



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

September 3, 2024

Governor Mike Dunleavy
Office of the Governor
P.O. Box 110001
Juneau, Ak 99811

Re: Eklutna Hydropower Project, 1991 Agreement Fish and Wildlife Program Brief

Dear Governor Dunleavy:

Thank you for inviting us to participate in a meeting to discuss your review of the Eklutna Hydropower Project's Fish and Wildlife Program pursuant to the 1991 Fish and Wildlife Agreement. The purpose of the meeting is to provide the signatories and the Native Village of Eklutna an opportunity to present our position on the proposed Program. Representatives from my staff will be present at the meeting to support our position and address your questions.

The meeting invitation also offered the opportunity to provide a legal brief addressing a series of questions. Our position on the proposed Fish and Wildlife program is outlined in the June 21, 2024 comment letter provided to your office and comports with the answers provided below. We look forward to the discussion on September 9.

Sincerely,



Jonathan M. Kurland

Regional Administrator

BRIEF IN RESPONSE TO QUESTIONS RAISED BY THE GOVERNOR TO CLARIFY RESPONSIBILITIES UNDER THE 1991 AGREEMENT

Under the 1991 Fish and Wildlife Agreement for the Snettisham and Eklutna Projects (1991 Agreement), the Eklutna Purchasers (Owners) are required to create a program to protect, mitigate damages to, and enhance fish and wildlife impacted by the Eklutna hydropower project (Program), in consultation with the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the State of Alaska resource management agencies (1991 Agreement Preamble and Para. 4). The Owners proposed a Final Program and NMFS submitted comments on that Final Program to the Governor on June 21, 2024 (1991 Agreement Para. 5). NMFS's comments summarize our position on the Owner's proposed Final Program, based on our expertise and statutory authorities (such as those under the Magnuson-Stevens Fishery Conservation and Management Act, 16 USC 181 et seq.). Pursuant to his responsibilities under the 1991 Agreement, the Governor requested additional information from the parties and the Native Village of Eklutna, concerning the Owners' Final Program and all subsequently received comments, asking a response to six questions. NMFS's response to those questions are addressed below.

- 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.**

The eight factors listed in Paragraph 5 of the 1991 Agreement are: (i) efficient and economical power production, (ii) energy conservation, (iii) protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat), (iv) protection of recreation opportunities, (v) municipal water supplies, (vi) preservation of other aspects of environmental quality, (vii) other beneficial public uses, and (viii) requirements of state law. Of these factors, the National Marine Fisheries Service (NMFS) has expertise and statutory authorities that apply to factor (iii) protection, mitigation of damage to, and enhancement of fish and wildlife. Under the 1991 Agreement, we hold an advisory role, but the Owners must give due weight to our recommendations, expertise, and authorities (1991 Agreement Paras. 4, 5).

As a party to the 1991 Agreement, we have actively participated in all stages of its implementation which encompassed the development of study plans, review of findings, and assessment of various protection and mitigation alternatives. We negotiated in good faith with the Owners, and signatories, as well as in discussions with NVE, to develop the proposed Fish and Wildlife Program. Based on those discussions, our review of the proposed Program, and consideration of potential alternatives, it is our conclusion that the proposed Program provides a framework to initiate the protection, mitigation and enhancement of fish and wildlife resources, and will support the next iteration of a mitigation plan. The Program includes provisions supporting habitat restoration initiatives, monitoring the effectiveness of the mitigation, a

technical working group (TWG) to inform the mitigation decision making process, and provisions to address changing technology and climate conditions.

Our comments on the proposed Program considered alternatives for water flow at the dam rather than sourced from the AWWU portal. Presently, the primary source of water into the river would be discharged from the AWWU portal approximately one mile downstream of the dam. The Program includes a provision for the Owners to conduct a detailed feasibility study of a new fixed wheel gate at the existing dam (including a stability analysis and Class 3 cost estimate). If the new gate is structurally feasible and monitoring efforts during the defined 10-year period indicate that average annual inflows to the lake have increased by 20,000 acre-feet or the Monitoring and Adaptive Management Committee determines that higher channel maintenance flows are warranted to maintain spawning gravels, then the Owners will commit up to \$10 million in 2024 U.S. dollars to install the new gate. We recommended one alternative in reference to the funds proposed in the Program for a fixed wheel gate. If the feasibility study indicates the dam is insufficiently stable to support a new gate structure and this action does not proceed, then one of two alternatives should be given consideration. In lieu of a new gate, we recommend further analysis for the construction of a pump station that takes water from Eklutna Lake and discharges it through, or adjacent to, the existing dam outlet gate. We reviewed the Owner's response to this alternative by NVE and understand their concerns. However, a more in depth analysis is warranted if the feasibility study for a new gate indicates an unfavorable stability result. A pump station would add functionality for controlling water levels, preventing uncontrolled spill, and managing the mitigation water budget. Alternatively, if the new gate is infeasible, the funds identified for the potential new gate should be designated for other mitigation measures related to water management for the protection, mitigation, and enhancement of fish and wildlife in the Eklutna River in coordination with the Monitoring and Adaptive Management Committee. This alternative also supports a framework for the protection, mitigation and enhancement of fish and wildlife resources, and will support the next iteration of a mitigation plan.

2. Does the Agreement require complete connection between the river and the lake to support fish passage?

The 1991 Agreement preamble states that the Agreement is "...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...Project." During the study plan phase, the 1991 Agreement directs the Owners to examine and develop proposals for the protection, mitigation of damages to, and enhancement of fish and wildlife affected by the hydropower development, taking into consideration impacts on electric ratepayers, municipal water utilities, recreation users and adjacent land use, and available means to mitigate any of those impacts (1991 Agreement Para. 2). The Owners then created the Final Program based on those studies and input by the Parties (as well as various other stakeholders not included in the 1991 Agreement) (1991 Agreement Paras. 4, 5). Finally, the 1991 Agreement directs the Governor to consider the eight factors listed above in making his decision on the Program (1991

Agreement Para. 5). The 1991 Agreement does not specifically mention fish passage or river connectivity to the lake.

3. Is MOA Assembly approval required for approval of the Owners' program?

NMFS lacks knowledge or information sufficient to answer this question.

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?

The process established by Anchorage Municipal Light and Power, Chugach Electric Association, and Matanuska Electric Association, owners of the Eklutna Project (collectively, the "Owners"), has been, to the best of NMFS's knowledge, consistent with the intent of the 1991 Agreement provisions and inclusive of significant stakeholders who are not parties

5. Does the Governor have the authority under the Agreement to impose a two-year extension on the process as requested by the MOA?

The 1991 Agreement lays out the timeline (1991 Agreement Para. 7) and allows the Governor to reconcile differences and establish the final program (1991 Agreement Para. 5). The 1991 Agreement does not speak to an extension of the process.

6. Whether the Owners and Anchorage Water and Wastewater Utility ("AWWU") have reached a final and binding agreement concerning the use of A WWU infrastructure as outlined in the Owners' program. If a final agreement has not been reached, what effect will that have on the Owners' ability to implement the final proposed program?

NMFS lacks knowledge or information sufficient to answer this question.