



Eklutna Hydroelectric Project: Implementing the 1991 Agreement

Anchorage Assembly's Assembly Resolution No. 2024-40 (February 2, 2024)

Assessment and Response

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Anchorage Assembly passed AR 2024-40 to comment on Owners' Draft Fish and Wildlife Agreement

- The Eklutna Hydroelectric Project Owners (Owners) have been implementing the 1991 Agreement since 2019; see <https://eklutnahydro.com/project-schedule/>.
- The Draft Fish and Wildlife Program was issued on October 27, 2023; following six public meetings in January, public comments are due on February 19, 2024.
- The Anchorage Assembly held a special meeting on February 2, 2024 to consider, among other items, a resolution submitting public comments on the Draft Fish and Wildlife Program.
- Draft AR No. 2024-40 was introduced, read, discussed, amended, and approved during the special meeting on February 2.
- The Owners were not given an opportunity to review and respond in detail before or during the special meeting, so the Owners reviewed it after its passage.
- The Owners found many incorrect factual and legal assertions in AR No. 2024-40 and in the public statements during the special meeting; we have determined that we must respond to the following “process and technical concerns” set forth by the Assembly.

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Concern 1.A “Non-Compliant Process”

Assembly Assertion: The process implemented by the Owners is not as good as a FERC licensing process, does not include a NEPA analysis, or use the process the Municipality uses for large capital projects and did not consider and present multiple alternatives

Owners' Assessment and Response: We fundamentally disagree.

1. 1991 Agreement is a process modeled on FERC licensing process, but it is different by design of the parties who signed contract and is not a federal regulatory process:
 - Governor approves Fish and Wildlife Program, not FERC;
 - Federal agencies have no mandatory conditioning authority; and
 - Federal National Environmental Policy Act (NEPA) does not apply.
2. Municipality's capital projects process is inapplicable.
3. The 1991 Agreement requires Owners to issue a draft Fish and Wildlife Program for review with parties and public comment; it does not contemplate Owners bringing a handful of alternatives to Assembly for its choosing.
4. Owners assessed **36 different alternatives**, with parties, the Native Village of Eklutna (NVE), state and federal agencies, and environmental groups over six-month period in 2023; NVE proposed dam removal as its preferred alternative only **after** Draft Fish and Wildlife Program was issued, but we're studying it now.

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Concern 1.B “Potential Impacts to Anchorage Drinking Water”

Assembly Assertion: Owners have not considered implications to Anchorage's drinking water supply

Owners' Assessment and Response: We fundamentally disagree.

1. Owners would never propose any action that would compromise or threaten the Municipal water supply; rather, we have been living up to our commitment set forth in the 1984 “Public Water Supply and Energy Generation from Eklutna Lake, Alaska” to take no action that would reduce suitability of water supply
2. We engaged with AWWU *before* proposing to use it facilities:
 - Our engineers engaged with AWWU's engineers on facilities' design, operations, and risks;
 - We entered into a binding term sheet outlines terms that would govern the interconnection of a new water release facility to the AWWU pipeline, water transportation, associated compensation, and associated water rights, which is confidential until deal executed; and is
 - **Contingent** on use of facilities being in Governor-approved Final Fish and Wildlife Program
3. Assembly's consultant's analysis is flawed and based on out-of-date information; the actual capacity of the tunnel and pipeline is 100 MGD, but AWWU's water permit (LAS 2569) is limited to 41 MGD which corresponds to the maximum capacity of the water treatment facility.

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Concern 1.C “Incomplete Analysis and Insufficient Mitigation”

Assembly Assertion: Owners' proposed alternative won't work, will lead to fish kills, and agencies have concerns

Owners' Assessment and Response: We fundamentally disagree.

1. Our engineers have designed the Eklutna River Release Facility, interconnections, and controls to be able to operate at all lake levels contemplated while also maintaining AWWU's full operational flexibility up to 41 MGD.
2. We have specifically designed the Eklutna River Release Facility to avoid dewatering the Eklutna River and fish kills.
3. We are working to resolve differences with Parties/state and federal resource agencies.
4. We are analyzing NVE's dam removal alternative, but:
 - AWWU has concerns about the effects of dam removal on Anchorage's water supply; see letter from AWWU, dated February 1, 2024
 - Instream flows (2,500 cfs every few years to 4,000 cfs every 10 years) could cause damage to downstream infrastructure (AWWU pipeline, bridges) and lands
 - Costs could be significant (other dam removals have cost more than \$350 million)

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Concern 1.D “Poor Coordination and Questionable Use of Public Funds”

Assembly Assertion: Portal Valve Alternative is single stand alone alternative, too expensive, and fails to protect broader interests.

Owners' Assessment and Response: We fundamentally disagree.

1. We examined **36 alternatives** to establish instream flows as the foundation of our Draft F&W Program; the Eklutna River Release Facility appeared to be the best.
2. We know no other alternative that (i) establishes similar year-round instream flows, (ii) creates as much fish spawning and rearing habitat, while (iii) also protecting the public water supply, and (iv) without exposing ratepayers and taxpayers to significantly higher costs, **but we are not done** considering and analyzing all alternatives, comments, suggestions, and public input.
3. We seek to meet the following criteria set forth in the 1991 Agreement: “In order to ensure that [the Project is] best adapted for power generation and other beneficial uses, the Governor shall give *equal consideration* to the purposes of efficient and economical power production, energy conservation, the protection, mitigation or 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 the other aspects of environmental quality, other beneficial uses, and requirements of State law.”

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Concern 2 No MOA Funding for F&W Program that Does Not Restore Full Length of Eklutna River

Assembly Assertion: The MOA will not authorize or fund any alternative the does not restore the entire length of Eklutna River

Owners' Assessment and Response: Noted, but we disagree on the requirement.

1. The Owners recognize that the Anchorage Assembly prefers full “restoration” of the Eklutna River, no such requirement exists in the 1991 Agreement.
2. Anadromous fish runs were eliminated in the Eklutna River by hydroelectric developments in the lower Eklutna River in the 1920s; those lower Eklutna River projects were not part of the Eklutna Project built in 1955 that we purchased in 1997.
3. We fully acknowledge the consequential impacts of these projects on NVE and its members, but the 1991 Agreement simply does not place upon us (and our ratepayers and taxpayers) the responsibility to address all adverse effects of all hydroelectric development in the Eklutna River basin over the past 100 years.
4. We are fully committed to **doing the one thing that only we can do:** establishing year-round flows of water in the Eklutna River for fish spawning and rearing habitat as a foundation of our Fish and Wildlife Program.

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Concern 3 RCA Investigation Before Governor Approval

Assembly Assertion: The Regulatory Commission of Alaska should investigate the utilities and review the Draft Fish and Wildlife Program before Governor approval

Owners' Assessment and Response: We completely disagree that it is appropriate or warranted for the RCA to initiate an investigation regarding the development of the Fish and Wildlife Program required under the 1991 Agreement.

1. The 1991 Agreement does not contemplate such RCA investigation or approval.
2. The RCA will have its opportunity to review and approve costs incurred under the Fish and Wildlife Program in the normal course.
3. We remain focused on impacts to ratepayers and their access to uninterrupted service.
 - this Project is very important to providing low cost, reliable, and dispatchable power year-round;
 - Project's value recently demonstrated during an extended period of cold weather in the Anchorage area when ENSTAR experienced gas deliverability problems with CINGSA, the gas storage facility that the Railbelt depends; the Project saved 87,300 MCF of gas for Chugach and MEA and diesel generation during cold snap

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Concern 4 Request for Two Year Extension

Assembly Assertion: Owners should seek a two-year extension to perform more analysis, consultation and coordination

Owners' Assessment and Response: Not possible; we disagree with the need.

1. The 1991 Agreement does not have any provision for extensions or amendment; it has no decision-making process or authority empowered to grant an extension or impose changes to the 1991 Agreement.
2. We have been fully engaged in this process since 2019 and we have performed each step of the process deliberately and with consultation with the Parties to the 1991 Agreement, NVE, State and federal resource agencies, and others interested in the Project; we categorically reject that the process has been a “rush to judgment” or an effort to “exclude stakeholders”
3. We have presented status reports to, and have held quarterly updates with, the Assembly and its Enterprise and Utility Oversight Committee **11 times**.
4. The Proposed Final Fish and Wildlife Program we deliver to the Governor for approval will meet all legal requirements of the 1991 Agreement and provide a robust set of protection, mitigation, and enhancement measures based on year-round instream flows in the Eklutna River.