

February 2, 2023

Sara Boario, Alaska Regional Director
U.S. Fish and Wildlife Service
1011 E Tudor Rd, Ste 200
Anchorage, AK 99503



Re: Native Village of Eklutna's USFWS BIL FY 2023 National Fish Passage Program Grant Request; Notice of Conflict with 1991 Fish and Wildlife Agreement for the Eklutna Hydroelectric Project (1991 Agreement)

Dear Sara,

On January 24, 2023, Native Village of Eklutna (NVE) informed us, the undersigned owners of the Eklutna Hydroelectric Project (Chugach Electric Association, Matanuska Electric Association, and the Municipality of Anchorage -- the "Project Owners"), that it intended to submit a National Fish Passage Program Grant Request to the U.S. Fish and Wildlife Service (USFWS) on Friday, January 27, 2023. As drafted, NVE is requesting USFWS grant funds to support NVE's and its partners' efforts to study and establish fish passage at the Eklutna Project, restoration of river flows in the Eklutna River, and other work in the Eklutna River. NVE also informed us that U.S. Fish and Wildlife Service (USFWS) has been assisting in the preparation of the grant application and the draft grant request itself reveals that a portion of the grant funds being sought would be "for USFWS participation to support their staff and overhead" in NVE's proposed work. While we have not received a copy of NVE's final grant request, we understand that NVE and USFWS are proceeding.

We respectfully object to NVE's grant request and USFWS's participation in its preparation. We find the grant request to be improper, duplicative, and contrary to the public process we (the Project Owners, USFWS, and other parties to the 1991 Agreement) are currently engaged in to implement the requirements set forth in the 1991 Agreement.

1. The Project Owners were not consulted and had no meaningful opportunity to engage with NVE, USFWS or any other proponents of the grant request. Three days' notice and no opportunity to comment is unreasonable. As a result, the grant request is filled with inaccuracies and misstatements about the Eklutna Project and the studies that the Project Owners are engaged in pursuant to the 1991 Agreement. Furthermore, it is simply untenable for a federal agency to be supporting studies or proposals regarding a project's removal (NVE draft grant request response 12), alteration, or addition of fish passage (NVE draft grant request response 7) without the Project Owners' involvement, consultation, or consent, especially as USFWS is a party to the 1991 Agreement and an active participant in the process it requires.

2. USFWS has failed to honor its commitments under the 1991 Agreement – an agreement specifically referenced by, and protected in, the act of Congress approving the sale of the Eklutna Project to the Project Owners. Pub. Law 104-58 (November 28, 1995). Section 13 of the 1991 Agreement requires that USFWS, as a party to 1991 Agreement, cooperate with the other parties in conducting studies pertaining to fish and wildlife other than those called for in the 1991 Agreement by notifying and consulting with the other parties before beginning a new fish and wildlife study. USFWS did not notify, consult, or seek cooperation of the Project Owners in the development of NVE’s study proposal.
3. NVE’s grant request seeks to duplicate studies that are being performed as part of the process required under the 1991 Agreement. The 1991 Agreement defines a consultation process and requires the Project Owners to fund and conduct studies to examine, and quantify if possible, the impacts to fish and wildlife from the Project, and then develop and propose to the Governor a program to protect, mitigate damages to, and enhance fish and wildlife, while considering the impact of such measures on electric rate payers, municipal water supply, recreational users and adjacent land use, as well as available means to mitigate those impacts.

The Project Owners initiated the consultation process required by the 1991 Agreement in March 2019, three years in advance of the required date to initiate the required process, by conducting a series of initial consultation meetings with key stakeholders, including USFWS. Since then, in addition to continuing stakeholder consultation, the Project Owners compiled all of the relevant existing information; developed an Initial Information Package that summarized the relevant existing information; identified what additional information is needed for informed decision making; established Technical Work Groups (TWGs) that include participants from NVE, USFWS, National Marine Fisheries Service (NMFS), Alaska Department of Fish and Game (ADFG), Alaska Department of Natural Resources (ADNR) Office of History and Archaeology (OHA), Chugach State Park, Trout Unlimited (TU), and staff from the Alaska Pacific University (APU); developed study plans in consultation with the TWGs as well as the ADNR Water Resources Section, Alaska Department of Transportation & Public Facilities (ADOT&PF), Alaska Railroad Corporation (ARRC), Anchorage Water and Wastewater Utility (AWWU), U.S. Army Corps of Engineers (USACE), U.S. Bureau of Land Management (BLM), and Eklutna, Inc.; and executed those study plans over the past two years. As part of this study program, the Eklutna Owners have developed instream flow and sediment transport models for the river and are currently evaluating potential engineering options for providing instream flows and fish passage both into and out of the lake.

Throughout this process, the Project Owners have communicated with and continued to coordinate with the parties to the 1991 Agreement, NVE, and other process

participants, including a recent series of TWG meetings conducted last fall where the consultant team presented the preliminary instream flow and sediment transport modeling results and solicited feedback from the TWG regarding what options should be evaluated as part to the engineering analysis, and explained how the engineering analysis that is currently underway will be used to evaluate comprehensive proposed fish and wildlife mitigation alternatives during the upcoming alternatives analysis.

NVE's grant request apparently seeks grant funds to duplicate some of these studies outside the process called for in the 1991 Agreement. The Project Owners and its consultants are not aware of any comprehensive studies that were requested by participants in the 1991 Agreement process that the Project Owners have refused to perform. The Project Owners have conducted all of the data collection/analysis that has been requested by the TWGs with the one exception of an undefined higher calibration flow which was found to be unnecessary for study purposes and would have involved unacceptable safety and liability concerns. The Project Owners have also been clear from the beginning of this process that the only alternatives they were not willing to evaluate were project/dam removal or the construction of an entirely new project (*i.e.*, the pumped storage concept that has been suggested) because it was outside the scope of 1991 Agreement.

In short, if USFWS found the Project Owners study plan scope or regime lacking, USFWS should have brought that information into the consultation process required under the 1991 Agreement rather than encouraging and supporting alternative, duplicative studies outside the public consultation process required under the 1991 Agreement.

4. NVE's draft grant request is filled with inaccuracies and misstatements about the Eklutna Project and the studies that the Project Owners are engaged in pursuant to the 1991 Agreement. For instance:
 - a. The statement made in NVE's draft grant request that the "Hydropower owners considered slot ladders, elevators and trap and haul operations at the dam site, but not in combination with flow release gates" is misleading. As noted, the Project Owners are well into a multi-year study and analysis effort which has focused on developing information on instream flows, geomorphology, and water quality to develop the analytical tools/models to assess potential flow regimes for the Eklutna River. We have more recently initiated efforts to evaluate potential options for providing instream flows to the river and fish passage into and out of Eklutna Lake. We are on the cusp of moving to the phase of our efforts where comprehensive alternative measures to provide flows and passage can be evaluated in a consistent manner. Evaluating potential measures "in combination" has been the ultimate goal of the Owners efforts since day one and we are now at

the point where that phase of our work can get underway. This has been communicated on multiple occasions to the stakeholders participating in our technical work groups, including NVE and USFWS representatives.

- b. The statement in the draft funding request that “The FWS has requested inclusion of fish passage options and additional downstream channel restoration which was outside of the scope of work of the hydropower owners’ hired consultant team. This proposal is a cooperative request for additional funding to close the gaps and provide a comprehensive analysis of all fish passage and stream restoration options for the Eklutna Dam site in the spirit of the 1991 resolution” is again misleading. The USFWS has participated in the study planning and execution under the 1991 Agreement as a member of a technical workgroup established by the Project Owners. We are not aware of any requests to evaluate fish passage options or downstream channel restoration that have been rejected by the Project Owners from being studied and evaluated.

Perhaps we simply misunderstand NVE’s or USFWS’s intentions with the NVE grant request. Unfortunately, we were not afforded the opportunity to review, discuss, and consult before NVE submitted its grant request. Consequently, please know that we cannot support the grant request as drafted and have no option but to object to the grant request for the reasons set forth above. We remain open to discussing potential funding opportunities for activities that are outside the purview of the 1991 Agreement. We must also reserve all rights under the 1991 Agreement.

We request a meeting as soon as practicable to discuss NVE’s grant proposal and USFWS support of it.

Sincerely,



Arthur Miller
Chief Executive Officer
Chugach Electric Association



Tony Izzo
Chief Executive Officer
Matanuska Electric Association



Kent Kohlbase
Acting Municipal Manager
Municipality of Anchorage

Letter to Sara Boario, U.S. Fish and Wildlife Service

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cc: Jennifer Spegon, USFWS
Carol Mahara, USFWS
Heather Hansen, USFWS
Anna Senecal, USFWS

All Parties to the 1991 Agreement