

Submitted by: Assembly Vice Chair Zaletel
Assembly Chair Constant
Assembly Member Kevin Cross
Prepared by: Legislative Services
Reviewed by: Assembly Counsel's Office
For reading:

ANCHORAGE, ALASKA
AR No. 2024-40

1 **A RESOLUTION OF THE ANCHORAGE ASSEMBLY SUBMITTING PUBLIC**
2 **COMMENT ON THE DRAFT FISH AND WILDLIFE PROGRAM FOR THE**
3 **EKLUTNA HYDROELECTRIC PROJECT.**
4

5
6 **WHEREAS**, the Municipality of Anchorage, Chugach Electric Association (CEA),
7 and Matanuska Electric Association (MEA) (collectively “the Hydroelectric Project
8 Owners”) jointly own the Eklutna Hydroelectric Project and are parties to the 1991
9 Fish and Wildlife Agreement (the “1991 Agreement”) with the State of Alaska, the
10 U.S. Fish and Wildlife Service and the National Marine Fisheries Service (an
11 agreement that notably excludes a key stakeholder, the Native Village of Eklutna,
12 the federally recognized tribe whose ancestral homelands encompass this project)
13 to fund studies to examine and quantify the impacts of the Eklutna Power Project on
14 fish and wildlife; examine and develop proposals for the protection, mitigation, and
15 enhancement of fish and wildlife affected by such hydroelectric development; and
16 prepare a Proposed Final Fish and Wildlife Program (the “Fish and Wildlife
17 Program”) for approval by the Governor; and
18

19 **WHEREAS**, once approved by the Governor, the Fish and Wildlife Program will
20 contractually bind operations of the Eklutna Hydroelectric Project and Anchorage
21 Water and Wastewater Utility (“AWWU”) for the next 35 years; and
22

23 **WHEREAS**, in their Draft Fish and Wildlife Program to mitigate their impacts to fish
24 and wildlife pursuant to the 1991 Agreement, the Hydroelectric Project Owners
25 propose to utilize AWWU infrastructure to deliver water into the Eklutna River via a
26 Portal Valve (the “Portal Valve Alternative”) one mile downstream of Eklutna Lake;
27 and
28

29 **WHEREAS**, the policy of the Municipality of Anchorage has been to support
30 restoration of the Eklutna River since the Anchorage Assembly adopted AR 2017-
31 324(S), “A Resolution in Support of Efforts to Restore the Eklutna River,” and AR
32 2022–262, As Amended, “A Resolution of the Anchorage Municipal Assembly in
33 Support of Efforts to Restore the Eklutna River”; and
34

35 **WHEREAS**, further, through the passage of AO 2023-131, As Amended, the
36 Assembly, through the creation of a specific law, reinforced and declared that it is
37 the official policy of the Municipality of Anchorage, inclusive of the Anchorage
38 Hydropower Utility Department, to restore the continuous water flow of the Eklutna
39 River and the fish populations of the River and Eklutna Lake, to the greatest extent
40 possible, subject to all provisions of the 1991 Agreement; and
41

1 **WHEREAS**, any changes to the Eklutna Hydroelectric Project will impact not only
2 hydroelectric power and drinking water, but also fish and wildlife; and
3

4 **WHEREAS**, Eklutna Lake is the primary source of Municipality's drinking water for
5 which AWWU currently pays approximately \$1.2 Million annually to the Eklutna
6 Hydroelectric Project to ensure access to the Municipality's drinking water and any
7 binding agreement relating to the purchase price of water and volumes available to
8 AWWU may impact property rights of AWWU and the regulated price of water to its
9 customers; and
10

11 **WHEREAS**, the Anchorage Assembly was recently briefed about the changing
12 regulatory environment for drinking water, and while the effects of the regulatory
13 changes are currently unknown, concern has been raised about the availability of
14 drinking water from ground wells under the new regulations; and
15

16 **WHEREAS**, the Anchorage Assembly hired an expert engineer, Don Spiegel, who
17 originally designed the Eklutna AWWU system, to evaluate the Portal Valve
18 alternative as it relates to AWWU's operation of the Eklutna Water Treatment Facility
19 and the effectiveness of the Portal Valve Alternative in delivering water to the river
20 to support the restoration of fish species; and
21

22 **WHEREAS**, the initial conclusions of Mr. Spiegel, which were submitted to the
23 Assembly through AIM 2024-11 on January 23, 2024, raise significant doubts as to
24 whether the Portal Valve Alternative will meet the mitigation objectives stated on a
25 year round basis: inability to meet those objectives could result in AWWU and the
26 Municipality being culpable and liable for the death of any in-river species that have
27 returned, depending on water levels provided by the Hydroelectric Project Owners,
28 and could be a limiting condition for AWWU expansion in the future; and
29

30 **WHEREAS**, the public comment period for the Draft Fish and Wildlife Program is
31 open until February 19, 2024; and
32

33 **WHEREAS**, following the public comment period is an opportunity for the
34 Hydroelectric Project Owners to review the comments and resolve any
35 disagreements prior to submitting a final proposal to the Governor; and
36

37 **WHEREAS**, the Native Village of Eklutna has put forward an alternative for removal
38 of the dam at Eklutna Lake, which is supported by the Municipal policy stated in AO
39 2023-131, As Amended, and codified at AMC 26.30.025A., but was never fully
40 considered by the Hydroelectric Project Owners and has not been presented as an
41 alternative in the Draft Fish and Wildlife Program; and
42

43 **WHEREAS**, in addition to the stated policy and support for dam removal, the
44 Anchorage Assembly has evaluated the Portal Valve Alternative and has concerns
45 about that alternative; and
46

47 **WHEREAS**, in the interest of protecting the future of the Municipal water supply as
48 well as the interests of its residents and municipal taxpayers, the Anchorage
49 Assembly submits the following public comments on the Draft Fish and Wildlife
50 Program regarding the Portal Valve Alternative;

1
2 **NOW, THEREFORE, THE ANCHORAGE ASSEMBLY RESOLVES and submits**
3 **the following as its comments on the Draft Fish and Wildlife Program:**
4

5 **Section 1.** The following are process and technical concerns particular to the
6 Portal Valve Alternative put forward by the Hydroelectric Project Owners for public
7 comment:
8

- 9 A. **Non-Compliant Process.** The August 7, 1991 Fish and Wildlife
10 Agreement (1991 Agreement) sets forth a process for addressing the
11 Eklutna Hydroelectric Project's impacts on fish and wildlife similar to
12 that for Federal Energy Regulatory Commission ("FERC") licensed
13 projects. The process set forth in the 1991 Agreement was intended
14 to be at least as robust as a normal FERC license process, which is
15 subject to all the provisions of National Environmental Policy Act
16 ("NEPA") and all the authorities typically granted to the federal
17 agencies. The process engaged by the Hydroelectric Project Owners
18 falls short of the FERC standard of analysis. No NEPA analysis was
19 done, the federal agencies were denied the authorities they normally
20 would have, such as to prescribe fish passage, and the public wasn't
21 presented any alternatives to choose from. Moreover, the process
22 engaged in does not appear comparable to the NEPA requirements to
23 consult with Native Tribes impacted by the project (18 C.F.R. 5.7), nor
24 have a dispute resolution process allowing agencies to mandate
25 conditions (18 C.F.R. 5.8 and 5.15).
26

27 None of state or federal signatories to the 1991 Agreement have so
28 far supported the Portal Valve Alternative. The comment letters from
29 these state and federal resource agencies raise questions around the
30 process engaged by the Hydroelectric Project Owners, the data inputs
31 used in modeling to develop the Draft Fish and Wildlife Program, and
32 the viability of the Portal Valve Alternative to achieve the stated goals
33 of the 1991 Agreement. These questions are unresolved.
34

35 Similarly, the process under the 1991 Agreement diverges
36 substantially from the type of alternatives analysis the Municipality
37 uses on its own capital projects. Often the Municipality's own large
38 capital projects, such as the Port of Alaska Modernization Program
39 ("PAMP") or projects co-funded through the Anchorage Metropolitan
40 Area Transportation Solutions ("AMATS") design alternatives, are
41 evaluated by experts and relevant stakeholders and the Assembly is
42 briefed and able to weigh in on the proposed alternatives, particularly
43 where Municipal resources are required to fund the projects. Based
44 on the information the Assembly has been provided to date, only one
45 alternative was seriously evaluated by the Hydroelectric Project
46 Owners and put forward for consideration even though a Municipal
47 contribution is expected through a property tax assessment.
48

- 49 B. **Potential Impacts to Anchorage Drinking Water .** Throughout this
50 process, there has been very little discussion about any implications

1 on AWWU and the Municipality's access to drinking water now and
2 into the foreseeable future (the next 35 years). The week of January
3 22, 2024, well after the Draft Fish and Wildlife Program was released
4 and after years of discussion and presentation by the Eklutna
5 Hydroelectric Project owners, we learned that the Hydroelectric
6 Project Owners and AWWU, all public utilities regulated by the
7 Regulatory Commission of Alaska (RCA), had signed a binding
8 agreement in early October 2023, prior to submitting the Draft Fish
9 and Wildlife Program for public comment. We learned this agreement
10 is based on the Portal Valve Alternative and no other alternative; an
11 alternative that may have significant impacts to the project outcome
12 as well as to regulated rates authorized by the RCA. The Anchorage
13 Assembly has requested a copy of the signed agreement, but we have
14 been told the agreement is confidential and we therefore have been
15 unable to review it. This is a significant hinderance on the Anchorage
16 Assembly, and the public, to provide complete comments on the Portal
17 Valve Alternative as related to AWWU operations, potential impacts to
18 Municipal growth and strategic investments for AWWU and the
19 Municipality. Significant legal questions also remain whether a binding
20 agreement can be signed relating to future Municipal utility assets,
21 revenues, and expenditures without Assembly approval.

22
23 Before learning of that agreement, the Anchorage Assembly hired an
24 expert to analyze the effectiveness of the Portal Valve option in
25 relation to AWWU's operation at Eklutna. That analysis by engineer
26 Don Spiegel, who designed the Eklutna AWWU system, concluded
27 that the Portal Valve "cannot provide adequate Eklutna River
28 restoration flows, nor can it provide year-round water without
29 interruption. Thus, it is the Author's opinion that the Portal Valve as
30 currently configured is fatally flawed and other Eklutna River
31 restoration alternatives should be studied further."

32
33 Furthermore, in the past month, AWWU has briefed the Assembly on
34 new developments concerning drinking water regulation through
35 federal and local entities. The impacts of the new drinking water
36 regulations are yet to be determined, but AWWU leadership has
37 expressed concerns about potential impacts to the Municipality from
38 limitations of retaining full ground well capacity. Until the new
39 regulatory landscape is better understood, particularly any reductions
40 in access to drinking water from sources other than Eklutna, any future
41 limitations on drinking water capacity at Eklutna should be held in
42 abeyance.

- 43
44 C. **Incomplete Analysis and Insufficient Mitigation.** The Portal Valve
45 Alternative does not meet the requirements of the 1991 Agreement
46 regarding "the protection, mitigation of damages to, and enhancement
47 of fish and wildlife affected by hydroelectric development of the
48 Eklutna Hydroelectric Project." There are a number of variables
49 related to lake level that can render the Portal Valve Alternative
50 inoperable. Additionally, regular and unexpected maintenance at the

1 AWWU water facility will also stop the flow of water into the Portal
2 Valve. Discontinuous water flows will result in fish kills in Eklutna
3 River. The state and federal signatories to the 1991 Agreement have
4 raised questions about the analysis and process used to develop the
5 Draft Fish and Wildlife Program. The Hydroelectric Project Owners
6 failed to consider all reasonable alternatives, including the dam
7 removal alternative proposed by the Native Village of Eklutna. The
8 Hydroelectric Project Owners failed to present the public with a full
9 range of alternatives as would typically occur in similar situations.

10
11 **D. Poor Coordination and Questionable Use of Public Funds.** The
12 Hydroelectric Project Owners and AWWU are regulated utilities and
13 need to demonstrate benefit to their rate payers. Additionally, the
14 Assembly, as the steward of taxpayer funds, must demonstrate benefit
15 to the residents of the Municipality through the expenditure of public
16 funds. Treating the Portal Valve Alternative as a singular stand-alone
17 project is short sighted and does not maximize various opportunities
18 to meet the goals and objectives of 1991 Agreement across various
19 entities nor does it meet the requirements of these entities to benefit
20 the public. The Portal Valve Alternative brought forward by the
21 Hydroelectric Project Owners is self-serving and fails to protect the
22 broader public interests of the Municipality of Anchorage. Given the
23 \$57 million price tag of the Portal Valve Alternative, its potential
24 impacts to AWWU operations, and the financial implications to
25 ratepayers and taxpayers for the next 35 years, we find this is a poor
26 use of public funds and lacked public coordination.

27
28 **For all the above reasons, the Anchorage Assembly cannot endorse**
29 **and thus opposes the Draft Fish and Wildlife Program.**

30
31 **Section 2.** The Municipality of Anchorage does not intend to issue
32 authorizations or provide funds or any other form of support of the Draft Fish and
33 Wildlife Program or any alternative that doesn't restore the full length of the Eklutna
34 River and comply with policy of the Municipality, as recently enacted by AO 2023-
35 131, As Amended, and codified at AMC 26.30.025A., as well as AR 2022-262, As
36 Amended, and AR 2017-324(S).

37
38 **Section 3.** The Regulatory Commission of Alaska (RCA), under its statutory
39 powers to initiate investigation into practices and facilities of a public utility, should
40 review the Draft Fish and Wildlife Program and examine any impacts on any of the
41 regulated utilities, including but not limited Chugach Electric, Matanuska Electric,
42 Anchorage Hydropower and AWWU, particularly about impacts to rate payers and
43 their access to uninterrupted service, **before** any option for a Final Fish and Wildlife
44 Program is transmitted to the Governor for review and approval.

45
46 **Section 4.** The Anchorage Assembly requests the Hydroelectric Project Owners
47 to seek a two-year extension of the 1991 Agreement from the signatories, of which
48 the Municipality is one through the Anchorage Hydropower Utility, to perform
49 additional analysis, consultation, and coordination with affected parties, including
50 the Anchorage Assembly and the Native Village of Eklutna. The issues at play are

1 too significant to our community to rush to judgment or exclude key stakeholders.
2 The residents of the Municipality deserve a measured and comprehensive approach
3 guided by respectful coordination to reach a solution that enjoys broad consensus
4 among the affected parties.

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

8
9 PASSED AND APPROVED by the Anchorage Assembly this _____ day
10 of _____, 2024.

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14 _____
Chair of the Assembly

15 ATTEST:

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17
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19 _____
20 Municipal Clerk