

REPORT ON ASSEMBLY LITIGATION RELATED TO  
EKLUTNA HYDROELECTRIC PROJECT

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Prepared at the request of the Anchorage Assembly

Through Chair Christopher Constant and Member Erin Baldwin Day

Dated: April 28, 2026

## INTRODUCTION

Early in 2024, the Assembly recognized the need to have independent legal counsel assist the Assembly in evaluating and defending its rights related to the August 7, 1991 Agreement Between the Municipality of Anchorage, DBA Municipal Light and Power, Chugach Electric Association, Inc., Matanuska Electric Association, Inc., U.S. Fish and Wildlife Service, National Marine Fisheries Service, Alaska Energy Authority, and the State of Alaska, relative to the Eklutna and Snettisham Hydroelectric Projects (hereinafter the “1991 Agreement”), and its obligations related to implementing the 1991 Agreement. Chair Christopher Constant and then-Vice Chair Meg Zaletel worked with outside counsel on litigation and legislative solutions. Member Zaletel left the Assembly at the end of her term in 2025 and Chair Constant’s term ends on April 28, 2026. This report is a summary of outside counsel’s work, in coordination with the Office of Assembly Counsel, and after July 1, 2024, the Municipal Attorney’s Office. We hope this Report will serve to aggregate the work and efforts into a single document so that future members, including Erin Baldwin Day who is now leading the Assembly’s efforts on this front, have ready access to the details of the Assembly’s work to date. This Report is not a comprehensive summary of the good work of Assembly Counsel or the Municipal Attorney’s office related to the Eklutna River; this Report is the work of the Assembly and should not be understood to be the work of the Administration or the Municipal Attorney’s Office.

## BACKGROUND

On August 7, 1991, the Municipality of Anchorage (dba Anchorage Municipal Light and Power), Chugach Electric Association, Inc., and Matanuska Electric Association, entered into an agreement with the United States Fish and Wildlife Service, the National Marine Fisheries Service, the Alaska Energy Authority, and the State of Alaska, regarding “protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) affected by hydroelectric development of the Eklutna Hydroelectric Project (the “Project”).<sup>1</sup> The 1991 Agreement was a transition from the work in the 1950s by the United States Bureau of reclamation.<sup>2</sup>

The 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 of Anchorage (the “Municipality”), Chugach Electric Association (“Chugach”), and Matanuska Electric Association (“MEA”) (collectively the “Project Owners”). Specifically, in 1997, the federal Alaska Power Administration sold the Project to MEA, Chugach, and the Municipality d/b/a Municipal Light and Power Department (“ML&P”). MEA obtained a 16.67% undivided ownership interest in the Project, Chugach obtained a 30% undivided ownership interest, and ML&P acquired a 53.33% undivided interest. The utilities operate the Project through the Eklutna Operating Committee (“EOC”) based upon affirmative votes of at least two of the utilities with a combined Project ownership interest of at least 50%.

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<sup>1</sup> See Agreement Between the Municipality of Anchorage, dba Municipal Light and Power, Chugach Electric Association, Inc., Matanuska Electric Association, Inc., U.S. Fish and Wildlife Service, National Marine Fisheries Service, Alaska Energy Authority, and the State of Alaska, Relative to the Eklutna and Snettisham Hydroelectric Projects (Aug. 7, 1991). Though the Eklutna and Snettisham projects are both described in the 1991 Agreement, the Snettisham project is not the subject of this Report or the relevant work.

<sup>2</sup> See Governor’s Decision, In the Matter of the Eklutna River Fish & Wildlife Program, p. 2 (Oct. 2, 2024) (hereinafter “Governor’s Decision”).

The Project Owners entered into the 1991 Agreement with the State of Alaska, Alaska Energy Authority, and federal agencies (the “1991 Agreement”). The 1991 Agreement described the process for the Project Owners to study and quantify “impacts to fish and wildlife from the Project, and to develop a proposed Final Program for the protection, mitigation, and enhancement of fish and wildlife effected by the Project”<sup>3</sup> and for the other parties to the agreement – the United States Fish and Wildlife Service (the “FWS”), the National Marine Fisheries Service (the “NMFS”), the Alaska Energy Authority (the “AEA”), and the State of Alaska (“State”) – to offer their comments on the proposed Final Program.

In or around 2017, the Project Owners entered into a “Common Interest Agreement” to facilitate negotiations regarding implementation of the 1991 Agreement. 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. Importantly, the Assembly was neither consulted nor approved the Common Interest Agreement. As part of the negotiations among the Project Owners regarding implementation of the 1991 Agreement, the Project Owners entered into one or more agreements with the Anchorage Water and Wastewater utility (“AWWU”) purportedly governing the Municipality’s water rights and access to drinking water from Eklutna Lake. Each of those agreements is subject to Assembly approval;<sup>4</sup> the Project Owners did not seek Assembly approval of those agreements before they were executed.

In 2018, the Municipality sold substantially all of the assets of ML&P to Chugach.<sup>5</sup> As part of that transaction, the Municipality retained its 53.33% ownership in the Project but agreed to sell its share of the power output to Chugach and MEA. The Project Owners agreed that Project management and operations decisions would continue to be made by the EOC, even after the sale of ML&P. The Municipality’s interest in the Project is now housed in the Anchorage Hydropower Utility (“AHP”). The Project remained a majority publicly held asset.

According to the terms of the 1991 Agreement, the Project Owners were to commence planning for a Final Program that would “adequately and equitably protect[], mitigate[] damage to, and enhance[] fish and wildlife resources”<sup>6</sup> by 2022 (25 years after the date the Project ownership was officially transferred to the Project Owners – October 2, 1997). Under the 1991 Agreement, the Project was exempted by law from the Federal Energy Regulatory Commission’s jurisdiction in exchange for development of a Project fish and wildlife mitigation plan. This mitigation plan is required to be submitted to the Governor of the State of Alaska for approval, and its approval was supposed to be obtained by October 2, 2024. Beginning in 2019, the Project Owners began scoping the work. In 2020, the Project Owners retained technical experts to assist with planning and consultation with the parties. In 2021-2022, the Project Owners began studying plans to shape a proposed Final Program, with the goal of developing a draft for review by the parties to the 1991 Agreement and stakeholders and for public review and comment.<sup>7</sup> This review

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<sup>3</sup> Governor’s Decision at 2.

<sup>4</sup> See AO No. 2024-28, As Amended.

<sup>5</sup> A copy of the Asset Purchase and Sale Agreement between the Municipality of Anchorage, Alaska and Chugach Electric Association, Inc. is available at: [https://www.muni.org/departments/assembly/documents/mlp%20asset%20purchase%20agreement%20-%20final%20execution%20version%20\(compiled\).pdf](https://www.muni.org/departments/assembly/documents/mlp%20asset%20purchase%20agreement%20-%20final%20execution%20version%20(compiled).pdf).

<sup>6</sup> The 1991 Agreement at 1.

<sup>7</sup> See Eklutna Hydro Project Schedule (available at <https://eklutnahydro.com/project-schedule/>).

and planning process largely took place out of the public’s view and without input from the Assembly.

In February of 2024, the Assembly learned that AWWU had entered into a final agreement related to the Project – described by the Project Owners as a “Binding Term Sheet.”<sup>8</sup> 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 Bronson Administration during an executive session. Assembly members were not permitted to retain copies of the Binding Term Sheet nor were they permitted to review it in a confidential setting with their legal counsel. Meanwhile, the Project Owners proceeded to evaluate a proposed Fish and Wildlife Program without involving the Assembly.

Pursuant to the 1991 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.

In April of 2024, Chugach and MEA submitted a plan to the Governor with Mayor Bronson’s support despite the objection of the Assembly. After Suzanne LaFrance was sworn in as Mayor in July of 2024, the Municipality submitted its own proposal to the Governor for consideration. Chugach and MEA proposed a portal valve design that would restore flow to most, but not all, of the Eklutna River. The Municipality’s plan was to further study pumped storage hydropower (a proposal that was overlooked by the Project Owners) that would rewater the entire Eklutna River and had the support of the Native Village of Eklutna.

#### THE ASSEMBLY’S AUTHORITY

The Assembly is a co-equal branch of the Municipality and the legislative and policy-making body. Under Article X, Section 11 of the Alaska Constitution, the Assembly “may exercise all legislative powers not prohibited by law or by charter.” And the Constitution also calls for “maximum local self-government” and demands that “[a] liberal construction shall be given to the powers of local government units.”<sup>9</sup> Municipal utility policy and budgetary decisions must be approved by the Assembly. The Assembly is charged with “prescrib[ing] rules and procedures for the operation and management of municipal utilities”<sup>10</sup> and, as the body with the purse strings, sets the budget for Municipal utilities. Furthermore, the Assembly, through ordinance, prescribed the Municipality’s policy on Eklutna River Restoration to be the restoration of the continuous water flow of the Eklutna River and the fish populations of the River and Eklutna Lake, to the greatest extent possible, subject to all provisions of the 1991 Agreement.<sup>11</sup> The Assembly is the body within the Municipality with the authority to approve the Proposed Final Fish and Wildlife Program: “[t]he Proposed Final Fish and Wildlife Program to protect, mitigate, and enhance fish and wildlife

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<sup>8</sup> 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.”) (available at <https://www.adn.com/alaska-news/anchorage/2024/04/17/whats-behind-the-fight-over-the-eklutna-river/>).

<sup>9</sup> A.K. CONST. art. X, § 1.

<sup>10</sup> Anchorage Charter, art. XVI, §16.01 – Municipal utilities.

<sup>11</sup> AMC 26.30.025; AO No. 2023-131, As Amended (Dec. 19, 2023)

resources in the Eklutna River shall be submitted to the Assembly with a proposed resolution in support for action, prior to its submission to the Governor of Alaska.”<sup>12</sup>

## THE PUBLIC PROCESS

Though the Municipality is a 53.33% owner in the Project, the Project Owners have operated as if the implementation of the 1991 Agreement is a private endeavor. The public’s review of plans has been limited, feedback from the public largely overlooked, and the Assembly’s ability to conduct oversight of the Project constrained. The Assembly pursued a number of litigation options to open the process up to the public, beginning with subpoenaing documents executed by the Project Owners in secret.

## THE SUBPOENAS

Despite the Assembly’s codified role in setting policy and approving budgets for Municipal utilities, the Project Owners, including the Administration of then-Mayor Bronson, excluded the Assembly from Project discussions and decisions. When the Assembly learned the Bronson Administration signed the Binding Term Sheet and was negotiating with the Project Owners in secret, it endeavored to gather information about what “binding” agreements the Administration was seeking to implement outside of the required approval channels – i.e. Assembly action.

Instead of informing and involving the Assembly in Project decisions – as was appropriate and legally required – the Bronson Administration took great pains to exclude the Assembly and shield the decisions from public view.

During the February 2, 2024 Assembly meeting, Assembly members asked to view copies of the Binding Term Sheet, which Mayor Bronson’s administration previously only showed to the Assembly during an executive session. The Assembly members were not permitted to retain copies of the Binding Term Sheet. 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.”<sup>13</sup>

AR No. 2024-103 provides,

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.<sup>14</sup>

On March 27, 2024, pursuant to AR No. 2024-103, Assembly Chair Christopher Constant on behalf of the Assembly issued subpoenas to produce documents to Municipal Manager Kent

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<sup>12</sup> AMC 26.30.025(B)(1); AO No. 2023-131, As Amended.

<sup>13</sup> AR No. 2024-103.

<sup>14</sup> *Id.* at 2.

Kohlhase (the “Kohlhase Subpoena”)<sup>15</sup> and AWWU General Manager Mark Corsentino (the “Corsentino Subpoena”).<sup>16</sup> 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.<sup>17</sup>

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

On April 3, 2024, Mr. Kohlhase and Mr. Corsentino each responded to the Kohlhase and Corsentino Subpoenas via email to Assembly 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.”<sup>19</sup> Mr. Kohlhase 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.”<sup>20</sup>

On April 4, 2024, then Municipal Attorney Anne Helzer allowed Assembly Chair Constant, the Assembly Counsel, and the Assembly’s outside legal counsel (Landye Bennett Blumstein LLP) 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 Assembly Chair Constant to retain copies of those documents. Ms. Helzer also did not allow Chair Constant to have a private conversation regarding the documents with Assembly Counsel and the Assembly’s outside counsel. Ms. Helzer insisted that an Assistant Municipal Attorney remain in the room with the documents at all times.

During the April 9, 2024, 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 advice from Assembly Legal Counsel and outside counsel regarding those documents. Ms. Helzer stated that she could not provide the documents to the Assembly unless each Assembly member signed a confidentiality agreement, which would be subject to approval from the other Project Owners. No other Municipal officer or employee was required to sign an additional confidentiality agreement prior to possessing or

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<sup>15</sup> Letter to K. Kohlhase Regarding Request for Certain Documents Concerning Municipal Access to Drinking water from Eklutna Lake (Mar. 27, 2024), Exhibit 4 to Complaint in 3AN-24-05979CI (the “Subpoena Case”).

<sup>16</sup> Letter to M. Corsentino Regarding Request for Certain Documents Concerning Municipal Access to Drinking Water from Eklutna Lake (Mar. 27, 2024), Exhibit 5 to Complaint in Subpoena Case.

<sup>17</sup> Letter to K. Kohlhase at 4; Letter to M. Corsentino at 4.

<sup>18</sup> AR No. 2024-103 at 3.

<sup>19</sup> Email from K. Kohlhase to M. Hurt at 1-2 (April 3, 2024), Exhibit 6 to Complaint in Subpoena Case.

<sup>20</sup> *Id.*

viewing documents under the Common Interest Agreement, including the Binding Term Sheet. The differential treatment is especially notable given that no other officer or employee had a greater interest in the policies and decision than the Assembly, since the Charter explicitly authorizes the Assembly to act in this instance.

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

On April 16, 2024, pursuant to AR No. 2024-103, Assembly Chair Constant on behalf of the Assembly issued a subpoena (the “Subpoena”) to Ms. Helzer.<sup>21</sup> The Subpoena required Ms. Helzer to produce the same documents that were described in the Kohlhasse 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, 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.<sup>22</sup>

The Subpoena was sent to Ms. Helzer via email on Tuesday, April 16, 2024 at 5:08 p.m. by Assembly Counsel Matthew Hurt and 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.<sup>23</sup>

On Wednesday, April 17, 2024, at 2:23 p.m., Ms. Helzer acknowledged receipt of the Subpoena in an email to Assembly Counsel Hurt.<sup>24</sup> Ms. Helzer requested additional time to comply with the Subpoena because she was traveling but did not offer any explanation for why these readily available documents could not be produced while she was out of the office. On Thursday, April 18, 2024, Assembly Counsel Hurt responded to Ms. Helzer’s request for additional time to comply with the Subpoena, providing until “the close of business Monday, April 22.”<sup>25</sup>

Ms. Helzer did not comply with the Subpoena by the deadline and did not seek to quash or limit the Subpoena. On April 24, 2024 the Assembly filed a lawsuit in Anchorage Superior Court (Case No. 3AN-24-05979CI) to enforce the Subpoena.<sup>26</sup> The Assembly sought expedited relief so it could obtain copies of the requested documents before the Project Owners submitted their Proposed Final Fish and Wildlife Program proposal to the Governor. The Court granted the

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<sup>21</sup> Letter to A. Helzer Regarding Demand for Full, Free, and Unrestricted Access to Certain Documents Concerning Municipal Access to Drinking Water from Eklutna Lake (April 16, 2024), Exhibit 7 to Complaint in Subpoena Case.

<sup>22</sup> *Id.* at 4.

<sup>23</sup> Email to A. Helzer from M. Hurt at 2 (April 18, 2024), Exhibit 8 to Complaint in Subpoena Case; Letter to A. Helzer at 2.

<sup>24</sup> Email to A. Helzer from M. Hurt at 2.

<sup>25</sup> Email to A. Helzer from M. Hurt at 1. According to Mr. Hurt’s email response, “we understand the documents to be readily accessible and, at this time, see no reason that counsel for the other Eklutna Owners would not be reachable by phone or email.”

<sup>26</sup> The lawsuit consisted of a Complaint and *Ex Parte* Motion for Order to Show Cause & to Enforce Subpoena filed contemporaneously with a Moton for Expedited Consideration of the Anchorage Assembly’s *Ex Parte* Motion for Order to Show Cause and to Enforce Subpoena.

Assembly’s request for expedited relief, set a deadline for Ms. Helzer to respond to the *Ex Parte* motion by April 30, 2024, and set a hearing on the Motion for Order to Show Cause for May 1, 2024.

On April 25, 2024, Ms. Helzer ultimately provided the documents to the Assembly.<sup>27</sup> In a Joint Notice to the Court drafted by Ms. Helzer’s legal counsel and filed on April 30, 2024, she noted she “does not concede that AMC 2.30.085 and the subpoena issued under its authority are valid under Alaska law, the Alaska Constitution, and the United States Constitution.”<sup>28</sup> In a transmittal letter authored by Ms. Helzer she argued the documents were privileged and could not be released before the privileged was waived.<sup>29</sup> That permission was apparently granted on or around April 25, 2026. On May 14, 2024, Ms. Helzer filed a Motion to Dismiss noting she “has not disputed the Assembly’s ability to issue a legislative subpoena,” seemingly reversing course from her position as of April 30, 2024. Accordingly, the Assembly submitted a Notice of Dismissal on June 7, 2024 along with a proposed Final Judgment noting Ms. Helzer’s position and quoting the Motion to Dismiss. Ms. Helzer took issue with the Assembly’s pleading and filed a Notice to Court Re: Assembly’s Notice of Dismissal on June 7, 2024 stating the Assembly’s quote was a “mischaracterization of the Municipal Attorney’s actual position. The Municipal Attorney has not conceded any legal issues in this case.”<sup>30</sup> Despite Ms. Helzer’s notice, the Court signed the Final Judgment as submitted by the Assembly on June 11, 2024 and found that “Plaintiffs have voluntarily dismissed their complaint pursuant to Alaska Rule of Civil Procedure 41(a)(1), without prejudice . . . This case is CLOSED.” The Assembly filed a Notice of Clarification on June 12, 2024 standing by its characterization of the record and the fact Ms. Helzer agreed “the Assembly’s legislative subpoena power is valid.”<sup>31</sup>

Though the Assembly ultimately received copies of the documents referenced in the Subpoena and reassurance from the Court that its subpoena powers are valid, Ms. Helzer’s actions frustrated the oversight obligations of the Assembly and caused significant delays and unnecessary expense to the taxpayers. The result, if not the intention, was a delay that assisted Chugach and MEA in their efforts to proceed in finalizing the Proposed Final Fish and Wildlife Program without the Assembly’s input.

#### THE ASSEMBLY’S RCA ACTION

Contemporaneous with the Assembly’s work to obtain copies of critical documents from the Eklutna Operating Committee to exercise its oversight and budgeting obligations, the Assembly undertook efforts to reassert its right to set policy related to the EOC. When Mayor Bronson and the members of the EOC continued to shut the Assembly out of the decision-making process and foreclosed the public’s ability to know and understand what the Project Owners intended to propose to the Governor, the Assembly filed a Petition to Intervene and Motion to Reopen Dockets and Modify Order No. 39 Dated May 28, 2020 with the Regulatory Commission of Alaska (“RCA”). The Petition and Motion were filed before - and in anticipation of – an

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<sup>27</sup> See Joint Notice Regarding Provision of Documents Demanded by Subpoena (April 30, 2024).

<sup>28</sup> See *Id.* p. 2.

<sup>29</sup> See A. Helzer Letter to Assembly Leadership (April 25, 2024) (Exhibit A to Notice of Filing in Subpoena Case).

<sup>30</sup> Notice to Court Re: Assembly’s Notice of Dismissal at 1-2.

<sup>31</sup> Assembly’s Notice of Clarification at 1.

impending EOC vote on the Proposed Final Fish and Wildlife Plan proposal that would then be submitted to the Governor by the Project Owners.

The RCA issued Order 39 on May 28, 2020 in connection with the sale of ML&P to CEA in consolidated dockets U-18-102/U-19-020/U-19-021.<sup>32</sup> Order 39 conditionally granted the Municipality’s application to amend its certificate of public convenience and necessity for the Project. When that transaction concluded, the RCA determined that the Municipality no longer had an employee with the qualifications and experience to manage an electric utility and required the Municipality to surrender its vote on the EOC, essentially surrendering its ability to vote on all Project management and operation decisions, including policy decisions implementing the 1991 Agreement, until the Municipality hired staff with the requisite qualifications and experience to serve as a voting representative on the EOC. The Municipality continues to be excluded from voting on management and operations decisions despite holding a 53.33% ownership interest in the Project and securing an appropriately-credentialed director at AHP.<sup>33</sup> This process is further outlined in a later section.

Specifically, Order 39 stated:

Under these circumstances we cannot unconditionally find that [the Municipality] is managerially or technically fit to maintain majority ownership of the Eklutna Project. We can only find that [the Municipality] is managerially and technically fit to maintain an ownership interest in the Eklutna Project subject to the condition that before the effective date of either the Eklutna [Power Purchase Agreement] or the MEA [Power Purchase Agreement], ML&P surrenders its vote on the EOC under the Eklutna Project agreements so that Chugach and MEA can jointly manage and operate the Eklutna Project, including negotiating compliance with the Fish and Wildlife Agreement, without [the Municipality] having a vote on operation or management decisions.<sup>34</sup>

The Municipality complied with the Order and surrendered its voting rights on the EOC and “under the Fish and Wildlife Agreement.”<sup>35</sup>

Beginning in 2019, the EOC was proceeding to study options and begin developing a Proposed Final Fish and Wildlife Program (pursuant to the 1991 Agreement) with the potential to commit the Municipality to a decades-long multi-million dollar mitigation plan all without allowing the Municipality to have a vote in that process.<sup>36</sup> The effect on Anchorage residents and taxpayers was a chief concern of the Assembly, and the Assembly noted the Bronson Administration had taken no action to reinstate the Municipality’s vote on the EOC. With this backdrop, the Assembly sought to intervene in the consolidated docket and reopen the docket to modify Order 39 and regain the Municipality’s policy making authority and vote on the EOC

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<sup>32</sup> Order U-18-102(44)/U-19-020(39)/U-19-021(39) (May 28, 2020).

<sup>33</sup> See Anchorage Assembly’s Petition to Intervene, Dockets U-18-102/U-19-020/U-19-021 (April 15, 2024); Anchorage Assembly’s Motion to Reopen Dockets and Modify Order No. 39 Dated May 28, 2020, Dockets U-18-102/U-19-020/U-19-021 (April 15, 2024).

<sup>34</sup> Order U-18-102(44)/U-19-020(39)/U-19-021(39) at 67.

<sup>35</sup> Notice of ML&P’s Surrender of Eklutna Operating Committee Voting Rights (Oct. 30, 2020).

<sup>36</sup> See Eklutna Hydro Schedule at <https://eklutnahydro.com/project-schedule/>.

decisions related to the Program.<sup>37</sup> Because the Assembly anticipated the EOC would be voting imminently, it requested the Commission consider its request on shortened time and filed a Motion for Expedite Consideration.<sup>38</sup>

In its Motion to Reopen Dockets and Modify Order No. 39, the Assembly asked the RCA to conditionally grant a certificate of public convenience and necessity to allow the Municipality to have a vote on the Project at the EOC. The Assembly's argument was supported by the Municipal code and the Municipal Charter, and the fact that since 2017, the Assembly consistently called for efforts to restore the Eklutna River and ensure continuous water flow to the greatest extent possible.<sup>39</sup> The Assembly argued that regardless of the substantive outcome or content of the Proposed Final Fish and Wildlife Program, there is a legal process that must be followed as prescribed in Municipal Code implemented through AO 2023-131. In the AO, the Assembly codified a requirement for Assembly approval before the plan is submitted to the Governor. "The Proposed Final Fish and Wildlife Program to protect, mitigate, and enhance fish and wildlife resources in the Eklutna River shall be submitted to the Assembly with a proposed resolution in support for action, prior to its submission to the Governor of Alaska."<sup>40</sup> Through the Code, the Assembly ensured there is a public process for the Assembly to have a role in approving the Proposed Final Fish and Wildlife Program before implementation.

In 2024, the Assembly again clarified municipal law surrounding the 1991 Agreement and implemented Municipal law confirming: "[p]ursuant to section 26.30.025, the assembly shall be responsible for all policy decisions related to the municipality's performance under the 1991 Fish and wildlife agreement regarding the Eklutna hydroelectric project."<sup>41</sup> The Assembly has the responsibility to make policy decisions regarding the 1991 Agreement, including deciding whether or not to approve the Proposed Final Fish and Wildlife Program.

At the RCA, the Assembly argued that the concerns the RCA had in 2020 were ameliorated because the Assembly implemented guardrails to ensure that policy decisions regarding the implementation of the 1991 Agreement would be made by the Assembly and not (then-unqualified) AHP staff. The Assembly viewed its role in setting policy as distinct from the technical expertise required to manage day to day hydroelectric operations. The logical follow-on was that the Commission could modify Order 39 to allow the Municipality to exercise its vote as to *policy* decision on the EOC without getting into regulated "button pushing" issues.<sup>42</sup>

No parties opposed the Assembly's Motion or Petition (and only ENSTAR Natural Gas Company opposed the request for expedited consideration).

On April 19, 2024, despite the fact that no parties had opposed the Assembly's requests, the RCA issued an expansive order wherein it denied the relief the Assembly requested. The document was titled an Order Redesignating the Commission Panel; Denying Motion to Reopen Dockets and Modify Order No. 39 Dated May 28, 2020; Denying Petition to Intervene; Denying

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<sup>37</sup> See Petition to Intervene and Motion to Reopen Dockets.

<sup>38</sup> Anchorage Assembly's Motion for Expedited Consideration of Petition to Intervene and Motion to Reopen Docket and Modify Order No. 39 Dated May 28, 2020 (April 15, 2024).

<sup>39</sup> AR No. 2017-324(S), § 1 (Oct. 24, 2017).

<sup>40</sup> AO 2023-131 at 3.

<sup>41</sup> AO No. 2024-28, § 1 (Mar. 19, 2024) (codified at AMC 3.20.070).

<sup>42</sup> See Motion to Reopen Dockets and Modify Order No. 39 at 10-11.

Motion for Expedited Consideration of Petition to Intervene and Motion to Reopen Docket and Modify Order 39 dated May 28, 2020; and Addressing Anchorage Ordinances.

The Commission denied the Motion to Reopen Dockets as untimely pursuant to 3AAC 48.105 (on motions for reconsideration of an order of the Commission), holding that the Assembly should have filed for reconsideration of the Order within 15 days of the date of the order – or by June 12, 2020. It reasoned that since the date of the Order, Chugach “has expended considerable resources incorporating [ML&P’s] assets into Chugach’s operations, that the transaction can no longer be undone.”<sup>43</sup> The Commission further noted that 3 AAC 48.105 only permits parties to a proceeding to seek reconsideration of an Order and because the Assembly was not directly a party to the earlier proceeding, it likely lacked standing to seek reconsideration (in 2020).

The Commission then denied the Petition stating there was not a process to reopen the dockets under the statutory timelines in AS 42.05.175 and further that petitions to intervene can only be considered in cases that are to be decided upon an evidentiary record after holding a hearing per 3 AAC 48.110(a). Because the Commission believed there was not a way to hold a hearing under the statute, the Commission reasoned there was also not a way to open the docket to consider the Assembly’s request to intervene. The Commission denied the Assembly’s Petition as moot.

The Commission also denied the request for expedited consideration, noting that the resolution of the pleadings could not be accomplished on the requested timeline because of the need to involve other parties and allow for their input. Instead, the Commission denied the request for expedited consideration without seeking the input from the other parties.

Finally, the Commission addressed two ordinances passed by the Assembly: AO No. 2023-131, As Amended December 19, 2023, and AO No. 2024-28, which passed on March 27, 2024, was vetoed by Mayor Bronson, and the Assembly overrode the Mayor’s veto on April 9, 2024. The Commission recounted its belief that the ordinances purported to require the EOC’s plan to require Assembly approval before it could be submitted by the EOC to the Governor. The Commission called the Assembly’s attention to AS 42.05.641 which states:

The commission’s jurisdiction and authority extend to public utilities operating within a municipality, whether home rule or otherwise. In the event of a conflict between a certificate, order, decision, or regulation of the commission and a charter, permit, franchise, ordinance, rule, or regulation of such a local governmental entity, the certificate, order, decision, or regulation of the commission shall prevail.

It then noted the Commission required “the MOA to surrender its right to vote on the EOC specifically to prevent the MOA from delaying or changing the EOC’s Project management decision, including decisions related to the Fish and Wildlife Agreement, until such time as the MOA convinces us that it has acquired the expertise required to fully participate as a voting member of the EOC.”<sup>44</sup> The Commission reasoned that because it had not reinstated the MOA’s

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<sup>43</sup> Order Redesignating the Commission Panel; Denying Motion to Reopen Dockets and Modify Order No. 39 Dated May 28, 2020; Denying Petition to Intervene; Denying Motion for Expedited Consideration of Petition to Intervene and Motion to Reopen Docket and Modify Order 39 dated May 28, 2020; and Addressing Anchorage Ordinances at 3 (April 19, 2024).

<sup>44</sup> *Id.* at 4.

status as a voting member of the EOC, and because the MOA had not convinced it that AHP had acquired the expertise to fully participate as a voting member, “any effort to delay or change EOC Project management decisions by ordinance are void under AS 42.05.641 as being contrary to Order 18-102(44).”<sup>45</sup>

#### ASSEMBLY’S APPEAL TO SUPERIOR COURT

On April 24, 2024, the Assembly appealed the RCA’s decision to the Alaska Superior Court in Case No. 3AN-24-06001CI. The appeal was filed before the Proposed Final Fish and Wildlife Program were submitted to the Governor on April 24, 2024, thus preserving the Assembly’s arguments related to voting rights and participation in the development of the proposed Plan.

In April of 2024, Suzanne LaFrance was elected as Anchorage Mayor. Mayor LaFrance’s approach to implementing the 1991 Agreement was a departure from the Bronson Administration and was largely in sync with the Assembly’s position. As a result, the Assembly was able to strategically position itself for a cooperative effort beginning upon her swearing in on July 1, 2024.

In its Statement of Points on Appeal (filed the same day as a Notice of Appeal), the Assembly argued:

1. The Regulatory Commission of Alaska (‘RCA’) erred in denying the Assembly’s Petition to Intervene, dated April 15, 2024, because the Assembly meets the requirements of 3 AAC 48.110(a) and has a statutory right to intervene.
2. The RCA erred in denying the Assembly’s Petition to Intervene because the Assembly should have been granted permissive intervention.
3. The RCA erred by misconstruing the Assembly’s Motion to Reopen Dockets and Modify Order No. 39 Dated May 28, 2020, as a motion for reconsideration of the RCA’s Order U-18-102(44)/U-19-020(39)/U-19-021.
4. The RCA erred when it denied the Assembly’s request to modify Order 39 to allow the Municipality to vote as a member of the ‘EOC’ for the purposes of implementation of the 1991 Fish and Wildlife Agreement.
5. The RCA erred when it determined that it lacked statutory authority to reopen the dockets referenced in the Assembly’s Motion.
6. The RCA’s decision was arbitrary, capricious, and an abuse of discretion.
7. The RCA erred when it relied on facts not in the record.

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<sup>45</sup> *Id.*

8. The RCA lacked jurisdiction to enter Order 39.
9. Order 39 violates state and federal law.

The Assembly proceeded to gather the record on appeal and the parties agreed to several extensions of pre-briefing deadlines. On July 18, 2024, AHP opened a new action in the RCA and filed a Notice and Request for Acknowledgement of Anchorage Hydropower’s Acquisition of Expertise Required to Participate as a Voting Member of the Eklutna Operating Committee, following AHP’s hiring of Mark Corsentino, P.E., as Utility Director for AHP. This, too, is described in more detail below. After the Assembly filed the appeal, Chugach and MEA filed a single proposal with the Governor and the Municipality (inclusive of the Assembly and its position) requested the Governor allow the parties to examine an alternative proposal involving pumped storage hydro. The Governor issued his decision on October 2, 2024, which granted the Municipality’s request (as described later in this document).

In October of 2024, the RCA moved to dismiss the appeal.<sup>46</sup> The RCA argued: (1) the Assembly’s action in the RCA was time-barred because its request was not filed within 15 days of the Commission’s Order in 2020; (2) the issues raised by the Assembly were moot because the Governor issued his decision on October 2, 2024; and (3) because the Assembly lacked a direct interest in the underlying RCA proceedings, was not aggrieved by the proceedings, and failed to participate when the dockets were open, the Assembly lacks standing to challenge the RCA’s decision.<sup>47</sup> After the deadline to file dispositive motions (like the Motion to Dismiss) lapsed on October 28, 2024, Chugach and MEA filed a Joinder to the RCA’s motion and included new, independent arguments describing the investments Chugach and MEA made in reliance on the Order 39 and that other non-parties have similarly relied on the Order.<sup>48</sup> The Assembly opposed the Joinder, noting it was filed after the dispositive motion deadline,<sup>49</sup> but the Court denied the Assembly’s request reasoning that the Assembly had sufficient time to respond to the allegations raised in it.<sup>50</sup>

The Assembly responded to the Motion to Dismiss on January 10, 2025.<sup>51</sup> Therein, the Assembly noted the RCA’s flawed reliance on exhaustion principles – the RCA asserted that it could not hear the Assembly’s Petition because it cannot reopen dockets except as narrowly authorized by statute. However, in reviewing the RCA’s online docket sheets, it is clear the RCA “regularly—and apparently routinely—reopens closed dockets, and has done so numerous times for myriad purposes . . . .”<sup>52</sup> The Assembly provided numerous examples of actions the RCA claimed were not permissible. As to the argument that the Assembly should have intervened in 2020 and sought the relief that it sought in 2024, it is clear that there was no reason for the Assembly to anticipate that Chugach and MEA would sideline the Assembly’s appropriating and legislating power related to the 1991 Agreement in 2020. That issue only came to light in 2024 when the Assembly discovered that the Bronson administration, Chugach, and MEA had entered

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<sup>46</sup> Motion to Dismiss or, in the Alternative, to Stay Appeal (Oct. 28, 2024).

<sup>47</sup> *Id.* at 1-2.

<sup>48</sup> Joinder in Corrected Motion to Dismiss or, in the Alternative, to Stay Appeal (Nov. 4, 2024).

<sup>49</sup> Motion to Strike CEA & MEA’s Joinder (Nov. 5, 2024).

<sup>50</sup> Order Denying Motion to Strike (Dec. 13, 2024).

<sup>51</sup> Anchorage Assembly’s Opposition to Motion to Dismiss (Jan. 10, 2025).

<sup>52</sup> *Id.* at 5-6, 8-9.

into a secret Binding Term Sheet without informing the Assembly or seeking its input.<sup>53</sup> Further, the Assembly argued that it is not required to seek reconsideration (here, as to Order 39 in 2020) and may appeal a Commission decision without first seeking reconsideration.<sup>54</sup> Lastly, as to the RCA's argument that the appeal was time barred (because an appeal should have been filed in 2020), the Assembly argued the operative appeal deadline followed the RCA's decision in 2024, not in 2020.<sup>55</sup>

In response to the RCA's argument that the Assembly lacked standing because the "Municipality" and not the "Assembly" had standing since the "Municipality's" voting rights were at stake, the Assembly noted the RCA ignored controlling Alaska law. The Alaska Constitution states that "[t]he governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter."<sup>56</sup> And, as described in AMC 3.20.010(6), the Assembly (not the Administration) has authority to make all policy decisions "related to the municipality's performance under the 1991 Fish and Wildlife agreement regarding the Eklutna hydroelectric project." Order 39 directly affected the Assembly's authority, and the Assembly is the proper party to challenge the decision.

Finally, the RCA argued that the appeal was moot because the Governor issued a Decision approving the final Fish and Wildlife Program in October 2024 (while the appeal was pending). On the contrary, the Governor's Decision notes that Order 39 required the Municipality to surrender its vote on Eklutna Project decisions but then requires the parties to the 1991 Agreement to consider several future policy decisions ("Limited Reopeners") that have important implications for the Eklutna River. The Governor's Decision makes reinstating the Assembly's ability to vote on those policy decisions even more important and certainly does not moot the appeal.<sup>57</sup>

In addition to responding to each of the RCA's arguments, the Assembly's Opposition highlighted the RCA's attempt to unilaterally remove the Municipality's voting rights under the 1991 Agreement:

[T]he process in which that proposed Fish and Wildlife Program was developed, and the associated agreements to use municipal infrastructure and water supply, violated municipal law and contradicted long-standing municipal policies. The Assembly sought RCA approval to modify Order 39 to allow the Assembly to exercise its proper, democratic role as the Municipality's policymaking body, with powers to appropriate municipal resources. Because policy decisions will continue to be made regarding implementation of the Fish and Wildlife Program (even after the Governor's Decision), the Assembly continues to have a strong interest in how the \$57-million plan is carried out over the next several decades.<sup>58</sup>

This concern undergirds the Assembly's actions related to the Eklutna River and provides context for why the Assembly has prioritized the policies surrounding the 1991 Agreement. The Assembly

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<sup>53</sup> *Id.* at 9-10

<sup>54</sup> *See* AS 42.05.551; Opposition to Motion to Dismiss at 11.

<sup>55</sup> *Id.* at 11.

<sup>56</sup> A.K. CONST. art. X, § 4.

<sup>57</sup> *See* Governor's Decision at 26-27.

<sup>58</sup> Opposition to Motion to Dismiss at 7.

has a fiduciary duty to protect both taxpayers and ratepayers and ensure funds are used prudently. The decisions surrounding the implementation of the 1991 Agreement have a direct effect on the assets and finances of the Municipality.

While the Motion to Dismiss was pending, the RCA issued a novel decision on the Municipality's Request for Acknowledgement of Anchorage Hydropower's Acquisition of Expertise.<sup>59</sup> In sum, the Commission determined that the surrender to be for the full length of the Eklutna Power Purchase Agreement ("PPA") and the MEA PPA, both scheduled to expire on October 31, 2055. The RCA filed a Notice of Supplemental Authority in the Appeal and lodged the RCA's Order.

On February 5, 2025, the Court issued an Order Granting Motion to Dismiss. The Court agreed with the Assembly and found that the Assembly was not required to exhaust administrative remedies before appealing to the Superior Court.<sup>60</sup> However, the Court found the appeal was untimely because it sought to undo the 2020 Order 39 and appeal should have been filed in 2020.<sup>61</sup> The Court further found that the Assembly did have standing to challenge Order 39 because it had a direct interest in the proceedings, a specific interest in the Project, was factually aggrieved, and the Assembly sufficiently participated in the RCA proceedings.<sup>62</sup> The Court found that there remains a live controversy and the appeal was not moot: "the Assembly's ultimate issue is not just with the Fish and Wildlife Program, but its general lack of input on the Eklutna project and the Program. This will continue to be a present, live controversy as long as the project operates."<sup>63</sup>

Importantly, the Court found that the Assembly could be entitled to future relief: "Under Order 39, the Assembly may petition to reinstate its voting rights on the EOC. While the Assembly's most recent petition was denied, the RCA notes that it may petition again in the future or file an appeal. The issue of the Assembly's participation in the Eklutna project clearly remains a live controversy."<sup>64</sup>

The RCA sought attorney's fees as the prevailing party,<sup>65</sup> and then agreed to withdraw the Motion after reaching an agreement with the Assembly.<sup>66</sup> The Court granted the request and the case was closed.

The Assembly elected not to appeal the dismissal and instead turned its focus towards participation in the planning process and working cooperatively with the LaFrance Administration on its RCA actions. The dismissal of the appeal marked the end of the Assembly-led litigation around the Eklutna Project.

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<sup>59</sup> Order Granting Motion to Dismiss in Part and Dismissing Notice and Request, Denying Motion to Dismiss in Part, Vacating Procedural Schedule, Denying Motion to Compel, Denying Request to Construe Notice and Request as petition to Amend Certificate Condition, Providing Guidance for Future Filings, and Closing Docket, U-24-024, Order No. 8 (Nov. 14, 2024) (hereinafter "RCA Order U-24-024(8)").

<sup>60</sup> Order Granting Motion to Dismiss at 2 (Feb. 5, 2025).

<sup>61</sup> *Id.* at 4-5.

<sup>62</sup> *Id.* at 5-7.

<sup>63</sup> *Id.* at 7.

<sup>64</sup> *Id.* (citing RCA Order U-24-024(8) at 35).

<sup>65</sup> Motion for Award of Attorney's Fees (Feb. 18, 2025).

<sup>66</sup> Stipulation to Withdraw motion for Award of Attorney's Fees (Mar. 10, 2025).

## THE GOVERNOR’S DECISION

This [Fish and Wildlife] Agreement is entered into on August 7, 1991 . . . regarding protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) affected by hydroelectric development of the Eklutna . . . Projects. With respect to the implementation provisions called for in this Agreement, the Eklutna Purchasers will be responsible for the consultation, study and implementation provisions applicable to the Eklutna Project . . . .<sup>67</sup>

The 1991 Agreement outlined the process for the parties to study the Project’s impacts to fish and wildlife and develop a proposed Final Program for the “protection, mitigation, and enhancement of fish and wildlife affected by” the Project and for the other Parties to offer their comments.<sup>68</sup> The 1991 Agreement requires the parties to consider “the impact on fish and wildlife measures on electric rate payers, municipal water utilities, recreational users and adjacent land use, as well as available means to mitigate these impacts.”<sup>69</sup> As described by the Governor, the Project received Congressional approval to substitute the 1991 Agreement and its requirements for federal licensing under the Federal Power Act and accompanying regulations.<sup>70</sup>

The 1991 Agreement laid out relevant timelines and some structure around the study and proposals. The Governor was charged with “evaluat[ing] the Proposed Final Program, attempt[ing] to reconcile differences between the Parties to the Agreement, and establish[ing] a Final Program that ‘adequately and equitably protects, mitigates damage to, and enhances fish and wildlife resources.’”<sup>71</sup> The evaluation required consideration of eight (8) factors to “ensure that Eklutna [is] best adapted for power generation and other beneficial public uses.”<sup>72</sup> The eight (8) factors are:

1. efficient and economical power production;
2. energy conservation;
3. the protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat);
4. the protection of recreation opportunities;
5. municipal water supplies;
6. the preservation of other aspects of environmental quality;
7. other beneficial public uses; and
8. requirements of State law<sup>73</sup>

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<sup>67</sup> 1991 Agreement.

<sup>68</sup> *Id.* at 3.

<sup>69</sup> *Id.*

<sup>70</sup> Governor’s Decision at 3 (citing 16. U.S.C. § 791a et seq.; 18 C.F.R. 4.1 et seq.).

<sup>71</sup> Letter from Governor Mike Dunleavy Accompanying the Governor’ Decision (Oct. 2, 2024).

<sup>72</sup> 1991 Agreement, § 5.

<sup>73</sup> *Id.*

On April 25, 2024, Chugach and MEA submitted a Proposed Final Fish and Wildlife Program with the support of Mayor Bronson.<sup>74</sup> The Assembly did not approve or support the proposal. Following the submission, the public had 60 days to comment on the Proposed Final Fish and Wildlife Program, followed by 30 days for the Project Owners to respond. Copies of comments can be found at <https://eklutnahydro.com/documents/#April2024Final|2>.

On June 11, 2024, the Assembly held a public hearing on the Proposed Final Fish and Wildlife Program and passed AR 2024-182(S-1) on June 25, 2024 encapsulating the public comments gathered by the Assembly and reiterating the Assembly's position in support of the Native Village of Eklutna and its proposed alternate plan.<sup>75</sup> The Assembly requested the Project Owners seek a two-year extension to perform additional analysis of alternate plans and to seek consensus among the parties.<sup>76</sup> The Assembly submitted the comments to the Governor on June 26, 2024.

On July 19, 2024, after her swearing-in, Mayor LaFrance submitted the Municipality's response (as a Project Owner) in the form of a letter to the Governor.<sup>77</sup> The letter was approved by the Assembly at its July 19, 2024 meeting and submitted as part of the public comment process.<sup>78</sup>

Chugach and MEA touted the Proposed Final Program as a compromise and response to public input:

After reviewing all of the comments received, the Project Owners made substantive revisions to the program reflecting negotiations with the parties to the 1991 Agreement and NVE, and are submitting the proposed final program to the Governor. The proposed final program includes the following:

- Construction of the Eklutna River Release Facility and establishment of year-round instream flows in the Eklutna River;
- Automation of the existing outlet gate at the dam to provide periodic channel maintenance flows in the Eklutna River;
- Construction of eight new bridges along the Anchorage Water and Wastewater Utility (AWWU) access road to enable AWWU's access to critical infrastructure year-round following the establishment of instream flows;
- Payment to Chugach State Park for lakeside trail repairs;
- Establishment of a Committee to oversee implementation of the Monitoring and Adaptive Management Plan;

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<sup>74</sup> Eklutna Hydroelectric Project Proposed Final Fish and Wildlife Program (April 25, 2024).

<sup>75</sup> See AR No. 2024-182(S-1); Letter from Native Village of Eklutna to S. Owen Re: Eklutna Hydroelectric Project Draft Fish and Wildlife Program (Dec. 4, 2023) (available at: <https://eklutnahydro.com/wp-content/uploads/2023/12/NVE-Eklutna-Draft-Fish-Wildlife-Program-Comment-Letter.pdf>).

<sup>76</sup> AR No. 2024-182(S-1) at 14.

<sup>77</sup> AM 557-2024(A) Comments to the Governor from the Municipality of Anchorage, In Response to Stakeholder Comments to the Eklutna Hydroelectric Project's Proposed Final Fish and Wildlife Program Put Forth on April 25, 2024 (July 19, 2024).

<sup>78</sup> *Id.*

- Funding to conduct monitoring studies in the Eklutna River throughout the 35-year program;
- Funding for physical habitat enhancement in the Eklutna River based on the monitoring results;
- Procedures for the Committee to adaptively manage the flow regime in the Eklutna River based on the monitoring results;
- Provisions for banking water in Eklutna Lake and potentially increasing the water budget for instream flows in the future;
- Potential installation of a fixed wheel gate to accommodate higher inflows in the future and/or allow higher channel maintenance flows if needed; and
- Potential installation of upstream and downstream fish passage facilities that meet specific criteria in the plan.

Approval of the Proposed Final Program will enable the Project Owners to implement these significant fish and wildlife measures at the Project, while simultaneously protecting the municipal water supply and continuing to provide firm, low cost, renewable energy to Southcentral Alaska.<sup>79</sup>

The Assembly’s perspective on the Proposal was not as positive. The Assembly’s sentiments were shared by Mayor LaFrance who expressed:

The current Proposed Final Fish and Wildlife Program would not result in a ‘continuous water flow of the Eklutna River,’<sup>80</sup> or restoration of ‘fish populations . . . to Eklutna Lake.’<sup>81</sup> The agencies that submitted stakeholder comments recognized that the proposed Program therefore ‘has limitations’<sup>82</sup> and “does not meet the goal of full ecosystem connectivity.”<sup>83</sup> They expressed preferences for an alternative that would “re-water[] the river with staged implementation of meaningful mitigation measures to support restoration and resilience of salmon runs in the Eklutna River watershed,”<sup>84</sup> and “[return] flows to the river that provide wetland connectivity, both instream and off-channel spawning and rearing habitats, and the return of salmon runs and marine derived nutrients into the entire river, lake, and its tributaries.”<sup>85</sup>

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<sup>79</sup> Press Release from Chugach and MEA, *Proposed Final Fish and Wildlife Program sent to Governor, Proposal calls for returning water, creating habitat in Eklutna River* (Apr. 25, 2024).

<sup>80</sup> AMC 26.30.025(A).

<sup>81</sup> *Id.*

<sup>82</sup> National Marine Fisheries Service, Comments on Proposed Program at 2 (June 21, 2024) (available at [https://eklutnahydro.com/wp-content/uploads/2024/07/2024-6-21-Comments-on-Proposed-Final\\_NMFS.pdf](https://eklutnahydro.com/wp-content/uploads/2024/07/2024-6-21-Comments-on-Proposed-Final_NMFS.pdf)).

<sup>83</sup> U.S. Fish and Wildlife Service, Comments on Proposed Program at 1 (June 24, 2024) ([https://eklutnahydro.com/wp-content/uploads/2024/07/2024-6-24-Comments-on-Proposed-Final\\_USFWS.pdf](https://eklutnahydro.com/wp-content/uploads/2024/07/2024-6-24-Comments-on-Proposed-Final_USFWS.pdf)).

<sup>84</sup> National Marine Fisheries Service, Comments on Proposed Program at 2.

<sup>85</sup> U.S. Fish and Wildlife Service, Comments on Proposed Program at 1.

Alternatives that would preserve power production while also resulting in this majority-preferred “continuous water flow” were proposed. As a result of time pressures, at least one received only an “initial analysis.”<sup>86</sup>

Mayor LaFrance reiterated that alternatives to the Proposed Final Fish and Wildlife Program existed and should be considered.<sup>87</sup> Noting the Governor’s authority to reconcile differences between the parties, the Municipality requested the Governor consider the Municipality’s position and require the Project Owners to:

use two years of the three-year pre-implementation period to identify an alternative infrastructure and engineering solution to ensure continuous water flow to all 12 miles of the Eklutna River. This will enable the owners to define and develop a practical alternative that will:

- Ensure continuous water flow to all 12 miles of the Eklutna River,
- Protect drinking water supply for Anchorage residents, and
- Further contribute to a reliable, affordable energy future for Southcentral Alaska.

In addition, the “limited reopeners” in the proposed final Program are unnecessary, as under the existing 1991 Agreement, the Owners can and should remain open on an ongoing basis to additional river restoration solutions as technology and conditions evolve. We propose you remove the limited reopeners from the final program to ensure clarity on this point.<sup>88</sup>

On August 15, 2024, Governor Dunleavy sent a letter to the parties setting a meeting for September 9, 2024 and requesting briefing on six (6) topics:

1. The Governor is required to give equal consideration to eight factors identified in Section 5 of the Agreement. Please identify how the proposed final program or an alternate program promoted by any other parties, or the Native Village of Eklutna, does or does not meet those eight factors.
2. Does the Agreement require complete connection between the river and the lake to support fish passage?
3. Is MOA Assembly approval required for approval of the Owners’ program?
4. What effect, if any, did the MOA’s lack of a vote on the Owners’ program have on the process set forth in the Agreement?
5. Does the Governor have the authority under the Agreement to impose a two-year extension on the process as requested by the MOA?
6. Whether the Owners and Anchorage Water and Wastewater Utility (‘AWWU’) have reached a final and binding agreement concerning the use of AWWU infrastructure as outlined in the Owners' program. If a final agreement has not

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<sup>86</sup> See Chugach Electric Association, Letter to the Anchorage Assembly at 9 (May 23, 2024) (available at <https://eklutnahydro.com/wp-content/uploads/2024/05/2021-05-23-Chugach-Letter-to-Assembly.pdf>).

<sup>87</sup> LaFrance Letter attached to AR 557-2024(A) at 2.

<sup>88</sup> *Id.* at 2-3.

been reached, what effect will that have on the Owners' ability to implement the final proposed program?<sup>89</sup>

The parties submitted briefs on September 4, 2024. In its brief, the Municipality argued that the Proposed Final Fish and Wildlife Program falls short when compared to other approaches and encouraged the Governor to allow the parties to study alternatives. The Proposed Final Fish and Wildlife Program has a hefty price tag (annualized cost of \$3.7 million per year) and reduces power production by 10%.<sup>90</sup> Furthermore, the Proposed Final Fish and Wildlife Program fails to re-water the entire Eklutna River and, in turn, fails to protect, mitigate harm to, or enhance fish and wildlife; it fails to adequately advance recreational and beneficial public uses; it does not meet the Municipality's expectations though it must be approved by the Assembly, risking viability if the Assembly withholds approval.<sup>91</sup>

The U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the Native Village of Eklutna also criticized the Proposed Final Fish and Wildlife Program citing similar concerns, including the Program's failure to rewater the entire Eklutna River.<sup>92</sup> Members of the public agreed.<sup>93</sup> The Municipality encouraged the Governor to allow for study of more promising programs over the following two (2) years, in particular pumped storage hydro.<sup>94</sup> The Municipality also highlighted the difficulties of advancing its position (and the public's) due to the RCA's actions regarding its voting rights and the concurrent obstruction by Chugach and MEA.<sup>95</sup>

In contrast, Chugach and MEA argued that the work to develop the Proposed Program was robust, considered the alternatives, incorporated comments from the parties and the public throughout the process, stating the process utilized "countless staff resources, and significant management time conducting a process of consultation with state and federal resource agencies, rigorous scientific and engineering studies, stakeholder engagement, and careful analysis of dozens of fish and wildlife protection, mitigation, and enhancement proposals."<sup>96</sup> Many of the public comments called out shortcomings with the Proposed Final Fish and Wildlife Program.

On September 4, 2024, the Parties met at the Governor's office and presented their arguments and proposals. On September 5, the Anchorage Assembly and Native Village of Eklutna passed Joint Resolution 2024-001 urging "Governor Dunleavy to establish a final Fish and Wildlife Program that requires the owners to use two years of the three year pre-implementation period to explore alternative infrastructure options, including pumped storage hydropower, that can provide continuous water flow to all twelve miles of the Eklutna River and fish passage into and out of

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<sup>89</sup> Letter from Governor Dunleavy to the Parties Re: Final Proposed Fish and Wildlife Program, p. 2 (Aug. 15, 2024).

<sup>90</sup> The Municipality of Anchorage's Brief Addressing the Governor's Questions About the Final Proposed Fish and Wildlife Program, Eklutna Hydro Project, p. 11 (Sept. 4, 2024).

<sup>91</sup> *Id.*

<sup>92</sup> See U.S. Fish and Wildlife Service, Comments on Proposed Program at 1; National Marine Fisheries Service, Comments on Proposed Program at 3; Native Village of Eklutna, Comments on Proposed Program at 1 (June 21, 2024) (available at [https://eklutnahydro.com/wp-content/uploads/2024/07/2024-6-21-Comments-on-Proposed-Final-Program\\_NVE.pdf](https://eklutnahydro.com/wp-content/uploads/2024/07/2024-6-21-Comments-on-Proposed-Final-Program_NVE.pdf)).

<sup>93</sup> See Proposed Program Attachment G.

<sup>94</sup> See Municipality's Brief at 13-14.

<sup>95</sup> *Id.* at 22-23.

<sup>96</sup> Chugach Electric Association Inc. and Matanuska Electric Association, Inc. Joint Brief at 1 (Sept. 4, 2024).

Eklutna Lake, protect the drinking water supply for Anchorage residents, and ensure a reliable, affordable energy future for Southcentral Alaska.”

The Governor issued his decision on October 2, 2024. He struck a compromise, allowing the portal valve project planning to proceed (as proposed by Chugach and MEA) while permitting a study of the pumped storage hydro option (as proposed by the Municipality and Native Village of Eklutna).<sup>97</sup>

## THE ADMINISTRATION’S RCA ACTIONS

When the Municipality sold ML&P to Chugach, it surrendered its vote on the EOC because the RCA determined that it no longer had the requisite knowledge of prudent utility practice and the Railbelt electric generation and transmission system required to be a voting owner representative on the EOC. However, by July of 2024, the Administration had secured that expertise by appointing Mark Corsentino, P.E. as Utility Director of AHP. On July 18, 2024, the Administration filed a Notice and Request for Acknowledgement of Anchorage Hydropower’s Acquisition of Expertise Required to Participate as a Voting Member of the Eklutna Operating Committee with the RCA.<sup>98</sup> The Notice included a request for expedited consideration so AHP would have a vote on decisions related to the Final Fish and Wildlife Program that would ultimately bind the Municipality to budgetary and policy decisions.

The Native Village of Eklutna filed a letter in support of the Municipality’s request.<sup>99</sup> Chugach and MEA opposed the request to consider the matter on shortened time and also raised substantive concerns about whether the RCA should grant the underlying relief.<sup>100</sup> Chief among their concerns was whether AHP’s Director would be subject to the whims of the Assembly.<sup>101</sup> Notably, Chugach and MEA did not dispute Mr. Corsentino’s qualifications or oppose his becoming a voting member of the EOC.<sup>102</sup> The Assembly filed a Petition to Intervene as a result of Chugach and MEA’s “attempt to place at issue the Assembly’s role in determining the Municipality’s policies with respect to the Eklutna Project and call into question the propriety of the Assembly’s actions regarding the 1991 Fish and Wildlife Agreement.”<sup>103</sup> Chugach and MEA opposed the Petition.<sup>104</sup>

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<sup>97</sup> See Governor’s Decision at 29. For a thorough look at options for implementing the 1991 Agreement and the Governor’s Decision, see Mark Corsentino’s opinion piece, “The biggest hydropower opportunity on the Railbelt isn’t on Chugach Electric Association’s List,” *Anchorage Daily News* (Feb. 26, 2026) (available at: <https://www.adn.com/opinions/2026/02/26/opinion-the-biggest-hydropower-opportunity-on-the-railbelt-isnt-on-chugach-electric-associations-list/>).

<sup>98</sup> Docket U-24-024.

<sup>99</sup> Letter of Support from Native Village of Eklutna (Aug. 2, 2024).

<sup>100</sup> Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.’s Joint Opposition to AHP’s Motion for Expedited Consideration (Aug. 26, 2024) (hereinafter “Joint Opposition”); Initial Comments on Chugach Electric Association, Inc. and Matanuska Electric Association, Inc. (Aug. 26, 2024) (hereinafter “Initial Comments”).

<sup>101</sup> Joint Opposition at 2-3.

<sup>102</sup> Initial Comments at 1 (“At this point, we do not oppose AHP’s nomination of Mr. Corsentino to become a voting member of the EOC.”).

<sup>103</sup> Anchorage Assembly’s Petition to Intervene at 1 (Aug. 27, 2024).

<sup>104</sup> Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.’s Joint Opposition to Anchorage Assembly’s Petition to Intervene (Sept. 3, 2024).

The RCA scheduled a prehearing conference for August 30, 2024; Administrative Law Judge (ALJ) James L. Walker presided. At the hearing, ALJ Walker denied AHP’s request for expedited consideration—electing for a truncated schedule but not as shortened as AHP requested—and denied the Assembly’s Petition to Intervene,<sup>105</sup> reasoning the Municipality could represent the Assembly’s interests.<sup>106</sup>

During the prehearing conference, ALJ Walker sua sponte posited that the term of the surrender of AHP’s vote might have been for the length of the Eklutna PPA and MEA PPA, 35 years,<sup>107</sup> stating “the Commission should be considering dismissal of the notice and request for acknowledgement as being prematurely filed” because it purportedly failed to acknowledge the required term length.<sup>108</sup> No party had argued for this interpretation, but Chugach and MEA immediately adopted it.<sup>109</sup>

The relevant language from the RCA Order regarding the term of the surrender reads:

We can only find that [AHP] is managerially and technically fit to maintain an ownership interest in the Eklutna Project subject to the condition that before the effective date of either the Eklutna PPA or the MEA PPA, ML&P surrenders its vote on the EOC under the Eklutna Project agreement so that Chugach and MEA can jointly manage and operate the Eklutna Project, including negotiating compliance with the Fish and Wildlife Agreement, without [AHP] having a vote on operating or management decisions. This surrender must have a term at least equal to the term of the Eklutna PPA and the MEA PPA, as those agreements may be extended, and cannot be lifted until such time as [AHP] has shown to our satisfaction that [AHP] has acquired the expertise required to fully participate as a voting member of the EOC.<sup>110</sup>

The Commission adopted a schedule to hear evidence and arguments on AHP’s request with hearings on the matter scheduled for November 18, 2024 and a Commission decision thereafter.<sup>111</sup>

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<sup>105</sup> The Assembly did not participate as a party to either of the Administration’s RCA actions after this date and the information included in this Report is for context to the Assembly’s advocacy but is not an exhaustive report on the Administration’s actions and efforts.

<sup>106</sup> Order Adopting Procedural Schedule, Denying Petition to Intervene, and Redesignating Commission Panel at 2-3, 5 (Sept. 12, 2024).

<sup>107</sup> *Id.* at 3.

<sup>108</sup> *See* U-24-024 Prehearing Conference, Tr. 7, lines 5-7.

<sup>109</sup> *See* Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.’s Joint Brief Regarding Surrender Term, pp. 11-12 (Oct. 8, 2024) (“Chugach and MEA admit that until ALJ Walker raised this issue in this proceeding, they had not examined this issue closely and were theoretically comfortable with an interpretation of the Surrender that if and when the MOA could demonstrate technical and managerial fitness, potentially with certain conditions imposed on the MOA to require MOA act consistently with prudent utility practice, to prevent the MOA from undermining the Project Owners’ work in implementing the Final Fish and Wildlife Program, and to protect the Eklutna Project as a valuable resource in the Railbelt, the MOA would be entitled to regain its voting rights on the EOC and with respect to the Fish and Wildlife Agreement before the end of the PPA terms. Upon further review in this proceeding, however, Chugach and MEA no longer think that this matter is so simple. . . .”) (hereinafter “Chugach & MEA Brief on Term”).

<sup>110</sup> Order U-18-102(44) at 67.

<sup>111</sup> *Id.* at 6-7.

In response to the RCA's request, the parties briefed the question of the surrender term with the Office of the Attorney General, Regulatory Affairs & Public Advocacy Section ("RAPA"), Chugach and MEA arguing the surrender was for a term of at least 35 years.<sup>112</sup> AHP argued that the language in Order 39 did not implement a minimum term and focused on the acquisition of expertise.<sup>113</sup>

As documented in the Acquisition dockets and the MEA PPA approval docket (TA379-121), as well as in subsequent filings in this docket, the Commission, the owners of the Eklutna Project, and the Office of the Attorney General, Regulatory Affairs & Public Advocacy Section ("RAPA") all had a public, contemporaneous and continuing understanding that while Order 39 required the term of the surrender to be equal to the terms of the Eklutna and MEA PPAs, that term was subject to termination, and the surrender was subject to being 'lifted' at any time after the MOA made a showing to the Commission's satisfaction that MHP had acquired the expertise required to fully participate as a voting member of the EOC.<sup>114</sup>

On October 15, 2024, RAPA filed a Motion to Dismiss the Notice and Chugach and MEA filed a Joinder on October 24, 2024.<sup>115</sup> RAPA argued that the issues raised by AHP were mooted by the Governor's Decision and Chugach and MEA further argued that the RCA's decision (due after briefing was filed) on the question of a minimum term would determine whether the parties should proceed to a hearing on the underling request.<sup>116</sup>

On November 14, 2024, the RCA issued its decision, finding the minimum term of the surrender was 35 years, the request to restore AHP's vote on the EOC was premature, vacating the hearings set for November 18, 2024, and closing the docket.<sup>117</sup>

On December 13, 2024, AHP appealed the RCA's decision to the Anchorage Superior Court in Case No. 3AN-24-10554CI.<sup>118</sup>

On July 30, 2025 (while the appeal in Case No. 3AN-24-01554CI was pending and stayed), AHP filed a new action in the RCA, this time requesting the RCA lift the condition requiring the surrender of the vote from the Certificate of Public Convenience and Necessity No. 780 and an

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<sup>112</sup> Office of the Attorney General's Brief on Interpretation of Order 39 (Oct. 8, 2024); Chugach & MEA Brief on Term.

<sup>113</sup> Municipality of Anchorage d/b/a/ Anchorage Hydropower's Brief Regarding Interpretation of Order 39 (Sept. 18, 2024).

<sup>114</sup> *Id.* at 3.

<sup>115</sup> Motion to Dismiss as Moot (Oct. 15, 2024); Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.'s Joinder in Motion to Dismiss Regarding Surrender Term (Oct. 24, 2024).

<sup>116</sup> *See Id.*

<sup>117</sup> Order Granting Motion to Dismiss in part and Dismissing Notice and Request, Denying Motion to Dismiss in Part, Vacating Procedural Schedule, Denying Motion to Compel, Denying Request to Construe Notice and Request as Petition to Amend Certificate Condition, Providing Guidance for Future Filings, and Closing Docket (Nov. 14, 2024). The RCA found RAPA's motion was moot, given its finding on the minimum surrender term. *See Id.* at 29-30.

<sup>118</sup> Notice of Appeal (Dec. 13, 2024); Statement of Points on Appeal (Dec. 13, 2024).

alternative application to amend Certificate No. 780.<sup>119</sup> The request approached the question of the vote surrender from a different angle and asked the RCA to amend the Certificate of Convenience as opposed to interpret its prior Order 39.<sup>120</sup>

RAPA filed a Motion to Dismiss the new action, relying on the minimum term set by the RCA in Docket U-24-024;<sup>121</sup> Chugach and MEA joined in RAPA's motion.<sup>122</sup> In a 3-2 vote, the RCA granted the Motion to Dismiss on January 26, 2026 finding the minimum term requirement had not been nullified and there was not good cause to grant the request to amend the Certificate of Convenience.<sup>123</sup> AHP filed a Petition for Reconsideration on February 10, 2026.<sup>124</sup> In a 3-2 vote, the RCA denied the Petition on February 27, 2026.<sup>125</sup>

AHP appealed the RCA's February 27, 2026 decision to the Anchorage Superior Court in Case No. 3AN-26-05848CI on March 31, 2026 and simultaneously moved to consolidate it with Case No. 3AN-24-10554CI. The appeals were consolidated in April of 2026 and the Municipality continues to pursue review of the RCA's decisions.<sup>126</sup>

## THE ROAD AHEAD

The Assembly serves as the steward of public funds (both taxpayer and ratepayer) and must exercise its authority prudently and in line with its fiduciary duties. The expected path for the Assembly to exercise its oversight and fiduciary duties related to the Eklutna River and the 1991 Agreement have been severely limited, as explained herein. Presently, the Municipality's partners in the Project have the ability to essentially decide how taxpayer and ratepayer funds are spent without the Municipality having a vote, despite the public's ownership stake in the Eklutna Project.

In the face of these difficulties, the Assembly continues to prioritize its government-to-government relationship with the Native Village of Eklutna and works to ensure Eklutna's position is centered in the Assembly's actions related to this Project. The Assembly is considering the related AWWU contracts with Chugach as part of its oversight related to the Eklutna Project. The process surrounding the implementation of the 1991 Agreement was flawed, in particular as it relates to the Assembly's oversight and public participation. But through the Assembly's actions as described in this Report and its continued focus on inclusive policy considerations, the Assembly has worked and continues to work with the Administration to represent the people of Anchorage and their priorities related to the Eklutna River.

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<sup>119</sup> Municipality of Anchorage d/b/a Anchorage Hydropower's Request to Lift Condition Requiring the Surrender of Voting Rights from Certificate of Public Convenience and Necessity No. 780; and Alternative Application to Amend Certificate of Public Convenience and Necessity No. 780, Docket U-25-025 (July 30, 2025).

<sup>120</sup> The RCA action also acknowledged some staffing changes at the Municipality but noted the requisite expertise remained. *Id.*

<sup>121</sup> Office of the Attorney General's Motion to Dismiss (Aug 8, 2025).

<sup>122</sup> Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.'s Joinder in Motion to Dismiss (Aug 22, 2025).

<sup>123</sup> Order Granting Motion to Dismiss and Closing Docket, U-25-025 at 20 (Jan. 26, 2026).

<sup>124</sup> Municipality of Anchorage d/b/a Anchorage Hydropower's Petition for Reconsideration of Order U-25-025(2) (Feb. 10, 2026).

<sup>125</sup> Order Denying Petition for Reconsideration and Finding Motions Moot (Feb. 27, 2026).

<sup>126</sup> *See* Order Granting Appellant's Motion to Consolidate Appeals (April 20, 2026).

As enshrined in AMC 26.30.025(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 . . . .**