90-day extension of the public comment period for the proposed amendments to 11 AAC 93.142, 93.146, and 93.147, which implement AS 46.15.145 governing reservations of water. The current deadline of June 30, 2026 does not allow sufficient time for the public, Tribal governments, and technical experts to adequately review proposals that carry significant long-term consequences for water resource protection across Alaska.

A 90-day extension would give Kenai Watershed Forum and other affected stakeholders, including Tribal governments, conservation organizations, subsistence users, and municipal governments, the time needed for technical, legal, and community consultation. This kind of broad participation is necessary for the Department to receive comprehensive public input and to make a sound regulatory decision consistent with Alaska's constitutional obligation to manage water resources for the long-term benefit of all Alaskans.

Response: At this time, DNR is not proposing an extension of time for this public notice period.

Question 70: Deborah Pederson (Southeast Alaska Fish Habitat Partnership) - We have actively participated in the scoping process undertaken by DNR over the last 2 years on potential changes to these regulations but have not heard any input on what was learned during that process. Was there a final analysis from DNR on the scoping sessions and input provided by the public?

Response: DNR received and considered extensive public input during the 2024 scoping period. Compilations of all scoping comments are publicly available on the project webpage. DNR used that input to develop the proposed regulations now under formal public notice. No separate formal analysis document was produced beyond incorporating scoping feedback into the current proposal.

Question 71: Deborah Pederson (Southeast Alaska Fish Habitat Partnership) - Can you provide additional details on how and why these specific proposed regulation changes were identified and chosen?

Response: DNR received and considered extensive public input during the 2024 scoping period. Compilations of all scoping comments are publicly available on the project webpage. DNR used that input to develop the proposed regulations now under formal public notice.

Question 72: Deborah Pederson (Southeast Alaska Fish Habitat Partnership) - Has an impact analysis been conducted on the proposed changes to clarify how previous and future reservations will be affected?

Response: Existing reservations remain unaffected. The proposed regulations are intended to strengthen future reservations by requiring robust, current data and monitoring from the time of application. This will produce higher-quality, more defensible reservations that better support public-interest determinations. Adjudication is expected to become more efficient as applications arrive better prepared.

Question 73: Deborah Pederson (Southeast Alaska Fish Habitat Partnership) - The current concern is that the comment period for the proposed regulation changes is too short and coincides with a time when many potential commenters are in the field or consumed by summer activities. Is it possible to move this effort to the fall and extend the comment period to at least 90 days?

Response: At this time, DNR is not proposing an extension of time for this public notice period.

Question 74: Deborah Pederson (Southeast Alaska Fish Habitat Partnership) - We also need time for questions to be asked and answered well before the final comment period is due now that specific proposed regulation changes are identified. Is it possible for DNR to host a webinar during the open comment period on the proposed changes so that the public can be more fully informed and understand the impacts those changes will have?

Response: The scoping process is complete. DNR will not be hosting a webinar related to this regulation process.

Question 75: Jen Leahy (Trout Unlimited) - TU respectfully requests that DNR extend the written comment deadline by 90 days, to October 1, 2026, for the following reasons:

1. DNR is proposing substantive changes, not a routine update. The changes to 11 AAC 93.146 would, for the first time, bar non-governmental applicants from holding certificates for reservations they apply for, vesting those certificates in the Department instead. The changes to 11 AAC 93.142 would impose significantly more demanding application requirements, and the changes to 11 AAC 93.147 would shift data collection costs onto applicants. Evaluating these changes requires careful legal and technical analysis and coordination among affected parties. A 30-day window is inadequate for that task.

2. The initial 30-day comment period conflicts with seasonal work and subsistence activities. Summer is the busiest time of year for the Alaskans likely to be most affected by these proposed regulatory changes, including subsistence harvesters, fishing and hunting guides, lodge and outfitting operators, commercial fishers, and anglers. These Alaskans are currently focused on time-sensitive work and activities that cannot be deferred. This makes meaningful stakeholder coordination and engagement through September particularly difficult.

3. An extension would serve the DNR's own interest in a complete record. Thorough, well supported comments will better inform the Department's final decision and its public interest determination under AS 46.15.145 than comments compressed into an unworkable timeframe.

4. DNR has stated it will aggregate and post responses to submitted questions, but the

questions deadline (June 20) leaves little or no opportunity for the Department to respond before the comment deadline (June 30). Commenters cannot meaningfully incorporate the Department's answers if they are made available only hours or days prior to the June 30 deadline. An extension is warranted for this reason alone.

Response: At this time, DNR is not proposing an extension of time for this public notice period.

Question 76: Jen Leahy (Trout Unlimited) - To support meaningful public participation on this compressed timeline, we also request that DNR hold a recorded public Q&A session—such as an online webinar made available on the Department's website—so that all interested parties can better understand the proposed changes.

Response: The scoping process is complete. DNR will not be hosting a webinar related to this regulation process.

Question 77: Jen Leahy (Trout Unlimited) - What harm or deficiency in the administration of the existing 11 AAC 93 regulations are these proposed changes designed to address? Please identify the specific problem that each of the proposed changes to 11 AAC 93.142, .146, and .147 is intended to solve.

Response: The proposed changes address the following deficiencies in the existing regulations:

- 11 AAC 93.142 (Application content): Many applications lack sufficient current data, leading to incomplete filings, repeated information requests, adjudication delays, and weaker public-interest findings. The new regulation requirements ensure stronger applications from the outset.
- 11 AAC 93.146 (Certificate issuance and monitoring): Fragmented holdership and lack of consistent monitoring data hinder long-term stewardship and enforcement. Clarifying that DNR holds the certificate for non-agency applicants and requiring monitoring improves consistent, effective management of public resources.
- 11 AAC 93.147 (Review process): Allowing equitable cost apportionment promotes responsible stewardship while ensuring reservations remain based on current information.

Question 78: Jen Leahy (Trout Unlimited) - To inform public understanding of the need for and effect of the proposed changes, please provide the number of applications for reservations of water that have been fully adjudicated under the existing 11 AAC 93 regulations, and the timeframe over which those adjudications occurred. Have applications for reservations of water been included in any Department effort to address its backlog of pending water-appropriation applications?

Response: This question is outside the scope of the current regulation process.

Question 79: Jen Leahy (Trout Unlimited) - The notice states the proposed changes will make the reservation process more efficient, consistent, and cost-effective. Several proposed changes—

including the expanded application requirements in 11 AAC 93.142, the monitoring and measuring-device requirements in 11 AAC 93.146, and the applicant-borne review costs in 11 AAC 93.147(c)—appear to add requirements and costs for applicants. What analysis supports the conclusion that these changes, taken together, improve efficiency and reduce costs, and for whom?

Response: DNR's assessment is based on experience with the current process, where incomplete or poorly supported applications have caused repeated information requests, staff time, and adjudication delays. Requiring stronger upfront data is expected to reduce incomplete filings leading to more timely adjudication. Clearer monitoring requirements give DNR the information needed for effective long-term management. Equitable cost apportionment under the Commissioner's discretion is reinforced in the proposed regulations. The primary efficiency gains benefit the adjudication process and sustainable program administration, producing stronger, more durable reservations.

Question 80: Jen Leahy (Trout Unlimited) - The fiscal note lists state costs as $0 and states no increased appropriation is expected. Please explain how that conclusion accounts for the new responsibilities the proposal assigns to the State, including DNR's holding and administration of all non-agency certificates, ADF&G concurrence reviews, and oversight of the new monitoring, reporting, and 10-year-review obligations. If the Department concludes these activities impose no additional cost, please explain the basis for that conclusion.

Response: The reservation of water program is currently staffed and DNR does not anticipate additional staff needs. The fiscal note reflects the proposed regulations primarily clarify and reorganize existing responsibilities rather than creating substantial new workload or requiring additional resources.

Question 81: Jen Leahy (Trout Unlimited) - The additional information form accompanying the notice leaves the estimated cost to a private person blank. What is DNR's estimate of the annual cost to a private applicant of complying with the new data, property-ownership, and monitoring requirements?

Response: Applicants have always been required to provide data and are in the best position to estimate the cost based on the characteristics of the applied for reservation.

Question 82: Jen Leahy (Trout Unlimited) - In evaluating a reservation of water, DNR must consider the public interest under AS 46.15.145(b). Has the Department analyzed how the proposed changes would impact Alaska's fisheries and the businesses, communities, and subsistence harvesters who depend on those fisheries and the adequate instream flows and water levels that sustain them? If such an analysis exists, how will the Department make it available?

Response: DNR has not conducted a formal analysis.

Question 83: Jen Leahy (Trout Unlimited) - During the 2024 public scoping on possible changes to 11 AAC 93, the Department received substantial written input, including comments raising constitutional and statutory objections to restricting non-governmental entities from holding reservation certificates. How did the Department consider that scoping input in developing the current proposal, and where in the rulemaking record is the Department's consideration of that input documented?

Response: DNR reviewed all 2024 scoping comments, and input was considered in developing the current proposed regulation change. DNR determined the change is consistent with AS 46.15.145 (who may *apply*) and AS 46.15.020. DNR holdership for non-agency applicants improves consistent long-term stewardship without limiting applicant rights. Scoping comments are posted on the project webpage.

Question 84: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.146 (issuance of certificates):

The proposal would allow only state and federal resource-management agencies to hold certificates for reservations they apply for, while the Department would hold certificates for all other applicants. AS 46.15.145 authorizes "any person" to apply to reserve water, and AS 46.15.260(7) defines "person" to include individuals, partnerships, associations, and public and private corporations, among others—not only governmental entities. AS 46.15.260 further defines "appropriation" to include a reservation of water, without distinguishing among appropriators. Given these definitions, what is the statutory and constitutional basis for permitting only state and federal agencies to hold certificates for the reservations they apply for, while denying that ability to every other "person" the statute authorizes to reserve water?

Response: The proposed regulations do not limit who may apply under AS 46.15.145. The statute does not specify who holds the certificate once issued. DNR has authority under AS 46.15.020 to adopt regulations governing the administration and issuance of certificates. Issuing certificates to DNR for non-agency applicants is an administrative measure to ensure consistent, long-term stewardship of public water resources under Art. VIII of the Alaska Constitution. It does not deny any statutory right to apply.

Question 85: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.146 (issuance of certificates):

Under current law, a person who appropriates water for an out-of-stream beneficial use—such as a diversion, withdrawal, or impoundment—holds the certificate for that use. The proposed regulatory changes would treat instream beneficial uses differently: A non-governmental applicant that relies on water for an instream use could not hold the certificate for its reservation, which the Department would hold instead. What is the statutory and constitutional basis for permitting users to hold certificates for out-of-stream beneficial uses while denying that ability to users of instream beneficial uses, given that AS 46.15.260 defines a

reservation as an appropriation and lists instream and out-of-stream uses among beneficial uses without establishing a hierarchy?

Response: DNR has authority under AS 46.15.020 to adopt regulations governing the administration of water rights. Although the statute defines a reservation as an appropriation and lists both uses as beneficial, reservations are distinct in purpose and effect. They protect broad public values on a large scale rather than authorizing a specific diversion or withdrawal by the holder. The proposed regulation allows DNR to hold certificates for non-agency applicants to ensure consistent, long-term stewardship of these public-interest protections. This administrative distinction is within DNR's regulatory authority.

Question 86: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.146 (issuance of certificates):

How would the proposed changes apply to applications filed by non-governmental applicants before the effective date, such as applications already filed but not yet adjudicated, partially adjudicated, or awaiting a final decision? If such an application is granted, would the applicant hold the certificate, or would the Department? Would certificates of reservation already granted to and held by non-governmental entities be impacted, and if so, how?

Response: The proposed regulations would not affect previously submitted applications.

Question 87: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.146 (issuance of certificates):

For a reservation the Department holds on behalf of a non-governmental applicant, who is responsible for installing measuring devices and for the monitoring and reporting obligations in proposed 11 AAC 93.146—the applicant or the Department?

Response: The applicant.

Question 88: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.146 (issuance of certificates):

Under the proposal, the Department would hold the certificate for a reservation of water applied for by a non-governmental applicant. If a competing application or other challenge to that reservation later arises, what role, if any, would the original applicant have in defending the reservation, and would the applicant have standing to participate in those proceedings?

Response: The applicant would retain standing to participate in administrative proceedings challenging the reservation. DNR, as certificate holder, would be the primary party, the applicant who established the reservation could participate, should they so choose to.

Question 89: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.146 (issuance of certificates):

According to the notice, a reservation of water application for fish habitat from a private party or interest group would require concurrence from the Alaska Department of Fish and Game (ADF&G). What standard(s) would ADF&G apply in deciding whether to concur, and what happens to the application if ADF&G does not concur? Is ADF&G concurrence required for any category of out-of-stream water right? What is the statutory or regulatory basis for the concurrence requirement?

Response: Proposed revisions to 11 AAC 93.146 are unrelated to ADF&G review.

Question 90: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.146 (issuance of certificates):

In 2021, DNR issued written responses (dated March 16, 2021 and April 1, 2021) to questions on previously proposed regulatory changes, including its rationale for not issuing reservation certificates to non-governmental entities. Do the proposed regulatory changes—in particular, the changes to 11 AAC 93.146—rest on the same rationale set out in those 2021 responses, or on a different basis? If different, please state the new rationale.

Response: DNR's rationale has been consistent throughout the scoping process. DNR holding certificates for non-agency applicants supports consistent, long-term stewardship of public water resources. The current proposal incorporates input from the 2024 scoping process.

Question 91: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.146 (issuance of certificates):

Does the State's formal recognition of federally recognized Tribes (HB 123, 2021) alter the Department's position on a Tribe holding a certificate of reservation? Will the Department continue to require a waiver of sovereign immunity as a condition of a Tribal reservation, and if so, under what statutory or regulatory authority?

Response: Tribes are not state or federal resource management agencies for purposes of certificate holdership. DNR would hold certificates for tribal applications. Because tribes would not hold certificates under the proposed regulations, a waiver is not required.

Question 92: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.146 (issuance of certificates):

Under the proposed 11 AAC 93.146—where DNR would hold a certificate of reservation on behalf of a non-governmental applicant—how would the Department ensure that the reservation, and the priority of a pending, unadjudicated application for a reservation of

water, is not impaired by a temporary water use authorization on the same source?

Response: DNR protects the priority of reservation applications when processing temporary water use authorizations. DNR evaluates TWUA requests to ensure they do not impair senior rights or applications that have been accepted and assigned a priority date. This protection applies regardless of who holds the reservation certificate. The proposed regulations do not alter DNR's authority or practice in this area.

Question 93: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.142 (content of application):

Under 11 AAC 93.040, an application for other water rights requires only a statement of beneficial use. By contrast, the proposed changes to 11 AAC 93.142 would require a reservation of water applicant to provide the reason the reservation is needed, five years of quantifying data, information supporting the specific habitat improvement, the estimated number and species of fish affected, the area and quality of habitat improved, and upstream and downstream property ownership. What is the statutory or constitutional basis for imposing a significantly heavier burden on reservation of water applicants than on applicants for other water rights?

Response: DNR has authority under AS 46.15.020 to prescribe application content. Reservations of water are distinct because they protect broad public values on a large scale rather than authorizing a specific diversion or use by the applicant.

Question 94: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.142 (content of application):

How will the Department treat applications for reservations of water that rely on the best available information but do not include five years of quantifying data?

Response: Applications without five years of quantifying data will not be accepted as complete under the proposed regulations.

Question 95: Jen Leahy (Trout Unlimited) - Regarding proposed changes to 11 AAC 93.147(c) (review of reservations):

Under the proposed changes, the Department would hold reservations on behalf of non-governmental applicants. Who bears the costs of additional research, data collection, and analysis required for review, including for the 10-year reviews under AS 46.15.145(f)? Could the reservation be reduced or revoked if the original applicant does not fund that cost?

Response: Under the proposed regulations, the commissioner may equitably apportion costs. For reservations held by DNR, the original applicant would bear costs as the interested party. A

reservation cannot by reduced or revoked solely for non-payment of review costs; any amendment or revocation must be based on grounds in AS 46.15 and 11 AAC 93.

Question 96: Michael Winfree (U.S. Fish & Wildlife Service-Alaska) - The Service requests a 60-day extension of the comment period currently set to close on June 30, 2026, which would move the deadline to August 29, 2026. The Service respectfully requests a response to this extension request no later than June 23, 2026 — one week prior to the close of the current comment period — so that the Service can plan its review accordingly. If DNR is unable to grant this extension, the Service would appreciate understanding the basis for that decision.

The Service's intent in seeking additional information from DNR is to better understand how DNR will apply the proposed amended regulations, so that the Service's subsequent comments are as constructive and well-informed as possible. A 30-day comment period is insufficient to complete the comprehensive analysis these proposed changes require. An extension would allow adequate time to evaluate how the proposed regulations would affect the Service's ability to fulfill its mission and the purposes of Alaska's National Wildlife Refuge System.

Response: At this time, DNR is not proposing an extension of time for this public notice period.

Question 97: Michael Winfree (U.S. Fish & Wildlife Service-Alaska) – Regarding proposed changes to 11 AAC 93.142 — Content of Applications:

To understand how the proposed content of application requirements in 11 AAC 93.142 — including the five-year monthly data requirement in (b)(4) and the additional requirements in (b)(9) — would apply, would the proposed requirements apply to each of the following categories of applications and reviews:

• applications that were submitted and accepted as complete and assigned a priority date before the effective date of the proposed revisions, but for which adjudication has not yet begun;
• applications for which adjudication has begun but is not yet complete;
• ten-year reviews of existing certificates of reservation that are currently in progress;
• future ten-year reviews of existing certificates of reservation; and
• reservation applications or ten-year review determinations that are currently under appeal?

The Service would appreciate a response for each category.

Response: All applications that have been received by DNR that have been assigned a priority date are subject to the statutes and regulations in place at the time the priority date was assigned. All currently authorized reservations of water are also subject to the statutes and regulations in place at the time the priority date was assigned.

Question 98: Michael Winfree (U.S. Fish & Wildlife Service-Alaska) – Regarding proposed changes to 11 AAC 93.142 — Content of Applications:

The proposed amendment to 11 AAC 93.142(b)(4) removes the "time period required to fully quantify the proposed reservation." Existing 11 AAC 93.142(d) allows an applicant to request an extension of "the time period specified under (b)(4) of this section." If (b)(4) no longer establishes a time period, how does DNR intend to apply 11 AAC 93.142(d), and does DNR intend to repeal or revise subsection (d) as part of the proposed revisions to the Regulations? Existing 11 AAC 93.142(e) provides that "when the applicant completes the quantification of the proposed reservation," the applicant must notify the commissioner and submit any information that changes, adds, or deletes information presented in the original application. Because the proposed amendment to (b)(4) would require stream flow quantification data to be submitted with the application rather than after filing, how does DNR intend to apply 11 AAC 93.142(e), and will DNR repeal or revise subsection (e) as part of the proposed revisions?

Response: Thank you for this question, we will review this further as we consider comments to make changes to final regulations.

Question 99: Michael Winfree (U.S. Fish & Wildlife Service-Alaska) – Regarding proposed changes to 11 AAC 93.142 — Content of Applications:

Proposed 11 AAC 93.142(b)(9)(B) and (C) would require a reservation applicant to estimate the fish population supplying sport, commercial, and subsistence use and to estimate the effect of differing flows on the amount and quality of habitat. Does DNR intend that an applicant conduct original research to generate this population and flow-habitat information, and to what extent may an applicant instead use existing data maintained by the Alaska Department of Fish and Game, including the Alaska Freshwater Fish Inventory and the Anadromous Waters Catalog (5 AAC 95.011), to satisfy these requirements?

Response: Applicants may use existing data sources to satisfy requirements. Where existing data is limited or insufficient, applicants may need to supplement with additional analysis or data collection.

Question 100: Michael Winfree (U.S. Fish & Wildlife Service-Alaska) – Regarding proposed changes to 11 AAC 93.142 — Content of Applications:

With respect to the fish-population and flow-habitat information required under proposed 11 AAC 93.142(b)(9)(B) and (C), the Service requests clarification on the following:

• What is the specific purpose for which DNR would use this population and flow habitat information in adjudicating a reservation application, and what level of analysis would DNR consider sufficient to satisfy these requirements?
• What metrics or process would DNR use so that an applicant can determine what is

expected to satisfy these requirements?
• Would these requirements apply to every application, or would the required level of data depend on the specific conditions of the proposed reservation — such as whether there are competing or potential competing uses for the water source — consistent with the public-interest criteria in AS 46.15.080(b)? For example, where an application concerns a river reach or water body with no competing or potential competing uses, would the same fish-population and flow-habitat estimates be required?
• What additional information would the population data provide beyond the fish periodicity data that applicants already submit?

Response: The required data and information are used to determine the public interest. DNR evaluates the adequacy of analysis case-by-case, and existing data is acceptable where sufficient. Population and flow-habitat data provide more specific, quantitative support for the public interest determination than general fish presence information alone.

Question 101: Michael Winfree (U.S. Fish & Wildlife Service-Alaska) – Regarding proposed changes to 11 AAC 93.146(d):

The proposed regulation states that "the certificate of reservation will state any additional terms or conditions the commissioner considers necessary to protect the prior valid rights of other appropriators and the public interest, including … (1) measuring devices of a type and at a location approved by the commissioner must be installed and maintained by the applicant to monitor and report on the reserved instream flow or level of water at intervals approved by the commissioner."

Will DNR require water reservation certificate holders to monitor instream flows on rivers or water levels in lakes where there are no prior appropriators? In addition:

• Would such a monitoring condition have a defined duration?
• How would DNR determine whether this monitoring condition applies, and what role would the applicant have in that decision?

Response: Under the proposed regulations, DNR may require monitoring to verify the reservation and support long-term management, even in the absence of prior appropriators.

Question 102: Michael Winfree (U.S. Fish & Wildlife Service-Alaska) – Regarding proposed changes to 11 AAC 93.147(c):

Existing 11 AAC 93.147(c) provides that the costs of additional research, data collection, and analysis are borne by the state. The proposed amendment provides that, where no protest has been filed, the commissioner "may apportion the costs among the department, the applicant, or the certificate holder, as the commissioner determines to be equitable." Because 11 AAC 93.147 applies, by its terms, to the review of a reservation "after the date of issuance

of the certificate of reservation," what does DNR intend "the applicant" to mean in this context, and how would that term differ from "the certificate holder" in the review of an issued certificate of reservation?

Response: In the context of a review of an issued certificate, “the applicant” refers to the original party who applied for the reservation. “The certificate holder” refers to the entity that currently holds the certificate. The distinction allows the commissioner to equitably apportion costs to the original interested party even when DNR holds the certificate.

Question 103: Michael Winfree (U.S. Fish & Wildlife Service-Alaska) – Regarding proposed changes to 11 AAC 93.147(c):

The public notice states that under proposed 11 AAC 93.147(c) "the applicant will now be required to bear the costs of conducting additional research, data collection, and analysis for their respective certificated reservations of water," and refers to "existing applications," "outdated" applications, and "old data." Does DNR intend these cost provisions to apply only to holders of issued certificates of reservation at the time of a certificate review, or also to pending applications that have not yet been adjudicated or certificated? The Service would also appreciate DNR identifying the provision in proposed 11 AAC 93.147(c), or elsewhere in 11 AAC 93, that establishes that intended scope.

Response: The cost apportionment provisions in the proposed 11 AAC 93.147 apply to reviews of issued certificates of reservation. They do not apply to pending applications awaiting initial adjudication.

Question 104: Michael Winfree (U.S. Fish & Wildlife Service-Alaska) – Regarding implementation of the proposed regulations with respect to the backlog of pending water reservation applications:

Will DNR adjudicate the 498 applications for reservations of water currently pending, including the Service’s 202 pending applications, each of which was accepted under the regulations in effect at the time it was submitted?

• If so, what is DNR's anticipated timeline and approach for adjudicating those pending applications, and would adoption of the proposed regulations affect the rate or timeframe for addressing this backlog?
• If not, please explain how the proposed changes would apply to pending applications already on file.

Response: The proposed changes will not affect already submitted applications. The remainder of this question is outside the scope of the current regulation process.

Question 105: Michael Winfree (U.S. Fish & Wildlife Service-Alaska) – Regarding implementation of the proposed regulations with respect to the backlog of pending water reservation applications:

Does DNR anticipate that the proposed regulations will increase or decrease the time required to adjudicate a reservation of water application, and what is the basis for that expectation?

Response: DNR expects the proposed regulations to decrease the overall time required to adjudicate reservation applications. Stronger, more complete data at the time of filing is expected to reduce incomplete applications and repeated information requests that have historically contributed to delays.

Question 106: Michael Winfree (U.S. Fish & Wildlife Service-Alaska) – Regarding implementation of the proposed regulations with respect to the backlog of pending water reservation applications:

Would the proposed regulations increase the costs borne by an applicant to collect and analyze data beyond what was required when the application was filed and accepted?

Response: The data requirements would apply to new applications filed after the regulations take effect and reviews.

Question 107: Stosh Anderson - Your time frame for comments (30 days) is inadequate for the individual public and industry to adequately prepare comments or respond to posted comments and DNR response. I request a 120-day extension of comment period to enable non-summer attention be placed on this important issue. (Initially requested in Question 19)

This comment is probably out of the scope of this regulation change but does address DNR's lack of direction and focus on enabling the public access to the reservation process. Instead of focusing on using technology such as lidar radar to define stream cross-sections and satellite photograph to determine flows it is focused on defining who holds certificates and shifting field work to the public. This may reduce DNR's workload by making it more difficult for the public to file a reservation but is not in the interest of the public.

As to the substance of the proposed changes. As is attested to DNR's backlog of reservation requests by making DNR the holder of the future reservations with the unknown bureaucracy that will be created with the entity that filed and is responsible for data and any review process is uncertain.

Response: At this time, DNR is not proposing an extension to this public notice period.

Question 108: Douglas Austen (American Fisheries Society) – Section b.(4) mandates monthly collection of data for a five-year period. As the Department well knows, many data types cannot

be collected on a routine monthly schedule due to access, stream conditions (e.g. ice covered), weather, and road infrastructure, this is clearly more challenging in Alaska than elsewhere. Surrogate estimates may be required with different levels of precision and accuracy to effectively compensate for these factors. The proposed regulations appear to establish a singular data collection protocol regardless of the highly variable geographic setting and other relevant factors that impact what is practical and possible yet scientifically defensible. Furthermore, the current data collection approach allows applicants to collect at least a minimum of one year of continuous data, collect more data if mutually determined relevant, combined with scientifically acceptable hydrologic estimates to synthetically calculate and extend long-term hydrologic records including use of correlations to long term gaging site based hydrologic records.

a. What are the reasons for proposing these changes?
b. What is the scientific basis of the 5-year time period?
c. Does the state adhere to this proposed 5-year data collection standard for its stream gaging water availability inventory program?
d. Will these same types of proposed data requirements also apply to all categories of appropriations of water withdrawal, diversion, impoundment If not, why not?

Response: DNR proposed the five-year monthly data requirement to ensure reservations are supported by robust data that captures interannual variability and supports defensible public interest determinations. These requirements apply specifically to reservations and not to other appropriations, which have different purposes and data needs.

Question 109: Douglas Austen (American Fisheries Society) – Section b(6) requests that data methodology be provided by the applicant for all submissions but provides no baseline or criteria for how these will be evaluated.

Are there any approved protocols? If so, what are they?

Response: DNR does not maintain a single list of pre-approved protocols. Methodologies are evaluated individually for scientific defensibility, appropriateness for the water body, and consistency with accepted hydrologic and biologic standards.

Question 110: Douglas Austen (American Fisheries Society) – There should be a complete documentation of acceptable protocols by ADNR before these rules are approved. These new data requirements and the evaluation of submitted data, analysis, and interpretation will clearly require significant staff time and expertise.

a. Does the department currently have staff with the time allocated and with sufficient technical expertise to address these new demands?
b. If so, please list the specific positions that will be tasked with addressing this workload and their expertise.

Response: The Reservation of Water Program is currently staffed and has the expertise.

Question 111: Douglas Austen (American Fisheries Society) – Section b(9)B - specifies a that a fish population estimate be provided but there are no criteria to establish methodology, precision, and accuracy.

What are those criteria? There are approved standard methods (e.g., see American Fisheries Society publications on fish sampling) for such collection and the agency should review those and be specific about data collection and populations estimation procedures.

Response: DNR does not prescribe a methodology due to the wide variability in Alaska waters and conditions. DNR evaluates proposals individually, and often in coordination with ADF&G.

Question 112: Douglas Austen (American Fisheries Society) – Proposed language in 11 AAC 93.147(c) specifies that the cost of data collection will be the responsibility of the applicant. However, there is no language nor references provided that help applicants to develop such costs.

Will the department develop and submit for public comment and technical review a document of anticipated data collection costs prior to approval of this regulation revision to allow all parties to fully understand the cost burden that these regulations may impose?

Response: No.

Question 113: Douglas Austen (American Fisheries Society) – The proposed regulation also suggest that "old data" may not be acceptable as part of an application package. However, there is no description on what is considered "old data".

Will ADNR provide specific guidance on how it will make this determination? If so, will that guidance be made available prior to approval of these revisions? Without such guidance, this regulation modification will create substantial uncertainty and likely result in appeals and other legal means to obtain further review and documentation.

Response: DNR will evaluate data for relevance, reliability, and how well it represents current conditions, rather than applying a fixed age cutoff.

Question 114: Christopher Estes - I currently have many other significant pre-existing commitments and am unable to perform what I consider the necessary assessment of these proposed revisions and be able provide meaningful deliberative feedback without a 90 days extension of this deadline to Sept. 30. I assume other members of the public and other water stakeholders with the same or less knowledge and background than I may be in the same situation, and will not be provide a thorough review and constructive useful input based on the present June 30 deadline. I therefore formally request you to please extend the comment public comment period deadline to September 30, 2026. Please inform me when and if you will make

your determination if you provide the supplemental time requested required to complete the type of assessment and public input, I assume the state prefers to achieve to ensure that if any modifications to these regulations are adopted, they will improve the implementation of AS 46.15.145, its cost effectiveness, and best serve the public interest to meet the intended purposes of AS 46.15.145. Please also provide the rationale for not approving this request if not approved.

Response: At this time, DNR is not proposing an extension to this public notice period.

Question 115: Devony Lehner (Homer Soil and Water Conservation District) - The issue I'd like to emphasize is that the timeframe provided for review of proposed regulatory changes is WAY TOO SHORT and is scheduled during one of the busiest times of the year--that is: ONE MONTH in JUNE! That schedule absolutely does not provide the timeframe or timing needed by most interested Alaskans in order for them to review the regulatory changes and comment on them in an informed way.

As you know, June is crazy for Alaskans who have any meaningful involvement with the out-of-doors. For example, I'm currently sampling nearshore marine waters at three recreational beaches in Homer and Anchor Point in order to make sure that recreators and anglers coming in contact with those waters are not exposed to harmful levels of fecal coliform or enterococci bacteria. I'm also working on several outdoor projects related to the benefits of water levels in streams, lakes, and rivers. These kinds of projects are time and resource intensive and do not allow reviewers such as I to undertake considered review of the regulations. I know that as fellow Alaskans familiar with seasonal variations of work demands, you will understand the inappropriateness of the current review schedule.

Please extend the time we have to review the regulations proposed for water reservations so that those of us with genuine interests and knowledge can contribute in an informed and meaningful way. An extension to at least the end of September, when field seasons are largely coming to an end, would likely provide the time necessary to make informed and well-considered comments.

Response: At this time, DNR is not proposing an extension to the public notice period.

Question 116: Robert Moreland - Why are the actual proposed changes to these rules not contained in the public notice? The narrative explanation of the effect of the changes is written from the DNR perspective and is not helpful to anyone who wishes to see the changes to the rules and to draw their own conclusion as to the effect of the changes. Why is necessary to go through multiple links to see the actual changes to the language of the rules? The public notice has links relating to submission of comments and questions, with a passing reference to something called the Online Public Notice System, but no link.

Response: The proposed changes are attached to the bottom of the online public notice as a pdf file (1 – Regs for publications.pdf). The Online Public Notice can be viewed at https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=224040.

Question 117: Robert Moreland - Why is the comment period for changes of this magnitude and the opportunity to submit questions limited to 30 days, particularly during probably the busiest month of the year for Alaskans? I would request a 90 day extension of the comment period, as being in the public interest.

Response: At this time, DNR is not proposing an extension to the public notice period.

Question 118: Robert Moreland - By what authority can the DNR review public comment, make no public response, hold no public hearing on the comments and then adopt "these proposed changes to this rule or other provisions" without further notice or decide to take no action? Should the adopted changes be different than the proposed changes, without explanation or opportunity for public input, the entire proposal/adoption process may be invalid.

Response: There has already been an extensive public scoping process where all input was taken into consideration to formulate the proposed regulations. The current notice properly describes this standard process.

Question 119: Robert Moreland - Is there no requirement or mechanism to inform the public how, if at all, the public comments were considered in formulating the final changes (which the Notice says may be different from the proposed changes published for review)?

Response: The final adopted regulations will be public records. DNR has posted responses to questions during this comment period and will consider all input.

Question 120: Robert Moreland - As holder of a current water reservation, does DNR have a conflict of interest if a private party or non-profit NGO applies for and receives a water reservation which is then issued to DNR by the commissioner?

Response: DNR holding certificates is not a conflict of interest, as it is our function to responsibly manage Alaska's natural resources on behalf of the public interest.

Question 121: Nancy Wainwright (Wainwright Legal Services, LLC) - There is significant public interest in these proposed regulation changes. DNR has been considering these changes since 2016 when it issued a public notice seeking information on regulatory changes. During the intervening decade, DNR revisited the changes in 2021, held a single public meeting in 2024, and received more than 1200 pages of written comments from the public. DNR has not responded to those comments or explained why it has decided to propose virtually the same changes it initially proposed in 2016.

DNR tackled these same types of issues since passage of AS 46.15.145 in 1980 and promulgation of the associated 11 AAC 93 regulations. There are extensive records of this evolution of the application of this law including during the period when the Alaska Water Resources Board[1] was functioning to ensure a transparent process representative of all water stakeholder interests would participate in a more inclusive and balanced public process (prior to defunding this important board.) Meanwhile, despite significant funding provided by the ADF&G pursuant to a DNR Memorandum of Understanding developed in 2000, and numerous application fee assessments, DNR has failed to adjudicate hundreds of pending instream flow reservations (IFRs).

Please extend the comment period on these regulations and hold a public hearing. The extension is critical to serve the best public interest.

[1] https://www.arlis.org/docs/vol1/F/WaterResourcesBoard/FactSheet-Jan2000.pdf

Response: At this time, DNR is not extending the public comment period.

Question 122: Nancy Wainwright (Wainwright Legal Services, LLC) - Why are there no Stakeholder Meetings, no Report to Legislature and Insufficient Time to Comment?

Response: DNR conducted extensive public scoping in 2024 and is now providing a formal public notice period. DNR will consider all input before proceeding with these proposed regulations.

Question 123: Nancy Wainwright (Wainwright Legal Services, LLC) - Under the proposed regulations, will DNR recognize federally recognized Alaska Native Tribes as eligible governmental applicants for reservations of water, where the Tribe possesses demonstrated resource-management expertise and has adopted resource-management ordinances, regulations, or programs applicable to the affected waters?

Response: The proposed regulations do not change or restrict who may apply; they only clarify who holds the certificate once a reservation is granted. Tribes remain fully eligible to submit applications.

Question 124: Sarah Saunders (Earthjustice) - The Alaska Constitution and Water Use Act provide that all water is "reserved to the people for common use," Alaska Const. art. VIII, § 3; AS 46.15.030, and the Water Use Act states that "[t]he state, an agency or a political subdivision of the state, an agency of the United States, or a person may apply to the commissioner to reserve sufficient water to maintain a specified in stream flow," AS 46.15.145 (emphasis added). How is the proposed change to issue certificates of reservation only to state or federal resource management agencies consistent with these provisions?

Response: The proposed regulations do not limit who may apply under AS 46.15.145, but places holdership with DNR for non-agency applicants to ensure consistent, long-term stewardship of public water resources in accordance with Art. VIII of the Alaska Constitution.

Question 125: Sarah Saunders (Earthjustice) - The proposed changes would limit issuance of certificates of reservation to state and federal resource management agencies on the basis that it is the mission of those agencies to work in the best interests of the public. Why does the proposal not allow for issuance of certificates of reservation to Tribal governments or Tribal resource management agencies?

Response: Tribes are not classified as state or federal resource management agencies under the proposed regulations. DNR would hold certificates for tribal applications to ensure consistent, long-term stewardship of reservations of water. This is an administrative distinction and does not limit tribes' statutory right to apply.

Question 126: Sarah Saunders (Earthjustice) - The Alaska Constitution and Water Use Act prioritize in-stream and out-of-stream water use equally. Alaska Const. art. VIII, § 3; AS 46.15.030. Both in-stream reservations and out-of-stream appropriations must be in the public interest. AS 46.15.080; AS 46.15.145(c)(4). What is DNR's justification for issuing permits and certificates for out-of-stream water use to any "person" who has met the requirements for obtaining such permit or certificate, 11 AAC 93.040(a), while proposing to issue certificates of reservation only to state or federal resource management agencies?

Response: There is a distinct nature to the two types of rights. Appropriations typically authorize a specific beneficial use by the holder, whereas reservations of water protect broad public values on a large scale. Because reservations serve the common interest, DNR's proposal to place holdership with the state for non-agency applicants supports consistent, long-term stewardship and enforcement of these public resources. Both types of rights must meet the public interest, but the administrative framework can appropriately reflect their different purposes and scale.

Question 127: Sarah Saunders (Earthjustice) - The Alaska Constitution and Water Use Act prioritize in-stream and out-of-stream water use equally. Alaska Const. art. VIII § 3; AS 46.15.030. Both in-stream reservations and out-of-stream appropriations must be in the public interest and may not impair prior appropriations. AS 46.15.080(a)(1) & (4); AS 46.15.145(c)(1) & (4). What is DNR's justification for proposing to require applicants for reservations of water to provide extensive stream flow data and information regarding fish and fish habitat not required for applicants for an out-of-stream water use? See 11 AAC 93.040(c).

Response: There is a distinct nature to the two types of rights. Reservations of water protect broad public values on a large scale. Appropriations typically authorize a specific beneficial use by the applicant. The enhanced data requirements for reservations support thorough public interest determinations.

Question 128: Sarah Saunders (Earthjustice) - DNR has not been timely processing applications for reservations of water and there are many pending applications, some for more than a decade. Will these proposed new rules apply to existing applications?

Response: The proposed regulations will not affect previously accepted applications.

Question 129: Sarah Saunders (Earthjustice) - How many applications for reservations of water are currently pending and what is the average processing time?

Response: This question is outside the scope of the public notice for these proposed regulations.

Question 130: Sarah Saunders (Earthjustice) - Why has DNR not been processing applications for reservations of water?

Response: This question is outside the scope of the public notice for these proposed regulations.

* Appendix 2 *

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Alaska State Office
222 West Seventh Avenue, #13
Anchorage, Alaska 99513-7504
www.blm.gov/alaska

In Reply Refer to:
7250 (AK-931)

June 30, 2026

Brandon McCutcheon
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1020
Anchorage Alaska, 99501

Dear Mr. McCutcheon:

Thank you for the opportunity to provide comments on the proposed regulation changes to 11 AAC 93 of Alaska Administrative Code relating to the reservations of water that were summarized in an online public notice posted by the Alaska Department of Natural Resources (DNR) on May 29, 2026. This process looks to make changes to the regulations in addition to the "administrative" changes adopted on July 7, 2024. Please note, the Bureau of Land Management (BLM) submitted comments to the administrative changes process on November 22, 2023 (enclosed) that were not addressed. The regulation changes currently being proposed revisit some of the changes BLM commented in opposition to on April 5, 2021 (enclosed). Making additional changes to 11 AAC 93, as proposed in the 2026 notice, has the potential to further significantly affect procedures DNR and BLM cooperatively developed to protect the outstandingly remarkable values of BLM-administered wild and scenic rivers and fish habitat BLM manages in Alaska. BLM believes that changes to the existing regulations are not warranted at this time and may run counter to streamlining efforts.
In accordance with policy outlined in BLM Water Rights Manual MS-7250 (Sept. 2013), the bureau is directed to:

> Acquire and perfect Federal reserved water rights necessary to carry out public land management purposes. If a Federal reserved water right is not available, then acquire and perfect water rights through state law.

Since 1988, BLM has been filing for instream flow reservations of water through state law [Alaska Statute (AS) 46.15.145 and 11 AAC 93] to maintain specified instream flows for designated wild and scenic rivers. BLM collaborated with DNR to provide training and instruction on securing state-based water rights through state law. BLM and DNR also participated in the interagency Federal Reserved Water Rights Work Group, which was established in response to previous Water Use Act Amendments, to develop processes to secure instream flow water rights through the state administrative system.

Over the past 30 years, BLM has filed 25 applications for reservations of water for hundreds of miles of rivers and has received state priority dates for these reservations. Currently, all but one of BLM's applications are awaiting adjudication by DNR. BLM has acted in good faith with the state, investing substantial resources to acquire its reservations of water and other water rights needs under the Water Use Act (AS 46.15.145). Because key details in DNR's notice remain unclear, BLM is concerned the proposed regulatory changes will adversely impact both its pending applications for state-based reservations of water as well as the applications it might submit in the future.

It is important to note that the water reservation applications BLM has submitted, or submits in the future, to DNR are not a waiver of the rights of the United States under the Supremacy Clause of the United States Constitution, or of any other rights under Federal Law and in no way are intended to quantify, diminish, or otherwise affect any Federal Reserved Water Right claim.

(1) 11 AAC 93.142 - Content of application

The proposed modifications to 11 AAC 93.142 requiring applicants to provide additional information are not needed and are inconsistent with the Water Use Act and needs of applications for other purposes. The current regulation requires applicants to "identify the purpose of the proposed reservation" [11 AAC 93.142 (b)(1)] and to "explain what need exists for the proposed reservation, including reasons why the reservation is being requested" [11 AAC 93.142 (b)(3)]. It is unnecessary to modify this portion of the regulation since it currently requires applicants to both identify which of the four clearly defined purposes the reservation aims to protect and to explain the need for the identified purpose(s). The proposed changes to 11 AAC 93.142 (b)(3) do not improve the clarity of the existing language, making it an unnecessary change.

The addition of a five-year minimum of data collection along with removal of language from 11 AAC 93.142(b)(4) that allowed applications to be accepted prior to completion of data quantification jeopardizes the utility of the water reservation process as described in the Water Use Act. Acceptance of an application as complete prior to finalization of data quantification is necessary to allow timely application and reservation of water "for use of fish and to maintain habitat for fish" in consideration of the appropriation for consumptive use water consistent with

the Water Use Act [AK Stat § 46.15.035(c)(1) (2025)]. Requiring the quantification of 5-years of monthly data before submission of a water reservation application will not allow the reservation process to keep pace with the consumptive water right applications process. The timing of these processes needs to be concurrent to provide for common use of the people through general reservation for water fish and wildlife while allowing for consumptive uses as intended by the Water Use Act.

The proposed addition of specific needs for fish purpose in water reservation applications [11 AAC 93.142(b)(9)] is redundant with other requirements and inconsistently explicit of needs for only one of the four purposes. The current regulation clearly requires applicants to "identify and explain the methodology to be used to quantify the proposed reservation" [11 AAC 93.142 (6)] including explanation of collection and analysis methods for both existing data and new data to be collected in support of the application [11 AAC 93.142 (6) (A)-(C)]. This language is adequate to cover the requirements for all four purposes. Furthermore, the additional specificity of fishery data requirements to include population studies [11 AAC 93.142 (9)(B)] exceeds the requirements for inclusion into the State of Alaska's Catalog of Anadromous Waters afforded protection by AS 16.05.871. Requiring additional information to describe population level details is impractical given the seasonal variability of fish populations in Alaska river systems, sampling costs, and other factors. The documentation of species present, life stage, and timing of fish is adequate measure of the need for fishery reservations consistent with the current adopted regulations and protections of AS 16.05.871.

Proposed removal of language in 11 AAC 93.142(b)(4) orphans portions of the remaining regulation while confusing the expected timing of flow quantification and application submission. The language in 11 AAC 93.142(b)(4) specifying time for completion of quantification is necessary for 11 AAC 93.142(d) to allow for extensions to be granted at the commissioner's discretion. Retention of the extension language in 11 AAC 93.142(d) suggests that the quantification of 5 years of monthly data can continue for up to two years after submission of an application.

The requirements as stated in 11 AAC 93.142 with respect to identification of purposes and providing explanation of the need for these purposes, and the requirements of detailing data collection and analysis methods do not need modification. The existing regulations have adequately guided the existing unadjudicated BLM applications for water reservation and should remain unchanged to allow consistency in the adjudication of existing applications with future water reservation applications.

(2) 11 AAC 93.146 - Issuance of a certificate of reservation of water

The proposed changes to 11 AAC 93.146 with respect to the issuance of a certificate of reservation of water are not needed. The existing interpretation of the regulations of the statute

that certificates of reservation should be issued to the applicant [11 AAC 93.146 (b)] is correct. The Water Use Act [AS 46.15.145 (a)] clearly defines the entities that can apply for water reservations but does not explicitly state to what entity the certificate of reservation should be granted [AS 46.15.145 (c)]. Granting the certificate to an entity other than the applicant would be inconsistent with appropriative water right procedures that grant the certificate of appropriation to the applicant [AS 46.15.120 and 11 AAC 93.130 (a)]. In addition, changes to what entity might hold a reservation certificate would create an inconsistency where some applicants could not hold a reservation of water certificate, but they could have a water right or water use permit. DNR's intent appears to be to limit the holders of instream flow reservations and does not indicate if existing unadjudicated applicants would be excluded from this limitation. Denying applicants from being granted certificates on the basis of a regulation change adopted after submission of the application would contravene the vested rights BLM, and others, obtained with already-filed water reservation applications.

Changes to what entities can hold reservation certificates will also affect existing scenarios that currently allow reservations of water co-applicants to select whether to file independently or to co-file. Without additional clarification, it appears co-applicants would still be able to file under more limited conditions but creates ambiguity in the responsibility of compliance with the conditions of the certificate of reservation.

(3) 11 AAC 93.147 - Review of reservation of water

DNR's May 29, 2026 notice of proposed changes suggests that changes to the review of reservations 11 AAC 93.147 will affect the review of data included in applications. The regulation changes as proposed only pertain to the review of certificates that have been issued and do not have any connection with data required for application. BLM requested clarification of this interpretation along with two other questions via email on June 18, 2026:

> *Question 3: Changes to 11 AAC 93.147 indicates a focus on the review of existing reservations of water <u>not</u> pending reservations. The notice suggests that these changes also affect "outdated" applications. Is DNR suggesting in the notice that the proposed revision of requirements for the "10 year" review of certificates also apply to the adjudication of pending applications that were submitted but have not been acted on for many years and are now deemed "outdated"?*

DNR answered BLM's other two questions directly but did not provide an answer to this third question. Changes to the regulations for the review of certificates of reservation in 11 AAC 93.147 do not change how data should be evaluated for adjudication of water reservation applications.

* Appendix 3 *

From:	Winfree, Michael M
To:	Regulation, DNR Water (DNR sponsored)
Cc:	Mollnow, Ryan
Subject:	USFWS Questions RE: Proposed Changes to 11 AAC 93 (Reservations of Water)
Date:	Saturday, June 20, 2026 11:48:12 AM
Attachments:	20260620_USFWS_questions_for_DNR.pdf

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Dear Mr. McCutcheon,

In accordance with the May 29, 2026 public notice, attached is a letter from the U.S. Fish and Wildlife Service submitting written questions relevant to the Alaska Department of Natural Resources' proposed changes to the regulations governing reservations of water (11 AAC 93). These questions are submitted in advance of the 5:00 PM, June 20, 2026 deadline for written questions identified in the notice.

The attached letter also includes a request for a 60-day extension of the public comment period, currently set to close June 30, 2026. The Service would appreciate a response to the extension request no later than June 23, 2026.

The Service appreciates DNR's consideration of these questions and of the extension request, and looks forward to DNR's responses. If you have any questions or need additional information, please feel free to contact me.

Best regards,

Michael Winfree
Regional Water Rights Coordinator
U.S. Fish and Wildlife Service, Alaska Region
907-209-2664 | michael_winfree@fws.gov

United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE
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IN REPLY REFER TO:

FWS/R7/NWRS/NR/WRB.MW

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

Dear Mr. McCutcheon:

The U.S. Fish and Wildlife Service (Service) appreciates the opportunity to ask questions about the Alaska Department of Natural Resources' (DNR) proposed changes to the regulations implementing reservations of water (11 AAC 93) that were summarized in a public notice on May 29, 2026. In advance of the written comment deadline on June 30, 2026, the Service respectfully submits the following questions and a request for an extension of the comment period.

The Service requests a 60-day extension of the comment period currently set to close on June 30, 2026, which would move the deadline to August 29, 2026. The Service respectfully requests a response to this extension request no later than June 23, 2026 — one week prior to the close of the current comment period — so that the Service can plan its review accordingly. If DNR is unable to grant this extension, the Service would appreciate understanding the basis for that decision.

The Service has a substantial and longstanding interest in the administration of AS 46.15.145, Reservations of Water. Since 1994, the Service has filed 203 applications for reservations of water, of which 202 remain pending. To date, DNR has processed only one of these applications. Throughout this period, the Service has acted in good faith and has worked collaboratively with the State in pursuing water reservations under Alaska's Water Use Act (AS 46.15). That collaboration has included the Service's participation in the Federal Reserved Water Rights Work Group, a cooperative effort of state and federal agencies on water-rights administration in Alaska, including reservations of water under the Water Use Act. Relevant records are listed in the References at the end of this letter.

The Service's intent in seeking additional information from DNR is to better understand how DNR will apply the proposed amended regulations, so that the Service's subsequent comments are as constructive and well-informed as possible. A 30-day comment period is insufficient to complete the comprehensive analysis these proposed changes require. An extension would allow adequate time to evaluate how the proposed regulations would affect the Service's ability to fulfill its mission and the purposes of Alaska's National Wildlife Refuge System.

DNR provided information on the proposed regulations in two documents: (1) the Regs for Publication (proposed regulations), and (2) the Notice of Proposed Changes on the Reservations of Water in the Regulations of the Department of Natural Resources (public notice). The questions and requests for clarification below refer to both documents. The questions are listed in the order in which the relevant provisions appear in the proposed regulations and are not necessarily presented in order of importance to the Service.

Question 1: Proposed changes to 11 AAC 93.142 — Content of Applications.

1a: To understand how the proposed content of application requirements in 11 AAC 93.142 — including the five-year monthly data requirement in (b)(4) and the additional requirements in (b)(9) — would apply, would the proposed requirements apply to each of the following categories of applications and reviews:

- applications that were submitted and accepted as complete and assigned a priority date before the effective date of the proposed revisions, but for which adjudication has not yet begun;
- applications for which adjudication has begun but is not yet complete;
- ten-year reviews of existing certificates of reservation that are currently in progress;
- future ten-year reviews of existing certificates of reservation; and
- reservation applications or ten-year review determinations that are currently under appeal?

The Service would appreciate a response for each category.

1b: The proposed amendment to 11 AAC 93.142(b)(4) removes the "time period required to fully quantify the proposed reservation." Existing 11 AAC 93.142(d) allows an applicant to request an extension of "the time period specified under (b)(4) of this section." If (b)(4) no longer establishes a time period, how does DNR intend to apply 11 AAC 93.142(d), and does DNR intend to repeal or revise subsection (d) as part of the proposed revisions to the regulations?

1c: Existing 11 AAC 93.142(e) provides that "when the applicant completes the quantification of the proposed reservation," the applicant must notify the commissioner and submit any information that changes, adds, or deletes information presented in the original application. Because the proposed amendment to (b)(4) would require stream flow quantification data to be submitted with the application rather than after filing, how does DNR intend to apply 11 AAC 93.142(e), and will DNR repeal or revise subsection (e) as part of the proposed revisions?

1d: Proposed 11 AAC 93.142(b)(9)(B) and (C) would require a reservation applicant to estimate the fish population supplying sport, commercial, and subsistence use and to estimate the effect of differing flows on the amount and quality of habitat. Does DNR intend that an applicant conduct original research to generate this population and flow-habitat information,

and to what extent may an applicant instead use existing data maintained by the Alaska Department of Fish and Game, including the Alaska Freshwater Fish Inventory and the Anadromous Waters Catalog (5 AAC 95.011), to satisfy these requirements?

1e: With respect to the fish-population and flow-habitat information required under proposed 11 AAC 93.142(b)(9)(B) and (C), the Service requests clarification on the following:

- What is the specific purpose for which DNR would use this population and flow-habitat information in adjudicating a reservation application, and what level of analysis would DNR consider sufficient to satisfy these requirements?
- What metrics or process would DNR use so that an applicant can determine what is expected to satisfy these requirements?
- Would these requirements apply to every application, or would the required level of data depend on the specific conditions of the proposed reservation — such as whether there are competing or potential competing uses for the water source — consistent with the public-interest criteria in AS 46.15.080(b)? For example, where an application concerns a river reach or water body with no competing or potential competing uses, would the same fish-population and flow-habitat estimates be required?
- What additional information would the population data provide beyond the fish-periodicity data that applicants already submit?

Question 2: Proposed changes to 11 AAC 93.146(d).

The proposed regulation states that "the certificate of reservation will state any additional terms or conditions the commissioner considers necessary to protect the prior valid rights of other appropriators and the public interest, including … (1) measuring devices of a type and at a location approved by the commissioner must be installed and maintained by the applicant to monitor and report on the reserved instream flow or level of water at intervals approved by the commissioner."

Will DNR require water reservation certificate holders to monitor instream flows on rivers or water levels in lakes where there are no prior appropriators? In addition:

- Would such a monitoring condition have a defined duration?
- How would DNR determine whether this monitoring condition applies, and what role would the applicant have in that decision?

Question 3: Proposed changes to 11 AAC 93.147(c).

11 AAC 93.147 is titled "Review of reservation of water" in the current regulations, providing regulatory guidance for reviews of DNR-issued water reservation certificates.

3a: Existing 11 AAC 93.147(c) provides that the costs of additional research, data collection, and analysis are borne by the state. The proposed amendment provides that, where no protest

has been filed, the commissioner "may apportion the costs among the department, the applicant, or the certificate holder, as the commissioner determines to be equitable." Because 11 AAC 93.147 applies, by its terms, to the review of a reservation "after the date of issuance of the certificate of reservation," what does DNR intend "the applicant" to mean in this context, and how would that term differ from "the certificate holder" in the review of an issued certificate of reservation?

3b: The public notice states that under proposed 11 AAC 93.147(c) "the applicant will now be required to bear the costs of conducting additional research, data collection, and analysis for their respective certificated reservations of water," and refers to "existing applications," "outdated" applications, and "old data." Does DNR intend these cost provisions to apply only to holders of issued certificates of reservation at the time of a certificate review, or also to pending applications that have not yet been adjudicated or certificated? The Service would also appreciate DNR identifying the provision in proposed 11 AAC 93.147(c), or elsewhere in 11 AAC 93, that establishes that intended scope.

3c: The public notice's plain language description of proposed 11 AAC 93.147(c) appears broader than the text of the proposed regulation itself. Which document reflects DNR's intended application of the revised regulation: the public notice or the proposed regulatory text?

Question 4: Implementation of the proposed regulations with respect to the backlog of pending water reservation applications.

4a: Will DNR adjudicate the 498 applications for reservations of water currently pending, including the Service's 202 pending applications, each of which was accepted under the regulations in effect at the time it was submitted?

- If so, what is DNR's anticipated timeline and approach for adjudicating those pending applications, and would adoption of the proposed regulations affect the rate or timeframe for addressing this backlog?
- If not, please explain how the proposed changes would apply to pending applications already on file.

4b: Does DNR anticipate that the proposed regulations will increase or decrease the time required to adjudicate a reservation of water application, and what is the basis for that expectation?

4c: Would the proposed regulations increase the costs borne by an applicant to collect and analyze data beyond what was required when the application was filed and accepted?

The Service appreciates DNR's consideration of these questions and of the Service's request for an extension, and looks forward to DNR's responses. Those responses will help ensure that the

Service's official comments on the proposed changes to 11 AAC 93 are accurate, constructive, and grounded in a clear understanding of how the regulations are intended to operate.

If you need clarification on any of these questions, or would like further information, please contact the Service's Regional Water Rights Coordinator, Michael Winfree, by telephone at 907-209-2664 or by electronic mail at michael_winfree@fws.gov.

Sincerely,

Michael Winfree
Regional Water Rights Coordinator
U.S. Fish and Wildlife Service, Alaska Region

References

Federal Reserved Water Rights, State-Federal Agency Meeting, Anchorage, AK, August 29, 1985

Federal Reserved Water Rights Work Group, Anchorage, Alaska, November 7, 1985

Federal Reserved Water Rights Work Group, November 13, 1986

Alaska Resources Library and Information Services (ARLIS): https://www.arlis.org/docs/vol1/L/AlaskaWaterRights/

cc: Ryan Mollnow, Division Lead, Natural Resources, U.S. Fish and Wildlife Service, Alaska Region