

Submitted by: Assembly Chair Constant and
Assembly Vice Chair Zaletel
Prepared by: Assembly Counsel's Office
For reading: March 27, 2024

ANCHORAGE, ALASKA
AR No. 2024-103

**A RESOLUTION OF THE ANCHORAGE ASSEMBLY APPROVING THE USE
OF SUBPOENAS TO COMPEL TESTIMONY AND DOCUMENT PRODUCTION
RELATED TO THE 1991 FISH AND WILDLIFE AGREEMENT (EKLUTNA
HYDROPOWER PROJECT) OR WATER RIGHTS TO EKLUTNA LAKE,
PURSUANT TO ANCHORAGE MUNICIPAL CODE SECTION 2.30.085.**

WHEREAS, Anchorage Municipal Code section 2.30.085, *Subpoena powers*, authorizes the Assembly Chair with the approval of a majority of the Assembly, to compel by subpoena the “testimony of a person whom the assembly reasonably believes may be able to give information relating to a public matter being considered by the assembly” and to “produce documents, papers or objects which the assembly reasonably believes may relate to a public matter being considered by the assembly”; and

WHEREAS, in 1984 the Alaska Power Administration and the Municipality Anchorage negotiated and executed an Agreement for Public Water Supply and Energy Generation from Eklutna Lake, Alaska (1984 Agreement) to secure water rights for the diversion of water from Eklutna Lake while protecting water volume needed for the Eklutna Hydropower Project; and

WHEREAS, in 1991, the Federal Government sold the Eklutna Dam Hydroelectric facility to the Chugach Electric Association, Matanuska Electric Association, and the Municipality of Anchorage (doing business as Anchorage Municipal Light and Power (ML&P)); and

WHEREAS, the terms of the 1991 Fish and Wildlife Agreement require a robust public process, in place of the process required for a Federal Energy Regulatory Commission license, whereby the owners are to study and propose a plan for mitigating the impact of the Eklutna Dam on local fish and wildlife; and

WHEREAS, in 1993, the Alaska Power Administration and the Municipality of Anchorage executed a supplemental agreement to their earlier 1984 Agreement (1993 Supplement) which currently governs Anchorage Water & Wastewater Utility’s (AWWU) rights and access to drinking water from Eklutna Lake and is set to expire in 2025; and

WHEREAS, in May of 2020, the Regulatory Commission of Alaska (RCA) approved the sale of the ML&P from the Municipality of Anchorage to Chugach Electric Association (CEA), with the requirement that the Municipality surrender its vote as a member of the Eklutna Operating Committee, until it could demonstrate to the RCA that it has sufficient expertise within Municipal Hydro Power to participate again as a voting member; and

WHEREAS, the Assembly Leadership recently learned that in October 2023,

1 AWWU and the Eklutna Owner’s Group, executed an agreement which the
2 Administration described to the Assembly as a “binding term sheet,” the terms of
3 which would govern AWWU’s rights and access to drinking water from Eklutna
4 Lake in the event the Governor endorses the currently proposed Fish and Wildlife
5 Plan; and

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7 **WHEREAS**, the Municipal Attorney and representatives of AWWU produced the
8 binding term sheet in executive session and it was examined by the Assembly
9 Members on February 2, 2024; and

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11 **WHEREA**, on February 23, 2024, the Assembly met again and recessed to an
12 executive session to discuss the legal implications of the binding term sheet and
13 the Proposed Fish and Wildlife Program; and

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15 **WHEREAS**, having taken up these matters in executive session, the Assembly
16 finds that it is necessary in furtherance of the Assembly’s legislative powers under
17 the Charter and the Assembly’s role to provide legislative oversight of municipal
18 agencies and utilities, to compel production of the binding term sheet so that the
19 Assembly may share the agreement with its counsel for legal review prior to a
20 determination by the Assembly regarding whether it is appropriate and in the
21 public interest to make the agreement a disclosable public record; and

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23 **WHEREAS**, the Chair of the Assembly now requests authorization of the
24 Assembly, per AMC section 2.30.085, to issue subpoenas for the production of
25 agreements and other records specified herein, and Assembly’s retention thereof;

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27 **NOW, THEREFORE BE IT RESOLVED THAT THE ANCHORAGE ASSEMBLY:**

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29 **Section 1.** Does hereby, pursuant to AMC section 2.30.085, authorize the Chair
30 of the Assembly, on behalf and in the name of the Assembly, to compel by
31 subpoena the attendance of persons to provide testimony or produce documents
32 at a time and place specified by the Chair, as described below:

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34 A. The agreement described as a “binding term sheet” executed
35 between the Eklutna Owners and the Anchorage Water and Wastewater
36 Utility, which had been previously provided for review only in executive
37 session; and

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39 B. Any existing agreement among the Eklutna Owners or between the
40 Eklutna Owners and any third party, upon which a claim of privilege or
41 confidentiality is based.

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43 **Section 2.** This resolution shall be effective immediately upon passage and
44 approval by the Assembly.

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46 PASSED AND APPROVED by the Anchorage Assembly this _____ day
47 of _____, 2024.

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Chair of the Assembly

ATTEST:

Municipal Clerk