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Attorneys for the Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

ANCHORAGE MUNICIPAL ASSEMBLY,)
 and CHRISTOPHER CONSTANT, in his)
 official capacity as Chair of the Anchorage)
 Assembly,)

Plaintiffs,)

v.)

ANNE HELZER, in her official capacity as)
 the Anchorage Municipal Attorney,)

Defendant.)

Case No. 3AN-24- 05979 CI

**COMPLAINT TO ENFORCE SUBPOENA ISSUED
 BY THE ANCHORAGE MUNICIPAL ASSEMBLY**

Plaintiffs Anchorage Municipal Assembly, through its Chair, Christopher
 Constant (collectively the “Assembly”), respectfully request that this Court issue an

Anchorage Assembly v. Helzer

Case No. 3AN-24-_____

Complaint to Enforce Subpoena Issued by the Anchorage Assembly Page 1 of 12

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Order directing that the Defendant Anne Helzer (the “Defendant” or “Ms. Helzer”) show cause and produce documents requested in a subpoena issued by Chair Christopher Constant on behalf of the Assembly on April 16, 2024. This Complaint is brought pursuant to Alaska Rules of Civil Procedure 45 and 90(b) and Anchorage Municipal Code (“AMC”) 2.30.085, and is supported by the accompanying Affidavit of Assembly Legislative Counsel Matthew Hurt, *Ex Parte* Motion for Order to Show Cause and to Enforce Subpoena, and the attachments thereto.

As the basis for this Complaint, the Assembly alleges as follows:

PARTIES

1. Plaintiffs are the Anchorage Municipal Assembly and its Chair, Christopher Constant, in his official capacity. Under the Anchorage Charter, the Assembly is the co-equal legislative branch of the Municipality of Anchorage.

2. At all times relevant to the events that are the subject of this dispute, Defendant Anne Helzer has served as the Anchorage Municipal Attorney. On information and belief, Ms. Helzer has custody and control of all the responsive documents that are described in the Subpoena. Ms. Helzer is sued in her official capacity.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under AS 22.10.020, Alaska Rules of Civil Procedure 45 and 90(b), and AMC 2.30.085B.

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4. Venue is proper in this Court under Alaska Rule of Civil Procedure 3 because this claim arose in Anchorage and the Defendant may be personally served in the Third Judicial District.

LEGAL BACKGROUND

5. The Assembly is authorized to issue subpoenas for the production of documents that relate to public matters being considered by the Assembly. AMC 2.30.085 provides in full:

- A. Subject to the privileges which witnesses have in courts of this state, the chairman of the assembly, with the approval of a majority vote of the assembly, may, in the chair's official capacity and on behalf and in the name of the assembly:
 - 1. Compel by subpoena, at a specified time and place, the appearance and sworn 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
 - 2. Compel a person, by subpoena, to produce documents, papers or objects which the assembly reasonably believes may relate to a public matter being considered by the assembly.
- B. If a person refuses to comply with a subpoena issued under subsection A of this section, the superior court may, on application of the chair of the assembly, compel obedience by proceedings for contempt in the same manner as in the case of disobedience to the requirements of a subpoena issued by the court for refusal to testify in the court.

C. A person who seeks to quash or limit a subpoena issued pursuant to this section may file an action against the assembly in superior court.^[1]

6. Alaska Rule of Civil Procedure 45 provides that a subpoena may “command the person to whom it is directed to produce the books, papers, documents, electronically stored information, or other tangible things designated therein.”

7. “Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.” Alaska R. Civ. P. 45(f).

8. Under Alaska Rule of Civil Procedure 90(b), “[f]or every contempt . . . upon a proper showing on ex parte motion supported by affidavits, the court shall either order the accused party to show cause at some reasonable time, to be therein specified, why the accused party should not be punished for the alleged contempt, or shall issue a bench warrant for the arrest of such party.”

FACTUAL BACKGROUND

9. The Eklutna Hydroelectric Project consists of a 40-megawatt dam on the Eklutna River. In the 1990s the federal government agreed to sell the Project to the Municipality, Chugach Electric Association (“Chugach”), and Matanuska Electric Association (“MEA”) (collectively the “Project Owners”). The Project Owners entered into a fish and wildlife agreement with the State of Alaska, Alaska Energy

¹ Exhibit 1 at 1-2 (AO No. 2023-133).

Authority, and federal agencies (the “1991 Fish and Wildlife Agreement”). The 1991 Fish and Wildlife Agreement requires the Project Owners to carry out certain measures to “protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat).” Pursuant to the 1991 Fish and Wildlife Agreement, the Project Owners must submit a proposed Fish and Wildlife Program to the governor for approval and then implement the governor’s approved final Fish and Wildlife Program beginning no later than 2027.

10. In or around 2017, the Project Owners entered into a “Common Interest Agreement” to facilitate negotiations regarding implementation of the 1991 Fish and Wildlife Agreement.

11. On information and belief, the Common Interest Agreement was executed by a representative of the Municipality of Anchorage and applies to the Municipality as whole, including all officers, departments, and branches of the municipal government.

12. As part of the negotiations among the Project Owners regarding implementation of the 1991 Fish and Wildlife Agreement, the Project Owners have entered into one or more agreements purportedly governing the Municipality’s water rights and access to drinking water from Eklutna Lake. Each of those agreements is subject to Assembly approval.²

² See Exhibit 2 (AO No. 2024-28, As Amended).

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13. On or about February 2, 2024, the Assembly learned that the Municipality and the Anchorage Water and Wastewater Utility (“AWWU”) had entered into a final agreement described as a “Binding Term Sheet.” See Emily Goodykoontz & Alex DeMarban, “What’s Behind the Fight Over the Eklutna River,” *Anchorage Daily News* (Apr. 18, 2024) (“[T]he Assembly earlier this year learned that the Bronson administration signed a deal with the utilities last October that will govern Anchorage’s drinking water rights for 25 years. The agreement, a ‘binding term sheet,’ was based on the utilities’ plan to tap into the city’s water supply. It would go into effect if the governor approves the Fish and Wildlife program, city officials have said.”).

14. During the February 2, 2024 Assembly Meeting, members of the Assembly requested to view copies of the Binding Term Sheet, which was shown to them by the Defendant during an executive session. The Assembly members were not permitted to retain copies of the Binding Term Sheet.

15. On March 27, 2024, the Assembly passed and approved AR No. 2024-103, a resolution 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.”³

³ Exhibit 3 (AR No. 2024-103).

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16. Also on March 27, 2024, pursuant to AR No. 2024-103, Chair Christopher Constant on behalf of the Assembly, issued subpoenas to produce documents to Municipal Manager Kent Kohlhase (the “Kohlhase Subpoena”)⁴ and AWWU General Manager Mark Corsentino (the “Corsentino Subpoena”).⁵

17. The Kohlhase and Corsentino Subpoenas were identical in all substantive respects and requested production of the following documents by “5 p.m. on Wednesday, April 3, 2024”:

1. The document described as a “binding term sheet” executed between the Eklutna Owners and the Anchorage Water and Wastewater Utility, which had been previously provided for review only in executive session; and
2. Any document constituting an existing agreement among the Eklutna Owners or between the Eklutna Owners and any third party upon which any claim of privilege or confidentiality is based.^[6]

18. On April 2, 2024, Mayor Dave Bronson vetoed AR No. 2024-103. In his veto transmission, Mayor Bronson stated that the requested documents “have been made available” to the Assembly and “are available to them, and this open invitation continues.”⁷

⁴ Exhibit 4.

⁵ Exhibit 5.

⁶ Exhibit 4 at 4; Exhibit 5 at 4.

⁷ Exhibit 3 at 3.

19. On April 3, 2024, Mr. Kohlhasse and Mr. Corsentino each responded to the Kohlhasse and Corsentino Subpoenas via email to Legislative Counsel Matthew Hurt, stating that they had “substantially complied” with their respective subpoenas “by making the documents available to the Assembly and its counsel for confidential review through the Municipal Attorney’s Office.”⁸ Mr. Kohlhasse and Mr. Corsentino further stated that their “invitation for the Assembly and its legal counsel to review the documents through the Municipal Attorney’s Office remains open.”⁹

20. On April 4, 2024, Ms. Helzer allowed an Assembly member, the Assembly Counsel, and the Assembly’s outside legal counsel to view copies of the Common Interest Agreement, Binding Term Sheet, and an amendment to the Binding Term Sheet at the Municipal Attorney’s Office. However, Ms. Helzer would not allow the Assembly member to retain copies of those documents. Ms. Helzer also did not allow the Assembly member to have a confidential and attorney-client-privileged discussion regarding the documents with Assembly Counsel and the Assembly’s outside legal counsel while they reviewed the documents. Ms. Helzer insisted that an Assistant Municipal Attorney remain in the room with the documents at all times.

21. On April 9, 2024, during an Assembly meeting, Assembly members reiterated their request for copies of the Common Interest Agreement, Binding Term Sheet, and amendment to the Binding Term Sheet in order to review and obtain legal

⁸ Exhibit 6 at 1-2.

⁹ Exhibit 6 at 1-2.

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advice regarding those documents. Ms. Helzer stated that she could not provide the documents to the Assembly unless each Assembly member signed an additional confidentiality agreement, which would be subject to approval from the other Project Owners.

22. On information and belief, no other municipal officer or employee has been required to sign an additional confidentiality agreement prior to possessing or viewing documents under the Common Interest Agreement, including the Binding Term Sheet.

23. On April 9, 2024, the Assembly voted to override the Mayor's veto of AR No. 2024-103.

ISSUANCE AND SERVICE OF THE SUBPOENA

24. On April 16, 2024, pursuant to AR No. 2024-103, Chair Christopher Constant on behalf of the Assembly issued a subpoena (the "Subpoena") to Ms. Helzer.¹⁰ The Subpoena required Ms. Helzer to produce the same documents that were described in the Kohlhase and Corsentino Subpoenas, and the amendment to the Binding Term Sheet:

1. The document described as a "binding term sheet" executed between the Eklutna Owners and the Anchorage Water and Wastewater Utility, which had been previously provided for review only in executive session, as well as any amendments, extensions,

¹⁰ See Exhibit 7.

addendums, or any other writing reflecting a change to the substantive terms thereto; and

2. The document described as the “2017 Common Interest Agreement” and any other document upon which a claim of privilege or confidentiality is based.^[11]

25. The Subpoena was served to Ms. Helzer via email on Tuesday, April 16, 2024 at 5:08 p.m. by Assembly Counsel Matthew Hurt.¹²

26. The Subpoena required Ms. Helzer to produce the requested documents for the Assembly’s inspection and retention by 5:00 p.m. on Wednesday, April 17, 2024.¹³

27. On Wednesday, April 17, 2024, at 2:23 p.m., Ms. Helzer acknowledged receipt of the Subpoena in an email to Assembly Counsel Hurt.¹⁴ Ms. Helzer requested additional time to comply with the Subpoena because she was traveling.

28. On Thursday, April 18, 2024, Assembly Counsel Hurt responded to Ms. Helzer’s request for additional time to comply with the Subpoena, extending the deadline until “the close of business Monday, April 22.”¹⁵ According to Mr. Hurt’s email response, “we understand the documents to be readily accessible and, at this

¹¹ Exhibit 7 at 4.

¹² Exhibit 8 at 2.

¹³ Exhibit 7 at 3.

¹⁴ Exhibit 8 at 2.

¹⁵ Exhibit 8 at 1.

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time, see no reason that counsel for the other Eklutna Owners would not be reachable by phone or email.”¹⁶

· GROUNDS FOR RELIEF

29. The Subpoena is proper in all respects.

30. The Defendant has willfully refused to comply with the Subpoena without a valid legal basis.

PRAYER FOR RELIEF

WHEREFORE, the Assembly respectfully requests enforcement of the subpoena as follows:

A. That the Defendant be held in contempt of court for willfully refusing to comply with the Subpoena;

B. That the Defendant be ordered to show cause at some reasonable time why the Defendant should not be punished for the contempt for willfully refusing to comply with the Subpoena, or alternatively, that the Defendant be ordered to comply with the Subpoena by a date and time certain before the show-cause hearing;

C. That the Court impose a reasonable punishment for the Defendant’s contempt, including, but not limited to, referring the Defendant’s conduct to the Alaska Bar Association and/or holding the Defendant personally liable for civil fines and the Assembly’s attorney’s fees;

¹⁶ Exhibit 8 at 1.

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D. That this Court grant the Assembly such other and further relief as may be necessary and proper to effectuate this Court's orders; and

E. That this Court retain jurisdiction over this matter to issue any subsequent declaratory or injunctive relief that may be appropriate after the documents described in the Subpoena have been produced to the Assembly and reviewed by the Assembly Counsel.

DATED: April 24, 2024.

LANDYE BENNETT BLUMSTEIN LLP

/s/ Andrew Erickson

Andrew Erickson, Alaska Bar No. 1605049
Leslie R. Need, Alaska Bar No. 0712113
Jackson Morawski, Alaska Bar No. 2310113

*Attorneys for the Plaintiffs Anchorage Assembly
and Christopher Constant, in his official capacity
as Chair of the Anchorage Assembly*

Municipal Clerk's Office

Approved

Date: January 16, 2024

Mayoral Veto Given

Date: January 23, 2024

Mayoral Veto Overridden

Date: January 23, 2024

Submitted by: Assembly Chair Constant
Prepared by: Assembly Counsel's Office
For hearing: December 5, 2023

**ANCHORAGE, ALASKA
AO No. 2023-133**

**AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE
MUNICIPAL CODE SECTION 2.30.085, SUBPOENA POWERS.**

WHEREAS, the Assembly formally codified its ability to issue subpoenas in 1991, by passing and approving AO 91-15(S) which enacted AMC Section 2.30.085; and

WHEREAS, when originally introduced, the intent if AO 91-15 was to recognize in the Assembly a subpoena power "similar to what the Alaska Legislature has under State Statutes"¹; and

WHEREAS, the original proposed ordinance was modified by a substitute (S) version which included the words "involving municipal funds" to clarify that the subpoena was intended to apply to "any matter that the city is involved in directly, and it would exclude, by that language, private business matters that happen to reside within the geographical area"²; and

WHEREAS, the language "involving municipal funds" has been misconstrued to limit the Assembly's subpoena power strictly to matters of fiscal policy, while the state legislature's subpoena power is not limited in this way; and

WHEREAS, the intent of this ordinance is merely to clarify the Assembly's existing subpoena power, and not to expand its scope; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code section 2.30.085 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

2.30.085 Subpoena powers.

A. Subject to the privileges which witnesses have in courts of this state, the chair[MAN] of the assembly, with the approval of a majority vote of the assembly, may, in the chair's official capacity and on behalf and in the name of the assembly:

1. Compel by subpoena, at a specified time and place, the appearance and sworn testimony of a person whom the assembly reasonably believes may be able to give information relating to a public matter [INVOLVING MUNICIPAL FUNDS AND POLICY] being considered by the assembly; and

¹ AM 131-91 (Memorandum of Fred Dyson).

² Regular Assembly Meeting of Feb. 12, 1991.

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2. Compel a person, by subpoena, to produce documents, papers or objects which the assembly reasonably believes may relate to a public [THE] matter being considered by the assembly [UNDER CONSIDERATION].

B. If a person refuses to comply with a subpoena issued under subsection A of this section, the superior court may, on application of the chair[MAN] of the assembly, compel obedience by proceedings for contempt in the same manner as in the case of disobedience to the requirements of a subpoena issued by the court for refusal to testify in the court.

C. A person who seeks to quash or limit a subpoena issued pursuant to this section may file an action against the assembly in superior court.

(AO No. 91-15(S))

Section 2. This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 16th day of January, 2023.

Christopher Constant

Chair

ATTEST:

Joni King

Municipal Clerk



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 955-2023

Meeting Date: December 5, 2023

1 **From: Assembly Chair Constant**

2
3 **Subject: AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING**
4 **ANCHORAGE MUNICIPAL CODE SECTION 2.30.085, SUBPOENA**
5 **POWERS.**
6

7
8 The proposed ordinance clarifies the section of the Anchorage Municipal Code
9 governing the Assembly's power to issue subpoenas. In keeping with the original
10 intent of AO 91-15 as well as the relevant caselaw, the Assembly's authority to
11 gather information needed to legislate on any matter of public concern "is an
12 essential and appropriate auxiliary to the legislative function"¹. It is not limited to only
13 matters involving municipal funds, but instead broadly covers any public matter on
14 which the Assembly may act or is considering legislative action. As such, this
15 ordinance makes minor clarifying changes to the language already in Code and
16 does not substantively alter the scope or process of the powers already possessed
17 by this body.

18
19 There are no anticipated economic effects by this ordinance, so a summary of
20 economic effects is not required.

21
22 **I request your support for the ordinance.**

23
24 Reviewed by: Assembly Counsel's Office


25
26 Respectfully submitted: Christopher Constant, Assembly Chair
27 District 1, North Anchorage

¹ *McGrain v. Daugherty*, 273 U.S. 135, 161, 174 (1927)



MUNICIPALITY OF ANCHORAGE
MAYOR DAVE BRONSON

OFFICE OF THE MAYOR

Date: January 23, 2024
To: Anchorage Assembly
From: Mayor Dave Bronson 
Subject: Veto of Ordinance No. AO 2023-133



Today, in accordance with Section 2.30.100 of the Anchorage Municipal Code (AMC) and Section 5.02 of the Municipal Charter, I am issuing a veto for AO 2023-133, which was approved during the Assembly's special meeting on January 16, 2024.

Several Assembly members have pointed out that the original 1991 subpoena ordinance restricted the scope of subpoenas to "municipal funds and policy." For this reason, AO 2023-133 was passed by the Assembly to solidify the expansion of subpoena powers, allowing the Assembly to subpoena individuals within its authority for any "public matter being considered by the assembly."

Citizen participation in Municipal governance is voluntary under normal circumstances. Citizens are encouraged to participate through their Community Councils, Boards and Commissions, public commentary at Assembly meetings, or by contacting their Assembly Member. The Assembly subpoena process changes voluntary participation into mandatory participation—even in the face of citizen objection. Uncontrolled Assembly subpoena powers will create a potential chilling effect on citizen volunteers participating in their municipal government. In a recent incident, four Anchorage residents were subpoenaed by the Assembly in relation to an election matter. Three of them sought legal representation, eventually persuading the Assembly to accept their voluntary appearance at a public meeting instead of a mandated one. For these citizens, the subpoena process itself became a form of punishment or penalty, and the broadening of this process raises deep concerns.

Moreover, critics argue that the expanded subpoena powers are unnecessary. The Municipality already has a prosecution department for handling misdemeanors. Ultimately, the additional financial burden falls on the Anchorage taxpayer.

Because this ordinance allows the Assembly to mandate citizen testimony in an otherwise voluntary public venue, expands Assembly power to subpoena testimony and document production, and imposes additional financial burden on the Anchorage taxpayer, I hereby veto AO 2023-133.

Municipal Clerk's Office
Amended and Approved
Date: March 27, 2024
Mayoral Veto Given
Date: April 3, 2024
Mayoral Veto Overridden
Date: April 9, 2024

Submitted by: Assembly Chair Constant
Assembly Vice Chair Zaletel
Prepared by: Assembly Counsel's Office
For reading: March 19, 2024

ANCHORAGE, ALASKA
AO No. 2024-28, As Amended

1 AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE
2 MUNICIPAL CODE SECTIONS 3.20.070, 25.20.020, 25.30.020, 26.30.025, AND
3 INSERTING A NEW SECTION 26.40.090 TO REQUIRE ASSEMBLY APPROVAL
4 OF ACTIONS TO ACQUIRE OR DISPOSE OF PROPERTY RIGHTS TO WATER,
5 MINERAL, WIND OR SOLAR RESOURCES, AND OF THE FISH AND WILDLIFE
6 PROGRAM FOR THE EKLUTNA HYDROPOWER PROJECT AND
7 RESTORATION OF CONTINUOUS WATER FLOWS TO THE EKLUNTA RIVER.

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9 THE ANCHORAGE ASSEMBLY ORDAINS:

10
11 **Section 1.** Anchorage Municipal Code section 3.20.070 is hereby amended to
12 read as follows (*the remainder of the section is not affected and therefore not set*
13 *out*):

14
15 **3.20.070 Executive branch organization.**
16 *** **

17 C. Office of the municipal manager. Within the office of the municipal
18 manager and reporting to the municipal manager or designee are: the
19 office of equal opportunity, the office of emergency management; risk
20 management; health and safety; transportation inspection; culture,
21 entertainment, and arts venues (including the Egan Center, the
22 Dena'ina Civic and Convention Center, the Anchorage Museum at
23 Rasmuson Center, the Anchorage Golf Course, the Sullivan Sports
24 Arena, the Alaska Center for the Performing Arts, and the Boeke and
25 Dempsey Ice Arenas); and the following departments:

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27 *** **

28 3. Anchorage Water and Wastewater Utility. The Water and
29 Wastewater Utility is responsible for providing water and
30 sanitary sewage services. The utility is also responsible for
31 billing and collecting special assessments.

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33 a. The municipal manager shall have operational oversight
34 of the utility; and

35
36 b. The mayor shall be responsible for **operational** policy
37 decisions of the utility, subject to the limitations of
38 subsection c.

39
40 c. Pursuant to section 26.30.025, the assembly shall be
41 responsible for all other policy decisions, including
42 those related to the municipality's performance under
43 the 1991 Fish and Wildlife agreement regarding the
44 Eklutna hydroelectric project.

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6. Anchorage Hydropower Utility. The Anchorage Hydropower Utility is responsible for supplying wholesale electric service to utilities in southcentral Alaska.

a. The municipal manager shall have operational oversight of the utility; and

b. The mayor shall be responsible for **operational** policy decisions of the utility, subject to the limitations of subsection c.

c. Pursuant to section 26.30.025, the assembly shall be responsible for all **other** policy decisions , **including those related to the municipality's performance under the 1991 Fish and Wildlife agreement regarding the Eklunta hydroelectric project.**

*** *** ***

(AO No. 21-76; AO No. 59-76; AO No. 283-76; AO No. 77-359; AO No. 78-82; AO No. 78-113; AO No. 78-121; AO No. 79-27; AO No. 80-5; AO No. 82-49; AO No. 83-159; AO No. 85-8; AO No. 86-204; AO No. 88-47(S); AO No. 88-82; AO No. 89-10; AO No. 89-18; AO No. 89-39; AO No. 90-15(S); AO No. 91-173(S); AO No. 92-79; AO No. 92-148; AO No. 94-135(S), § 8, 7-12-94; AO No. 95-141, § 1, 7-11-95; AO No. 96-47, § 2, 3-5-96; AO No. 98-115(S), § 3, 7-1-98; AO No. 2003-109, § 6, 9-9-03; AO No. 2004-132, § 2, 10-12-04; AO No. 2004-136, § 2, 12-7-04; AO No. 2005-142, § 2, 10-25-05; AO No. 2008-90(S), § 2, 1-1-09; AO No. 2009-21, § 2, 2-24-09; AO No. 2009-101, § 6, 8-25-09; AO No. 2010-64, § 2, 9-28-10; AO No. 2010-93, § 2, 1-11-11; AO No. 2011-40, § 1, 3-29-11; AO No. 2011-25, § 2, 5-24-11; AO No. 2012-106, § 3, 11-13-12; AO No. 2013-34, § 3, 2-26-13; AO No. 2015-112(S), § 5, 1-1-16 ; AO No. 2017-122(S) , § 4, 10-24-17; AO No. 2018-24 , § 3, 4-10-18; AO No. 2018-108(S) , § 3, 12-31-18; AO No. 2018-118 , § 2, 1-1-19; AO No. 2019-42 , § 2, 4-23-19; AO No. 2019-133 , § 1, 11-5-19; AO No. 2020-23 , § 2, 3-10-20; AO No. 2020-24 , § 1, 3-10-20; AO No. 2020-79(S) , § 2, 8-26-20; AO No. 2020-109 , § 2, 10-13-20; AO No. 2020-121 , § 2, 1-1-21; AO No. 2021-113(S) , § 3, 11-10-21; AO No. 2021-114 , § 2, 1-31-22; AO No. 2022-40(S) , § 3, 3-22-22; AO No. 2023-38(S) , § 2, 4-18-23; AO No. 2023-61(S) , § 1, 5-23-23)

Section 2. Anchorage Municipal Code section 25.30.020 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

25.20.020 - Approval by assembly.

In addition to any other assembly action that may be required by law with regard to real property acquisition by the municipality, the following shall be subject to assembly approval:

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A. Acquisitions of, or substantive change to the terms governing ownership, control, or access to, real property including an interest in mineral, wind, solar or water rights, except:

*** **

(AO No. 79-170; AO No. 84-61(S))

Section 3. Anchorage Municipal Code section 25.30.020 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

25.30.020 Disposal by ordinance.

A. Except as required or provided otherwise by law, the municipality may dispose of municipal land or any interest therein only by ordinance.

B. For purposes of this section, an interest in municipal land means any estate in real property or improvements thereon, including an interest in mineral, wind, solar, or water rights, but excluding the following if found by the assembly to be without substantial value to the municipality:

1. Revocable permits;
2. Revocable Licenses;
3. Rights-of-way; or
4. Easements.

*** **

(AO No. 79-170; AO No. 80-48(S); AO No. 2007-102, § 1, 8-14-07; AO No. 2015-47, § 2, 5-14-15 , AO No. 2023-107, § 1, 10-10-2023)

Section 4. Anchorage Municipal Code section 26.30.025 is hereby amended to read as follows:

26.30.025 Eklutna River Restoration

A. It is the policy of the Municipality of Anchorage and the Anchorage Hydropower utility 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 Fish & Wildlife Agreement.

B. Under the 1991 Agreement with the State of Alaska, federal agencies, and utility partners, the Municipality of Anchorage, through its Anchorage Hydropower utility and ownership share in the Eklutna Hydroelectric Project, bears responsibility to study and develop proposals for the protection, mitigation, and enhancement of fish and

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wildlife affected by the hydroelectric development.

1. The Anchorage Hydropower utility shall provide a report to each joint session of the Anchorage Assembly and the Native Village of Eklutna under section 2.30.135B. regarding the restoration of the Eklutna River and Lake and the municipality's performance of its obligations under the 1991 Agreement and the Final Fish and Wildlife Program.
2. The Proposed Final Fish and Wildlife Program to protect, mitigate, and enhance fish and wildlife resources in the Eklutna River shall be subject to assembly approval [SUBMITTED TO THE ASSEMBLY WITH A PROPOSED RESOLUTION IN SUPPORT FOR ACTION], prior to its submission to the Governor of Alaska.

(AO No. 2023-131 § 1, 12-5-23)

Section 5. Anchorage Municipal Code is amended to insert a new section 26.40.090 to read as follows (requiring no legislative drafting):

26.40.090 Water rights.

The utility may enter agreements for water and water rights for use by or within the municipality, subject to approval by the assembly.

Section 6. This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 27th day of March, 2024.

Christopher Constant

Chair

ATTEST:
Joni Lem

Municipal Clerk



**MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM**

No. AM 280-2024

Meeting Date: March 27, 2024

1 **From:** **Assembly Chair Constant**

2
3 **Subject:** **AO 2024-28 – AN ORDINANCE OF THE ANCHORAGE ASSEMBLY**
4 **AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS**
5 **3.20.070, 25.20.020, 25.30.020, 26.30.025, AND INSERTING A NEW**
6 **SECTION 26.40.090 TO REQUIRE ASSEMBLY APPROVAL OF**
7 **ACTIONS TO ACQUIRE OR DISPOSE OF PROPERTY RIGHTS TO**
8 **WATER, MINERAL, WIND OR SOLAR RESOURCES, AND OF THE**
9 **FISH AND WILDLIFE PROGRAM FOR THE EKLUTNA**
10 **HYDROPOWER PROJECT AND RESTORATION OF**
11 **CONTINUOUS WATER FLOWS TO THE EKLUNTA RIVER.**

12
13 The proposed Ordinance is submitted in response to the apparent effort by the
14 Eklutna Owners group to incur financial obligations and dispose of Municipal
15 resources and assets without the approval of or any formal consultation with the
16 Assembly. That is in derogation to the Assembly's legislative powers; it has sole
17 authority to obligate Municipal revenues through its appropriations power, and
18 dispositions of Municipal property, which is apparent in the proposed Draft Fish and
19 Wildlife Plan under the 1991 Agreement, requires Assembly approval. The
20 proposed Ordinance clarifies incurring and obligating the Municipality in these
21 circumstances where the proposed Final Fish and Wildlife Plan will become effective
22 upon approval by the Governor, requires Assembly prior approval.

23
24 **Section 1.** The Proposed AO corrects an oversight in the language of AMC 3.20.070
25 which had apparently delegated broad policy-making decisions for utilities to the
26 Mayor. This language is an improper delegation of the Assembly's authority as the
27 legislative policy-making branch of the municipal government and directly conflicts
28 with the language of AMC section 26.30.025 as codified in AO 2023-131. The
29 changes proposed in this section will clarify that except for operational policies, the
30 policy making authorities, such as budgetary, financial, construction, and other
31 policy considerations reside with the Assembly and thereby resolves the conflict in
32 the Code.

33
34 **Sections 2 & 3.** These proposed changes clarify the Assembly's approval authority
35 over any agreements acquiring or disposing of any interest in real property, including
36 water rights. Specifically, these changes are meant to address a perceived gap in
37 the Code where creative legal instruments have previously been used to grant
38 private parties exclusive use of Municipal property. These proposed amendments
39 make plain that the Assembly's approval must be obtained for the Municipality to
40 grant, dispose, or alter any parties' right to acquire, dispose of, control or access
41 public property, including wind, solar, mineral and water rights.

42
AO 2024-28

1 **Section 4.** This proposed change inserts a new requirement for the Assembly to
2 approve the final Fish and Wildlife program proposed under the 1991 Eklutna Dam
3 agreement, prior to submission the Governor. This change has proven necessary,
4 as the Eklutna Owners have made clear their intention to alter the Municipality's
5 access to drinking water and obligate the Municipality to fund the final program
6 inside the tax cap. These decisions have been made ignoring meaningful input from
7 and policy guidance passed and approved by the Assembly over the past seven
8 years and often in direct conflict to the guidance provided time and time again.

9
10 **Section 5.** Finally, Section 5 inserts a new section of code that requires AWWU
11 submit any agreement for water rights to the Assembly for approval.

12
13 **I request your support for the ordinance.**

14
15 Prepared by: Assembly Counsel's Office


16
17 Respectfully submitted: Christopher Constant, Assembly Chair
18 District 1- Northern Anchorage



MUNICIPALITY OF ANCHORAGE
MAYOR DAVE BRONSON

OFFICE OF THE MAYOR



Date: April 3, 2024
To: Anchorage Assembly
From: Mayor Dave Bronson 
Subject: Veto of Ordinance No. AO 2024-28 (As Amended)

Today, in accordance with Section 2.30.100 of the Anchorage Municipal Code (AMC) and Section 5.02 of the Municipal Charter, I am issuing a veto for AO 2024-28 (As Amended), which was approved during the Assembly's special meeting of March 27, 2024.

History is instructive here. Seven years ago, the Assembly passed a resolution supporting the restoration of the hydrology and fisheries of the Eklutna River "subject to all provisions of the Fish and Wildlife agreement of August 7, 1991." (AR 2017-324(S)). While the Assembly at that time appropriately urged support from the utilities to restore hydrology and fisheries of the Eklutna River, the Assembly never presumed the power to second guess the operational decisions of the utilities themselves. (Anchorage Assembly, Regular Meeting of October 24, 2017 (51:30 - 58:38)).

Under Charter Section 16.01, municipal utilities are required to be operated as utilities, not as political tools. Municipal utilities combine subject-matter expertise and decision-making that is in the best interest of the Municipality and its citizens. In the past six months, however, the Assembly has shifted its stance to one of imposing operational control over the proposed Eklutna Fish and Wildlife Program to achieve a political purpose. This shift has resulted in legislation that pits politicians against subject matter experts, both inside and outside of the of the Municipality (AR 2024-75 (as amended)). This imposition by the Assembly has created tension between the utilities, affected departments, and executive staff charged with making operational decisions in the best interests of the Municipality. The ordinance I am vetoing today, AO 2024-28 (as amended), removes the policymaking power of the mayor as it was historically established in code for utilities – AWWU and the Anchorage Hydropower Utility.

There is no need to change Title 3 of the Anchorage Municipal Code to shift policymaking from one government branch to the other. As was stated at the March 27, 2024 meeting (32:05 - 32:30), and has been repeated numerous times before, serious concerns arise when powers are shifted between branches. Previous mayors signed documents on behalf of the Municipality relating to Eklutna Lake. Those actions were valid and binding upon the Municipality as a whole. The Municipality of Anchorage Charter grants executive and administrative power to the mayor. Assembly action that purports to strip executive and

Page | 1

administrative power from the mayor or municipal manager and grant that same power to itself raises the question of a charter violation.

The executive branch has held the power to make policy and execute agreements when the original agreements were signed in 1984 and 1991 and continues to hold this power today. Should the Assembly wish to disapprove executive branch actions, there are ways to accomplish its goals without dismantling the structure of our home rule municipal government as defined by the Anchorage Municipal Charter.

For the above reasons, I hereby veto AO 2024-28 (As Amended).

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 350-2024

Meeting Date: April 9, 2024



1 **From: Assembly Chair Constant and Vice Chair Zaletel**

2
3 **Subject: Response to Mayoral vetoes of AR 2024-103 and AO 2024-28, As**
4 **Amended.**
5
6

7 We request the Assembly override the Mayoral vetoes of AR 2024-103, dated April
8 2, 2024 and AO 2024-28, As Amended, dated April 3, 2024. Both vetoes are either
9 woefully uninformative, or deliberately misleading. For the sake of clarity this memo
10 addresses each veto in turn:

11 **AR 2024-103**

12 In the veto message of AR 2024-103, Mayor Dave Bronson states that “[b]ecause
13 the Assembly is part of the Municipality of Anchorage, we have no objection to
14 Assembly members making their own copies of the confidential term sheet and of
15 the confidential Common Interest Agreement.”¹ This statement is remarkable, not
16 only for its sound logic, but particularly because it is the first time **any** member of
17 the Administration has expressed this view to members of the Assembly, and it
18 came in the form of a Mayoral veto.
19

20
21 On January 23, 2024, the Assembly learned of the existence of a “binding term
22 sheet” between the Eklutna Owners and AWWU. It is notable that neither the
23 Administration, nor the Department of Law saw fit to inform the Assembly of the
24 existence of this document, but rather the Assembly Leadership was forced to send
25 the Municipal Attorney a request asking to inspect it. The following day, the
26 Municipal Attorney confirmed the existence of a document titled as a binding term
27 sheet, but refused to allow us to see it, asserting that its terms and conditions were
28 “confidential.” This assertion of confidentiality notably lacked reference or citation to
29 any legal authority, merely that, whatever its basis for a claim of confidentiality, the
30 Municipal Attorney did not consider the Assembly to have the appropriate standing
31 to see this document upon request.

32
33 Further, when Assembly Leadership agreed to take up this agreement in executive
34 session on February 2, 2024, the Administration only provided a copy of the binding
35 term sheet after receiving the consent of the other Eklutna Owners. When the
36 Assembly requested to see correspondence between the Municipal Attorney and
37 the Eklutna Owners, this was also refused as being “confidential.” And finally, on
38 April 4th when the Chair recently attempted to review the term sheet with the
39 Assembly’s attorneys, as the Mayor’s veto clearly stated he would be able to, he
40 was denied the opportunity to either retain a copy or even review and discuss it

¹ Veto of AR 2024-103.

1 without a municipal attorney present until the Eklutna Owners approved the
2 language of a confidentiality agreement she intended to have both the Chair and
3 the Attorneys sign. In this extraordinary change in Municipal policy, the Municipal
4 Attorney didn't bother to apprise the Assembly Chair of her unilateral decision to
5 restrict his ability to confer with counsel. Until the language of the confidentiality
6 agreement was approved, the Chair and the Assembly's attorneys would only be
7 allowed to view the document with a member of the Department of Law physically
8 present in the room.

9
10 Despite the repeated affirmations of the Municipal Attorney that their office works
11 for the Municipality of Anchorage and that its job is to advise both branches of the
12 Municipal Government, the Assembly has been consistently treated as a third party,
13 if not a party opponent, to the Eklutna Owners, and has been denied meaningful
14 access to these documents.

15
16 **AO 2024-28, As Amended.**

17 The Mayor's veto quite condescendingly states that "[h]istory is instructive here"².
18 Ironically, we cannot agree more.

19
20 As the legislative branch of the Municipal Government, it is inherently the
21 Assembly's role to articulate and codify the policy of the Municipal Government.³

22
23 The Administration's assertion that "[t]he executive branch held the power to make
24 policy and executive agreements when the original agreements were signed in 1984
25 and 1991"⁴ strikes us as statement that could be best described as grossly
26 inaccurate.

27
28 The Mayor describes previous mayors as having "signed documents on behalf of
29 the Municipality relating to Eklutna Lake. Those actions were valid and binding upon
30 the Municipality as a whole."⁵ However, the historical record of the Eklutna Project
31 reflects substantial involvement by the Assembly and the public in those
32 agreements.

33
34 In 1987, Mayor Tony Knowles presented the prospect of purchasing the Eklutna
35 Hydropower Project and requested both public hearings and the Assembly's
36 endorsement to even begin the negotiations for its purchase.⁶ In 1989, Mayor Tom
37 Fink presented the purchase agreement to the Assembly and requested authority
38 from them to sign on behalf of the Municipality,⁷ and again in 1991, requesting the
39 Assembly's approval of the final amendment to the agreement.⁸ The actions of
40 these previous mayors were "valid and binding" not because there were the inherent
41 prerogative of the executive, but rather, because they were done openly, with the

² Veto of AO 2024-28 (As Amended), pg 1.

³ See <https://mrsc.org/stay-informed/mrsc-insight/february-2021/separation-of-powers-in-local-government>.)

⁴ Veto *supra* note 2

⁵ *Id.*

⁶ See AR 1987-41(S-1), as Amended.

⁷ See AM 674-1989.

⁸ See AM 716-1991.

1 | advice, consultation, and **consent** of the Assembly.
2 |
3 | History is instructive indeed.
4 |
5 | By way of comparison, should we examine the actions of this administration? Not
6 | just with regard to Eklutna Lake, but his management of public utilities and public
7 | finances as a whole?
8 |
9 | It is this Mayor who disregarded the requirements of code and unilaterally
10 | discontinued the fluoridation of the Municipality's water supply in violation of AMC
11 | 26.40.050.⁹
12 |
13 | It is this Mayor who ignored the Assembly's authority to over contracts under AMC
14 | and illegally executed a multi-million dollar contract on a tent purportedly intended
15 | to shelter human beings but lacking any approved and verifiable engineering data
16 | pertaining to its capacity to hold snow load or withstand wind as required by Title 23
17 | of the Municipal Code.¹⁰
18 |
19 | It is this Mayor who ignored the State Legislative Program, duly enacted by the
20 | Assembly under AMC 2.10.075 and its published advocacy pamphlet, and instead
21 | printed a separate program and advocated his own personal policies to the State
22 | Legislature, undermining his own government, betraying the people of Anchorage,
23 | and violating subsection 2.10.075B.¹¹
24 |
25 | This Mayor clandestinely negotiated and is presently attempting to bind the
26 | Municipality to a series of agreements implicating tens of millions of taxpayers' and
27 | ratepayers' funds and access to drinking water for decades in direct contradiction of
28 | policies duly established and codified by the Assembly. Moreover, the Mayor's
29 | actions were done without clearly informing the public of the substance and effect
30 | of the unauthorized agreements he is attempting to make.
31 |
32 | Nevertheless, with this historical context, this Mayor still has the temerity to assert
33 | that it is the action of the Assembly which "raises the question of a charter
34 | violation."¹²
35 |
36 | History is instructive here, but not nearly so instructive as the law. We strongly
37 | encourage the Administration to apprise itself of both before implying that we have
38 | strayed from our sworn duties under the Charter. That the code had previously

⁹ See Michael Levenson, *Anchorage Mayor Briefly Shut Off Fluoride in City's Water System*, N.Y. TIMES, Dec. 16, 2021 available at <https://www.nytimes.com/2021/12/16/us/anchorage-mayor-dave-bronson-fluoride-water.html>.

¹⁰ See Emily Goodykoontz, *Bronson Administration Approved \$4.9 Million for Construction for East Anchorage Homeless Shelter Without Required Assembly Approval*, ANCHORAGE DAILY NEWS, Oct. 13, 2022 available at <https://www.adn.com/alaska-news/anchorage/2022/10/13/bronson-administration-green-lit-49-million-in-construction-for-east-anchorage-homeless-shelter-without-assembly-approval/>

¹¹ See Yallow Silvers, *Anchorage Mayor 'Bonson' Goes Rogue in Juneau*, THE ALASKA CURRENT, Jan. 26, 2024 available at <https://thealaskacurrent.com/2024/01/26/anchorage-mayor-bonson-goes-rogue-in-juneau/>

¹² Veto supra note 2, pg.2

1 delegated certain policy-making powers to the executive branch, does not, should
2 not, and cannot be presumed to create an insurmountable impediment to returning
3 such power to the policy-making branch: the legislative. This is particularly important
4 now, when that power has been so grossly abused by an Administration so
5 seemingly incapable of performing the most basic of functions of government
6 without violating the law.

7
8 Regardless of the characterizations implied by the Mayor's vetoes, the actions of
9 this body do not constitute an expansion of the Assembly's power or an
10 impermissible intrusion into the authority of the executive. Rather, these are the
11 measured and reasonable actions of a body attempting to secure information to
12 which it is already entitled, to exercise legislative powers it has not had to exercise
13 in the past, and to implement policies inherently within its authority.

14
15 **We request your support for overriding the veto of both the ordinance and**
16 **resolution.**

17
18 Prepared by: Assembly Chair Constant
19 Reviewed by: Assembly Counsel's Office

20
21 Respectfully submitted: Christopher Constant, Assembly Chair
22 District 1, North Anchorage

23
24 Meg Zaletel, Assembly Vice Chair
25 District 4, Midtown

Municipal Clerk's Office

Approved

Date: March 27, 2024

Mayoral Veto Given

Date: April 2, 2024

Mayoral Veto Overridden

Date: April 9, 2024

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

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

6
7 **WHEREAS**, Anchorage Municipal Code section 2.30.085, *Subpoena powers*,
8 authorizes the Assembly Chair with the approval of a majority of the Assembly, to
9 compel by subpoena the "testimony of a person whom the assembly reasonably
10 believes may be able to give information relating to a public matter being considered by
11 the assembly" and to "produce documents, papers or objects which the assembly
12 reasonably believes may relate to a public matter being considered by the assembly";
13 and
14

15 **WHEREAS**, in 1984 the Alaska Power Administration and the Municipality Anchorage
16 negotiated and executed an Agreement for Public Water Supply and Energy Generation
17 from Eklutna Lake, Alaska (1984 Agreement) to secure water rights for the diversion of
18 water from Eklutna Lake while protecting water volume needed for the Eklutna
19 Hydropower Project; and
20

21 **WHEREAS**, in 1991, the Federal Government sold the Eklutna Dam Hydroelectric
22 facility to the Chugach Electric Association, Matanuska Electric Association, and the
23 Municipality of Anchorage (doing business as Anchorage Municipal Light and Power
24 (ML&P)); and
25

26 **WHEREAS**, the terms of the 1991 Fish and Wildlife Agreement require a robust public
27 process, in place of the process required for a Federal Energy Regulatory Commission
28 license, whereby the owners are to study and propose a plan for mitigating the impact
29 of the Eklutna Dam on local fish and wildlife; and
30

31 **WHEREAS**, in 1993, the Alaska Power Administration and the Municipality of
32 Anchorage executed a supplemental agreement to their earlier 1984 Agreement (1993
33 Supplement) which currently governs Anchorage Water & Wastewater Utility's (AWWU)
34 rights and access to drinking water from Eklutna Lake and is set to expire in 2025; and
35

36 **WHEREAS**, in May of 2020, the Regulatory Commission of Alaska (RCA) approved the
37 sale of the ML&P from the Municipality of Anchorage to Chugach Electric Association
38 (CEA), with the requirement that the Municipality surrender its vote as a member of the
39 Eklutna Operating Committee, until it could demonstrate to the RCA that it has sufficient
40 expertise within Municipal Hydro Power to participate again as a voting member; and
41

42 **WHEREAS**, the Assembly Leadership recently learned that in October 2023, AWWU
43 and the Eklutna Owner's Group, executed an agreement which the Administration
44 described to the Assembly as a "binding term sheet," the terms of which would govern
45 AWWU's rights and access to drinking water from Eklutna Lake in the event the
46 Governor endorses the currently proposed Fish and Wildlife Plan; and

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

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

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

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

NOW, THEREFORE BE IT RESOLVED THAT THE ANCHORAGE ASSEMBLY:

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

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

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

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

PASSED AND APPROVED by the Anchorage Assembly this 27th day of March, 2024.

Christopher Constant

Chair

ATTEST:

[Signature]


Municipal Clerk



MUNICIPALITY OF ANCHORAGE
MAYOR DAVE BRONSON

OFFICE OF THE MAYOR



Date: April 2, 2024
To: Anchorage Assembly
From: Mayor Dave Bronson 
Subject: Veto of Resolution No. AR 2024-103

Today, in accord with Section 2.30.100 of the Anchorage Municipal Code (AMC) and Section 5.02 of the Municipal Charter, I am issuing a veto for AR 2024-103, which was approved during the Assembly's special meeting on March 27, 2024.

Why are assembly members spending taxpayer dollars for their attorneys to subpoena documents they already have access to? These documents have been made available to them, are available to them, and this open invitation continues. These threatening subpoenas are nothing more than scare tactics to bully municipal employees into potentially breaching municipal contracts. As one of the Assembly's own members put it, these extreme tactics are mere "chest puffing."

The Assembly and their own lawyers have said the real reason for the subpoena is to make the term sheet public. However, the term sheet they seek to make public is subject to a prior contract - a Common Interest Agreement signed by the Municipality of Anchorage in 2017. Because the Assembly is part of the Municipality of Anchorage, we have no objection to Assembly members making their own copies of the confidential term sheet and of the confidential Common Interest Agreement. Indeed, disclosure has already been made, and is available to members of the Assembly and their paid outside counsel - if the confidentiality is properly maintained, and the Common Interest Agreement is not breached. I simply do not see why the Anchorage Assembly believes they are not bound by the 2017 Common Interest Agreement and, consequently, I do not agree that the Assembly has a unilateral right to publicly release documents subject to a Common Interest Agreement. If the Anchorage Assembly makes this document public as they want to, the Municipality will surely be sued for breach of contract.

The Municipality agreed in 2017 that no party would have the authority to waive any privilege or defense of any other party without the consent from the other parties. Chugach and MEA have not waived their rights under the Common Interest Agreement.

A subpoena is unnecessary when we have already made these documents available to Assembly Members and their counsel. AR 2024-103 is an attempt to interfere and potentially

Page | 1

Exhibit 3
Page 3 of 8



**MUNICIPALITY OF ANCHORAGE
MAYOR DAVE BRONSON**

OFFICE OF THE MAYOR

A handwritten signature in blue ink, appearing to be 'Dave Bronson', located to the right of the official header.

breach the contractual obligations agreed to by the Municipality in 2017 during the Berkowitz administration.

For the above reasons, I hereby veto AR 2024-103.

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 350-2024

Meeting Date: April 9, 2024



1 **From:** Assembly Chair Constant and Vice Chair Zaletel
2
3 **Subject:** Response to Mayoral vetoes of AR 2024-103 and AO 2024-28, As
4 Amended.
5
6

7 We request the Assembly override the Mayoral vetoes of AR 2024-103, dated April
8 2, 2024 and AO 2024-28, As Amended, dated April 3, 2024. Both vetoes are either
9 woefully uninformative, or deliberately misleading. For the sake of clarity this memo
10 addresses each veto in turn:
11

12 **AR 2024-103**

13 In the veto message of AR 2024-103, Mayor Dave Bronson states that “[b]ecause
14 the Assembly is part of the Municipality of Anchorage, we have no objection to
15 Assembly members making their own copies of the confidential term sheet and of
16 the confidential Common Interest Agreement.”¹ This statement is remarkable, not
17 only for its sound logic, but particularly because it is the first time any member of
18 the Administration has expressed this view to members of the Assembly, and it
19 came in the form of a Mayoral veto.
20

21 On January 23, 2024, the Assembly learned of the existence of a “binding term
22 sheet” between the Eklutna Owners and AWWU. It is notable that neither the
23 Administration, nor the Department of Law saw fit to inform the Assembly of the
24 existence of this document, but rather the Assembly Leadership was forced to send
25 the Municipal Attorney a request asking to inspect it. The following day, the
26 Municipal Attorney confirmed the existence of a document titled as a binding term
27 sheet, but refused to allow us to see it, asserting that its terms and conditions were
28 “confidential.” This assertion of confidentiality notably lacked reference or citation to
29 any legal authority, merely that, whatever its basis for a claim of confidentiality, the
30 Municipal Attorney did not consider the Assembly to have the appropriate standing
31 to see this document upon request.
32

33 Further, when Assembly Leadership agreed to take up this agreement in executive
34 session on February 2, 2024, the Administration only provided a copy of the binding
35 term sheet after receiving the consent of the other Eklutna Owners. When the
36 Assembly requested to see correspondence between the Municipal Attorney and
37 the Eklutna Owners, this was also refused as being “confidential.” And finally, on
38 April 4th when the Chair recently attempted to review the term sheet with the
39 Assembly’s attorneys, as the Mayor’s veto clearly stated he would be able to, he
40 was denied the opportunity to either retain a copy or even review and discuss it

¹ Veto of AR 2024-103.

1 without a municipal attorney present until the Eklutna Owners approved the
2 language of a confidentiality agreement she intended to have both the Chair and
3 the Attorneys sign. In this extraordinary change in Municipal policy, the Municipal
4 Attorney didn't bother to apprise the Assembly Chair of her unilateral decision to
5 restrict his ability to confer with counsel. Until the language of the confidentiality
6 agreement was approved, the Chair and the Assembly's attorneys would only be
7 allowed to view the document with a member of the Department of Law physically
8 present in the room.

9
10 Despite the repeated affirmations of the Municipal Attorney that their office works
11 for the Municipality of Anchorage and that its job is to advise both branches of the
12 Municipal Government, the Assembly has been consistently treated as a third party,
13 if not a party opponent, to the Eklutna Owners, and has been denied meaningful
14 access to these documents.

15
16 **AO 2024-28, As Amended.**

17 The Mayor's veto quite condescendingly states that "[h]istory is instructive here"².
18 Ironically, we cannot agree more.

19
20 As the legislative branch of the Municipal Government, it is inherently the
21 Assembly's role to articulate and codify the policy of the Municipal Government.³

22
23 The Administration's assertion that "[t]he executive branch held the power to make
24 policy and executive agreements when the original agreements were signed in 1984
25 and 1991"⁴ strikes us as statement that could be best described as grossly
26 inaccurate.

27
28 The Mayor describes previous mayors as having "signed documents on behalf of
29 the Municipality relating to Eklutna Lake. Those actions were valid and binding upon
30 the Municipality as a whole."⁵ However, the historical record of the Eklutna Project
31 reflects substantial involvement by the Assembly and the public in those
32 agreements.

33
34 In 1987, Mayor Tony Knowles presented the prospect of purchasing the Eklutna
35 Hydropower Project and requested both public hearings and the Assembly's
36 endorsement to even begin the negotiations for its purchase.⁶ In 1989, Mayor Tom
37 Fink presented the purchase agreement to the Assembly and requested authority
38 from them to sign on behalf of the Municipality,⁷ and again in 1991, requesting the
39 Assembly's approval of the final amendment to the agreement.⁸ The actions of
40 these previous mayors were "valid and binding" not because there were the inherent
41 prerogative of the executive, but rather, because they were done openly, with the

² Veto of AO 2024-28 (As Amended), pg 1.

³ See <https://mrsc.org/stay-informed/mrsc-insight/february-2021/separation-of-powers-in-local-government>.)

⁴ Veto *supra* note 2

⁵ *Id.*

⁶ See AR 1987-41(S-1), as Amended.

⁷ See AM 674-1989.

⁸ See AM 716-1991.

1 advice, consultation, and **consent** of the Assembly.

2
3 History is instructive indeed.

4
5 By way of comparison, should we examine the actions of this administration? Not
6 just with regard to Eklutna Lake, but his management of public utilities and public
7 finances as a whole?

8
9 It is this Mayor who disregarded the requirements of code and unilaterally
10 discontinued the fluoridation of the Municipality's water supply in violation of AMC
11 26.40.050.⁹

12
13 It is this Mayor who ignored the Assembly's authority to over contracts under AMC
14 and illegally executed a multi-million dollar contract on a tent purportedly intended
15 to shelter human beings but lacking any approved and verifiable engineering data
16 pertaining to its capacity to hold snow load or withstand wind as required by Title 23
17 of the Municipal Code.¹⁰

18
19 It is this Mayor who ignored the State Legislative Program, duly enacted by the
20 Assembly under AMC 2.10.075 and its published advocacy pamphlet, and instead
21 printed a separate program and advocated his own personal policies to the State
22 Legislature, undermining his own government, betraying the people of Anchorage,
23 and violating subsection 2.10.075B.¹¹

24
25 This Mayor clandestinely negotiated and is presently attempting to bind the
26 Municipality to a series of agreements implicating tens of millions of taxpayers' and
27 ratepayers' funds and access to drinking water for decades in direct contradiction of
28 policies duly established and codified by the Assembly. Moreover, the Mayor's
29 actions were done without clearly informing the public of the substance and effect
30 of the unauthorized agreements he is attempting to make.

31
32 Nevertheless, with this historical context, this Mayor still has the temerity to assert
33 that it is the action of the Assembly which "raises the question of a charter
34 violation."¹²

35
36 History is instructive here, but not nearly so instructive as the law. We strongly
37 encourage the Administration to apprise itself of both before implying that we have
38 strayed from our sworn duties under the Charter. That the code had previously

⁹ See Michael Levenson, *Anchorage Mayor Briefly Shut Off Fluoride in City's Water System*, N.Y. TIMES, Dec. 16, 2021 available at <https://www.nytimes.com/2021/12/16/us/anchorage-mayor-dave-bronson-fluoride-water.html>.

¹⁰ See Emily Goodykoontz, *Bronson Administration Approved \$4.9 Million for Construction for East Anchorage Homeless Shelter Without Required Assembly Approval*, ANCHORAGE DAILY NEWS, Oct. 13, 2022 available at <https://www.adn.com/alaska-news/anchorage/2022/10/13/bronson-administration-green-lit-49-million-in-construction-for-east-anchorage-homeless-shelter-without-assembly-approval/>

¹¹ See Yellow Silvers, *Anchorage Mayor 'Bonson' Goes Rogue in Juneau*, THE ALASKA CURRENT, Jan. 26, 2024 available at <https://thealaskacurrent.com/2024/01/26/anchorage-mayor-bonson-goes-rogue-in-juneau/>

¹² Veto supra note 2, pg.2

1 delegated certain policy-making powers to the executive branch, does not, should
2 not, and cannot be presumed to create an insurmountable impediment to returning
3 such power to the policy-making branch: the legislative. This is particularly important
4 now, when that power has been so grossly abused by an Administration so
5 seemingly incapable of performing the most basic of functions of government
6 without violating the law.

7
8 Regardless of the characterizations implied by the Mayor's vetoes, the actions of
9 this body do not constitute an expansion of the Assembly's power or an
10 impermissible intrusion into the authority of the executive. Rather, these are the
11 measured and reasonable actions of a body attempting to secure information to
12 which it is already entitled, to exercise legislative powers it has not had to exercise
13 in the past, and to implement policies inherently within its authority.

14
15 **We request your support for overriding the veto of both the ordinance and**
16 **resolution.**

17
18 Prepared by: Assembly Chair Constant
19 Reviewed by: Assembly Counsel's Office

20
21 Respectfully submitted: Christopher Constant, Assembly Chair
22 District 1, North Anchorage

23
24 Meg Zaletel, Assembly Vice Chair
25 District 4, Midtown



Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4311 • Fax: (907) 343-4313 <http://www.muni.org/assembly>

Anchorage Assembly Leadership

March 27, 2024

Mr. Kent Kohlhase
632 West 6th Avenue, Ste. 850
Anchorage, AK 99501
kent.kohlhase@anchorageak.gov

*Sent electronically and
served via certified mail*

Re: Request for certain documents concerning Municipal access to drinking water
from Eklutna Lake

Dear Mr. Kohlhase:

At a recent executive session the General Manager of the Anchorage Water and Wastewater Utility and the Municipal Attorney appeared and provided information regarding the substance of a “binding term sheet” which had been executed between the Anchorage Water and Wastewater Utility and the Eklutna Owners Group governing the Municipality’s access to drinking water from Eklutna Lake. As we have stated before, this is a matter of significant public interest.

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

Given the foregoing, the Assembly leadership hereby requests you produce copies of the following documents:

- The agreement described as a “binding term sheet” executed between the Eklutna Owners and the Anchorage Water and Wastewater Utility, which had been previously provided for review only in executive session; and
- Any existing agreement among the Eklutna Owners or between the Eklutna Owners and any third party, upon which a claim of privilege or confidentiality is based.

Please provide the requested documents to us either physically or via email **no later than 5p.m. Wednesday, April 3, 2024**. Your attention is invited to the attached subpoena compelling the production of these documents.


We will appreciate your prompt attention to this matter.

Municipal Manager Kent Kohlase
March 27, 2024
Page 2 of 2

Sincerely,



Christopher Constant, Assembly Chair



Meg Zaletel, Assembly Vice Chair

Cc: Municipal Attorney

Municipality of Anchorage

Christopher Constant
Chair

Anna Brawley
Karen Bronga
Kevin Cross
Zac Johnson
George Martinez



Dave Bronson
Mayor

Meg Zaletel
Vice-Chair

Scott Myers
Kameron Perez-Verdia
Felix Rivera
Randy Sulte
Daniel Volland

Jamie Heinz, Municipal Clerk

Jasmine Acres, Deputy Municipal Clerk

SUBPOENA TO PRODUCE DOCUMENTS ON BEHALF AND IN THE NAME OF THE ANCHORAGE ASSEMBLY

Pursuant to the authority provided under Article IV of the Anchorage Municipal Charter, Section 2.30.085 of the Anchorage Municipal Code, and Assembly Resolution 2024-103:

To:
Mr. Kent Kohlhase
ATTN: Records Custodian, Anchorage Hydropower Utility
632 West 6th Avenue, Ste. 850
Anchorage, AK 99501
kent.kohlhase@anchorageak.gov

*Sent electronically and
served via certified mail*


YOU ARE HEREBY ORDERED TO PRODUCE for the Assembly's inspection and retention, the documents listed in the Appendix to this subpoena.

Provide the requested documents either in person, by certified mail, or by electronic submission no later than **5 p.m. on Wednesday, April 3, 2024** to:

Chair Christopher Constant
632 West 6th Avenue, Ste. 150
Anchorage, AK 99501
christopher.constant@anchorageak.gov

Failure to obey the commands of this subpoena may be punished by contempt proceedings, in addition to any other remedy available by law.

This subpoena is issued this day, March 27, 2024, upon authorization of:



Christopher Constant
Chair, on Behalf of the Assembly

ATTEST:

Jasmine Acres
for _____
Municipal Clerk

SUBPOENA TO PRODUCE DOCUMENTS
To: Mr. Kent Kohlhase

APPENDIX

INSTRUCTIONS

1. The term “documents” means and includes, without limitation, all written or graphic matter of every kind and description, however produced or reproduced, whether draft or final, original or reproduction, internal or otherwise, whether stored in tangible, electric, mechanical, or electronic form or representation of any kind.
2. Documents, communications, and records must be produced in a form that is reasonably usable, such PDFs or native file.

RECORDS REQUESTED

1. The document described as a “binding term sheet” executed between the Eklutna Owners and the Anchorage Water and Wastewater Utility, which had been previously provided for review only in executive session; and
2. Any document constituting an existing agreement among the Eklutna Owners or between the Eklutna Owners and any third party, upon which a claim of privilege or confidentiality is based.



Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4311 • Fax: (907) 343-4313 <http://www.muni.org/assembly>

Anchorage Assembly Leadership

March 27, 2024

Mr. Mark Corsentino
3000 Arctic Boulevard
Anchorage, AK 99503-3813
mark.corsentino@awwu.biz

*Sent electronically and
served via certified mail*

Re: Request for certain documents concerning Municipal access to drinking water from Eklutna Lake

Dear Mr. Corsentino:

At a recent executive session you appeared and testified regarding the substance of a “binding term sheet” which had been executed between the Anchorage Water and Wastewater Utility and the Eklutna Owners Group governing the Municipality’s access to drinking water from Eklutna Lake.

As we have stated before, this is a matter of significant public interest.

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

Given the foregoing, the Assembly leadership hereby requests you produce copies of the following documents:

- The agreement described as a “binding term sheet” executed between the Eklutna Owners and the Anchorage Water and Wastewater Utility, which had been previously provided for review only in executive session; and
- Any existing agreement among the Eklutna Owners or between the Eklutna Owners and any third party, upon which a claim of privilege or confidentiality is based.

Please provide the requested documents to us either physically or via email **no later than 5p.m. Wednesday, April 3, 2024**. Your attention is invited to the attached subpoena compelling the production of these documents.

We will appreciate your prompt attention to this matter.

General Manager Mark Corsentino
March 27, 2024
Page 2 of 2

Sincerely,



Christopher Constant, Assembly Chair



Meg Zalatel, Assembly Vice Chair

Cc: Michael McLaughlin

Municipality of Anchorage

Christopher Constant
Chair

Anna Brawley
Karen Bronga
Kevin Cross
Zac Johnson
George Martinez



Dave Bronson
Mayor

Meg Zaletel
Vice-Chair

Scott Myers
Kameron Perez-Verdia
Felix Rivera
Randy Sulte
Daniel Volland

Jamie Heinz, Municipal Clerk

Jasmine Acres, Deputy Municipal Clerk

SUBPOENA TO PRODUCE DOCUMENTS ON BEHALF AND IN THE NAME OF THE ANCHORAGE ASSEMBLY

Pursuant to the authority provided under Article IV of the Anchorage Municipal Charter, Section 2.30.085 of the Anchorage Municipal Code, and Assembly Resolution 2024-103:

To:
Mr. Mark Corsentino
ATTN: Records Custodian, Anchorage Water and Wastewater Utility
3000 Arctic Boulevard
Anchorage, AK 99503-3813
mark.corsentino@awwu.biz

*Sent electronically and
served via certified mail*

YOU ARE HEREBY ORDERED TO PRODUCE for the Assembly's inspection and copying, the documents listed in the Appendix to this subpoena.

Provide the requested documents either in person, by certified mail, or by electronic submission no later than **5 p.m. on Wednesday, April 3, 2024** to:

Chair Christopher Constant
632 West 6th Avenue, Ste. 150
Anchorage, AK 99501
christopher.constant@anchorageak.gov

Failure to obey the commands of this subpoena may be punished by contempt proceedings, in addition to any other remedy available by law.

This subpoena is issued this day, March 27, 2024, upon authorization of:

Christopher Constant
Chair, on Behalf of the Assembly

ATTEST:

Jor

Municipal Clerk

SUBPOENA TO PRODUCE DOCUMENTS
To: Mr. Corsentino

APPENDIX

INSTRUCTIONS

1. The term “documents” means and includes, without limitation, all written or graphic matter of every kind and description, however produced or reproduced, whether draft or final, original or reproduction, internal or otherwise, whether stored in tangible, electric, mechanical, or electronic form or representation of any kind.
2. Documents, communications, and records must be produced in a form that is reasonably usable, such PDFs or native file.

RECORDS REQUESTED

1. The document described as a “binding term sheet” executed between the Eklutna Owners and the Anchorage Water and Wastewater Utility, which had been previously provided for review only in executive session; and
2. Any document constituting an existing agreement among the Eklutna Owners or between the Eklutna Owners and any third party upon which any a claim of privilege or confidentiality is based.

[REDACTED]

[REDACTED]

From: Kohlhase, Kent E. <kent.kohlhase@anchorageak.gov>
Sent: Wednesday, April 3, 2024 4:05 PM
To: Hurt, Matthew P. <Matthew.Hurt@anchorageak.gov>
Cc: Gates, Dean T. <dean.gates@anchorageak.gov>; Helzer, Anne <Anne.Helzer@anchorageak.gov>;
Bolgiano, Allison P. <Allison.Bolgiano@anchorageak.gov>
Subject: Letter and Subpoena

Good afternoon, Mr. Hurt,

As Municipal Manager, I have substantially complied with the attached Subpoena by making the documents available to the Assembly and its counsel for confidential review through the Municipal Attorney's Office.
My invitation for the Assembly and its legal counsel to review the documents through the Municipal Attorney's Office remains open.

Further, I assert the client-lawyer privilege because all documents responsive to the Subpoena in my possession are privileged communications. Additionally, the documents are confidential under the terms of a Common Interest Agreement executed in 2017, and I cannot breach my duty of confidentiality under that Agreement because I do not wish to expose the Municipality to legal liability.

Please include the Municipal Attorney on any further communications with me about this matter.

Thank you,

Kent



Kent Kohlhase, P.E.
Municipal Manager
Municipality of Anchorage
632 W. 6th Avenue, Suite 850
Anchorage, Alaska 99501
(907) 343-7110
kent.kohlhase@anchorageak.gov

[REDACTED]

From: Corsentino, Mark A. <Mark.Corsentino@awwu.biz>
Sent: Wednesday, April 3, 2024 1:29 PM
To: Hurt, Matthew P. <Matthew.Hurt@anchorageak.gov>
Cc: Gates, Dean T. <dean.gates@anchorageak.gov>; McLaughlin, Michael S <mmclaughlin@guessrudd.com>; Helzer, Anne <Anne.Helzer@anchorageak.gov>; Kohlase, Kent E. <kent.kohlase@anchorageak.gov>; Bolgiano, Allison P. <Allison.Bolgiano@anchorageak.gov>
Subject: RE: Letter and Subpoena

Matthew,

As AWWU's General Manager, I have substantially complied with the attached Subpoena by making the documents available to the Assembly and its counsel for confidential review through the Municipal Attorney's Office.

My invitation for the Assembly and its legal counsel to review the documents through the Municipal Attorney's Office remains open.

Further, I assert the client-lawyer privilege because all documents responsive to the Subpoena in my possession are privileged communications made for the purpose of facilitating the provision of legal services to AWWU.

Additionally, the documents are confidential under the terms of a Common Interest Agreement executed in 2017, and I cannot breach my duty of confidentiality under that Agreement because I do not wish to expose AWWU or the Municipality to legal liability.

Please include the Municipal Attorney on any further communications with me about this matter.

Thank you,



Mark A. Corsentino, P.E.
General Manager
Anchorage Water & Wastewater Utility
Direct: 907-786-5511
Cell: 907-917-6551
Mark.Corsentino@awwu.biz

AWWU is investing to ensure reliable service, safeguard public health, and protect the environment, long into the future.

From: Hurt, Matthew P. <Matthew.Hurt@anchorageak.gov>
Sent: Thursday, March 28, 2024 4:54 PM
To: Corsentino, Mark A. <Mark.Corsentino@awwu.biz>
Cc: Gates, Dean T. <gatesdt@muni.org>; McLaughlin, Michael S <mmclaughlin@guessrudd.com>
Subject: Letter and Subpoena

On behalf of the Anchorage Assembly, please see the attached letter and subpoena.

Thank you,

Matthew Hurt
Legislative Counsel
O: 907.343.4714
C: 907.802.7238



Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4311 • Fax: (907) 343-4313 <http://www.muni.org/assembly>

Anchorage Assembly Leadership

April 16, 2024

To:
Ms. Anne Helzer
Municipal Attorney
632 West 6th Avenue, Ste. 730
Anchorage, AK 99501
anne.helzer@anchorageak.gov

*Sent electronically and
served.*

Re: Demand for Full, Free, and Unrestricted Access to Certain Documents Concerning
Municipal Access to Drinking Water from Eklutna Lake

Dear Ms. Helzer,

As you know, on April 9, 2024, the Assembly overrode the Mayor's veto of AR 2024-103, which authorized the Chair to issue subpoenas on behalf the Assembly for certain documents in the Administration's possession related to the Eklutna Project. While the Assembly does not concede that the Mayor may validly veto a resolution authorizing a subpoena pursuant to AMC 2.30.085, in this instance, the Assembly has removed any doubt by overriding the veto.

After having taken up these matters in executive session, the Assembly has determined that this is a matter of significant public interest and it remains necessary to compel production of certain public documents in the Administration's possession.

The Assembly recently learned that in 2017, the Municipality entered into a "Common Interest Agreement" with Chugach Electric Association and Matanuska Electric Association, who, along with the Municipality, collectively own and manage the Eklutna Hydroelectric Project. The Assembly understands that the purpose of the Common Interest Agreement was to facilitate negotiations, including communications among the Project Owners' attorneys, regarding implementation of the 1991 Fish and Wildlife Agreement. The Assembly further understands that the Common Interest Agreement was intended to apply to the Municipality of Anchorage as whole and that no other municipal employee or officer has been required to sign a supplemental confidentiality agreement prior to receiving access to materials designated as confidential under the Common Interest Agreement.

The Assembly also recently learned that the Project Owners, including the Municipality and the Anchorage Water and Wastewater Utility ("AWWU"), entered into an agreement described as a "Binding Term Sheet." That agreement purportedly commits the Municipality to certain obligations regarding implementation of the 1991 Fish and Wildlife Agreement and negotiations regarding the Municipality's water rights and access to Eklutna Lake. Importantly, the Binding Term Sheet also contains a provision

[REDACTED]

[REDACTED]

Municipal Attorney Anne Helzer
April 16, 2024
Page 2 of 2

Finally, on April 4, the Assembly learned of an "Amendment to the Binding Term Sheet," which contained [REDACTED]. Each of those [REDACTED] will be subject to Assembly approval prior to their execution.

The Assembly has repeatedly asked to review each of the aforementioned documents in private with Assembly Counsel and the Assembly's outside attorneys. However, on April 4, when reviewing the documents in your office with Assembly Counsel, you refused to allow Assembly members to discuss the documents confidentially, outside of the presence of an Assistant Municipal Attorney.

The Assembly is the co-equal legislative branch of the Municipality of Anchorage. As part of the Municipality, the Assembly has a legitimate and compelling interest in providing legislative oversight of municipal agencies and utilities. In particular, the Assembly has a responsibility to Anchorage residents to ensure that any agreements that purport to legally bind municipal agencies or commit municipal resources are in the public interest. In carrying out its duties, the Assembly is entitled to seek the advice of the Assembly Counsel, including outside counsel. Under AMC 2.20.065, the Assembly Counsel is entitled to "full, free, and unrestricted access" to all public records and "all activities of the municipal government and its various departments."

The Assembly finds that it is necessary in furtherance of the Assembly's legislative powers under the Charter to compel production of the following documents for the Assembly to retain and share with their counsel:

- The document described as a "binding term sheet" executed between the Eklutna Owners and the Anchorage Water and Wastewater Utility, which had been previously provided for review only in executive session, as well as any amendments, extensions, addendums, or any other writing reflecting a change to the substantive terms thereto; and
- The document described as the "2017 Common Interest Agreement" and any document upon which a claim of privilege or confidentiality is based.

Please provide the requested documents to us either physically or via email **no later than 5p.m. Wednesday, April 17, 2024**. Time is of the essence in this matter. Should you have questions or require additional time to provide these documents please do not hesitate to contact the Office of the Assembly Counsel, and we will endeavor to accommodate a reasonable request.

We appreciate your prompt attention to this matter.

Sincerely,


Christopher Constant, Assembly Chair


Meg Zaletel, Assembly Vice Chair

[REDACTED]

Municipality of Anchorage

Christopher Constant
Chair

Anna Brawley
Karen Bronga
Kevin Cross
Zac Johnson
George Martinez



Dave Bronson
Mayor

Meg Zaletel
Vice-Chair

Scott Myers
Kameron Perez-Verdia
Felix Rivera
Randy Sulte
Daniel Volland

Jamie Heinz, Municipal Clerk

Jasmine Acres, Deputy Municipal Clerk

SUBPOENA TO PRODUCE DOCUMENTS ON BEHALF AND IN THE NAME OF THE ANCHORAGE ASSEMBLY

Pursuant to the authority provided under Article IV of the Anchorage Municipal Charter, Section 2.30.085 of the Anchorage Municipal Code, and Assembly Resolution 2024-103:

To:
Ms. Anne Helzer
ATTN: Records Custodian, Department of Law
632 West 6th Avenue, Ste. 730
Anchorage, AK 99501
anne.helzer@anchorageak.gov

*Sent electronically and
served in person*

YOU ARE HEREBY ORDERED TO PRODUCE for the Assembly's inspection and retention, the documents listed in the Appendix to this subpoena.

Provide the requested documents either in person, by certified mail, or by electronic submission no later than 5 p.m. on Wednesday, April 17, 2024 to:

Chair Christopher Constant
632 West 6th Avenue, Ste. 150
Anchorage, AK 99501
christopher.constant@anchorageak.gov

Failure to obey the commands of this subpoena may be punished by contempt proceedings, in addition to any other remedy available by law.

This subpoena is issued this day, April 16, 2024, upon authorization of:

Christopher Constant
Chair, on Behalf of the Assembly

ATTEST:

Jamie Heinz
Municipal Clerk

SUBPOENA TO PRODUCE DOCUMENTS
To: **Error! Reference source not found.**

APPENDIX

INSTRUCTIONS

1. The term “documents” means and includes, without limitation, all written or graphic matter of every kind and description, however produced or reproduced, whether draft or final, original or reproduction, internal or otherwise, whether stored in tangible, electric, mechanical, or electronic form or representation of any kind.
2. Documents, communications, and records must be produced in a form that is reasonably usable, such PDFs or native file.

RECORDS REQUESTED

1. The document described as a “binding term sheet” executed between the Eklutna Owners and the Anchorage Water and Wastewater Utility, which had been previously provided for review only in executive session, as well as any amendments, extensions, addendums, or any other writing reflecting a change to the substantive terms thereto; and
2. The document described as the “2017 Common Interest Agreement” and any other document upon which a claim of privilege or confidentiality is based.

Subject: RE: Subpoena 4/16/2024
Date: Thursday, April 18, 2024 at 5:02:10 PM Alaska Daylight Time
From: Hurt, Matthew P.
To: Helzer, Anne
CC: Gates, Dean T.

Ms. Helzer,

After conferring with leadership, we are willing to wait until the close of business Monday, April 22nd. While we appreciate that you are out of town, we have reason to believe that the owners intend to transmit the document to the State by the 30th. Further, we understand the documents to be readily accessible and, at this time, see no reason that counsel for the other Eklutna Owners would be unreachable by phone or email.

Thanks in advance,

Matthew Hurt
Legislative Counsel
O: 907.343.4714
C: 907.802.7238

From: Helzer, Anne <Anne.Helzer@anchorageak.gov>
Sent: Thursday, April 18, 2024 11:15 AM
To: Hurt, Matthew P. <Matthew.Hurt@anchorageak.gov>
Cc: Gates, Dean T. <dean.gates@anchorageak.gov>
Subject: Re: Subpoena 4/16/2024

Good afternoon, Matt,
I think the 30th is reasonable. I don't get back to Alaska until next week. I will need time to consult with the affected Municipal departments in order to meaningfully respond.

Anne R. Helzer
Municipal Attorney
Municipality of Anchorage

From: Hurt, Matthew P. <Matthew.Hurt@anchorageak.gov>
Sent: Wednesday, April 17, 2024 6:59 PM
To: Helzer, Anne <Anne.Helzer@anchorageak.gov>
Cc: Gates, Dean T. <dean.gates@anchorageak.gov>; Constant, Christopher <christopher.constant@anchorageak.gov>; Zaletel, Meg <meg.zaletel@anchorageak.gov>
Subject: RE: Subpoena 4/16/2024

Ms. Helzer,

How much time would you request to provide a response?

Thanks in advance,

Matthew Hurt
Legislative Counsel
O: 907.343.4714
C: 907.802.7238

From: Helzer, Anne <Anne.Helzer@anchorageak.gov>
Sent: Wednesday, April 17, 2024 2:32 PM
To: Hurt, Matthew P. <Matthew.Hurt@anchorageak.gov>
Cc: Gates, Dean T. <dean.gates@anchorageak.gov>; Constant, Christopher <christopher.constant@anchorageak.gov>; Zaletel, Meg <meg.zaletel@anchorageak.gov>
Subject: Re: Subpoena 4/16/2024

Dear Attorney Hurt,

I am in receipt of a subpoena delivered to my office after 4:00 PM on April 16, 2024. The subpoena demands that the Municipal Attorney respond by producing lawyer-client privileged and contractually confidential documents to Assembly leadership within 24 hours. As I am traveling across the country today, I am unable to substantively confer with the impacted parties—including Municipal clients—before the requested time of production. Due to the exceptionally short timeline provided in the subpoena, I will be unable to substantively respond within the limited time provided.

Please advise. Thank you.

Anne R. Helzer
Municipal Attorney
Municipality of Anchorage

From: Hurt, Matthew P. <Matthew.Hurt@anchorageak.gov>
Sent: Tuesday, April 16, 2024 5:08 PM
To: Helzer, Anne <Anne.Helzer@anchorageak.gov>
Cc: Gates, Dean T. <dean.gates@anchorageak.gov>; Constant, Christopher <christopher.constant@anchorageak.gov>; Zaletel, Meg <meg.zaletel@anchorageak.gov>
Subject: Subpoena 4/16/2024

Ms. Helzer,

Please see attached letter and subpoena from the Assembly Leadership.

Thank you,

Matthew Hurt
Legislative Counsel
O: 907.343.4714
C: 907.802.7238