



# NATIVE MOVEMENT

Building Healthy & Sustainable Communities

[www.nativemovement.org](http://www.nativemovement.org)

February 19, 2024

Chugach Electric Association, Inc.  
Matanuska Electric Association, Inc.  
Municipality of Anchorage

**RE: October 2023, Eklutna Hydroelectric Project, Draft Fish and Wildlife Program**

Submitted via: [info@eklutnahydro.com](mailto:info@eklutnahydro.com)

Native Movement<sup>1</sup> is pleased to offer comment on the October 2023 Eklutna Hydroelectric Project, Draft Fish and Wildlife Program. Native Movement is an organization dedicated to building people power rooted in an Indigenized worldview. Our mission is to foster healthy, sustainable, and just communities for all, with a particular emphasis on upholding social justice, Indigenous Peoples' rights, and the rights of Mother Earth. At Native Movement, we prioritize grassroots-led projects that align with our vision and values. We recognize the interconnectedness of environmental stewardship, cultural preservation, and social equity. It is within this framework that we engage in efforts to protect and restore our natural environment, promote traditional knowledge, and advocate for policies that prioritize the well-being of both present and future generations.

**Native Movement stands with the Native Village of Eklutna, local community councils, and others who support the restoration of the Eklutna Lake and River ecosystem.**

### **Proposed Eklutna River Flows**

The Project Owners are proposing to release year-round instream flows of 27 cfs in the winter and 40 cfs in the summer from Eklutna Lake into Eklutna River from a new Eklutna River Release Facility which will be located adjacent to the AWWU portal valve. The Project Owners claim this will water 11 of 12 miles of the Eklutna River.

Native Movement concurs with growing public sentiment that a stream flow rate of between 27 to 40 cfs is marginal, and whether a flow rate of between 27 to 40 cfs is adequate would likely depend on many factors that would have to work in unison. Some species of salmon may be more adaptable to lower flow rates than others. Species like pink salmon or chum salmon might

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<sup>1</sup> <https://www.nativemovement.org/what-we-do>

be more tolerant of lower flow conditions compared to species like Chinook or Coho salmon. At the proposed marginal flow rate it seems the quality of the water would be very critical for salmon survival and reproduction. Even if the flow rate is suitable, the water must have adequate oxygen levels, be free from pollutants, and maintain appropriate temperatures that salmon prefer. Flows between 27 to 40 cfs may be sufficient for some aspects of salmon habitat, such as migration corridors or summer rearing habitat, but it may not provide enough space or suitable conditions for all life stages, especially spawning habitat. Salmon require a variety of habitats throughout their life cycle, such as riffles, pools, and areas with suitable substrate for spawning. It is possible the proposed flows of between 27 to 40 cfs may only allow for limited stream habitat types.

### **Removing the Eklutna Dam**

Native Movement is convinced that full restoration is consistent with the existing 1991 agreement. If the Tribe and the public demand justice for restoration, then it seems reasonable and consistent with the 1991 agreement to consider full restoration. The relevant language of the 1991 agreement is as follows: *“protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) affected by hydroelectric development.”*

The statements *“protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) affected by hydroelectric development”* should not exclude restoration because each component—protection, mitigation, and enhancement—contributes comprehensively to fish and wildlife populations and their habitats. Each component—protection, mitigation, and enhancement—addresses different aspects of managing the impacts of hydroelectric development on fish and wildlife; they collectively can easily contribute to the broader goal of restoration. By integrating these components into a strategy, it becomes clear that recovering and restoring fish and wildlife populations and their habitats affected by hydroelectric development is inclusive of full restoration.

### **Water Rights**

The Project Owners have claimed that their Priority of Appropriation gives them a superior claim to water over other users who value a restored Eklutna River ecosystem. Native Movement is not convinced the Project Owners have the right to prevent changes in the condition of water occurrence if the will is to restore an intact Eklutna River ecosystem. Native Movement believes it is within the rights of the Tribe and the public to propose appropriation of water rights for the Eklutna River ecosystem, and the Project Owners cannot prevent subsequent generations from securing water for fish and wildlife. The law may uphold the priority of appropriation principle. However, subsequent appropriators could be allowed to reasonably access water for fish and wildlife even if it means the prior appropriator may need to adapt to the new circumstances or if the will of the public demands water rights be relinquished to benefit fish and wildlife.

### **1991 Fish and Wildlife Agreement**

The Project Owners are claiming the 1991 Agreement is the guiding document they have followed during development of the draft fish and wildlife program. The Project Owners also claim to have fully met the procedural and schedule requirements of the 1991 Agreement. They go on further to say: “The Project Owners have gone well beyond the requirements of the 1991 Agreement in terms of consultation, documentation, and analysis of Draft Program alternatives.” However, the Draft Fish and Wildlife Program puts forth one alternative and rejects many others. During the January 2024 public hearings in Eagle River, it was noted that a dam removal analysis option would be drafted after the comment period closed.

By considering only one alternative in the Draft Fish and Wildlife Program and rejecting many others, there is a lack of transparency in the decision-making process. This has an impact on public trust by giving the impression that decisions are made without considering diverse perspectives or fully informing the public about available options. By compiling a dam removal analysis option after the comment period closes, the Project Owners are excluding a significant alternative after the public input phase, and that creates the perception that decision-makers are not genuinely interested in hearing and incorporating public feedback or exploring all viable options.

### **Sockeye Salmon**

The Project Owners have claimed: *“that no adult sockeye were observed spawning in the lower river during the 2-year study program. Therefore, any attempt to establish a sockeye salmon run in the Eklutna watershed would either rely on sockeye straying from other river systems or intentional stocking efforts.”*

This statement casts doubt on traditional ecological knowledge (TEK) and the potential for sockeye salmon to thrive in the Eklutna watershed. The Project Owners seem to be suggesting that since no adult sockeye were observed spawning during a two-year study program, the dream of witnessing these majestic fish returning home to their ancestral waters seems bleak. However, Tribal Administrator Brenda Hewitt testified at a House Energy Committee hearing on February 8 that the Tribe in fact had seen and tagged sockeye salmon on the river in the last year. She further testified that the Tribe had informed the project owners of their findings, indicating that project owners are either ignoring or actively hiding information contrary to their conclusions. Even if sockeye had not been recently documented in the river, that would not mean that sockeye could not return. Nature has a way of surprising us, and Native Movement is convinced of the TEK already put forth, that once there was enough salmon that one could walk across their backs. It's crucial to remember that the absence of evidence is not evidence of absence. We also must not overlook the prospect of sockeye straying from neighboring river systems. Salmon are nature's wanderers, after all salmon embark on a journey out to Cook Inlet to who knows where, venturing far from their natal stream.

### **Lack of Free, Prior and Informed Consent, or Even Meaningful Consultation with the Tribe**

The Eklutna Tribe has been stewarding the Eklutna River for generations. The original dams were built without the Tribe's input or consent, and they have been devastating to the Tribe's

ability to fish. It is time to stop trampling the rights of the sovereign Eklutna people. Any proposal for the Eklutna Hydro project can only move forward with the free, prior, and informed consent of the Tribe. This process has been none of those. The Tribe does not consent to the proposal. It has not been given the opportunity to work meaningfully with the decisionmakers prior to the utilities publishing a proposal. And the Project Owners have actively worked to hide information from the Tribe and the public. In fact, although the Project Owners claim to have consulted with the Tribe, they have rejected the Tribe's input at every turn and worked to silence the Tribe's voice. They barred the Tribe from speaking at the public hearings and did not invite the Tribe to speak at a recent legislative hearing on the project. There is no free, prior, and informed consent for the project proposal; there is not even real consultation.

### **Inadequate Public Process**

In addition to ignoring the Eklutna Tribe's rights, the Project Owners have not provided adequate public process. In the meetings that were advertised as public hearings, the Project Owners did not allow time for public testimony. Instead, they only allowed the public, including members of the Eklutna Tribe, to submit comments in the back of the room. Across all 6 public meetings, only 17 out of 230 attendees submitted written comments. Many attendees were disappointed to not hear what others in the room thought. The utilities themselves gave a presentation that left out important information and included slanted information. They had McMillen Inc. scientists and engineers available after the presentation to answer questions. However, there were no tables for other experts and parties to the 1991 Agreement, including Native Village of Eklutna, the US Fish and Wildlife Service, or the National Marine Fisheries Service.

Moreover, in putting forward only one alternative, the Project Owners have not provided an adequate basis for the public to weigh in. With the tight timeline that the Project Owners have put themselves on, there is no time for the public to fully develop and analyze a new alternative. The Project Owners should have fully analyzed multiple alternatives, including the Tribe's preferred alternative. Without valid alternatives to consider, the public is hindered in its ability to weigh in meaningfully. Therefore, we support the Anchorage Assembly's request for a two-year pause to complete additional analysis of true river protection, enhancement, and restoration alternatives.

We were also disheartened to learn during a recent special Assembly meeting that a binding agreement between AWWU and the Project Owners to implement the portal alternative was signed prior to the public process and any resolution of differences amongst the Parties to the Agreement. According to the 1991 Agreement, any documents related to the Agreement process should be made available to the public upon request. When the Assembly requested a copy of that agreement, their inquiry was denied, further demonstrating the disingenuous nature of the purported public process.

### **Conclusion**

The Project Owners seem to be suggesting a sense of finality that law and agreements are on their side and their draft fish and wildlife program has met all the requirements. The journey to

establish salmon in the Eklutna watershed may be fraught with challenges, but it is also filled with hope. The first people of Eklutna whose lands were taken from them without consideration for this hydroelectric project deserve to have their voices heard, and all Alaskans deserve to have Eklutna River restoration looked at as a viable alternative.

Thank you for your time and consideration.

Sincerely,

Austin Ahmasuk