



ASSEMBLY LEADERSHIP

CHRISTOPHER CONSTANT | CHAIR
MEG ZALETEL | VICE CHAIR

October 23, 2023
sent via email

Dear Eklutna Hydroelectric Project Owners,

The undersigned Anchorage Assembly Members are writing to you in advance of the October 27, 2023 release of the Draft Fish and Wildlife Program (“Draft Program”). The Draft Program is a position statement of the Eklutna Hydroelectric Project Owners (“Project Owners”), which includes the Municipality of Anchorage (“MOA”).

Based on the presentations to the Anchorage Assembly and the follow up communications from the Native Village of Eklutna and other stakeholders, we do not believe the Draft Program to be consistent with the policy as adopted by the Anchorage Assembly or based on complete information. Because of these deficiencies we ask that you delay the planned release of the Draft Program for at least 90 days to allow resolution of the outstanding issues.

The first issue is that the MOA’s policy has consistently been to maximize the opportunity for return of water and fish to Eklutna River. In 2017, the Assembly passed a resolution supporting the efforts to restore the hydrology and fisheries of the Eklutna River subject to all provisions of the Fish & Wildlife agreement of August 7, 1991,¹ and in 2022, the Assembly passed a resolution to once again commit to the restoration of the Eklutna watershed, including providing instream flow and fish passage the length of the Eklutna River and into Eklutna Lake.² In 2023, the Assembly further petitioned Alaska’s congressional delegation to seek out federal funding to restore water to the Eklutna and restore fish passage.³

The Assembly is the policy making branch of the MOA government. Additionally, the Assembly is responsible for setting property taxes and authorizing regulated utilities to set rates and seek appropriate approvals from the Regulatory Commission of Alaska. The insistence of the MOA Administration on taking a position contrary to that expressed by the Anchorage Assembly violates the

¹ AR 2017-324(S)

² AR 2022-262, As Amended

³ AR 2023-94(S)



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separation of powers.⁴ Additionally, during the course of the Eklutna River studies and creation of the Draft Program, the Assembly has formally established government to government relations⁵ with the Native Village of Eklutna (“NVE”) and in that capacity consulted with NVE on their preferred course of action, which is consistent with policy of the MOA.

The MOA Administration has supported positions on Eklutna Hydro mitigation that are contrary to the adopted policy of the MOA, contravening the separation of powers and actively undermining the established government to government consultation with NVE. At this point, the Project Owners must pause the release of the Draft Program so that the Assembly can ensure that the Draft accurately reflects the position of the MOA, respects the role of each branch of government, and honors the commitments the MOA has made to NVE.

Second, the Draft Program is incomplete. NVE and Eklutna, Inc. have raised serious concerns about the cost estimates provided McMillen, which should be reconciled before the Draft Program is released for public comment. Additionally, the Draft Program does not provide the full range of potential alternatives. NVE has requested additional alternatives analysis that should be incorporated into the Draft Program. These issues should be resolved so that we provide the public with the best available information.

If the Project Owners can agree to a 90-day delay of the Draft Program, the Assembly commits to holding a jointly convened worksession in December with the NVE, McMillen, Eklutna, Inc. and the Project Owners to address the outstanding issues with the hopes of reaching consensus on a path forward, while also proactively working with the Administration to clarify the roles of government as it pertains to the separation of powers and who is making decisions for the MOA

⁴ See Swetzof v. Philemonoff 203 P.3d 471, 485 (Alaska 2009) (affirming the municipal power “to declare a new policy and deal with the overall policy question rather than merely a small segment of a pre-established policy” is inherently legislative); See also Yute Air Alaska v. McAlpine, 698 P.2d 1173, 1176 (Alaska 1985) (defining acts of the legislature’s law making powers as the power to “establish a public policy and they make it the chief executive’s duty to carry that policy out. They are a solemn expression of legislative will, and that is what law is all about.” *Id.* citing Black’s Law Dictionary 1074 (3rd ed. 1933)).

⁵ AO 2020-137(S), As Amended



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within the Project Owners group to ensure the Draft Program accurately reflects the policy of the MOA.

Sincerely,

Assembly Chair Christopher Constant
District 1, North Anchorage

Assembly Vice Chair Meg Zaletel
District 4, Midtown

Daniel Volland
District 1, North Anchorage

Felix Rivera
District 4, Midtown

Kevin Cross
District 2,
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Anna Brawley
District 3,
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Kameron Perez-Verdia
District 3,
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Karen Bronga
District 5, East Anchorage

George Martinez
District 5, East Anchorage

Zac Johnson
District 6, South Anchorage

CC:

Stakeholders

Aaron Leggett, President
The Native Village of Eklutna

Jennifer Spegon & Anna Senecal
United States Fish & Wildlife Service

Sean McDermott
NOAA Fisheries

Ron Benkert
Alaska Department of Fish & Game

Ben Corwin
Alaska Department of Natural Resources

Restoration Project Team

Michael Curry, President and Chair
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The Alaska Center

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The Conservation Fund

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