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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Molly Benson, Department of Natural Resources

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: June 7, 2024

RE: Filed Permanent Regulations: Department of Natural Resources

Department of Natural Resources regulations re: Water Management (Part 1)
(11 AAC 93)

Attorney General File:	2020200431.001
Regulation Filed:	6/7/2024
Effective Date:	7/7/2024
Print:	251, October 2024

cc with enclosures: Colleen Bailey, Department of Law
Judy Herndon, LexisNexis



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

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June 6, 2024

The Honorable Nancy Dahlstrom
Lieutenant Governor
State of Alaska
P.O. Box 110015
Juneau, AK 99811-0015

Re: *11 AAC 93: DNR - Water Management (Part 1)*
Our file: 2020200431

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Department of Natural Resources against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This letter constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Department of Natural Resources after the close of the public comment period.

The regulations concern application closure for a water right, temporary water uses, and public notices and meetings for critical water management areas. After review of public comments, the department has postponed proposed changes relating to applications and certificates for instream flow reservations.

The November 6, 2023 public notice and the June 4, 2024 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.060 is not required.

No technical corrections were necessary to conform the regulations in accordance with AS 44.62.060.

Sincerely,

TREG TAYLOR
ATTORNEY GENERAL

By: **Rebecca C. Polizzotto** Digitally signed by
Rebecca C. Polizzotto
Date: 2024.06.06
11:50:50 -08'00'
Rebecca C. Polizzotto
Chief Assistant Attorney General
Legislation, Regulations, and
Legislative Research Section

RCP/scw

CC w/enclosure: Molly Benson, Regulations Contact
Department of Natural Resources

Dana S. Burke, Assistant Attorney General
Department of Law

Steven C. Weaver, Assistant Attorney General
Department of Law

ORDER ADOPTING CHANGES TO REGULATIONS
OF DEPARTMENT OF NATURAL RESOURCES

The attached six pages of regulations, dealing with water management in 11 AAC 93, are adopted and certified to be a correct copy of the regulation changes that the Department of Natural Resources adopts under the authority of AS 38.05.020 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Natural Resources paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 6/4/2024




John Boyle, Commissioner
Alaska Department of Natural Resources

FILING CERTIFICATION

Trail Simpson for

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on

June 7, 2024, at 10:15 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for 

Lieutenant Governor *Nancy Dahlstrom*

Effective: July 7, 2024.

Register: 251, October 2024.

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, NANCY DAHLSTROM, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

April Simpson, Regulations and Initiatives Specialist

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on May 15th, 2023.



A handwritten signature in blue ink, reading "Nancy Dahlstrom", is written over a horizontal dotted line.

**NANCY DAHLSTROM
LIEUTENANT GOVERNOR**

11 AAC 93.115 is amended to read:

11 AAC 93.115. Closure of an application for a water right. The commissioner may close a [A] pending water right application and the department's application file [WILL, IN THE COMMISSIONER'S DISCRETION, BE CLOSED] if

(1) the applicant informs the commissioner, in writing, or by filing a notice of relinquishment, that the applicant has abandoned plans to develop the water source or use, in which case **the commissioner may** close the application [WILL, IN HIS OR HER DISCRETION, BE CLOSED BY THE COMMISSIONER] without further correspondence with the applicant;

(2) the applicant informs the commissioner orally that the applicant has abandoned plans to develop the water source **or** [AND] use, in which case the **commissioner will notify the** applicant [WILL BE NOTIFIED] in writing that the application is closed as a consequence of the oral notice;

(3) the commissioner is unable to locate the applicant by certified mail at the address on file in order to adjudicate the application, in which case **the commissioner may close** the application [WILL, IN THE COMMISSIONER'S DISCRETION, BE CLOSED] without further correspondence [BY THE COMMISSIONER] with the applicant;

(4) the applicant fails to provide information requested under 11 AAC 93.070 or fails to complete the newspaper notice of the proposed appropriation, in which case the **commissioner will notify the** applicant [WILL BE NOTIFIED] by certified mail that the application has been closed, noting the reason for **and effective date of** the closure [, THE EFFECTIVE DATE OF THE CLOSURE, AND ANY APPEAL PROCESS]. (Eff. 11/7/90, Register 116; am 7 / 7 / 2024, Register 251.)

Authority: AS 46.15.020 AS 46.15.133

11 AAC 93.210(a) is amended to read:

(a) Procedures to authorize the temporary use of water, as provided in 11 AAC 93.220, will apply if the use continues for less than five consecutive years and the water applied for is not otherwise appropriated **under a permit to appropriate water, certificate of appropriation, certificate of reservation, or change permit.**

11 AAC 93.210(c) is amended to read:

(c) Upon the commissioner's receipt of a written request from the permittee, **the commissioner may, for good cause, extend one time** an authorization for temporary use of water. **The temporary use may not** [WILL, IN THE COMMISSIONER'S DISCRETION, BE EXTENDED ONE TIME FOR GOOD CAUSE FOR A PERIOD OF TIME NOT TO] exceed five years, **including the extension and the initial time period for which that authorization was issued.** The request for an extension of the authorization for temporary use of water must be accompanied by the fee prescribed in 11 AAC 05.260. (Eff. 2/8/67, Register 23; am 12/29/79, Register 72; am 11/7/90, Register 116; am 9/16/92, Register 123; am 8/20/2004, Register 171; am 7 / 7 / 2024, Register 251)

Authority: AS 46.15.020 AS 46.15.133 AS 46.15.155
AS 46.15.040

11 AAC 93.220(b)(2) is amended to read:

(2) a map identifying the section, township, range, and meridian, and indicating

the location [,] of the property, the point of withdrawal, diversion, or impoundment, [AND] the point of use, and the point of discharge or return flow, if any;

(Eff. 12/29/79, Register 72; am 11/7/90, Register 116; am 8/20/2004, Register 171; am 7/1/2018, Register 227; am 7 / 7 / 2024, Register 251)

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

11 AAC 93.510 is repealed and readopted to read:

11 AAC 93.510. Public notice and meeting. (a) Before the commissioner designates a geographic or hydrologic area as a critical water management area or revokes or amends a designation, the department will post a notice of the proposed action on the Alaska Online Public Notice System (AS 44.62.175) for at least 30 days and will allow an opportunity of at least 30 days for comment by mail, by electronic mail, or through the Alaska Online Public Notice System. For the department to consider a comment, the comment must be received not later than the last day of the comment period.

(b) At the same time that the department posts a notice under (a) of this section on the Alaska Online Public Notice System, the department will provide the notice by mail, electronic mail, or other means to

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

(2) appropriators of record on a water source affected by the proposed designation, revocation, or amendment;

(3) existing applicants for appropriations of water on a water source affected by

the proposed designation, revocation, or amendment;

(4) existing applicants for, or holders of, a temporary water use authorization on a water source affected by the proposed designation, revocation, or amendment;

(5) affected federal, state, and local agencies, including the Department of Fish and Game and the Department of Environmental Conservation; and

(6) any affected regional or village corporation organized under 43 U.S.C. 1601 - 1629h (Alaska Native Claims Settlement Act).

(c) The commissioner may

(1) hold a public meeting at a location within or in close proximity to the geographic area affected by the proposed designation, revocation, or amendment;

(2) extend the public notice and comment period; the department will post notice of any extension on the Alaska Online Public Notice System for the duration of the extension and will provide notice to persons under (b) of this section. (Eff. 11/7/90, Register 116; am

7 / 7 / 2024, Register 251)

Authority: AS 46.15.010 AS 46.15.020

11 AAC 93.530(a) is amended to read:

(a) **Not later than** [WITHIN] 30 days after signing a department order to designate a geographic or hydrologic area as a critical water management area [,] or revoke or amend a designation, the commissioner will announce the decision by **posting** [PUBLISHING] the order **on the Alaska Online Public Notice System (AS 44.62.175) and mailing the order** [IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AFFECTED AREA ONCE A WEEK FOR FOUR CONSECUTIVE WEEKS. THE ORDER WILL ALSO BE MAILED] to

(1) applicants for appropriations of water in the affected area;

(2) appropriators [, PERMITTEES OR CERTIFICATE HOLDERS] of record **in the affected area;**

(3) [AND] property owners [OF RECORD] in the **affected** area;

(4) affected federal, state, and local agencies, **including the Department of Fish and Game and the Department of Environmental Conservation;** [,] and

(5) any affected regional and village corporations **organized under 43 U.S.C. 1601 - 1629h (Alaska Native Claims Settlement Act).**

(Eff. 11/7/90, Register 116; am 8/20/2004, Register 171; am 7 / 7 / 2024, Register 251)

Authority: AS 46.15.010 AS 46.15.180 AS 46.15.255
AS 46.15.020 AS 46.15.250 AS 46.15.256

11 AAC 93.970(4) is amended to read:

(4) "commissioner" means the commissioner of **natural resources, or the commissioner's** [OF THE DEPARTMENT OF NATURAL RESOURCES OR HIS OR HER] delegate;

11 AAC 93.970(9) is amended to read:

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

11 AAC 93.970(25) is amended to read:

(25) "appropriators of record" means [APPLICANTS FOR, AND PERMITTEES

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AND CERTIFICATE] holders of permits to appropriate water, certificates of appropriation, certificates of reservation, or change permits [, WATER RIGHTS];

(Eff. 2/8/67, Register 23; am 12/29/79, Register 72; am 9/11/83, Register 87; am 11/7/90,

Register 116; am 9/16/92, Register 123; am 8/20/2004, Register 171; am 7 / 7 / 2024,

Register 251)

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