

MUNICIPALITY OF ANCHORAGE
WATERSHED & NATURAL RESOURCES ADVISORY COMMISSION
RESOLUTION NO. 2020-01

A RESOLUTION RECOMMENDING THAT A STUDY PLAN BE DEVELOPED TO ALLOW “FLUSHING FLOWS” TO BE RELEASED FROM EKLUTNA LAKE IN 2020 TO FACILITATE IMPLEMENTATION OF THE 1991 FISH AND WILDLIFE AGREEMENT.

(WNRC Case No. 2017-03)

WHEREAS, the Watershed & Natural Resources Advisory Commission (WNRC Case No 2019-03) and Anchorage Assembly (AR No. 2017-324) have previously resolved to support restoration of the Eklutna River in a manner consistent with the 1991 Fish and Wildlife Agreement signed by the three purchasers of all the hydroelectric facilities associated with Eklutna Lake (hereinafter the “Purchasers”) and other municipal, state, and federal government agencies; and

WHEREAS, re-establishing and sustaining viable runs of the original five species of salmon throughout the Eklutna River drainage is unquestionably the best way to measure the ecological health and diversity of the river and its riparian habitats; and

WHEREAS, the former river channel has been clogged with sediments entering from side canyons and cliffs in the 91 years since the dams were built, and the best way to flush this material and facilitate hydrological studies is to temporarily release enough water from the lake for several “flushing flows”; and

WHEREAS, at an Anchorage Assembly workshop on February 12, 2020, representatives from all three Purchasers claimed that the 1991 Fish and Wildlife Agreement prohibited them from releasing flushing flows or doing anything else that might affect fish and wildlife until the mitigation plans are signed by the governor and implemented or they would be liable for downstream damages; and

WHEREAS, the single sentence they referred to in Section 7 is “In addition, prior to undertaking any major structural or operational modifications substantially affecting water usage or fish and wildlife at the projects, the Purchasers shall follow the process called for in Sections 2 through 6 of this Agreement”; and

WHEREAS, Section 2 relates to the study plan, which the Purchasers had agreed to fund and “develop proposals for the protection, mitigation, and enhancement of fish and wildlife affected by such hydroelectric development”; and

WHEREAS, Section 3 relates to carrying out the study plan, which shall be developed in consultation with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the Alaska departments of Fish and Game, Environmental Conservation, and Natural Resources “to aid in the formulation of the Program called for in this Agreement”; and

WHEREAS, Section 4 relates to the preparation, agency consultation and public review of a summary of final study results and a mitigation plan “for the protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) and set a tentative schedule for their implementation”; and

WHEREAS, Section 5 relates to a public interest determination in which the Purchasers shall compile all comments, prepare a draft mitigation plan to “protect, mitigate and enhance fish and wildlife resources” and negotiate a final mitigation plan in consultation with the agencies and the governor; and

WHEREAS, Section 5 also lists factors the governor “shall give equal consideration to” which include “efficient and economical power production, energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat), the protection of recreation opportunities, municipal water supplies, the preservation of other aspects of environmental quality, other beneficial public uses, and requirements of State law”; and

WHEREAS, Section 5 also requires the governor to establish a final mitigation plan “that adequately and equitably protects, mitigates damage to, and enhances fish and wildlife resources (including affected spawning grounds and habitat) affected by the Eklutna Project”; and

WHEREAS, Section 6 requires the Purchasers to implement the mitigation plan signed by the governor, subject to their right to judicial review; however, the Purchasers are required to “implement all provisions of the Program that do not require major capital expenditures pending judicial review”; and

WHEREAS, the purpose of the 1991 Fish and Wildlife Agreement was to develop and implement a mitigation plan to protect, mitigate damage to, and enhance fish and wildlife resources harmed by hydroelectric and related activities conducted prior to 1991; and

WHEREAS, the 1991 Fish and Wildlife Agreement was intended to prevent further environmental damage that would have to be mitigated; and

WHEREAS, therefore, a reasonable person would conclude that the sentence in Section 7 that alludes to “undertaking any major structural or operational modifications substantially affecting water usage or fish and wildlife at the projects” refers to modifications related to the generation of hydroelectric power, not those intended to allow or facilitate scientific studies required for developing a mitigation plan; and

WHEREAS, Section 13 stipulates that “the Parties agree that they will cooperate with one another in conducting studies pertaining to fish and wildlife other than those called for in this Agreement” by “having the option of funding fish and wildlife studies before the process called for in Sections 2 and 3 of this Agreement would otherwise require”; and

WHEREAS, some water will need to be spilled from Eklutna Lake to allow and facilitate environmental studies; and

WHEREAS, the agencies tasked with conducting studies cannot make much progress without the temporary release of flushing flows and an assessment of their effect on the river's channel and floodplain; and

WHEREAS, the Producers' reluctance to work with the agencies to develop a study plan for the release of flushing flows during Eklutna Lake's annual high-water period in fall is holding up the process; and

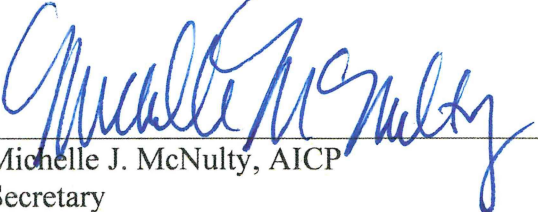
WHEREAS, the study plan will identify and address the potential impacts to downstream infrastructure; and

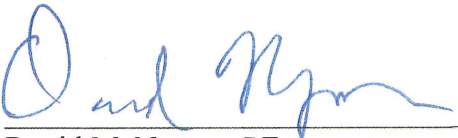
WHEREAS, in fact, the key element of the 1991 Fish and Wildlife Agreement is to restore water in Eklutna River, and suitable salmon habitat cannot be re-established without flushing flows that remove and redistribute sediments.

NOW, THEREFORE, BE IT RESOLVED THAT the Watershed & Natural Resources Advisory Commission recommends:

- A. The Municipality ensure that Municipal Light & Power and the other Purchasers work with the agencies on a study plan to release flushing flows during the lake's high-water period in 2020.

PASSED AND APPROVED by the Watershed & Natural Resources Advisory Commission on this 15th day of July 2020.


Michelle J. McNulty, AICP
Secretary


David M. Nyman, PE
Chair