

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,**
5 **PURSUANT TO ANCHORAGE MUNICIPAL CODE SECTION 2.30.085.**
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8 **WHEREAS**, Anchorage Municipal Code section 2.30.085, *Subpoena powers*,
9 authorizes the Assembly Chair with the approval of a majority of the Assembly, to
10 compel by subpoena the “testimony of a person whom the assembly reasonably
11 believes may be able to give information relating to a public matter being considered
12 by the assembly” and to “produce documents, papers or objects which the assembly
13 reasonably believes may relate to a public matter being considered by the
14 assembly”; and
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16 **WHEREAS**, in 1984 the Alaska Power Administration and the Municipality
17 Anchorage negotiated and executed an Agreement for Public Water Supply and
18 Energy Generation from Eklutna Lake, Alaska (1984 Agreement) to secure water
19 rights for the diversion of water from Eklutna Lake while protecting water volume
20 needed for the Eklutna Hydropower Project; and
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22 **WHEREAS**, in 1991, the Federal Government sold the Eklutna Dam Hydroelectric
23 facility to the Chugach Electric Association, Matanuska Electric Association, and the
24 Municipality of Anchorage (doing business as Anchorage Municipal Light and Power
25 (ML&P)); and
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27 **WHEREAS**, the terms of the 1991 Fish and Wildlife Agreement require a robust
28 public process, in place of the process required for a Federal Energy Regulatory
29 Commission license, whereby the owners are to study and propose a plan for
30 mitigating the impact of the Eklutna Dam on local fish and wildlife; and
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32 **WHEREAS**, in 1993, the Alaska Power Administration and the Municipality of
33 Anchorage executed a supplemental agreement to their earlier 1984 Agreement
34 (1993 Supplement) which currently governs Anchorage Water & Wastewater
35 Utility’s (AWWU) rights and access to drinking water from Eklutna Lake and is set
36 to expire in 2025; and
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38 **WHEREAS**, in May of 2020, the Regulatory Commission of Alaska (RCA) approved
39 the sale of the ML&P from the Municipality of Anchorage to Chugach Electric
40 Association (CEA), with the requirement that the Municipality surrender its vote as
41 a member of the Eklutna Operating Committee, until it could demonstrate to the
42 RCA that it has sufficient expertise within Municipal Hydro Power to participate again
43 as a voting member; and
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1 **WHEREAS**, the Assembly Leadership recently learned that in October 2023,
2 AWWU and the Eklutna Owner’s Group, executed an agreement which the
3 Administration described to the Assembly as a “binding term sheet,” the terms of
4 which would govern AWWU’s rights and access to drinking water from Eklutna Lake
5 in the event the Governor endorses the currently proposed Fish and Wildlife Plan;
6 and

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

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

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

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

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

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

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

38
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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50 _____

Chair of the Assembly

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ATTEST:

Municipal Clerk