

# ALASKA STATE LEGISLATURE



## Representative Geran Tarr

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### Summary of DNR Water Regulation Changes

The Department of Natural Resources recently announced regulatory changes regarding water management regulations, specifically Title 11 of the Alaska Administrative Code. These regulatory changes have potentially significant impacts on instream flow reservation procedures and the larger debate on water rights. The changes are summarized below:

1. **11 AAC 93.115 (Closure of an application for a water right):**

This code was changed to remove the appeal process for water right applications that were closed at the discretion of the Commissioner.

2. **11 AAC 93.142 (Content of application):**

This code was changed to add qualifying language to the existing code, such as saying “purported need” instead of simply stating the “need” for water reservation. It also states that applications must include “applicable” data to substantiate the “purported need.” By adding this qualifying and subjective language, it gives DNR more flexibility to determine whether or not an application is valid.

3. **11 AAC 93.146 (Issuance of a certificate of water reservation):**

This code was changed significantly to alter the recipient of the certificate of water reservation. Under the new changes, only applicants that are state or federal agencies will receive the certificate directly. Individuals or NGOs, for instance, will not receive the certificate – instead DNR will be the certificate holder (and will be responsible for compliance).

Additionally, the certificate holder (and applicant) will have the ability to participate/initiate any administrative/judicial proceedings re: the application decision or the management of the certificate.

4. **11 AAC 93.147 (Review of reservation of water):**

This code is changed slightly for grammatical and procedural clarity (inserting the words “original” in front of the word “purpose,” and “subsequent” in front of the word “applicant”).

5. **11 AAC 93.210 (Temporary water use):**

This code is changed to say that instead of being able to extend a temporary permit for an additional 5 years, a temporary use of water can only be extended for a maximum of 5 years (including “time served”).

6. **11 AAC 93.220 (Procedure for temporary water use):**

This code is changed to specify that an application must also include the point of discharge or return flow, if there are any.

7. **11 AAC 93.510 (Public notice and hearing):**

This code is completely rewritten to remove the requirement of DNR to publish proposed water reservations in the local community’s newspaper. It also removes the requirement of DNR to hold a public hearing with oral/written testimony. A public meeting (not hearing) may be held at the Commissioner’s discretion, but public input must be provided through the Alaska Online Public Notice System. Only affected property owners, applicants, governmental agencies, and “appropriators of record” will be notified of DNR water management designations.

8. **11 AAC 93.970 (Definitions)**

“Appropriators of record” are redefined to be the “holders of a permit,” rather than the applicants for the permit. The Division of Land and Water Management is also redefined as the Division of Mining, Land, and Water.