

## Correspondence



**RABBIT CREEK COMMUNITY COUNCIL (RCCC)**  
A Forum for Respectful Communication & Community Relations



**1057 West Fireweed Lane, Suite 100 / Anchorage, AK 99503**

Alaska Department of Natural Resources (DNR)  
Division of Mining, Land & Water  
Program Support Section  
550 W 7<sup>th</sup> Avenue Suite 1070  
Anchorage AK 99501-3579

November 29, 2024

Regarding: Scoping for potential changes to 11 AAC 93.142 – 147, Regulations implementing AS 46.15.145, Reservation of Water

Dear Mr. Barrett:

Thank you for the opportunity to comment on the Department of Natural Resources (DNR) potential updating of regulations 11 AAC 93.142-147, implementing AS 46.15.145 Reservation of Water.

Rabbit Creek Community Council (RCCC) is a community organization representing residents and property owners in a delineated geographic area of [southeast Anchorage](#). RCCC is an advisory group within Anchorage's Community Council system established in the Anchorage Municipal Charter. RCCC, through its Land Use and Transportation Committee, reviewed the issues surrounding water reservations, particularly as they pertain to Potter Marsh. At a General Meeting of the membership on November 14, 2024, RCCC voted to submit comments and questions, detailed in the attachment, by a vote of 26 yeas, 0 nays, and 1 abstention.

In summary, RCCC advocates for:

- a reservation system that prioritizes protecting the natural hydrologic function (including water quality and quantity) of waterbodies.
- DNR to provide a clear context, with associated data and analyses, from which we, and the general public, can provide meaningful, detailed comments on the 11 AAC 43 regulations.
- Prompt extension of the Alaska Department of Fish & Game water reservations on Rabbit Creek, Little Rabbit Creek, and Little Survival Creek, the three streams that feed Potter Marsh, based on our local knowledge of Potter Marsh and creeks within our Council area.
- Periodic review of all water appropriations so that DNR does not grant permanent allocations that may not be sustainable.

- Pro-active DNR management, including baseline data collection, analyses of hydrologic systems, and the means to enforce water rights, especially in areas of water resource competition, such as our Anchorage Hillside.
- Improved public outreach and public education related to any appropriations of water. Public notices are needed that more clearly define the purposes and processes for proposed actions regarding all types of DNR appropriation of water similar to that previously provided by the former Alaska Water Resources Board. This includes convening public meetings related to scoping and proposed regulation changes.

Again, thank you for the opportunity to submit comments on DNR's regulations for water reservations.

Sincerely,



Ann Rappoport, Co-chair



John Riley, Co-chair

Attachment

cc: Sue Rodman, ADF&G  
Joseph Klein, ADF&G  
Cory Stantorf, ADF&G  
Barbara Carlson, Friends of the Anchorage Coastal Wildlife Refuge  
Cherie Northon, Anchorage Waterways Council

## ATTACHMENT

The Rabbit Creek Community Council (RCCC) has reviewed issues, and the limited information provided for the proposed updating of regulations 11 AAC 93.142-147, implementing AS 46.15.145 Reservation of Water. This review gives us serious concerns about the proposal and leads us to comment on one specific action and three general concerns, as follows, and as approved at our General Membership Meeting on November 14, 2024, by a vote of 26 yeas, 0 nays, and 1 abstention.

### **1. Lack of public outreach regarding water rights for Potter Marsh and the potential regulation revisions.**

Regarding Potter Marsh, RCCC is very concerned that our Council—and presumably the affected public—have been ignorant of the issue of water reservations on three tributary creeks to Potter Marsh. The Alaska Department of Natural Resources (DNR) should provide direct notice to affected parties and, at a minimum, groups such as the RCCC and Friends of the Anchorage Coastal Wildlife Refuge, as part of its adjudicatory review of those water reservations and any proposed actions. We suggest that you add interested organizations and groups representing geographic areas where water reservations exist for proposed actions affecting them including options for public meetings. For future decisions affecting the Potter Marsh watershed please contact us in advance in a timely manner via email at [rabbithcreekcc@gmail.com](mailto:rabbithcreekcc@gmail.com); our mailing address is c/o Federation of Community Councils, 1057 West Fireweed Lane, Suite 100, Anchorage, AK 99503.

Regarding the DNR public notice for potential changes to 11 AAC 93, the outreach seems vague and obfuscating. How can the public evaluate potential changes without any knowledge of why changes might be warranted; or what those changes might be, especially as they relate to earlier public suggestions on scoping exercises such as in 2016? By comparison, when RCCC is given an opportunity to comment on a municipal regulatory change, we typically receive a written staff analysis that includes background, data, an objective analysis of current regulations, and a range of recommended changes. We believe a similar analysis of the outcomes from this exercise should also include DNR's proposed implementation timeline. The public should also be provided an opportunity to comment on proposed future actions so DNR can weigh that input as part of their final determinations.

### **2. Extend the water reservations acquired by Alaska Department of Fish & Game for three creeks to ensure recharge of Potter Marsh.**

RCCC just became aware that, since the 1980s, the Alaska Department of Fish and Game (ADF&G) has held in-stream reservations on three creeks that replenish Potter Marsh: Rabbit Creek, Little Rabbit Creek, and Little Survival Creek. Similarly, RCCC recently became aware that these water reservations are long-overdue for extension and is herein requesting prompt extension of these water reservations for the following reasons:

- The incalculable value of Potter Marsh to the entire Anchorage community and visitors. Potter Marsh is the jewel of the Alaska Coastal Wildlife Refuge, allowing urban residents effortless access to view and enjoy a myriad species of iconic Alaskan wildlife, including trumpeter swans, spawning salmon, Arctic terns, and concentrations of moose in early spring.
- The three creeks with ADF&G reservations are anadromous despite their fairly small sizes. Instream reservations are important to maintain seasonal flows and habitat conditions that sustain fish populations.
- As a State Critical Habitat and Wildlife Refuge, Potter Marsh has significant habitat values for countless bird species that use it as an important spring and fall migratory stop and others that nest and raise their young here. Those habitat values are directly related to the water flows, and thus instream reservations.
- Potter Marsh clearly serves the public interest. Over 150,000 visitors annually spend time at the north-end boardwalk in all seasons. The middle and south parts of the Marsh host diverse recreation uses, including birdwatching, photography, skiing and skating. In addition, drive-through viewers on the Seward Highway number at least 10,000 vehicles per day on average.
- The reservations pose no diminishment of other uses. In fact, healthy creeks enhance the surrounding residential setting and add to property values.
- RCCC has a decades-long history of advocating for Potter Marsh as a thriving ecosystem that provides recreation and passive enjoyment.
- Public and private investment in the marsh are hard evidence of the public value of Potter Marsh and its watershed:
  - ADF&G and partnership funding for a paved pull-out at South Potter Marsh.
  - RCCC's successful grant application to the Municipality in 2020-2021 for additional amenities at the South Potter Marsh Pull-out.
  - The collaboration of the Municipality, the Great Land Trust, and citizen donors to create the nascent 300-acre Potter Marsh Watershed Park immediately uphill of Potter Marsh to protect a network of small tributaries that recharge the south end of Potter Marsh.

We are disappointed there is no public signage in Potter Marsh discussing the existing reservations of water, their purposes and values, and urge DNR to work with ADF&G to provide this information. Regarding the ADF&G water reservations for Rabbit Creek, Little Rabbit Creek and Little Survival Creek, the public value of these reservations is incontrovertible. We respectfully request the prompt extension of these water reservations.

### **3. General concerns and questions regarding potential revisions to the water reservation regulations**

In general, RCCC opposes changes to the 11 AAC 93 regulations that would diminish the maintenance of water quality and quantity in freshwater streams, lakes, estuaries, and groundwaters. RCCC asks DNR to place high value on the cultural and socioeconomic

importance and benefits of reserving water in rivers and streams for fisheries, tourism and recreation. Regarding water resources in our locality:

- Our local [Hillside District Plan](#) (Municipality of Anchorage, 2010) has environmental quality goals and associated policies that explicitly or implicitly favor maintaining our natural hydrologic systems, including:
  - “. . . protecting natural systems such as aquifer recharge areas and stream corridors” (Goal 5).
  - “. . . maintain and protect environmental quality at ...[the] watershed [scale] (Goal 5, Policy 5-A).
  - Create a Riparian Greenbelt Acquisition Program (Goal 5, Policy 5-C).
  - Protect existing stream and wetland functions by maintaining the natural quantity, quality, and periodicity of recharge to natural waterbodies and wetlands (Goal 8).

RCCC’s research on the issue of water allocations revealed the problem of insufficient baseline data and analyses for Anchorage waterbodies, and indeed statewide waterbodies. We were alarmed to learn that neither DNR nor apparently any other agency systematically collects baseline water resource data in Anchorage. Similarly, we are unaware of any local regional and statewide water availability and use plans that project the amounts of water available and the potential demands of water over time to ensure water is managed in the best public interest under AS 46,15.080. This seems to be a serious shortcoming for both current and future management of such a critical resource as water and to identify if future water delivery infrastructure will be required to cost-effectively meet all competing water demands

We understand that while reservations of water are subject to a 10-year review and extension, water appropriations for withdrawals, diversions, and impoundments are not. This seems out-of-balance. Appropriations (withdrawals of water) should be regarded as the ‘harvestable surplus’ from water bodies, and subject to periodic review. DNR should not grant de facto permanent withdrawals of water. As our climate is changing, water flows and timing are changing, affecting fish and wildlife habitats. What may have been a reasonable appropriation at one time, may no longer be sustainable.

#### **4. General concerns regarding the lack of public education and outreach on water resources issues**

Our Community Council has long-been concerned about cyclic and long-term water scarcity at our local level. Much of our area uses on-site systems for water and septic. Some homeowners have wells that have gone dry or been compromised as additional homes have been built without data or understanding of the water resource capacity for current and future development in specific areas. New zoning policies from local leaders call for infill development and higher density on the Anchorage Hillside, without regard for water availability. Given that RCCC homeowner water resources are all uphill of Potter Marsh, continuing housing developments in our area have the potential to affect the waters flowing into and supporting Potter Marsh. But there is no program to collect data and determine how to avoid potential impacts. This is another reminder that inventorying existing water resources and projecting

long-term water use and needs demands (all types of beneficial uses of water) are essential to cost-effective water management and serving the best public interest.

RCCC residents are also frustrated by the apparent unenforceability of our DNR water rights for residential wells.

- Before revising regulations for water allocations, we urge DNR to address the overall lack of data and management capability of water resources.
- Specifically, we wonder whether the former Alaska Water Resources Board might be funded and reactivated to address these issues regionally and statewide, with local advisory boards from localities with water quantity or quality issues or competing uses for their water resources.

Here's the background:

Most of our RCCC residents rely on groundwater, through private residential wells or community wells. Some homes consistently experience water shortages—either chronically low flow wells or intermittently dry wells. These residents face expensive and inadequate remedies such as, holding tanks, pump truck deliveries, and fracking.

Some residents have obtained DNR water rights, but these seem to be entirely unenforceable because we lack scientific hydrologic data and models of how the groundwater system functions. There is no DNR or Municipality of Anchorage process to establish when existing water rights are, or could be, diminished by new development or climatic changes. New development impedes recharge of groundwater by increasing impervious surfaces and diverting water into the AWWU sanitary system. Wells for new development do not consider the effects on surrounding wells, except for very rarely required drawdown testing, as in the case of a large church expansion. Climate change, clearly, has impacts on recharge, such as more frequent winter run-off events instead of a slowly melting spring snowpack.

As inferred above we recommend and would appreciate DNR generating a public report on the results, analyses, recommendations, timelines, and conclusions for additional comment within the next 60 days or less. Thank you for the opportunity to submit comments on DNR's water regulations.