ANCHORAGE, ALASKA
AR No. 2024-40

A RESOLUTION OF THE ANCHORAGE ASSEMBLY SUBMITTING PUBLIC COMMENT ON THE DRAFT FISH AND WILDLIFE PROGRAM FOR THE EKLUTNA HYDROELECTRIC PROJECT.

WHEREAS, the Municipality of Anchorage, Chugach Electric Association (CEA), and Matanuska Electric Association (MEA) (collectively “the Hydroelectric Project Owners”) jointly own the Eklutna Hydroelectric Project and are parties to the 1991 Fish and Wildlife Agreement (the “1991 Agreement”) with the State of Alaska, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (an agreement that notably excludes a key stakeholder, the Native Village of Eklutna, the federally recognized tribe whose ancestral homelands encompass this project) to fund studies to examine and quantify the impacts of the Eklutna Power Project on fish and wildlife; examine and develop proposals for the protection, mitigation, and enhancement of fish and wildlife affected by such hydroelectric development; and prepare a Proposed Final Fish and Wildlife Program (the “Fish and Wildlife Program”) for approval by the Governor; and

WHEREAS, once approved by the Governor, the Fish and Wildlife Program will contractually bind operations of the Eklutna Hydroelectric Project and Anchorage Water and Wastewater Utility (“AWWU”) for the next 35 years; and

WHEREAS, in their Draft Fish and Wildlife Program to mitigate their impacts to fish and wildlife pursuant to the 1991 Agreement, the Hydroelectric Project Owners propose to utilize AWWU infrastructure to deliver water into the Eklutna River via a Portal Valve (the “Portal Valve Alternative”) one mile downstream of Eklutna Lake; and

WHEREAS, the policy of the Municipality of Anchorage has been to support restoration of the Eklutna River since the Anchorage Assembly adopted AR 2017-324(S), “A Resolution in Support of Efforts to Restore the Eklutna River,” and AR 2022-262, As Amended, “A Resolution of the Anchorage Municipal Assembly in Support of Efforts to Restore the Eklutna River”; and

WHEREAS, further, through the passage of AO 2023-131, As Amended, the Assembly, through the creation of a specific law, reinforced and declared that it is the official policy of the Municipality of Anchorage, inclusive of the Anchorage Hydropower Utility Department, to restore the continuous water flow of the Eklutna River and the fish populations of the River and Eklutna Lake, to the greatest extent possible, subject to all provisions of the 1991 Agreement; and
WHEREAS, any changes to the Eklutna Hydroelectric Project will impact not only hydroelectric power and drinking water, but also fish and wildlife; and

WHEREAS, Eklutna Lake is the primary source of Municipality’s drinking water for which AWWU currently pays approximately $1.2 Million annually to the Eklutna Hydroelectric Project to ensure access to the Municipality’s drinking water and any binding agreement relating to the purchase price of water and volumes available to AWWU may impact property rights of AWWU and the regulated price of water to its customers; and

WHEREAS, the Anchorage Assembly was recently briefed about the changing regulatory environment for drinking water, and while the effects of the regulatory changes are currently unknown, concern has been raised about the availability of drinking water from ground wells under the new regulations; and

WHEREAS, the Anchorage Assembly hired an expert engineer, Don Spiegel, who originally designed the Eklutna AWWU system, to evaluate the Portal Valve alternative as it relates to AWWU’s operation of the Eklutna Water Treatment Facility and the effectiveness of the Portal Valve Alternative in delivering water to the river to support the restoration of fish species; and

WHEREAS, the initial conclusions of Mr. Spiegel, which were submitted to the Assembly through AIM 2024-11 on January 23, 2024, raise significant doubts as to whether the Portal Valve Alternative will meet the mitigation objectives stated on a year round basis: inability to meet those objectives could result in AWWU and the Municipality being culpable and liable for the death of any in-river species that have returned, depending on water levels provided by the Hydroelectric Project Owners, and could be a limiting condition for AWWU expansion in the future; and

WHEREAS, the public comment period for the Draft Fish and Wildlife Program is open until February 19, 2024; and

WHEREAS, following the public comment period is an opportunity for the Hydroelectric Project Owners to review the comments and resolve any disagreements prior to submitting a final proposal to the Governor; and

WHEREAS, the Native Village of Eklutna has put forward an alternative for removal of the dam at Eklutna Lake, which is supported by the Municipal policy stated in AO 2023-131, As Amended, and codified at AMC 26.30.025A., but was never fully considered by the Hydroelectric Project Owners and has not been presented as an alternative in the Draft Fish and Wildlife Program; and

WHEREAS, in addition to the stated policy and support for dam removal, the Anchorage Assembly has evaluated the Portal Valve Alternative and has concerns about that alternative; and

WHEREAS, in the interest of protecting the future of the Municipal water supply as well as the interests of its residents and municipal taxpayers, the Anchorage Assembly submits the following public comments on the Draft Fish and Wildlife Program regarding the Portal Valve Alternative;
NOW, THEREFORE, THE ANCHORAGE ASSEMBLY RESOLVES and submits the following as its comments on the Draft Fish and Wildlife Program:

Section 1. The following are process and technical concerns particular to the Portal Valve Alternative put forward by the Hydroelectric Project Owners for public comment:

A. Non-Compliant Process. The August 7, 1991 Fish and Wildlife Agreement (1991 Agreement) sets forth a process for addressing the Eklutna Hydroelectric Project’s impacts on fish and wildlife similar to that for Federal Energy Regulatory Commission (“FERC”) licensed projects. The process set forth in the 1991 Agreement was intended to be at least as robust as a normal FERC license process, which is subject to all the provisions of National Environmental Policy Act (“NEPA”) and all the authorities typically granted to the federal agencies. The process engaged by the Hydroelectric Project Owners falls short of the FERC standard of analysis. No NEPA analysis was done, the federal agencies were denied the authorities they normally would have, such as to prescribe fish passage, and the public wasn’t presented any alternatives to choose from. Moreover, the process engaged in does not appear comparable to the NEPA requirements to consult with Native Tribes impacted by the project (18. C.F.R. 5.7), nor have a dispute resolution process allowing agencies to mandate conditions (18 C.F.R. 5.8 and 5.15).

None of state or federal signatories to the 1991 Agreement have so far supported the Portal Valve Alternative. The comment letters from these state and federal resource agencies raise questions around the process engaged by the Hydroelectric Project Owners, the data inputs used in modeling to develop the Draft Fish and Wildlife Program, and the viability of the Portal Valve Alternative to achieve the stated goals of the 1991 Agreement. These questions are unresolved.

Similarly, the process under the 1991 Agreement diverges substantially from the type of alternatives analysis the Municipality uses on its own capital projects. Often the Municipality’s own large capital projects, such as the Port of Alaska Modernization Program (“PAMP”) or projects co-funded through the Anchorage Metropolitan Area Transportation Solutions (“AMATS”) design alternatives, are evaluated by experts and relevant stakeholders and the Assembly is briefed and able to weigh in on the proposed alternatives, particularly where Municipal resources are required to fund the project. Based on the information the Assembly has been provided to date, only one alternative was seriously evaluated by the Hydroelectric Project Owners and put forward for consideration even though a Municipal contribution is expected through a property tax assessment.

B. Potential Impacts to Anchorage Drinking Water. Throughout this process, there has been very little discussion about any implications...
on AWWU and the Municipality’s access to drinking water now and into the foreseeable future (the next 35 years). The week of January 22, 2024, well after the Draft Fish and Wildlife Program was released and after years of discussion and presentation by the Eklutna Hydroelectric Project owners, we learned that the Hydroelectric Project Owners and AWWU, all public utilities regulated by the Regulatory Commission of Alaska (RCA), had signed a binding agreement in early October 2023, prior to submitting the Draft Fish and Wildlife Program for public comment. We learned this agreement is based on the Portal Valve Alternative and no other alternative; an alternative that may have significant impacts to the project outcome as well as to regulated rates authorized by the RCA. The Anchorage Assembly has requested a copy of the signed agreement, but we have been told the agreement is confidential and we therefore have been unable to review it. This is a significant hinderance on the Anchorage Assembly, and the public, to provide complete comments on the Portal Valve Alternative as related to AWWU operations, potential impacts to Municipal growth and strategic investments for AWWU and the Municipality. Significant legal questions also remain whether a binding agreement can be signed relating to future Municipal utility assets, revenues, and expenditures without Assembly approval.

Before learning of that agreement, the Anchorage Assembly hired an expert to analyze the effectiveness of the Portal Valve option in relation to AWWU’s operation at Eklutna. That analysis by engineer Don Spiegel, who designed the Eklutna AWWU system, concluded that the Portal Valve “cannot provide adequate Eklutna River restoration flows, nor can it provide year-round water without interruption. Thus, it is the Author’s opinion that the Portal Valve as currently configured is fatally flawed and other Eklutna River restoration alternatives should be studied further.”

Furthermore, in the past month, AWWU has briefed the Assembly on new developments concerning drinking water regulation through federal and local entities. The impacts of the new drinking water regulations are yet to be determined, but AWWU leadership has expressed concerns about potential impacts to the Municipality from limitations of retaining full ground well capacity. Until the new regulatory landscape is better understood, particularly any reductions in access to drinking water from sources other than Eklutna, any future limitations on drinking water capacity at Eklutna should be held in abeyance.

### C. Incomplete Analysis and Insufficient Mitigation

The Portal Valve Alternative does not meet the requirements of the 1991 Agreement regarding “the protection, mitigation of damages to, and enhancement of fish and wildlife affected by hydroelectric development of the Eklutna Hydroelectric Project.” There are a number of variables related to lake level that can render the Portal Valve Alternative inoperable. Additionally, regular and unexpected maintenance at the
AWWU water facility will also stop the flow of water into the Portal Valve. Discontinuous water flows will result in fish kills in Eklutna River. The state and federal signatories to the 1991 Agreement have raised questions about the analysis and process used to develop the Draft Fish and Wildlife Program. The Hydroelectric Project Owners failed to consider all reasonable alternatives, including the dam removal alternative proposed by the Native Village of Eklutna. The Hydroelectric Project Owners failed to present the public with a full range of alternatives as would typically occur in similar situations.

D. Poor Coordination and Questionable Use of Public Funds. The Hydroelectric Project Owners and AWWU are regulated utilities and need to demonstrate benefit to their rate payers. Additionally, the Assembly, as the steward of taxpayer funds, must demonstrate benefit to the residents of the Municipality through the expenditure of public funds. Treating the Portal Valve Alternative as a singular stand-alone project is short sighted and does not maximize various opportunities to meet the goals and objectives of 1991 Agreement across various entities nor does it meet the requirements of these entities to benefit the public. The Portal Valve Alternative brought forward by the Hydroelectric Project Owners is self-serving and fails to protect the broader public interests of the Municipality of Anchorage. Given the $57 million price tag of the Portal Valve Alternative, its potential impacts to AWWU operations, and the financial implications to ratepayers and taxpayers for the next 35 years, we find this is a poor use of public funds and lacked public coordination.

For all the above reasons, the Anchorage Assembly cannot endorse and thus opposes the Draft Fish and Wildlife Program.

Section 2. The Municipality of Anchorage does not intend to issue authorizations or provide funds or any other form of support of the Draft Fish and Wildlife Program or any alternative that doesn’t restore the full length of the Eklutna River and comply with policy of the Municipality, as recently enacted by AO 2023-131, As Amended, and codified at AMC 26.30.025A., as well as AR 2022-262, As Amended, and AR 2017-324(S).

Section 3. The Regulatory Commission of Alaska (RCA), under its statutory powers to initiate investigation into practices and facilities of a public utility, should review the Draft Fish and Wildlife Program and examine any impacts on any of the regulated utilities, including but not limited Chugach Electric, Matanuska Electric, Anchorage Hydropower and AWWU, particularly about impacts to rate payers and their access to uninterrupted service, before any option for a Final Fish and Wildlife Program is transmitted to the Governor for review and approval.

Section 4. The Anchorage Assembly requests the Hydroelectric Project Owners to seek a two-year extension of the 1991 Agreement from the signatories, of which the Municipality is one through the Anchorage Hydropower Utility, to perform additional analysis, consultation, and coordination with affected parties, including the Anchorage Assembly and the Native Village of Eklutna. The issues at play are
too significant to our community to rush to judgment or exclude key stakeholders. The residents of the Municipality deserve a measured and comprehensive approach guided by respectful coordination to reach a solution that enjoys broad consensus among the affected parties.

Section 5. This resolution shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this ______ day of ________________, 2024.

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Chair of the Assembly

ATTEST:

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Municipal Clerk