

August 7, 1991

# **Fish and Wildlife Agreement**

## **Snettisham and Eklutna Projects**

**Municipality of Anchorage  
d/b/a Anchorage Municipal Light and Power**

**Chugach Electric Association, Inc.**

**Matanuska Electric Association, Inc.**

**Alaska Energy Authority**

**United States Department of Commerce  
National Marine Fisheries Service**

**United States Department of Interior  
Fish and Wildlife Service**

**State of Alaska**

**AGREEMENT**

**AGREEMENT BETWEEN  
THE MUNICIPALITY OF ANCHORAGE,  
DBA ANCHORAGE MUNICIPAL LIGHT AND POWER,  
CHUGACH ELECTRIC ASSOCIATION, INC.,  
MATANUSKA ELECTRIC ASSOCIATION, INC.,  
U.S. FISH AND WILDLIFE SERVICE,  
NATIONAL MARINE FISHERIES SERVICE,  
ALASKA ENERGY AUTHORITY,  
AND THE  
STATE OF ALASKA,  
RELATIVE TO THE EKLUTNA AND SNETTISHAM  
HYDROELECTRIC PROJECTS**

This Agreement is entered into on August 7, 1991, between The Municipality of Anchorage, dba, Anchorage Municipal Light and Power, Chugach Electric Association, Inc., and Matanuska Electric Association, Inc. (hereinafter collectively "Eklutna Purchasers"), the United States Fish and Wildlife Service (hereinafter "USFWS"), the National Marine Fisheries Service (hereinafter "NMFS"), the Alaska Energy Authority (hereinafter "AEA") and the State of Alaska (hereinafter "the State"), 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 and Snettisham Projects. With respect to the implementation provisions called for in this Agreement, the Eklutna Purchasers will be responsible for the consultation, study and implementation provisions applicable to the Eklutna Project and AEA shall be responsible for the consultation, study and implementation provisions applicable to the Snettisham Project.

**WITNESSETH THAT:**

WHEREAS, subject to the approval of Congress, the Eklutna and Snettisham Projects will be transferred from the Federal Alaska Power Administration to the Eklutna Purchasers and AEA (collectively, "the Purchasers") without the necessity of their having to obtain a Federal Energy Regulatory Commission (FERC) License for project operation; and

WHEREAS, the Eklutna and Snettisham hydroelectric developments may have resulted in a yet to be quantified impact to fish and wildlife resources; and

WHEREAS, concerns have been expressed that without FERC licensing, there is no opportunity to determine the extent of that fish and wildlife impact, develop measures to protect, mitigate

damages to, and enhance fish and wildlife (including related spawning grounds and habitat), and implement fish and wildlife measures found to be in the public interest.

NOW THEREFORE, the parties agree as follows:

**1. FERC Licensing.**

NMFS, USFWS and the State agree that the following mechanism to develop and implement measures to protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat) obviate the need for the Eklutna Purchasers and AEA to obtain FERC licenses.

**2. Study Plan.**

The Purchasers agree to fund studies to examine, and quantify if possible, the impacts to fish and wildlife from the Eklutna and Snettisham Projects. The studies will also examine and develop proposals for the protection, mitigation, and enhancement of fish and wildlife affected by such hydroelectric development. This examination shall consider the impact of fish and wildlife measures on electric rate payers, municipal water utilities, recreational users and adjacent land use, as well as available means to mitigate these impacts.

**3. Carrying Out The Study Plan.**

Study Plans shall be developed by the Purchasers in consultation with the USFWS, NMFS, the Alaska Department of Fish and Game, the Alaska Department of Environmental Conservation and the Alaska Department of Natural Resources (the "State Resource Management Agencies"), or their successors to aid in the formulation of the Program called for in this Agreement. Prior to implementation, the parties to this Agreement shall review the plans and concur with their scope of work.

The Purchasers shall conduct the studies and prepare the evaluations called for in the plans, seeking input from the USFWS, NMFS, the State Resource Management Agencies and other interested parties as the studies progress. The USFWS, NMFS, and State Resource Management Agencies shall have an opportunity to comment on draft study reports, and their comments and a response to their comments shall be included in the final study reports. All study plans, data, reports and comments will be made available to the parties and, upon request, to the public.

#### **4. Review of Findings.**

After final study reports are prepared, the Purchasers shall prepare a draft Summary of Study Results and prepare a draft Fish and Wildlife Program. The draft Fish and Wildlife Program shall consist of the measures recommended by the Purchasers 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. The Purchasers shall provide copies of the draft Summary and draft Fish and Wildlife Program to the USFWS, NMFS, and State Resource Management Agencies for comments or recommendations. If USFWS, NMFS, or the State Resource Management Agencies' comments or recommendations differ from those of the Purchasers, the Purchasers will attempt to resolve such differences giving due weight to the recommendations, expertise, and statutory responsibilities of USFWS, NMFS, and the State Resource Management Agencies.

Once comments and recommendations have been received, the Purchasers shall hold at least one public meeting each in Anchorage and the Matanuska Valley (with respect to the Eklutna Project) and in Juneau (with respect to the Snettisham Project) to receive public comment on the draft Summary, the draft Fish and Wildlife Program, and the comments and recommendations of the USFWS, NMFS, and the State Resource Management Agencies. At least thirty days prior to the proposed public meetings, copies of the draft Fish and Wildlife Program, reports and recommendations will be distributed to representative public libraries in the Anchorage and Matanuska Valley areas (in the case of the Eklutna Project) and in the Juneau area (in the case of the Snettisham Project). Public notice will also be posted in at least two newspapers serving the Anchorage and Matanuska Valley areas (for Eklutna) and the Juneau area (for Snettisham). The public notice shall specify meeting places, times and dates; where studies, reports and recommendations may be obtained for review; and where written comments may be sent. The Purchasers will provide copies of the draft Summary, draft Fish and Wildlife Program, and the comments and recommendations of the USFWS, NMFS, and State to interested members of the public at no charge.

#### **5. Public Interest Determination.**

The Purchasers shall compile all comments and testimony received; prepare a summary and analysis of them; develop a Proposed Final Fish and Wildlife Program to protect, mitigate, and enhance fish and wildlife resources; and prepare an explanatory statement describing the basis for its Proposed Final Fish and Wildlife Program. All comments, testimony, summary, and analysis materials and the Proposed Final Fish and Wildlife Program shall be provided to the parties to this Agreement and to the Governor

of Alaska. The parties shall have 60 days to submit written comments on the proposed Fish and Wildlife Program, and any alternative recommendations for the protection, mitigation, and enhancement of fish and wildlife resources, to the Governor. The Purchasers shall have 30 days to submit written reply comments to the Governor.

The Governor shall review the Proposed Final Fish and Wildlife Program, the comments, testimony, summary and analysis materials, and any alternative recommendations for the protection, mitigation, and enhancement of fish and wildlife resources. The Governor shall attempt to reconcile any differences between the parties, giving due weight to the recommendations, expertise, and statutory responsibilities of USFWS, NMFS, the State Resource Management Agencies and the Purchasers. In order to ensure that Eklutna and Snettisham are best adapted for power generation and other beneficial public uses, the Governor shall give equal consideration to the purposes of 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. Based on his/her review and consideration, the Governor shall establish a final Fish and Wildlife Program 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 the Snettisham Project.

#### **6. Implementation.**

The Purchasers shall implement the Fish and Wildlife Program established by the Governor, subject to their right to judicial review as provided in Section 9 hereof. However, the Purchasers will implement all provisions of the Program that do not require major capital expenditures pending judicial review, unless otherwise agreed among the Parties or unless a stay is granted by the Court.

#### **7. Schedule.**

The consultation process leading to the Programs shall be initiated no later than 25 years after the Transaction Date specified in the respective Eklutna and Snettisham Agreements. The Study Plans shall include a schedule for the consultation, comment, and decision making, called for in this Agreement, which shall be adopted by the parties in consultation with the Governor. The schedule shall call for implementation of all provisions of the Fish and Wildlife Program by the Eklutna Purchasers to begin no

later than 30 years after the Transaction Date, and to be completed no later than 35 years after the Transaction Date. The schedule shall call for implementation of all provisions of the Fish and Wildlife Program by AEA (Snettisham) to begin no later than 35 years after the Transaction Date, and to be completed no later than 40 years after the Transaction Date. The schedules shall call for the issuance of the Fish and Wildlife Program by the Governor at least three years prior to the commencement of the period for implementation.

The Purchasers shall repeat the process called for in Sections 2 through 6 of this Agreement on a recurring basis every 35 years, beginning within 25 years of the time implementation of the Fish and Wildlife Program has been completed for the prior consultation process. In addition, prior to undertaking any major structural or operational modification 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. Compliance with the terms of the Agreement for Public Water Supply and Energy Generation from Eklutna Lake, Alaska, entered into between the Alaska Power Administration and the Municipality of Anchorage on February 17, 1984, as amended by a Supplemental Agreement dated August 2, 1988, shall not be construed to be a major structural or operational modification. However, the Eklutna Purchasers will discuss major structural or operational changes from current operations with NMFS and USFWS and will consider any recommendations they have for fisheries mitigation related to such changes.

**8. Dam Construction, Modification, Removal or Abandonment.**

The Purchasers agree to comply with 11 AAC 93.151-.201 with respect to safety inspections, new construction or modifications to existing structures, removal and/or abandonment of all or part of the project.

**9. Enforcement of Fish and Wildlife Program and Agreement.**

The provisions of this Agreement, including the decisions of the Governor and the provisions of the Fish and Wildlife Program, shall be reviewable and enforceable in the United States District Court for the District of Alaska and the Court may order specific performance thereof.

At least thirty days prior to seeking review or enforcement in the United States District Court for the District of Alaska, a party shall send written notice of its concerns to all parties and hold a meeting to attempt informal resolution of its concerns. During the period of informal resolution, any statute of limitations shall toll.

**10. Authority of Parties.**

Each party to this Agreement warrants that it has the legal authority to sign this Agreement and be fully bound by its terms, subject to any administrative or regulatory approval, if required. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

**11. Term of Agreement.**

This Agreement shall be effective, as to each project, upon the Transaction Date specified in the respective Purchase Agreement and shall remain in full force and effect so long as that project remains in operation. The Agreement shall terminate, as to either project, if that Project becomes subject to the provisions of the Federal Power Act.

**12. Severability.**

If any section, paragraph, clause or provision of this Agreement or any agreement referred to in this Agreement shall be finally adjudicated by a court of competent jurisdiction or administrative agency to be invalid or unenforceable as to either project, the Agreement shall nonetheless remain in full force and effect as to the other project.

**13. Cooperation With Studies.**

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:

- a. Notifying and consulting with the other parties before beginning a new fish and wildlife study,
- b. Providing each other with data on flows, fish populations, and other data already in their possession,
- c. 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, whether such studies are conducted by the parties themselves, or by third parties.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

MUNICIPALITY OF ANCHORAGE, DBA ANCHORAGE MUNICIPAL LIGHT & POWER

By: Tom Fink Date 7/30/91  
Tom Fink, Mayor

CHUGACH ELECTRIC ASSOCIATION, INC.

By: Thomas D. Humphrey Date 7/30/91  
Thomas D. Humphrey, President

MATANUSKA ELECTRIC ASSOCIATION, INC.

By: Jess Lee Date 7/29/91  
Jess Lee, President

ALASKA ENERGY AUTHORITY

By: Charles Bussell Date 8-7-91  
Charles Bussell, Executive Director

U.S. DEPARTMENT OF COMMERCE, NATIONAL MARINE FISHERIES SERVICE

By: John A. Knauss Date JUL 12 1991  
John A. Knauss, Under Secretary of Commerce for Oceans and Atmosphere

U.S. DEPARTMENT OF INTERIOR, FISH AND WILDLIFE SERVICE

By: S. Scott Sewell Date 7/19/91  
S. Scott Sewell, Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

STATE OF ALASKA

By: Walter Hickel Date 8/7/91  
Walter Hickel, Governor