

**Questions and Answers Regarding Proposed Water Regulations**  
**Division of Mining, Land and Water**  
**Department of Natural Resources**  
**March 16, 2021**

**Questions Regarding Proposed Changes to 11 AAC 93.115**

**Question:** What are the purposes for limiting notices under 11 AAC 93.115 for closures of an application?

**Answer:** The proposed revisions only remove a reference to the appeals process, consistent with closure notices issued elsewhere in the regulations of the Department of Natural Resources (DNR).

**Question:** Regarding 11 AAC 93.115(1), why is there inconsistency between sections of the proposed regulations with regards to newspaper notification? In the opening section, not completing the notification is grounds for closing the application, where later in the document the newspaper requirement is eliminated. Which section is correct?

**Answer:** There are no changes to 11 AAC 93.115(1). 11 AAC 93.115(4) applies only to the closure of a water right application and the draft regulations are making the closure of an application language consistent with DNR's process for application closures. The only proposed change in this section is the removal of 'and any appeal process.'

**Question:** What administrative appeal process is available for an applicant under 11 AAC 93.115(3) and (4)?

**Answer:** As stated in the existing version of 11 AAC 93.300, appeals arising from 11 AAC 93.115(3) and (4) by an eligible person affected by a decision are in accordance with 11 AAC 02. The appeal process is typically referenced with the decision documents with certificates. There are no proposed changes to the appeal process.

**Question:** Regarding 11 AAC 93.115(4), please provide the rationale for removing the text referencing the appeal process. Does this mean that any appeal process is eliminated? Does this mean a notification is eliminated that any appeal process is available?

**Answer:** See answer to previous question. The appeal process is unaffected, only the language referencing the appeal process is removed from this section. Because the appeal process is described by regulation, further description of the appeal process in the certified mail notice is unnecessary.

**Question:** Regarding 11 AAC 93.115(4), why is the appeal process only required for consumptive water use while being eliminated for non-consumptive, instream reservations?

**Answer:** See answer to previous question. The appeal process is not changing, either for consumptive water use or instream flow reservations.

### Questions Regarding Proposed Changes to 11 AAC 93.142

**Question:** Please provide definitions for the following terms referenced in 11 AAC 93.142:

- a. 'Purported need'
- b. 'Applicable' data – is that different than 'best data available'?

**Answer:**

- a) 'Purported need' is not defined in the regulations. The Department of Natural Resources (DNR) may change the term for clarity or may consider adding a definition of this or another term.
- b) 'Applicable data' is not defined in the regulations. Refer to a dictionary or a common usage definition for guidance.

**Question:** Regarding 11 AAC 93.142(b)(3), why is the wording changed? The law already defines four purposes, so the addition of the term 'purported' would seem to add ambiguity where it does not exist. Why is this not consistent for all water rights uses, both reservations and consumptive uses, when they are all appropriated waters?

**Answer:** See answer to previous question. The proposed revision is intended to have the applicant state why a reservation of water is being requested and list the need. There may not be unilateral agreement that a reservation of water is needed. Stronger need statements in applications should provide clarity to why a reservation is necessary, which may stand up to potential challenges to the decision to issue a reservation of water.

**Question:** Will the proposed addition of 'purported need' also be applied to other types of appropriated water rights such as withdrawals, diversions, and impoundments?

**Answer:** No, the other appropriations require a statement of beneficial use.

**Question:** Regarding 11 AAC 93.142(b)(8), what criteria or guidelines deem data 'applicable' in this context? It is not defined and should be the same across all appropriated waters.

**Answer:** The data provided should relate to the purpose for which the reservation is being requested. A common use definition of the term 'applicable' can be found in a dictionary; however, DNR is considering adding a definition for the term.

**Question:** Regarding 11 AAC 93.142(b)(8), will a clear definition of 'purported need' be included in the definitions listed in 11 AAC 93.970?

**Answer:** See answers to previous questions regarding 'purported need.' DNR is considering changing the term and potentially adding the term to the definitions section.

### Questions Regarding Proposed Changes to 11 AAC 93.146

**Question:** Regarding proposed 11 AAC 93.146(b), what are the reasons for proposing that only a governmental agency (and in the case of non-governmental applicants, only DNR) may be the holder of a water reservation?

**Answer:** AS 46.15.145(c) requires the commissioner of DNR to issue a water reservation certificate where the reservation is justified. The statute does not specify to whom the certificate should be issued, leaving it to the commissioner's discretion. Issuing certificates of reservation to a resource agency will avoid any potential inference that a private interest holds a private, exclusive management authority over public water. Unlike water appropriation certificates under AS 46.15.040, which may be issued to private 'persons' for their beneficial use, instream flow reservations serve a public purpose.

**Question:** What specific past experiences, if any, have caused DNR to move forward with this proposal that eliminates the holding of a water reservation by a non-governmental organization?

**Answer:** See previous response. Issuing reservations to the state or its political subdivisions is consistent with the Alaska Constitution. A review of existing authorizations reveals that only four reservations of water are currently held by a non-governmental organization, with many complete applications accepted and awaiting adjudication.

**Question:** Why has the agency not proposed a change to existing law (specifically AS 46.15.145(a)) to delete the reference to a 'person' as a proper applicant for a reservation of water, and the proper holder of such a reservation, if issued?

**Answer:** The proposed regulation recognizes that a 'person' (including non-governmental persons or entities) is a proper applicant, in accordance with the statute. Issuance of the reservation to a government entity, regardless of the applicant, is likewise consistent with the statute, which does not specify to whom the reservation should be issued.

**Question:** Why has DNR decided to pursue this change in ownership of a water reservation under AS 46.15.145(a) from a non-government organization to DNR by regulatory change, instead of by amending the statute? In 2014, House Bill 77 proposed to amend the law by eliminating a 'person' as an authorized holder of a water reservation. There was strong opposition to this proposed statutory change, and it was not enacted.

**Answer:** See response to previous question.

**Question:** What is the definition of a 'person' in AS 46.15.145(a) that would exclude (or conversely, include) a 'person' as being, or not being, an authorized water reservation holder under that statute?

**Answer:** See response to above question. AS 46.15.145 does not specify to whom a reservation of water should be issued.

**Question:** Does the proposed revision to 11 AAC 93.146, which allows an applicant to be a person, but prohibits a person from holding the certificate, comport with the statutory language found in AS 46.15.145? Has there been an analysis of this issue? Will the public be able to receive a copy of this analysis? What is the reason for treating a 'person' differently than any other applicant? Was there an analysis of whether the certificate of reservation could be more properly held by a state agency other than DNR?

**Answer:** See responses to previous questions. As stated above, the proposed regulation is consistent with the statute. Under the proposed 11 AAC 93.146(g), non-government applicants will “have standing to initiate or participate in any administrative or judicial proceeding regarding the department’s adjudication of the application or the management of the certificate.” Existing water reservation certificates that have been issued to non-governmental organizations will not be changed (currently there are four).

**Question:** Regarding proposed 11 AAC 93.146, exactly how does this change comply with the Alaska Constitution provision stating that “[w]herever occurring in a natural state, the water is reserved to the people for common use (see Article VIII § 3) “and is subject to appropriation and beneficial use and to the reservation of instream flows....”? See AS 46.15.030.

**Answer:** See answers to previous questions. No changes are proposed in the regulations concerning who may apply for a reservation of water, only which agency may hold the certificate once adjudicated.

**Question:** What legal rights does a certificate holder of an instream water right possess under the current rules which would be lost under the newly proposed rules?

**Answer:** A certificate holder of an instream water reservation will not lose any legal rights associated with the certificate under the proposed regulations. If adopted, the regulations will not be retroactive.

**Question:** How will an applicant’s rights and responsibilities differ under the proposed regulations if the certificate of reservation is issued to DNR, compared to their rights and responsibilities under the current regulations? Will the applicant have the same rights to enforce the reservation, receive notice of and to participate in administrative actions affecting the reservation, and appeal or seek judicial review? If DNR’s response is that there is no change, why is DNR proposing the changes to 11 AAC 93.115 - 147?

**Answer:** Under the proposed regulations a non-government applicant will no longer be responsible for complying with the conditions of the certificate of reservation after the issuance of the certificate to DNR. The applicant may, however, have some continuing responsibility to provide information to the agency related to the reservation during review periods identified under AS 46.15.145(f) or if the applicant believes that the flow is being affected by water rights or temporary use authorizations established after the date the reservation was certificated. This represents a change from the existing regulations. The non-government applicant will have the same legal rights as the certificate holder, as stated in proposed 11 AAC 93.146(g).

**Question:** Under the proposed rules, what legal rights would an applicant for an instream flow reservation have if DNR refused or failed to enforce the instream flow right for which the applicant applied? Could the applicant obtain relief in court, and if so, would the remedies be under statutory law, common law, or both?

**Answer:** See response to previous questions. Under proposed 11 AAC 93.146(g), the applicant for and the holder of a certificate of reservation will have the same legal remedies, even if they are different persons or entities.

**Question:** Are federally-recognized Indian tribes in Alaska considered government entities or political subdivisions with respect to 11 AAC 93.146? If not, why not?

**Answer:** Proposed 11 AAC 93.146(g) refers to a “state or federal agency, or a political subdivision of the state.” Federally recognized Indian tribes in Alaska that apply for water reservations should make their own evaluation of whether they meet this criterion. Upon application submission, DNR will consider each application to determine whether the applicant meets the criterion.

**Question:** If tribes are eliminated from the ability to apply for and be granted a water reservation, except through DNR as the actual certificate holder, does this conflict with federal law?

**Answer:** There are no changes to the proposed regulations concerning who can apply for a reservation of water.

**Question:** As ‘government entities’ appears to only apply to state and federal agencies or ‘political subdivisions,’ are municipalities excluded from applying for and holding certificates? If so, why?

**Answer:** Municipalities are considered political subdivisions of the state.

**Question:** Has there been an assessment of whether these proposed applicant options might encourage tribal entities, which are considered by the state to be private entities, to instead pursue federal reserved water rights if they can no longer file independently as private entities under AS 46.15.145 and retain sole or co-ownership of their certificate of reservation?

**Answer:** The proposed regulations do not affect the rights of tribal entities to apply for state water reservations.

**Question:** If DNR adopts the proposed changes to 11 AAC 93.146(b), would a regional, village, or urban Alaska Native corporation be able to hold a certificate of reservation?

**Answer:** Proposed 11 AAC 93.146(g) refers to a “state or federal agency, or a political subdivision of the state.” Regional, village, or urban Alaska Native corporations that apply for water reservations should make their own evaluation of whether they meet this criterion. Upon application submission, DNR will consider each application to determine whether the applicant meets the criterion.

**Question:** Are state-owned corporations such as the Alaska Energy Corporation and the Alaska Industrial Development and Export Authority, or state-supported land managers such as the Mental Health Land Trust and the University Lands trust, considered political subdivisions of the state?

**Answer:** Proposed 11 AAC 93.146(g) refers to a “state or federal agency, or a political subdivision of the state.” Entities such as the Alaska Energy Authority, the Alaska Industrial Development and Export Authority, the Mental Health Land Trust, or the University Lands trust that apply for water reservations should make their own evaluation of whether they meet this criterion. Upon application submission, DNR will consider each application to determine whether the applicant meets the criterion.

**Question:** If DNR adopts the proposed changes to 11 AAC 93.146(b), would a power producer such as Chugach Electric Association be able to hold a certificate of reservation?

**Answer:** Proposed 11 AAC 93.146(g) refers to a “state or federal agency, or a political subdivision of the state.” Entities such as Chugach Electric Association should make their own evaluation of whether they meet this criterion. Upon application submission, DNR will consider each application to determine whether the applicant meets the criterion.

**Question:** If adopted, how would the proposed changes to 11 AAC 93.146(b) affect an existing certificate for a reservation that DNR already issued to an entity that is not a state or federal agency or political subdivision of the state?

**Answer:** Changes will not be applied to existing certificate holders. Any certificates issued to a ‘persons’ (as defined in law) prior to these regulation changes will remain the same.

**Question:** The application process is costly and time-consuming. Does DNR intend to compensate the ‘person’ applicant for the costs associated with pursuing the application, or does the state intend to ‘take’ the certificate, which is the fruit of the ‘person’ applicant’s efforts?

**Answer:** The new regulations will only apply to applications submitted after adoption of the regulations. If the proposed regulations are adopted, future non-governmental applicants will be aware that the costs associated with the application will result in certificate issuance (if approved) to a government agency. Based on the issuance of the requested certificate and based upon the applicant’s rights under 11 AAC 93.146(g), the applicant will enjoy the ‘fruits’ of the application.

**Question:** Regarding 11 AAC 93.146(b), would DNR be the sole certificate holder in the case of a joint application? The joint application guidelines and criteria are not explicitly stated in the proposed revision. Can entities that are not considered under one of the above criteria be a co-applicant with an entity that meets the above definition?

**Answer:** The proposed regulations do not prohibit co-applications. Under the proposed regulations, in the event of a joint application by a non-government applicant and a government applicant, the certificate will be issued to the government applicant only.

**Question:** Please clarify if co-applicants would still be able to continue to file with the proposed text changes, and whether the full responsibility of compliance with the conditions of the certificate of reservation would rest solely with the state or federal agency or a political subdivision of the state. How will this work as proposed?

**Answer:** See answer to question above. Under the proposed regulation, the government certificate holder will be responsible for compliance with the conditions of the certificate of reservation.

**Question:** Will a non-government applicant have the opportunity to designate which government department or agency (state, federal, political subdivision, or possibly tribe) it would prefer be substituted as applicant and certificate holder?

**Answer:** The non-government applicant can partner with a government resource agency (with subject agency consent) but the certificate will be issued to one agency. DNR would encourage any applicant to work with the most relevant resource agency during the application process.

**Question:** What legal rights does a non-government applicant (and/or certificate holder) have under the current regulations that it will lose under the proposed regulations?

**Answer:** There will be no loss of legal rights to the non-government entity. They will have standing as described in proposed 11 AAC 93.146(b).

**Question:** If DNR is proposing to assume responsibility for all instream flow reservations from 'non-governmental applicants' and carry out the duties required of certificate holders, will there be costs associated with these new DNR responsibilities?

**Answer:** Under the proposed regulations, the government agency certificate holder will be responsible for compliance with the conditions of the certificate reservation. The certificate holder is not prohibited from partnering with a non-government entity regarding costs, but responsibility lies with the certificate holder.

**Question:** Has DNR calculated or considered the costs to 'non-governmental applicants' from the loss of their ability to obtain a certificate of reservation?

**Answer:** Non-governmental entities do not lose their ability to apply for a reservation of water and will still have standing as specified in 11 AAC 93.146(g). They will not be responsible for compliance with the conditions of the certificate of reservation and therefore, will not bear associated costs.

**Question:** Under the proposed regulations, would non-government 'applicants' be entitled to notice and an opportunity to review and comment on applications for temporary water use permits in waters where an applicant has 'standing' under proposed 11 AAC 93.146(g) but DNR holds the certificate of reservation?

**Answer:** Under AS 46.15.155(d), DNR is not required to provide public notice of a temporary water use authorization.

**Question:** Would a mining interest still be able to file for a reservation of water to maintain adequate volumes of water to comply with dilution or temperature water quality standards by partnering and co-filing with the Department of Environmental Conservation (DEC) or have the option to select DEC to serve as their trustee to hold their reservation of water if they couldn't file alone under this proposal?

**Answer:** A mining interest that applies for a reservation for one or more of the purposes stated in AS 46.15.145 would be entitled to co-file with DEC. If the mining interest is not a government agency, the certificate would be issued to DEC.

**Question:** Would a lodge or cabin owner living on a remote lake still be able to partner and co-file a reservation of water to maintain a lake level for recreation and/or navigation on the lake with either the Division of Mining, Land and Water or other divisions within DNR such as the Division of Parks and Outdoor Recreation if they could not file alone under this proposal?

**Answer:** Yes.

**Question:** Regarding 11 AAC 93.146(b), the change in terms from ‘applicant’ to ‘certificate holder’ appears to make priority the date of adjudication (issued certificate) rather than the application date and could potentially allow consumptive use of waters to adversely impact the purposes for the reservation. What is the rationale for this change, and will there be a legislated timeline for adjudication?

**Answer:** The priority date of an issued certificate is the same date that a complete application was accepted by DNR. The wording was changed from ‘applicant’ to ‘certificate holder’ to make it clear that the certificate holder is responsible for compliance with the conditions of the certificate of reservation.

**Question:** Under proposed 11 AAC 93.146(b), is there an administrative appeal process or any other remedy available for an applicant if the certificate holder of that applicant's reservation does not comply with the conditions of the certificate?

**Answer:** Under proposed 11 AAC 93.146(g), an applicant has “standing to initiate or participate in any administrative or judicial proceedings regarding... the management of the certificate.”

**Question:** Under proposed 11 AAC 93.146(c)(2), what is the administrative appeal process or other remedy for an applicant if the applicant determines that the certificate holder is improperly administering the certificate?

**Answer:** See answer to previous question.

**Question:** Under proposed 11 AAC 93.146(d)(2), the reservation will be reviewed by the commissioner within a specified period of time. How will DNR address potential due process and conflict-of-interest issues presented by having the commissioner review a certificate that the commissioner holds?

**Answer:** This section of the regulation has not changed. In the event a non-government applicant is concerned about the commissioner’s review of a corresponding certificate issued to DNR, the non-government applicant would qualify as an interested party in the commissioner’s review. Under 11 AAC 93.147 (d), the commissioner will provide written notice as required in 11 AAC 93.145(a) of the review. Under 11 AAC 93.145(a), interested parties who have filed a request with DNR to receive notice are entitled to such notice.

**Question:** Under proposed 11 AAC 93.146(e), the priority is linked to the issuance of a certificate of reservation of water. Does this proposed language eliminate the priority of an applicant for a reservation of water until the certificate of reservation is issued by DNR, if there are subsequent junior applications to divert, withdraw or impound water or temporary water use authorizations?

**Answer:** Under proposed 11 AAC 93.146(e), the priority of a certificate relates back to the date of application acceptance. The purpose for the proposed revision is to clarify the current regulation.



**Question:** How does 11 AAC 93.146(e) affect the standing of an applicant for a reservation of water (whose certificate has not yet been issued) in administrative or judicial proceedings regarding the adjudication of the application to divert, withdraw or impound water or temporary water use authorizations?

**Answer:** Under proposed 11 AAC 93.146(g), the applicant has standing regardless of whether the certificate has been issued.

**Question:** Regarding 11 AAC 93.146(e), AS 46.15.050 defines priority dates for appropriated uses and should be consistent with all of those uses. With no defined timelines for evaluating applications, how can existing applicants express their rights with respect to temporary water use permits, as has been done since 1980, to protect those values for which the application was made?

**Answer:** The intent of the draft regulatory change was to make clear that the priority date for a reservation of water certificate is the date the application was accepted and considered complete by DNR, much the same as traditional water rights. Nothing is changed with respect to existing applicants' ability to express themselves.

**Question:** Regarding 11 AAC 93.146(e), how will DNR determine the priority of an application for a reservation for which it has not yet issued a certificate? Will the priority of an uncertified application be the date the application was accepted by DNR for filing, or will an uncertified application not receive priority until such a time as when DNR might issue a certificate?

**Answer:** The priority date and laws regarding priority dates are not changed. When a complete application is received by DNR, it receives a date stamp which will become the priority date, if and when the application goes to certificate.

**Question:** The change to 11 AAC 93.146(e) reads as follows "Pursuant to AS 46.15.050, the [THE] priority of an issued certificate of reservation of water [A RESERVATION OF WATER] is the date the application for such certificate was accepted by the department for filing." Please clarify the intent of this deletion and insertion.

**Answer:** The proposed revisions are editorial changes and help to clarify that the priority date of an issued certificate of reservation is the day the application was accepted for filing by DNR.

**Question:** Under proposed 11 AAC 93.146(f), the applicant is responsible for securing necessary permits and licenses. What other permits or licenses are, or would be, necessary for the applicant to apply for a reservation of water? If there are other permits or licenses required, will all holders (including DNR) be required to obtain those permits/licenses?

**Answer:** This section of regulation did not change. The potential need for permits or licenses depends on the circumstances specific to the reservation, including the purpose(s) under AS 46.15.145.

**Question:** In 11 AAC 93.146, new subsection (g) provides that the 'person' applicant will have standing to initiate or participate in any administrative or judicial proceeding regarding the department's adjudication of the application or the management of the certificate. Has an

analysis been undertaken demonstrating how this would occur? What is intended if the 'person' applicant and DNR differ on discretionary decisions with respect to the certificate?

**Answer:** The new subsection (g) is intended to give the applicant standing as described. Whether the applicant who initiates or participates in proceedings is a non-government 'person' or a government agency 'person,' such as BLM (which may be a certificate holder as well as an applicant), DNR's discretionary decision-making authority remains the same. Should the person disagree with DNR's decisions, they may have the opportunity to appeal as described in the existing regulations.

**Question:** In 11 AAC 93.146(g), what is the definition of 'standing' in this change in the statutes?

**Answer:** 'Standing' is not defined in the regulations. Refer to a legal dictionary or caselaw for guidance.

**Question:** What was the DNR's intent in proposing 11 AAC 93.146(g)?

**Answer:** AS 46.15.145(c) requires the commissioner to issue a water reservation certificate where the reservation is justified. The statute does not specify to whom the certificate should be issued, leaving it to the commissioner's discretion. Issuing certificates of reservation to a resource agency will avoid any potential inference that a private interest holds a private, exclusive management authority over public water.

**Question:** Does the addition of 11 AAC 93.146(g) affect the ten year review process? If so, how?

**Answer:** In the event a non-government applicant is concerned about the commissioner's review of a corresponding certificate issued to a governmental agency, the non-government applicant would qualify as an interested party in the commissioner's review. Under 11 AAC 93.147(d), the commissioner will provide written notice as provided in 11 AAC 93.145(a) of the review. Under 11 AAC 93.145(a), interested parties who have filed a request with the department to receive notice are entitled to such notice.

**Question:** As proposed, would an applicant for a certificate of reservation of water issued under AS 46.15.145 have standing to initiate an administrative or judicial proceeding regarding DNR's management of the certificate? In the event there is an unsuccessful applicant (perhaps where there were competing applicants and only one was successful) would the unsuccessful applicant also have standing to initiate an administrative or judicial proceeding regarding DNR's management of the certificate?

**Answer:** Under proposed 11 AAC 93.146(g), the applicant for and the holder of a certificate of reservation will have the same legal remedies, even if they are different persons or entities. The proposed regulations do not speak to legal remedies of unsuccessful applicants.

**Question:** Please define 'management of the certificate' as contemplated by DNR in the proposed language above.

**Answer:** 'Management of the certificate' refers to compliance with conditions of the certificate of reservation under 11 AAC 93.146(b). The applicant may have some continuing responsibility

to provide information to the agency related to the reservation during review periods identified under AS 46.15.145(f) or if the applicant believes that the flow is being affected by water rights or temporary use authorizations established after the reservation priority date.

**Question:** Under 11 AAC 93.146(g), do other agencies and the public have the right to comment on the adjudication process?

**Answer:** This proposed provision identifies both the applicant for and the holder of a water reservation certificate as persons who have standing to initiate or participate in administrative or judicial proceedings regarding DNR's adjudication of the application or the management of the certificate. This does not change other regulations regarding public comment during the adjudication process. See 11 AAC 93.145.

**Question:** Under 11 AAC 93.146(g), does an applicant lose 'standing' if they do not comment?

**Answer:** No. This question appears to confuse 'standing' to initiate/participate in administrative or judicial proceedings and the public comment process under 11 AAC 93.145.

**Question:** Does the addition of 11 AAC 93.146(g) restrict the U.S. Fish and Wildlife Service from commenting on the adjudication process when they are not the applicant or the certificate holder?

**Answer:** No. This question appears to confuse 'standing' to initiate/participate in administrative or judicial proceedings and the public comment process under 11 AAC 93.145. Anyone (both agency and public) can comment on a specific application when it is out for public notice.

**Question:** Regarding 11 AAC 93.146(g), does only the certificate holder and application have standing, to the elimination of other stakeholders, including other state and federal agencies, the public, and tribes? Is the ten year review included as an administrative or judicial action? The purpose of this addition is not clear.

**Answer:** The intent of this change was to add that the applicant for and the holder of a certificate both have standing. This is because under the proposed regulations the applicant and the certificate holder may not be the same person or entity. This change does not affect other persons' or entities' status.

### **Questions Regarding Proposed Changes to 11 AAC 93.147**

**Question:** Regarding 11 AAC 93.147, please provide a definition for 'original need.'

**Answer:** 'Original need' is the need as stated in the application.

**Question:** Regarding 11 AAC 93.147, why are there not clear timelines identified for the agency to issue a decision once an application is considered complete?

**Answer:** This proposed amended regulation and the current 11 AAC 93.147 do not address issuance of a decision on the application. These regulations address the review of existing reservations and subsequent to issuance of the certificate.

**Question:** Regarding 11 AAC 93.147, where are the clear guidelines or specific criteria of what constitutes a complete application?

**Answer:** See response to previous question.

**Question:** Regarding 11 AAC 93.147(b)(2), why is the word 'original' inserted here rather than evaluation based on any existing need at the time of the review?

**Answer:** The reason for the addition of the word 'original' is to make the need analysis consistent with the 'purposes' analysis in 11 AAC 93.147(b)(1).

**Question:** The proposed regulations add the word 'original' into the statements referring to the purpose of the reservation. What is the purpose for adding this word and how will DNR interpret the term?

**Answer:** See answer to previous question.

**Question:** Under what clear circumstances is DNR basing a finding that the original purpose for the reservation of water or the circumstances of the 'original' findings of fact have been significantly altered by subsequent events? Where is the appeal process or opportunity for the applicant to respond to such a finding?

**Answer:** The circumstances under which DNR would find that the original purpose for the reservation has changed or the 'original findings of fact have been significantly altered' would depend upon the information evaluated at the time of the review. When any decision is made, there will always be the right to appeal, as stated in 11 AAC 93.300.

**Question:** How does delay in adjudicating an application affect a difference in the original findings?

**Answer:** This question does not relate to the proposed regulation changes.

**Question:** What prevents DNR from just sitting on an application until the required data within the application is no longer relevant?

**Answer:** This question does not relate to the proposed regulation changes.

**Question:** Does a subsequent application for the same waterbody, such as a temporary water use application, count as significantly altering the circumstances?

**Answer:** This question does not relate to the proposed regulation changes.

**Question:** Regarding 11 AAC 93.147, why is the ten year review only an aspect of the non-consumptive, instream reservation of water and not other appropriated uses?

**Answer:** The ten year review for a reservation of water is addressed in AS 46.15.145(f).

**Question:** Per proposed applicant option changes to 11 AAC 93.147(a)(3), would it be clearer to use 'junior' instead of 'subsequent'?

**Answer:** DNR opted to use 'subsequent' because in rare instances, some uses of water, though applied later in time, can have a preferred use under AS 46.15.150 and 11 AAC 230.

**Question:** Regarding proposed 11 AAC 93.147(a)(4), can a certificate be abandoned, conveyed, transferred, assigned, or converted without the consent of the original applicant?

**Answer:** In the event a non-government applicant is concerned about the commissioner's review of a corresponding certificate issued to a governmental agency, the non-government applicant would qualify as an interested party in the commissioner's review. Under 11 AAC 93.147(d), the commissioner will provide written notice as provided in 11 AAC 93.145(a) of the review. Under 11 AAC 93.145(a), interested parties who have filed a request with the department to receive notice are entitled to such notice.

### Questions Regarding Proposed Changes to 11 AAC 93.210

**Question:** Regarding 11 AAC 93.210:

- (a) Exactly where can the definition or guidance on adjudicating 'for good cause' be found?
- (b) What is the distinction between a timeframe based on 'the use' versus the timeframe established in the authorization? Is the 'consecutive years' clause based on continuous use of the water or the term of the authorization?
- (c) How does it serve the public for extensions to be granted 'at the discretion of the Department' without a public process?

**Answer:**

- (a) This question does not appear to relate to the proposed regulation changes. 'Good cause' is not defined in the regulations and is a term that is unchanged in these proposed changes. Refer to a dictionary or the common usage definition for guidance. In practice, the extension is usually requested to accommodate delayed or unfinished work.
- (b) This question does not appear to relate to the proposed regulation changes. The term of a temporary water use authorization is limited to five consecutive years total.
- (c) This question does not appear to relate to the proposed regulation changes. Pursuant to 46.15.155 (d), DNR is not required to provide public notice.

**Question:** Regarding 11 AAC 93.210(a), why is this proposed change needed?

**Answer:** The proposed additional language is intended to provide clarity concerning how the waters could be previously appropriated.

**Question:** Regarding 11 AAC 93.210(a), what protections are there for applicants against adverse impacts caused by temporary water uses?

**Answer:** This question does not appear to relate to the proposed regulation changes. Temporary water use authorizations are revocable.

**Question:** The new language for 11 AAC 93.210(a) calls for a 'certificate of reservation' rather than an active application for a reservation.

- (a) Please explain the implications to an applicant and a certificate holder for a reservation of water or a water right relative to a temporary water use under 11 AAC 93.210.
- (b) Will an applicant, prior to issuance of a certificate, have priority if the temporary water use will potentially harm the applicant's reservation or water right?
- (c) How often can a temporary water use be reissued?

(d) Will DNR issue certificates of reservation prior to granting temporary water use permits on water systems with pending instream flow reservation applications?

**Answer:**

(a) An applicant does not have a certificate of reservation, and therefore does not have an appropriation right. Temporary water use will only be authorized if there is unappropriated water remaining.

(b) If a reservation of water application is still waiting to be adjudicated, the temporary water use authorization may give consideration to the reservation application, and in most cases, there will be conditions on the authorization regarding the applied-for reservation.

(c) Temporary water use authorizations are only issued for up to five years total. Example: a developer applies for temporary water use for two years, but the project is delayed. They may request a change for an additional three years maximum, for a total of five years. Temporary water use authorizations are also revocable at any time by DNR.

(d) DNR may issue a temporary authorization on a water body with a pending instream flow reservation, but only for the water that remains unappropriated after considering the reservation of water.

**Question:** Regarding 11 AAC 93.210(c), the way the inserted text reads suggests that a ‘temporary’ permit could be issued and could be valid for up to ten years. Could you clarify the purpose of this change and provide a scenario where a ten year permit could be considered a ‘temporary’ permit under current regulations. Is there a stipulation that after this period, no new permit could be issued for the same use, or would another permit grant another potential ten years of ‘temporary’ use?

**Answer:** The draft regulations were revised to make clear that a temporary water use authorization is issued for up to five years. Occasionally, projects apply for a lesser timeframe, but are delayed. This allows for a one-time extension not to exceed five years total.

### **Questions Regarding Proposed Changes to 11 AAC 93.510**

**Question:** If the other changes (11 AAC 93.146) are made, is there a reason why a ‘person’ applicant was not included in the list of those to be notified? What was the reason for the modification to subparagraph (c) that gives the commissioner, at ‘his or her discretion,’ the ability to hold a ‘meeting’ instead of a ‘hearing’ with no requirement to take written or oral comments? What will this ‘meeting’ look like, and will written or oral comments be taken? Why is this modification necessary? What problem does it address?

**Answer:** Water reservation applicants, whether governmental or non-governmental applicants, will be on the list of those to be notified. DNR will consider amending 11 AAC 93.510(b)(3) to specify that water reservation applicants will receive notice. Regarding the second question, the intention of making a meeting discretionary, and to characterize this as a meeting as opposed to a hearing, is to make the process less formal. In the 55 year history of the water use act, only two critical water management areas have been established. Records from one hearing on St. Paul Island indicate that nobody attended the hearing. More recently, at an informal hearing in the community of Moose Creek in July 2020, DNR provided outreach and responded to

questions in the form of a meeting. DNR expects to continue the practice of holding meetings but reserves discretionary authority in the event there is no public interest in attending a meeting.

**Question:** Regarding 11 AAC 93.510, why is the terminology changing from ‘hearing’ to ‘meeting’? Is there a formal hearing process that makes it more cumbersome? There is also no allowance for the use of new technology to facilitate a meeting, including virtual forms that could provide better access, particularly to underserved communities that may be important stakeholders.

**Answer:** See response to previous question.

**Question:** Please provide a definition for ‘meeting.’

**Answer:** Meetings are more flexible than the original hearings that were referenced in existing regulations and allow more flexibility in how they are conducted. Refer to a dictionary or a common usage definition for guidance.

**Question:** Proposed 11 AAC 93.510(c) proposes a public ‘meeting’ as opposed to a public ‘hearing.’ What is the difference between a ‘meeting’ and a ‘hearing’? Will the public be permitted to speak at the meeting? Is DNR required to keep records of comments at a public meeting? Is DNR required to respond to comments taken at a public meeting? Will DNR take minutes at a public meeting and make those minutes available for public review?

**Answer:** See responses to questions above. The intent of offering a meeting instead of a hearing is to allow for conversational communication. DNR will respond to questions and will keep records of comments and any minutes recorded. These will become public records. DNR’s intention is to allow the public to provide testimony and to record comments for consideration of a proposed critical water management area (CWMA).

**Question:** Regarding 11 AAC 93.510(c)(1), please provide a summary of how many hearings in the past have been conducted under this existing regulation, including the name of water sources/locations and critical water management issue(s) that triggered the hearing.

**Answer:** A hearing for a proposed CWMA on St. Paul Island resulted in no public attendees. In the community of Moose Creek in July 2020, DNR provided outreach and responded to questions at an informal hearing concerning DNR’s proposed CWMA relating to contaminated surface and groundwater subject to a remedial action by the U.S. Air Force, the EPA, and DEC. Hearings were conducted in the affected communities for each of the previous two CWMAs.

**Question:** Regarding 11 AAC 93.510, does the public meeting record give the same weight to public comments as in a hearing? If not, how does this change add to the clarity sought by these changes?

**Answer:** Equivalent weight is given to comments provided at meetings and hearings. The intent of changing from a hearing to a public meeting is to open the forum to a more interactive presentation and potential discussion.

**Question:** One of the proposed changes is to limit input from the community, is this correct?

**Answer:** It is presumed that this question relates to the proposed amendments to 11 AAC 93.510, including amendments regarding public notice and meetings as opposed to hearings. There is no intention to limit input from the community. The proposed amendments will allow DNR to provide notice to the public in a more targeted, cost-effective, and efficient manner, while still allowing adequate notice and time for the public to comment on proposed designations.

**Question:** DNR is limiting public notice in proposed 11 AAC 93.510 and 11 AAC 93.530.

(a) Why is DNR changing the public notice provisions to only the Alaska Online Public Notice System when many residents of rural villages have no internet access?

(b) Is this more limited notice inconsistent with Article VIII, section 10 and AS 38.05.945 notice requirements?

**Answer:** The public notice process under proposed 11 AAC 93.510 is intended to open the notification process to include the Alaska Online Public Notice System and electronic notification, which is not referenced in the current regulation. The requirement to reach all the affected parties listed in 11 AAC 93.510(b)(1) – (5) by a variety of means, with less dependence solely on a 'newspaper of general circulation within the affected area' expands notification methods. These changes do not preclude notice by other means to serve more remote locations.

**Question:** Regarding proposed 11 AAC 93.510, what is the basis for eliminating notice to those who request notice in writing?

**Answer:** Public notice requirements under 11 AAC 93.510(a) have been modernized to include electronic notification using the Alaska Online Public Notice system and electronic mail. Additional means of notice are described in proposed 11 AAC 93.510(b).

**Question:** Regarding 11 AAC 93.510, how does DNR plan on notifying concerned parties who do not internet access or are at fish camp or on a fishing boat during the comment period?

**Answer:** See answers to previous questions. Notifications are sent by mail and the methods listed in 11 AAC 93.510(b). Newspaper advertising may still occur if there is a newspaper of general circulation in the subject area.

**Question:** Regarding 11 AAC 93.510, how does DNR plan on complying with the Americans with Disabilities Act (ADA) on public notice?

**Answer:** ADA compliance is achieved through 11 AAC 93.510(b). The intent of the changes is to provide more options for notifying affected parties.

**Question:** Regarding 11 AAC 93.510, how does DNR plan on notifying rural communities without high-speed internet, those who are older than 65, those who have lower incomes, those who lack high-school diplomas, and other parties who are disproportionately cut off from the internet in far higher numbers than the average member of the public?

**Answer:** See answers to previous questions on this topic. Electronic notice is not the only means of notifying affected parties. Provisions under proposed subsection 11 AAC 93.510(b)



include several options, such as email, mail, or other means to provide notice to property owners in the area, appropriators of record on a water source, existing applicants for a water source, existing applicants or holders of a temporary use authorization, and affected state and local agencies, including affected regional or village tribes. The proposed changes provide notice to a more extensive list of people and entities than current regulations.

**Question:** Typically, an affidavit of publication in a newspaper of general circulation is used to verify that the public was notified of an agency action. How does DNR archive or verify publication of notice only done electronically and overcome the greater scrutiny applied by the courts subject to digital evidence over evidence published in newspapers?

**Answer:** DNR complies with applicable procedures for archiving electronic records.

**Question:** Why do the proposed changes to 11 AAC 93.510 eliminate the requirement for the agency to provide the public with at least 30 days' notice of the agency's intent to hold a public meeting, including the date, time, and place?

**Answer:** The requirement for 30 days' notice was not eliminated in 11 AAC 93.510(a).

**Question:** Regarding 11 AAC 93.510, does DNR intend to provide a map of the location of the critical management area and language that is easily understood by private citizens in each public notice?

**Answer:** DNR intends to provide a map of the CWMA in the public notice. Maps of existing CWMA areas and proposed CWMAs are also posted on DNR's website and in Alaska Mapper.

**Question:** How many geographic or hydrologic areas has DNR designated as critical water management areas to date?

**Answer:** Auke Bay community once had a CWMA, St. Paul Island currently has a CWMA, and the U.S. Air Force petitioned DNR for a CWMA in the community of Moose Creek in 2019.

**Question:** Proposed 11 AAC 93.510(b)(5) proposes to give notice to any 'affected regional or village corporation' but not to any affected tribe. What is the basis for providing notice to Native corporations but not to tribes, given Administrative Orders 123, 186, and 300 and Alaska Attorney General's Opinion of October 19, 2017 recognizing tribal sovereignty? In some areas of Alaska, the village corporations created under the Alaska Native Claims Settlement Act (ANCSA) ceased to exist due to mergers with regional corporations. The authority over the merged village corporations' ANCSA lands was retained by the governing body of the tribe. What notice will DNR provide to tribes in that situation?

**Answer:** DNR will revise the provision to add affected tribes to the list of entities to receive notice. Every effort is made to contact each affected party within a CWMA.

**Question:** Proposed 11 AAC 93.510(a) fails to provide the same notice required under 11 AAC 93.080(5) to those "whose request to receive written notice is on file with the department." What is the basis for eliminating notice to those who request notice in writing?

**Answer:** Notice requirements under 11 AAC 93.510(a) pertain only to a proposed CWMA and are managed separately from water right and reservation of water public notice requirements

in 11 AAC 93.080. The intent of the proposed regulatory change is to update the notification process to include the Alaska Online Public Notice System. Every reasonable effort will be made to notify owners of property, appropriators of record, existing applicants for water rights and temporary water use authorizations, and various political entities.

### Questions Regarding Proposed Changes to 11 AAC 93.970

**Question:** Regarding 11 AAC 93.970(25), what is the basis for the exclusion of applicants as ‘appropriators of record’ that has been applied since the 1980s? Is this consistent for all types of appropriated water?

**Answer:** The purpose for the proposed change to 11 AAC 93. 970(25) is to define an ‘appropriator of record’ to conform to AS 46.15. AS 46.15.260(1), which defines ‘appropriate’ as “to divert, impound, or withdraw a quantity of water from a source of water, for a beneficial use or to reserve water under AS 46.15.145.” AS 46.15.260(2) defines ‘appropriation’ as the “diversion, impounding, or withdrawal of a quantity of water from a source of water for a beneficial use or the reservation of water under AS 46.15 .145.” In order to ‘appropriate’ or to engage in an ‘appropriation’ the person or entity must possess a permit certificate. Thus, applicants whose applications have not been adjudicated and decided do not possess a right to ‘appropriate’ or engage in ‘appropriations.’

**Question:** Regarding 11 AAC 93.970(25), please explain the implications to an applicant of removing ‘applicant’ from the definition of ‘appropriator of record’ as related:

- (a) to the content of an application,
- (b) completeness of an application,
- (c) the adjudication of an application,
- (d) and the issuance of a certificate of a reservation of water or water right?

**Answer:** See response to previous question.

**Question:** Proposed 11 AAC 93.970(25) changes the definition of ‘appropriators of record.’ There appears to be an incomplete sentence in this proposed regulation (ending with ‘or change permit.’ What is the complete sentence?

**Answer:** ‘Change permit’ refers to a change made with respect to an existing permit to appropriate or certificate of appropriation. See 11 AAC 93.930.

**Question:** Regarding 11 AAC 93.970(25), does this change in definition affect the priority date of an applicant for appropriation or reservation for instream flow?

**Answer:** No. Pursuant to a as 46.15.050(b), the priority of an appropriation dates from the filing of the application with the commissioner. Under 11 AAC 93.146(e), the priority of an issued certificate of reservation of water is the date the application for such certificate was accepted by DNR for filing. The fact that applicants are not appropriators of record does not affect the priority date. However, the appropriation exists only upon issuance of the permit or certificate.

### General Questions Regarding Proposed Changes

**Question:** Can DNR hold public hearings on the proposed regulations? If yes, why is DNR not holding public hearings?

**Answer:** The changes to the regulations are largely administrative and are intended to provide clarity to applicants, resulting in more complete applications and a public notice process under 11 AAC 93.510 that is consistent with the public notice process elsewhere in DNR's regulations. Given the volume of comments and diverse viewpoints, there is little advantage to conducting a hearing. All reasonable comments will be tabularized and made available for concerned parties to see by e-mailed response and online.

**Question:** Does DNR only intend the regulations to apply prospectively, or does DNR also intend to apply the regulations retroactively?

(a) If so, how does this affect individuals and organization who currently hold reservations (or who have applications submitted) but are not federal agencies or 'political subdivisions of the state'?

(i) Can DNR unilaterally decide to end the certificate or transfer it to DNR itself based solely on the new language defining who can be issued a certificate?

(ii) What legal rights does an individual or organization have when the new language takes effect, including rights to renew a certificate?

(b) If not, how will management and adjudication be affected given two different kinds of certificate holders?

(i) Would the certificate be transferred to DNR when the applicant requests a renewal or requests some change in the certificate based on changes that have affected the 'need/purpose'?

(ii) Can DNR unilaterally decide to review the application of an individual or organization after the changes and take it away or transfer it to DNR itself based solely on the new language on who can be issued a certificate, and not based on an updated decision on the 'need' for the reservation?

**Answer:** The revised regulations apply prospectively.

**Question:** What provisions are proposed or will be adopted by ADNR to reimburse a non-government applicant for the considerable expenses it has incurred in documenting a successful water reservation application that is applied for after the regulatory change had become effective?

**Answer:** Expenses will not be reimbursed. If the application results in the issuance of a certificate of reservation, the non-government applicant's expenses will result in the successful creation of a reservation.

**Question:** Has there been any interagency review of the draft regulations before their release? If so, which agencies reviewed the draft regulations? What dates did the agencies review the draft regulations?

**Answer:** The draft regulations were reviewed by the Department of Fish and Game and the Department of Environmental Conservation, and the agency review period was October 23, 2020 through November 6, 2020.

**Question:** Can the comment period be extended to allow time to review the Questions and Answers document before submitting comments?

**Answer:** DNR extended the comment period for three weeks, until March 19, 2021, and will extend it again for another two weeks, with a new comment deadline of April 2, 2021.

**Question:** DNR's Dear Alaskan letter dated January 15, 2021, states "...Regulations regarding the appropriation and use of water have not been substantially revised since 2004..." Are any of these regulation proposals based on the attached DNR's public scoping notice dated March 18, 2016? If so:

(a) Which ones, and

(b) Are the public scoping comments available for review?

**Answer:** The scoping comments have been provided under a separate public records request.

**Question:** Under the proposed rules, how can DNR maintain its public trust obligations under Article VIII of the Alaska Constitution for withdrawals from a waterbody if the water right certificate holder is a private entity?

**Answer:** Water rights are typically for private entities to use a specific volume of water (appropriation) for a specific beneficial use, consistent with Article VIII, Section 13. Priority of appropriation shall give prior right.

**Question:** Under the proposed rules, does Article VIII, Section 17, of the Alaska Constitution allow DNR to lawfully require instream flow certificates to be held by DNR, while water rights certificates for water withdrawals will continue to be held by private entities?

**Answer:** See answer to previous question. Reservations of water are not an appropriation for a private entity's unique use. A reservation of water is an allocation intended to remain in the waterbody for a given purpose (there are four purpose categories) for the benefit of the public.

**Question:** Trout Unlimited (TU) has submitted multiple applications for reservations to DNR, and has waited many years for DNR to issue certificates for those outstanding applications. TU submitted several of its applications more than a decade ago. When does DNR intend to determine whether TU's applications meet the requirements of AS 46.15.145 and, if the requirements are met, issue a certificate for reservation for TU's applications? If DNR adopts the proposed changes to 11 AAC 93.146(b) and finds TU's applications meet the requirements of AS 46.15.145, would DNR issue a certificate of reservation to TU?

**Answer:** Except for the final question, these questions do not relate to the proposed regulation changes. Regarding the final question, the regulations in existence when Trout Unlimited applied will apply.

**Question:** What other questions have been asked of you regarding these proposed regulations? What are the DNR's responses to those questions?

**Answer:** DNR's responses to all of the submitted questions are contained in this document.

**Question:** The notice of proposed changes to regulations states that the statutory authority for the regulations is based, in part, on the authority in AS 46.15.020. AS 46.15.020(b)(5)(C), provides that the commissioner will report to the legislature, before February 1, each year, the recommendations for changes in state water law. These proposed regulations will affect the legal rights of holders of certificates of reservations of water, applications for reservations of water (including those pending adjudication or pending completion of adjudication), temporary water use permits, critical water management processes, and public stakeholder interests.

(a) Has the commissioner reported these proposed changes to the legislature?

(b) What was the date of that report to the legislature?

**Answer:** The requirement for the commissioner to report recommendations for changes to water law pertains to statutory changes, not changes to regulations. However, changes to water regulations were mentioned in DNR's January 2021 Annual Report to the Legislature.

**Question:** The public notice of the proposed regulations references numerous statutory authorities for the entire suite of proposed regulations. AS 44.62.040(b) requires that for each adopted regulation the agency cite the general authority under which the regulation is adopted as well as citation of specific statutory sections being implemented, interpreted, or made clear. Will DNR please provide:

(a) the specific statutory authority and the statutory sections being implemented, interpreted, or made specific for each proposed regulation?

(b) DNR's objectives to be accomplished for each of the proposed regulation?

**Answer:** This request seeks information that is not required with respect to proposed regulations out for public comment.

**Question:** The Additional Regulation Notice Information (attached to the Notice of Proposed Changes dated January 15, 2021) states the 'cost to comply with the proposed action' is \$0.00 for private persons, state agencies, municipalities, and the implementing state agency.

(a) If DNR is proposing to assume responsibility for all instream flow reservations from non-governmental applicants and carry out the duties required of certificate holders (such as compliance with terms and conditions of certificates of reservation) will there be costs associated with these new DNR responsibilities?

(b) Are there potential costs to DNR for reimbursing the non-government applicants whose applications are pending prior to the adoption of proposed regulations for their funds expended on (1) flow data gathering, (2) applications, (3) legal costs associated with their applications?

(c) Has DNR calculated or considered the costs to non-governmental applicants from the loss of their ability to obtain a certificate of reservation?

**Answer:**

(a) DNR is not presuming it will carry out all duties required of certificate holders as the applicant will retain some responsibilities as noted in DNR response on page 4 above.

(b) There are no anticipated additional costs to DNR for reimbursing applicants. The regulations as proposed do not apply retroactively. Costs associated with data acquisition and continued monitoring are case specific and will be addressed on a case-by-case basis with the applicant. The applicant's objective of establishing a reservation of water is accomplished, regardless of the name on the certificate.

(c) A reservation of water is not for the beneficial use of the applicant like a water right. It is for a reservation of a state resource in the public interest for common use.

**Question:** Under these proposed regulations, is there a change proposed in the authority and mandates of the Alaska Department of Fish and Game, and especially for instream flow water rights? If so, please describe the effects of any such proposed changes.

**Answer:** The proposed regulations do not address the authority or mandates of the Alaska Department of Fish and Game.

**Question:** Is the Notice of Proposed Changes dated January 15, 2021 the only analysis of the proposed regulatory changes? If not, is the more complete analysis available to the public?

**Answer:** The January 15, 2021 notice is the only analysis available outside of DNR's deliberative process.

**Question:** In the cover letter from DNR, as a rationale for the regulations is an assertion that some regulations are not consistent with applicable statutes. Which current regulations are not consistent with the relevant statutory provisions?

**Answer:** Elsewhere in these responses DNR has explained that the purpose for the proposed change to 11 AAC 93. 970(25) is to define an 'appropriator of record' to conform to AS 46.15. With respect to other revisions, DNR's answers explain how the revisions provide clearer consistency with statutes.

**Question:** Regarding the Dear Alaskan letter, the basis for many of the changes is unclear. Agencies have a duty to explain the purpose of individual changes proposed to regulations. Please provide a section-by-section explanation of the proposed changes.

**Answer:** The proposed changes are expressed in a clear manner, as required in the Alaska Department of Law's Drafting Manual for Administrative Regulations.

**Question:** Regarding the Dear Alaskan letter, exactly how do these changes guarantee consistent approach, review, and issuance of the applications?

**Answer:** Appeals to decisions and comments received on noticed applications have followed a trend that indicates more information could better support applications.

**Question:** Regarding the Dear Alaskan letter, is DNR planning to add clarity to this rule in guidance and policy documents establishing this clarity outside the public process?

**Answer:** No other guidance or policy documents are planned at this time.

**Question:** Has the Alaska Department of Law produced an opinion on these proposed changes?

**Answer:** DNR's consultations with the Alaska Department of Law are subject to the attorney-client privilege.

**Question:** Please provide budget documentation for where DNR has access to enough funding to adequately acquire and properly administer instream rights.

**Answer:** DNR has not developed budget documentation to support developing applications for reservations of water. Future department budgets are subject to legislative appropriation.

**Question:** The state is acting as both the proprietor and enforcer of water rights. Where in the suggested changes guard against bias in adjudication or resolution of water disputes?

**Answer:** The suggested changes and the existing regulations provide mechanisms for public comment, participation in administrative or judicial proceedings, and appeals.

**Question:** Where in the proposed changes is DNR responsible for monitoring and enforcement?

**Answer:** The proposed regulations do not address enforcement. Under proposed 11 AAC 93.146(b), where DNR holds a Water Reservation Certificate, DNR will be responsible for compliance with the conditions of the certificate.

**Question:** If the proposed amendments to existing water regulations are instituted, what effect does that have on existing and future Alaska Native tribal applications for instream flow reservations for the purpose of protection of fish and wildlife habitat, migration, and propagation?

**Answer:** There are no changes to the proposed regulations concerning who can apply for a reservation of water. Regional, village, or urban Alaska Native corporations should make their own evaluation as to whether they should apply for a reservation of water. Upon application submission, DNR will consider each application to determine whether the applicant meets the criterion. The new regulations will only apply to applications submitted after adoption of the regulations.

**Question:** If the proposed amendments to existing water regulations are instituted, what are the impacts or potential impacts for those who hold an existing water right for an out-of-stream withdrawal? For example, for LAS 26428, where the grantees of a certificate of a water right have the right to withdraw 500 gallons per day for specific purposes, what are the impacts?

**Answer:** There will be no impacts to out-of-stream appropriations (traditional water rights) due to these proposed changes in the water regulations.

**Question:** AS 46.15.145 states "the 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 instream flow." How does DNR compensate for the loss of a property right if this is applied retroactively?

**Answer:** This question does not relate to the proposed regulation changes. The proposed regulations, if adopted, will not be retroactive.