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104TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 104–187 Part 1

# ALASKA POWER ADMINISTRATION SALE ACT

JULY 13, 1995.—Ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

## REPORT

together with

## DISSENTING VIEWS

[To accompany H.R. 1122]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1122) to authorize and direct the Secretary of Energy to sell the Alaska Power Administration, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Alaska Power Administration Sale Act".

**SEC. 2. DEFINITIONS.**

For purposes of this Act:

(1) The term "Eklutna assets" means the Eklutna Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Eklutna Purchase Agreement.

(2) The term "Eklutna Purchase Agreement" means the August 2, 1989, Eklutna Purchase Agreement between the Department of Energy and the Eklutna Purchasers, together with any amendments thereto which were adopted before the enactment of this Act.

(3) The term "Eklutna Purchasers" means the Municipality of Anchorage doing business as Municipal Light and Power, the Chugach Electric Association, Inc. and the Matanuska Electric Association, Inc.

(4) The term "Memorandum of Agreement" means the Memorandum of Agreement entered into between the State of Alaska, the Eklutna Purchasers, the Alaska Energy Authority, and the Federal fish and wildlife agencies regarding

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the protection, mitigation of damages to, and enhancement of fish and wildlife, dated August 7, 1991.

(5) The term "Secretary" means the Secretary of Energy except where otherwise specified.

(6) The term "Snettisham assets" means the Snettisham Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Snettisham Purchase Agreement.

(7) The term "Snettisham Purchase Agreement" means the February 10, 1989, Snettisham Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Alaska Power Authority and its successors in interest, together with any amendments thereto which were adopted before the enactment of this Act.

**SEC. 3. SALE OF SNETTISHAM AND EKLUTNA ASSETS.**

(a) SNETTISHAM.—The Secretary is authorized and directed to sell and transfer the Snettisham assets to the State of Alaska in accordance with the terms of this Act and the Snettisham Purchase Agreement.

(b) EKLUTNA.—The Secretary is authorized and directed to sell and transfer the Eklutna assets to the Eklutna Purchasers in accordance with the terms of this Act and the Eklutna Purchase Agreement.

(c) COOPERATION OF OTHER AGENCIES.—Other departments, agencies, and instrumentalities of the United States shall cooperate with the Secretary in implementing the sales and transfers under this Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to prepare, survey, or acquire Snettisham and Eklutna assets for sale and transfer under this Act. Such preparations and acquisitions shall provide sufficient title in the assets to ensure beneficial use, enjoyment, and occupancy thereof to the purchasers.

**SEC. 4. EXEMPTION.**

Following completion of the sales authorized by this Act, the Eklutna and Snettisham hydroelectric projects, including future modifications, shall continue to be exempt from the requirements of the Federal Power Act (16 U.S.C. 791a et seq.). The exemption provided by this section shall not affect the Memorandum of Agreement, and nothing in this Act or in the Federal Power Act shall preclude the State of Alaska from carrying out the responsibilities and authorities of the Memorandum of Agreement.

**SEC. 5. GENERAL PROVISIONS.**

(a) JUDICIAL REVIEW.—(1) The United States District Court for the District of Alaska shall have jurisdiction to review decisions made under the Memorandum of Agreement and to enforce the provisions of the Memorandum of Agreement, including the remedy of specific performance.

(2) Any action seeking review of the Fish and Wildlife Program of the Governor of Alaska under the Memorandum of Agreement or challenging actions of any of the parties to the Memorandum of Agreement prior to the adoption of such Program shall be brought 90 days after the date on which such Program is adopted by the Governor of Alaska or be barred.

(3) Any action seeking review of implementation of such Fish and Wildlife Program shall be brought not later than 90 days after the challenged act implementing such Program or be barred.

(b) RIGHTS-OF-WAY AND OTHER LANDS FOR THE EKLUTNA PROJECT.—With respect to Eklutna lands described in Exhibit A of the Eklutna Purchase Agreement:

(1) The Secretary of the Interior shall issue rights-of-way to the Alaska Power Administration for subsequent reassignment to the Eklutna Purchasers at no cost to the Eklutna Purchasers.

(2) Such rights-of-way shall remain effective for a period equal to the life of the Eklutna hydroelectric project as extended by improvements, repairs, renewals, or replacements.

(3) Such rights-of-way shall be sufficient for the operation, maintenance, repair, and replacement of, and access to, the facilities of the Eklutna hydroelectric project located on military lands and lands managed by the Bureau of Land Management, including land selected by, but not yet conveyed to, the State of Alaska.

(4) If the Eklutna Purchasers subsequently sell or transfer the Eklutna hydroelectric project to private ownership, the Bureau of Land Management may assess reasonable and customary fees for continued use of the rights-of-way on lands managed by the Bureau of Land Management and military lands in accordance with applicable law.

(5) The Secretary shall transfer fee title to lands at Anchorage Substation to the Eklutna Purchasers at no additional cost if the Secretary of the Interior determines that pending claims to and selections of those lands are invalid or relinquished.

(6) With respect only to the Eklutna lands identified in paragraphs 1. a., b., and c. of Exhibit A of the Eklutna Purchase Agreement, the State of Alaska may select, and the Secretary of the Interior shall convey, to the State, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (Public Law 85–508) and the North Anchorage Land Agreement of January 31, 1983. The conveyance of such lands is subject to the rights-of-way provided to the Eklutna Purchasers under paragraph (1).

(c) LANDS FOR THE SNETTISHAM PROJECT.—With respect to the approximately 2,671 acres of Snettisham lands identified in paragraphs 1.a. and b. of Exhibit A of the Snettisham Purchase Agreement, the State of Alaska may select, and the Secretary of the Interior shall convey to the State, improved lands under the selection entitlement in section 6 of the Act of July 7, 1958 (Public Law 85–508).

(d) EFFECT ON STATE SELECTIONS.—Notwithstanding the expiration of the right of the State of Alaska to make selections under section 6 of the Alaska Statehood Act (Public Law 85–508; 72 Stat. 339), the State of Alaska may select lands authorized for selection under this Act or any Purchase Agreement incorporated into or ratified by this Act. The State shall complete such selections within one year after the date of the enactment of this Act. The Secretary of the Interior shall convey lands selected by the State under this Act notwithstanding the limitation contained in section 6(b) of the of the Alaska Statehood Act (Public Law 85–508; 72 Stat. 339) regarding the occupancy, appropriation, or reservation of selected lands. Nothing in this subsection or in subsection (b)(6) or (c) of this section shall be construed to authorize the Secretary of the Interior to convey to the State of Alaska a total acreage of selected lands in excess of the total acreage which could be transferred to the State of Alaska pursuant to Act of July 7, 1958 (Public Law 85–508) and other applicable law.

(e) REPEAL OF ACT OF AUGUST 9, 1955.—The Act of August 9, 1955 (69 Stat. 618), concerning water resources investigations in Alaska, is repealed.

(f) TREATMENT OF ASSET SALE.—The sales of assets under this Act shall not be considered a disposal of Federal surplus property under the provisions of section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) or section 13 of the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

(g) APPLICATION OF CERTAIN LAWS.—(1) The Act of July 31, 1950 (64 Stat. 382) shall cease to apply on the date, as determined by the Secretary, when all Eklutna assets have been conveyed to the Eklutna Purchasers.

(2) Section 204 of the Flood Control Act of 1962 (Public Law 87–874; 76 Stat. 1193) shall cease to apply effective on the date, as determined by the Secretary, when all Snettisham assets have been conveyed to the State of Alaska.

**SEC. 6. TERMINATION OF ALASKA POWER ADMINISTRATION.**

(a) TERMINATION OF ALASKA POWER ADMINISTRATION.—Not later than one year after both of the sales authorized in this Act have occurred, as measured by the Transaction Dates stipulated in the Purchase Agreements, the Secretary shall—

(1) complete the business of, and close out, the Alaska Power Administration;

(2) prepare and submit to Congress a report documenting the sales; and

(3) return unobligated balances of funds appropriated for the Alaska Power Administration to the Treasury of the United States.

(b) DOE ORGANIZATION ACT.—Section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)) is amended as follows:

(1) In paragraph (1)—

(A) by striking out subparagraph (C); and

(B) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E) respectively.

(2) In paragraph (2), by striking out "the Bonneville Power Administration, and the Alaska Power Administration" and inserting in lieu thereof "and the Bonneville Power Administration".

The amendments made by this subsection shall take effect on the date on which the Secretary submits the report referred to in paragraph (2) of subsection (a).

## Amend the title so as to read:

A bill to authorize the Secretary of Energy to sell the Snettisham and Eklutna hydroelectric projects administered by the Alaska Power Administration, and for other purposes.

## PURPOSE OF THE BILL

The purpose of H.R. 1122 is to authorize and direct the Secretary of Energy to sell the Alaska Power Administration, and for other purposes.

## BACKGROUND AND NEED FOR LEGISLATION

The Federal Government markets power from its 129 hydroelectric projects throughout the United States through five Power Marketing Administrations (PMAs). These multi-purpose projects, constructed and owned by the Department of he Interior's Bureau of Reclamation and the U.S. Army Corps of Engineers for flood control, navigation, irrigation and more recently, for recreational purposes, generate 45 percent of the Nation's hydroelectric power as a by-product, which is sold by the PMAs to local pubic, private and cooperative utilities at cost. Supplemental power from these projects is provided to all but 16 States.

Unique among the PMAs, the Alaska Power Administration (APA), owns, operates and maintains two hydroelectric projects: Eklutna and Snettisham. Not only are these two projects confined to local Alaska markets, but, unlike the other PMAs, the APA's single-purpose projects are not the result of a water resource management plan nor were they intended to remain indefinitely under Federal control. Instead, they were created to encourage and promote economic development and to foster the establishment of essential industries in Alaska by providing and encouraging the most widespread use of hydroelectric power at the lowest possible rates. It was for these purposes, rather than flood control, navigation, irrigation and recreation, that the 30 megawatt (MW) Eklutna Project was built in 1955 to serve the Anchorage and Matanuska Valley Areas, and the 78MW Snettisham project as constructed to serve Juneau in 1975.

To date, the two projects have served their original purposes well. Findings indicate that not only have they provided widespread, relatively low-cost, long-term supplies of renewable energy to the areas served and recovered the Federal costs as intended in the authorizing legislation, but economic and industrial development has occurred to the point where their role in the State as major providers of electric power has greatly diminished. Together, these projects provide only about eight percent of the total energy requirements of Alaska's electric utilities. Individually, the Eklutna project provides about five percent of the power needs in its market area and Snettisham provides 80 percent of Juneau's power requirements.

These findings indicate that the time for the Federal Government's divestiture of these projects is ripe, since the goals as originally intended have been met. It is no longer necessary for the Federal Government to operate a small, separate power program in Alaska because: (1) the projects fill a small market niche; (2) economic and industrial development of the regions served has evolved as planned; (3) other providers have emerged that can provide and serve the region's needs; and (4) the State and local electric utilities are poised to manage the projects in a manner consistent with Alaska's future energy and development needs.

Although informal discussions of divesture date back many years, it was not until 1986 that a formal proposal first appeared. Subsequent to this, a public comment process resulted in invitations to purchase the projects being extended in the spring of 1987 to electric utilities served by the APA projects. In response to solicitation requests, the State of Alaska proposed to purchase the Snettisham project, while three utilities, the City of Anchorage, the Mantanuska Electric Association and the Chugach Electric Association, submitted a joint proposal to purchase Eklutna. Finding both perspective purchasers well qualified to own, operate and maintain the projects, the APA moved forward to draft purchase agreements.

The APA and the proposing parties negotiated the purchase agreements which set forth the terms, conditions and responsibilities of each party for the orderly sale and transfer of the projects. The final agreements, signed in 1989, have been amended twice to extend the purchase deadline. They reflect great care and deliberation to incorporate and address, to the extent possible, all views and concerns of interested parties to ensure a balance between Federal taxpayers, affected Federal agencies, State and local utilities, and retail customers. As a result, the divesture proposal has widespread support.

H.R. 1122 and separate formal agreements provide for the full protection of fish and wildlife. The purchasers, the State of Alaska, the U.S. Department of Commerce, the National Marine Fisheries Service (NMFS) and the U.S. Department of the Interior have entered into a formal agreement providing for post-sale protection, mitigation and enhancement of fish and wildlife resources affected by Eklutna and Snettisham. H.R. 1122 makes that agreement legally enforceable.

As a result of this formal agreement, the Department of Energy, the Department of Interior and the Department of Commerce all agree that the two hyrdoelectric projects warrant exemption from the Federal Energy Regulatory Commission (FERC) licensing under the Federal Power Act. The August 7, 1991, formal purchase agreement states, in part, that:

> NMFS, [the United States Fish and Wildlife Service] and the State agree that 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 [Alaska Energy Authority] to obtain FERC licenses.

This agreed-upon exemption from the Federal Power Act requirement to obtain a FERC license will save the purchasers—and their customers—hundreds of thousands of dollars in annual fees.

The Federal Government will be relieved of the responsibility of owning and operating two small, isolated hydroelectric projects in Alaska and any liabilities for future maintenance, equipment replacement, and claims. Equally important, proceeds from the sale will recover nearly 95% of the present value of the original Federal investment in the APA projects and prescribed interest (estimated between $73.5 and $80.3 million, depending on certain conditions when the sale is approved), and foregone annual revenues of ap-

proximately $10 million will be nearly off-set by the avoidance of annual expenditures averaging $4 million for management and operations, and $6 million in principal and interest on the outstanding debt on these two projects.

The APA also has 34 employees in Alaska, and the purchasers of the two projects have promised to hire as many of these people as possible. For those not hired by the purchasers, the Department of Energy (DOE) has pledged that it will hire them, although the DOE jobs are expected to be in the lower 48 States.

In designing a "break even" or "cost recovery" sale of these two projects, the Federal government meets two goals: first, it optimizes the taxpayers' interests by recovering nearly all of the original investment; and second, it addresses the consumers' concerns that hydroelectric power continue to be provided without a significant increase in rates.

## COMMITTEE ACTION

H.R. 1122 was introduced on March 3, 1995, by Chairman Young of Alaska. The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power Resources. The bill was also referred to the Committee on Commerce. On March 15, 1995, the Subcommittee held a hearing on H.R. 1122, where the State of Alaska, the Administration and proposed purchasers testified in support. On May 11, 1995, the Subcommittee met to mark up H.R. 1122. An amendment in the nature of a substitute was offered by Chairman John Doolittle, and adopted by voice vote. The bill was then ordered favorably reported to the Full Committee in the presence of a quorum. On May 17, 1995, the Full Committee met to consider H.R. 1122. An amendment in the nature of a substitute was offered by Chairman Young, and adopted by voice vote. The bill was then ordered favorably reported to the House of Representatives, in the presence of a quorum.

## SECTION-BY-SECTION ANALYSIS

### SECTION 1. SHORT TITLE

The short title of the bill is the "Alaska Power Administration Sale Act".

### SECTION 2. DEFINITIONS

This section defines certain terms for the purposes of the Act.

### SECTION 3. SALE OF SNETTISHAM AND EKLUTNA ASSETS

This section authorizes and directs the Secretary of Energy to sell and transfer the Snettisham and Eklutna assets. It also directs other Federal agencies to cooperate with the Secretary of Energy in implementing the sales. It further authorizes to be appropriated such sums as may be necessary to prepare the assets for sale.

### SECTION 4. EXEMPTION

This section stipulates that after the sale, the Eklutna and Snettisham projects will continue to be exempt from the Federal Power Act.

### SECTION 5. GENERAL PROVISIONS

This section stipulates that the United States District Court for the District of Alaska shall have jurisdiction to review decisions made under the Memorandum of Agreement entered into between the State of Alaska, the Eklutna Purchasers, the Alaska Energy Authority and the Federal fish and wildlife agencies regarding the protection, mitigation of damages to, and enhancement of fish and wildlife. The section further states that any action seeking review of the fish and wildlife program under the memorandum of Agreement must be brought within 90 days of the date of the adoption of the program or of an challenged act implementing the program or be barred.

The section further states that the Secretary of the Interior shall issue rights-of-ways to the APA for subsequent reassignment to the purchasers, and to provide future access to Federal lands in the event the assets of the projects are ever resold. The section also stipulates that the Secretary of the Interior can convey certain lands associated with the projects to the State of Alaska under section 6 of the Alaska Statehood Act and that the sale is not considered a disposal of assets under the provisions of section 203 of the Federal Property and Administrative Services Act of 1949.

As a housekeeping measure, this section also repeals the Act of August 9, 1955, and clarifies that two other provisions of Federal law would no longer apply to the sold projects.

### SECTION 6. TERMINATION OF ALASKA POWER AUTHORITY

This section stipulates that following the sale and transfer of assets, the APA will cease to exist.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

## INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 1122 will have no significant inflationary impact on prices and costs in the operation of the national economy.

## COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 1122. However, clause 7(d) of that Rule provides that this requirement does

not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

## COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 2308(a) of the Congressional Budget Act of 1974, H.R. 1122 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. H.R. 1122 will provide an increase of $7 million in revenues to the Federal Government, and a decrease of $3 million per year in revenues following the sale of the Eklutna project.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1122.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1122 from the Director of the Congressional Budget Office.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, June 1, 1995.*

Hon. DON YOUNG,
*Chiarman, Committee on Resources,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1122, the Alaska Power Administration Sale Act.

Enacting H.R. 1122 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1122.

2. Bill title: The Alaska Power Administration Sale Act.

3. Bill status: As ordered reported by the House Committee on Resources on May 17, 1995.

4. Bill purpose: This bill would authorize the sale of the Alaska Power Administration (APA) in accordance with the terms of the purchase agreements negotiated in 1989 between the U.S. Department of Energy and the proposed purchasers of the APA. The APA consists of two hydroelectric projects, Eklutna and Snettisham. The sale of the Snettisham project, however, would be conditional on

the enactment of legislation allowing the Snettisham purchasers to issue tax-exempt debt to finance the acquisition of that hydroelectric project. The bill also would terminate the APA upon completion of the sales.

5. Estimated cost to the Federal Government: H.R. 1122 would authorize and direct the Secretary of Energy to sell the Alaska Power Administration's Eklutna project. Enacting this bill would not result in the sale of the Snettisham project because the purchase agreement calls for the enactment of subsequent legislation allowing tax-exempt financing. Sale of the Eklutna project would result in the budgetary impacts summarized in the following table.

[By fiscal year, in millions of dollars]

| | 1996 | 1997 | 1998 | 1999 | 2000 |
|---|---|---|---|---|---|
| Asset sale receipts: | | | | | |
| Estimated budget authority | −7 | 0 | 0 | 0 | 0 |
| Estimated outlays | −7 | 0 | 0 | 0 | 0 |
| Direct spending: | | | | | |
| Estimated budget authority | 0 | 3 | 3 | 3 | 3 |
| Estimated outlays | 0 | 3 | 3 | 3 | 3 |
| Authorizations of appropriations: | | | | | |
| Estimated authorization level | 5 | −2 | −2 | −2 | −2 |
| Estimated outlays | 4 | −1 | −2 | −2 | −2 |

The costs of this bill fall within budget functions 270 and 950.

The above table does not include potential budgetary impacts for the sale of APA's Snettisham project because that sale would be contingent on future legislation allowing the use of tax-exempt financing. If such additional legislation is enacted, the sale of the Snettisham project would yield additional asset sale receipts of about $70 million, and the government would forgo annual receipts (direct spending) of $8 million, but could save annual operating costs (subject to appropriations) of about $5 million.

CBO estimates that sale of the Eklutna project in accordance with the terms and conditions of a negotiated purchase agreement would result in receipts to the government of about $7 million near the end of fiscal year 1996. Unlike the sale of the Snettisham project, selling the Eklutna project is not contingent upon enactment of any additional legislation. Under the purchase agreement, the sales price would be determined by calculating the net present value of the remaining debt service payments that the Treasury would receive if the federal government retains ownership of Eklutna, plus an additional payment of $1 million. The purchase agreement specifies a discount rate for this calculation of 9 percent.

Consistent with the Balanced Budget and Emergency Deficit Control Act of 1985 and the 1995 budget resolution (H. Con. Res. 218), receipts from selling the Eklutna project would be considered the proceeds of a nonroutine asset sale and would not be credited as a reduction in the deficit for pay-as-you-go purposes or Congressional scorekeeping.

After the sale is completed, the government would no longer receive income from producing electric power at Eklutna's facilities—approximately $3 million annually. The bill would authorize appropriations of sums necessary to prepare both APA projects for sale. Based on information from DOE, we estimate the agency would need to spend about $5 million in 1996 to conduct land surveys, ob-

tain appraisals and legal services, and obtain power line and substation rights-of-way. Finally, when the sale of Eklutna is completed, the agency's need for appropriated funds to pay operations and maintenance expenses of the Eklutna project would be reduced by about $2 million annually.

6. Comparison with spending under current law: For 1995, the APA has appropriations of $6.5 million and will have estimated outlays of about $6 million. The two APA projects generate about $11 million annually in offsetting receipts from the sale of power. To prepare for the sale of the APA projects, H.R. 1122 would authorize additional sums necessary to prepare for the sale, and CBO estimates $5 million would be needed for this purpose. Following the sale of Eklutna, the APA's operating costs would decline by about $2 million annually. In addition, once the Eklutna project is sold, offsetting receipts would decline by $3 million per year.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 1122 would affect direct spending by reducing offsetting receipts. Therefore, pay-as-you-go procedures would apply to the bill.

[By fiscal year, in millions of dollars]

| | 1996 | 1997 | 1998 |
|---|---|---|---|
| Change in outlays | 3 | 3 | 3 |
| Change in receipts | (1) | (1) | (1) |

[1] Not applicable.

While this bill would authorize the sale of both APA hydroelectric projects, sale of the Snettisham project could not occur under the existing purchase agreements without enactment of legislation that would allow Alaska to issue tax-exempt debt for the purchase of the Snettisham project. Any subsequent legislation that allowed Alaska to issue tax-exempt debt for this purpose would have a pay-as-you-go cost of $8 million annually over the 1996–1998 period.

8. Estimated cost to State and local governments: None.

9. Estimate comparison: None.

10. Previous CBO estimate: On March 22, 1995, CBO prepared a cost estimate for S. 395, a bill to authorize and direct the Secretary of Energy to sell the Alaska Power Administration, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources on March 15, 1995. S. 395 would not allow the sale of either APA hydroelectric project until legislation is enacted that would allow tax-exempt financing for the Snettisham purchase. Consequently, CBO estimated that enacting S. 395 would not affect offsetting receipts for either APA project, and hence, pay-as-you-go procedures would not apply to Title I of S. 395. Title II of S. 395 would, however, increase offsetting receipts by allowing the export of Alaskan North Slope oil. That provision is not included in H.R. 1122.

11. Estimate prepared by: Kim Cawley.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## ACT OF AUGUST 9, 1955

AN ACT To authorize the Secretary of the Interior to investigate and report to the Congress on projects for the conservation, development, and utilization of the water resources of Alaska.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* [That, for the purpose of encouraging and promoting the development of Alaska, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to make investigations of projects for the conservation, development, and utilization of the water resources of Alaska and to report thereon, with appropriate recommendation, from time to time, to the President and to the Congress.

[SEC. 2. Prior to the transmission of any such report to the Congress, the Secretary shall transmit copies thereof for information and comment to the Governor of Alaska, or to such representative as may be named by him, and to the heads of interested Federal departments and agencies. The written views and recommendations of the aforementioned officials may be submitted to the Secretary within ninety days from the day of receipt of said proposed report. The Secretary shall immediately thereafter transmit to the Congress, with such comments and recommendations as he deems appropriate, his report, together with copies of the views and recommendations received from the aforementioned officials. The letter of transmittal and its attachments shall be printed as a House or Senate document.

[SEC. 3. There are hereby authorized to be appropriated not more than $250,000 in any one fiscal year.]

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## SECTION 302 OF THE DEPARTMENT OF ENERGY ORGANIZATION ACT

TRANSFERS FROM THE DEPARTMENT OF THE INTERIOR

SEC. 302. (a)(1) There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 5 of the Flood Control Act of 1944, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

[(C) the Alaska Power Administration;

[(D)] *(C)* the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 and the Federal Columbia River Transmission System Act;

[(E)] *(D)* the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

[(F)] *(E)* the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, [the Bonneville Power Administration, and the Alaska Power Administration] *and the Bonneville Power Administration* shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

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## DISSENTING VIEWS OF HON. GEORGE MILLER

My objections do not stem from doubts about whether the Alaska Power Administration (APA) should be sold; instead, my concern is how the sale is authorized by this legislation to proceed.

Simply put, this a lousy deal for the Federal taxpayers and a sweetheart deal for the private utilities in Anchorage and the State of Alaska. They will be allowed to purchase the APA assets at bargain prices which do not reflect fair market value.

Under the terms of the agreement negotiated with the Department of Energy (DOE), the purchasers will pay about $75 million to the Treasury. However, this price is $9 million below the net present value of $84 million which would be received if the APA were to be retained in Federal ownership.

Morever, the purchase price fails to adequately recover the value of the Federal investment in the APA assets. A 1994 audit by DOE calculated that 206 million Federal taxpayer dollars have been invested in the APA. A 1986 study by Coopers and Lybrand valued the APA assets at $319.5 million when considering replacement cost new less depreciation.

Adding insult to taxpayer injury, the bill has an open-ended authorization for additional Federal dollars to purchase private lands necessary to effectuate the transfer of the APA facilities. It is estimated to cost $500,000 just to survey the lands to identify what property needs to be purchased.

In the 103d Congress, the House passed legislation which directed DOE to assess alternative options for maximizing the return to the Treasury from the sale of the APA. As the committee report stated, "[t]he clear intent of this subtitle is for DOE to proceed cautiously on the APA divestiture * * * the Committee expects that GAO's concerns about the DOE's limitation on bidders and failure to receive fair market value in the negotiated agreements ("Views on the Sale of the Alaska Power Administration Hydropower Assets" (GAO/RCED–90–93) will be carefully evaluated." See: H. Rept. 103–366, Part 5.

Yet DOE's response to my questions for the hearing record on H.R. 1122 makes it clear that they did absolutely no additional review of the APA purchase agreement in response to the 1993 House directive to consider alternatives.

The APA divestiture resembles a going-out-of-business sale in more ways than one. For only $75 million, the APA purchasers are receiving Federal facilities worth $200 to $300 million, yet the purchase price is below even the net present value of the income to be derived if the assets were retained by the DOE. It's as if a landlord gave a tenant the keys to an apartment building for free, failed to seek bids to test the fair market value and accepted a purchase price which is even less than the income which would be received if the landlord kept ownership of the building. Anyone in the

private sector would soon be bankrupt if they did business that way.

This legislation sets a very poor precedent for the Administration's proposed sale of power marketing administrations in other areas of the nation.

GEORGE MILLER.

**APPENDIX A**

**The Purchase Agreements**

# February 10, 1989

# Snettisham Purchase Agreement

**Including Amendment No. 1, January 25, 1991**

**Alaska Power Administration**
**United States Department of Energy**

**Alaska Energy Authority**
**State of Alaska**

# Snettisham Purchase Agreement

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Appended Material:

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Exhibit B: Future Principal & Interest Payments
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Sales Price Determination

Amendment No. 1, January 25, 1991

February 10, 1989

**SNETTISHAM PURCHASE AGREEMENT**

1. Parties to the Agreement.

The parties to this agreement are the Alaska Power Administration (APAd), a unit of the United States Department of Energy, and the Alaska Power Authority (APAu), a corporate entity of the State of Alaska.

2. Purpose.

This agreement sets out arrangements, terms, and conditions for sale of the Snettisham hydroelectric project ("Snettisham") to APAu, such arrangements, terms, and conditions to be implemented if the United States Congress authorizes such sale and the APAu receives all necessary approvals and is able to sell revenue bonds in an amount sufficient to pay the Sales Price.

3. Definitions. As used in this Agreement:

"ADF&G" means the Alaska Department of Fish and Game.

"APAd" means the Alaska Power Administration, a unit of the United States Department of Energy.

"APAu" means the Alaska Power Authority, a corporate entity of the State of Alaska.

"BLM" means the Bureau of Land Management, a unit of the United States Department of Interior.

"Corps of Engineers" means the United States Army Corps of Engineers.

"Crater Lake" or "Crater Lake addition" means the Crater Lake portion of Snettisham now under construction by the Corps of Engineers and described in section 4 of this agreement (Assets to be Sold or Transferred).

"DOE" means the United States Department of Energy.

"Federal authorization" means legislation by the United States Congress authorizing the transfer of Snettisham to the APAu.

"Final Interest Rate" means the net interest cost on the date of sale of the Snettisham Bonds.

"Sales Price" means the price set out in section 5 (Sales Price).

"Exhibit B Payments" means the schedule of interest and principal payments shown in Exhibit B to this agreement.

"Snettisham" means the Snettisham hydroelectric project and includes both the Long Lake portion and the Crater Lake portion as well as all other assets generally described in section 4 (Assets to be Sold or Transferred).

"Snettisham Bonds" means the APAu revenue bonds to be issued to finance the purchase of Snettisham by the APAu.

"Transaction Date" means the date on which ownership of Snettisham is to be transferred to the APAu as discussed in section 6 (Transfer).

"USFS" means the United States Forest Service.

4. Assets to be Sold or Transferred.

The Snettisham assets to be transferred comprise the power production, transmission, and all other facilities and assets constructed or otherwise provided and held by the Corps of Engineers and APAd for the "Crater-Long Lakes Division of the Snettisham project" authorized in Section 204 of the Flood Control Act of 1962 (76 Stat. 1194, as amended).

The Long Lake portion of Snettisham, on which construction was completed in the 1970's, includes such assets as the improvements and property including: an underground powerhouse containing two complete turbine-generator sets with ratings of 23,580 kilowatts, each; auxiliary electrical and mechanical systems; waterways and hydraulic structures; reservoir and low concrete dam; switchyards, transformers, 138,000 kilovolt transmission line connecting the Snettisham powerplant and Juneau; the Juneau substation; project roads, airstrip, boat basin, and barge dock; water, sewage, and waste disposal facilities; maintenance facilities and vehicles; spare parts and materials; supervisory control and communications systems; and various buildings such as living quarters, garage, and warehouses.

The Crater Lake portion of Snettisham is now under construction by the Corps of Engineers with power production expected to begin in March 1989 and all construction expected to be completed by September 1990, and includes such assets as the improvements and property including: one complete turbine-generator set with a rating of approximately 31,000 kilowatts; auxiliary electrical and mechanical systems;

waterways and hydraulic structures; a reservoir; a transformer and certain switchyard modification; a new supervisory control system; and all spare parts and materials.

The above description of assets is intended to be general and not precise or all inclusive. As part of the transition activities, the parties will jointly prepare a particularized listing of the assets to be sold or transferred.

Other assets acquired or otherwise provided by the Corps of Engineers and APAd for Snettisham include: lands, easements, and permits; studies, records, drawings, operating data, and other technical information; and improvements and replacements for original equipment; and warranties or other intangible rights associated with the assets to be transferred or sold.

Federal lands administered by the United States Forest Service (USFS) and Bureau of Land Management (BLM) are used for project purposes. With respect to these lands, the parties intend that approximately 2,666 acres in the vicinity of Port Snettisham (generally identified in Exhibit A) be selected by the State of Alaska under Statehood Act entitlements and that rights-of-way be provided to APAu to operate and maintain the Snettisham transmission facilities between Port Snettisham and Juneau. Such rights-of-way are included in the assets to be sold and transferred. Alaska will acquire the approximately 2,666 acres under its Statehood Act entitlement; that land is not a part of the assets to be sold by the APAd.

The parties intend that the sale of Snettisham and accompanying transfer of assets to APAu not result in additional costs to APAu for licenses, permits, or other rights for Snettisham, which costs would not have been encountered under continued Federal ownership of Snettisham.

In full consideration of the payment by APAu of the sales price to the federal government, APAd will convey title to all Snettisham assets, including but not limited to those assets described above by bill of sale or other appropriate documents; provided that for any Snettisham assets not yet available for transfer at the Transaction Date, APAd will provide: 1) satisfactory assurances that such remaining assets will be transferred to APAu subsequently and in a timely fashion, and 2) clear authority to APAu for use and/or beneficial occupancy of such remaining assets pending their conveyance to APAu.

All costs associated with preparing the Snettisham assets under control of the Corps of Engineers and APAd for conveyance to APAu, including the costs of completing construction of the Crater Lake unit, shall be the responsibility of the federal government.

5. Sales Price.

The sales price will be calculated by APAd immediately after APAu has notified APAd of the Final Interest Rate for the APAu revenue bonds issued to finance the purchase of Snettisham ("Snettisham Bonds").

The sales price shall be the larger of:

1. The present value as of the Transaction Date of the remaining interest and principal payments after the Transaction Date according to the schedule shown in Exhibit B ("Exhibit B Payments") discounted at a rate two (2) percentage points above the final interest rate for the Snettisham Bonds; or

2. Eighty-five (85) percent of the present value as of the Transaction Date of the remaining Exhibit B payments after the Transaction Date discounted at a rate equal to the average yield rate for the most current 30 year United States Treasury Bonds during the 90 day period immediately preceding the selling price determination, with such average yield rate to be based upon Treasury bond yield rates as published in "The Bond Buyer."

For purposes of the price determination, the Exhibit B payments will be assumed to occur at the federal fiscal mid-year (April 1). For the federal fiscal year in which the Transaction Date occurs, the Exhibit B payments will be prorated to reflect the portion of the year remaining after the Transaction Date.

APAu will make full payment of the sales price to the United States Treasury by wire transfer on the Transaction Date.

The sales price described above is to be full consideration for all Snettisham assets, including Crater Lake, described in section 4 (Assets to be Sold or Transferred).

6. Transfer.

APAu will pay the sales price to the United States Treasury simultaneously with the transfer of available Snettisham assets from the federal government or APAd to APAu on the Transaction Date. "Transaction Date" means the date on which ownership of Snettisham is to be transferred to the APAu. The date will initially be set in the transition plans described in section 10. The parties recognize, however, that there may arise circumstances that would warrant deferral of the Transaction Date. Accordingly, each party has a one-time option to defer the scheduled Transaction Date up to 90 days if a party notifies the other in writing at any time prior to 45 days before the

scheduled Transaction Date. By mutual agreement the parties may defer the Transaction Date to any mutually agreeable date. If on the Transaction Date the federal government or APAd is unable to either transfer all Snettisham assets (including Crater Lake) or produce satisfactory assurances of reasonable future delivery and interim use of such assets, then the parties agree to discuss and implement appropriate remedies, including but not limited to termination of the agreement.

7. Liabilities and Responsibilities.

As of the Transaction Date, APAu will assume all ownership responsibilities and liabilities for Snettisham and federal responsibilities and liabilities shall cease, except that:

1. APAd will be solely responsible for all costs to close out APAd responsibilities including but not limited to federal employee entitlements and benefits for APAd employees;

2. The parties recognize that there may be unfinished work as of the Transaction Date which is the responsibility of APAd and/or the Corps of Engineers to complete. Such unfinished work could include completion of construction on the Crater Lake unit, incomplete transfer of some assets, or specific APAd responsibilities arising out of the joint determination of maintenance activities to be completed by APAd. APAd will be solely responsible for such unfinished work, including provisions of appropriate assurances that unfinished work under control of the Corps of Engineers will be completed at federal expense; and

3. APAu assumes no responsibility for any claims filed or legal proceedings initiated by any other parties concerning Snettisham and arising from actions or alleged actions by APAd and the Corps of Engineers while those entities controlled Snettisham assets, regardless of the date on which such claims may be asserted or proceedings may be initiated.

8. Operation and Maintenance Expenses, Revenues.

All Snettisham operation and maintenance expenses incurred up to the Transaction Date, including all obligations incurred by the federal government for payments to be disbursed after the Transaction Date, will be the responsibility of the APAd. Operation and maintenance expenses for assets transferred after the Transaction Date will be the responsibility of the federal government until the date of transfer to the APAu or

until APAu gains use and/or beneficial occupancy of such assets. Subsequent operation and maintenance expenses will be the responsibility of APAu. APAd fund balances from Congressional appropriations as of the Transaction Date will remain with APAd.

All revenues for power delivered up to the Transaction Date will be returned to the United States Treasury. APAu will receive all revenues for power delivered after the Transaction Date.

9. Non-Power Users.

The parties do not intend to adversely affect non-power users as a result of transfer of ownership from federal control.

APAu, consistent with state and federal law, will continue to make lands and water accessible and available to the public.

The existing agreement between APAd and the Alaska Department of Fish and Game ("ADF&G") will be continued. Any new agreement will contain terms at least as favorable to ADF&G as now exist.

APAu will continue to honor the existing agreement between the APAd and the USFS for use of surplus rock spoil material stored at Snettisham.

APAu will work with the USFS and BLM in a cooperative manner to ensure effective and proper management of lands required for Snettisham.

10. Transition Plans.

Within six months after the state and federal authorizations are obtained, APAu and APAd will adopt specific transition plans setting forth the arrangements and a timetable for completing the sale and transfer. The parties intend that the transition plans will foster an efficient, orderly, and expeditious transfer of Snettisham and its operation to APAu, help minimize transition costs, and help minimize adverse impacts on employees. The transition plans shall be developed jointly by APAu and APAd and, among other items, will include:

1. A "Transaction Date" on which ownership of Snettisham would transfer to APAu;

2. A timetable for obtaining the financing and making the price determination;

3. Arrangements and timetable for the transfer of operations, maintenance, power marketing, and administration of Snettisham;

4. A definition of activities and schedules for completing the sale and assignment of responsibilities for such activities;

5. A continuation of the consultations and access to records and data, and arrangements and timetable for transfer of data and other records to APAu;

6. Provisions for engineering and safety inspections by APAu and APAd and a joint determination by APAu and APAd of specific maintenance activities, including procurement, to be completed by the APAd;

7. If necessary, provisions for completing asset transfer actions that may not be completed as of the Transaction Date, including transfer of the Crater Lake addition;

8. Provisions for the completion of necessary agreements, including a perticularized listing of the assets to be sold or transferred;

9. Transition staffing plans as necessary to assure continuity of operations and minimizing adverse impacts on APAd employees. In this regard, the parties intend that APAd Snettisham personnel have first call on post-transfer Snettisham jobs for which they are qualified, and APAu will include such a requirement in any operations contract. The staffing plans shall also consider transferring portions or all of the operations and maintenance functions to its operations contractor in advance of the Transaction Date, if that course of action is found to be feasible and helpful in minimizing adverse impacts to employees. APAu will request assistance through state personnel and employment offices and from its operations contractor in locating suitable employment opportunities for displaced APAd employees; and

10. Other matters as may be considered necessary by the parties.

11. Interim Activities.

The parties to this agreement recognize that, in addition to the transition plan described above, a number of actions still need to be taken by the parties and other entities. The asset transfer will involve several administrative jurisdictions within the federal and state governments. The

parties intend to maintain full coordination with each of these jurisdictions and that legislation authorizing the sale provide appropriate authority to implement the asset transfer. The parties agree to take all actions necessary to complete the asset transfer including, but not limited to, the following actions:

a. APAd and the United States Department of Energy (DOE) will prepare federal legislation needed to implement this agreement. The legislation, among other items, will include provisions to accomplish the following:

(1) Authorize in accordance with this agreement the sale and transfer of Snettisham to APAu;

(2) Direct and authorize other federal agencies, including the United States Departments of Defense, Agriculture, and Interior, to assist and cooperate in sale implementation including transfer of Snettisham assets under their jurisdiction;

(3) Provide for the selection by the state and conveyance to the state of lands needed for Snettisham, including improved lands, under Alaska's Statehood Act entitlements;

(4) Exempt Snettisham and APAu or state activities associated with Snettisham, including but not limited to exempting subsequent project modifications, from jurisdiction of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791), unless such modifications impact federal lands other than those presently used for Snettisham; and

(5) Affirm tax-exempt status, subject to the State of Alaska's private activity bond volume limit if applicable, for the Snettisham bonds.

b. APAd will be responsible for the following actions:

(1) Apply for USFS and BLM rights-of-way necessary for operation and maintenance of Snettisham transmission facilities crossing federal lands, such rights-of-way to be subsequently transferred to APAu;

(2) Arrange for expeditious transfer of all Snettisham assets held by the Corps of Engineers or other agencies of the federal government to APAd for subsequent transfer to APAu; and

(3) Arrange and be prepared to transfer to APAu all other Snettisham assets including but not limited to those assets described in section 4 (Assets to be Sold or Transferred).

c. APAu will be responsible for the following:

(1) Pursue state selection of the approximately 2,666 acres of Snettisham land identified in Exhibit B with appropriate state agencies; and

(2) Arrange for the payment of the amounts set out in section 5 (Sales Price) to be paid to the United States Treasury.

d. APAu and APAd will conduct engineering and safety inspections at Snettisham, APAu and APAd will jointly determine a list of items or matters they consider necessary to be changed or modified prior to transfer. APAd will make the changes prior to the Transaction Date, or provide appropriate assurances that those changes or modifications will be made. APAu and APAd will also jointly determine the acceptability of Snettisham for transfer to APAu. Failure to reach agreement on the joint determination of either the list of necessary changes or modifications or the acceptability of Snettisham for transfer will constitute grounds for either party to terminate this agreement.

The parties agree that the above-listed actions in subsections (a) through (d) along with passage of the legislation described in (a) are crucial to the Snettisham purchase and that failure to complete such actions by the Transaction Date, or provide appropriate assurance of subsequent completion, shall constitute grounds for either party to terminate this agreement.

12. Post-sale Operation, Maintenance and Power Marketing Arrangements.

APAu intends to contract for operation and maintenance of Snettisham and for sale of project power with the power sales contract standing as the instrument backing APAu revenue bonds issued to purchase the project.

To assist in implementation of these post-sale arrangements, APAd will make available for inspection and use by APAu all project records and data and will consult with APAu on operating procedures, replacement schedules, staffing plans, and training on a continuing basis starting on the effective date of this agreement.

These provisions are intended to ensure that APAu has full opportunity to become fully familiar with Snettisham and to help identify further specific actions that will facilitate the transfer of operation of Snettisham to state ownership.

13. Effective Date.

This agreement shall become effective as of the calendar date as of which signatures on behalf of the parties and the approval of the APAu board of directors have been obtained.

14. Environmental Management.

The parties intend that the transfer of ownership be accomplished in a manner that assures continued compliance with environmental and public safety standards and laws. The parties note that, under applicable Department of Energy instructions, APAd is required to prepare a management plan for the Snettisham Project covering environmental and safety regulations.

APAd agrees to develop and implement such management plan prior to the Transaction Date and in full consultation with APAu.

APAu agrees to continue the implementation of such management plan after the Transaction Date, and to update the plan periodically as needed.

15. Severability.

If any provision of this agreement is held invalid, the remaining provisions shall not be affected thereby.

16. Term.

This agreement shall remain in effect for such time as is necessary both to complete the sale and transfer of Snettisham to APAu and to complete payments for such sale to the United States Treasury, provided that this agreement shall terminate two years after the effective date if authorization by federal legislation has not been obtained within those two years, and provided further that this agreement shall terminate two years after the date of the federal authorization if transfer of Snettisham to APAu has not occurred by that time. The above termination dates may be extended by mutual agreement of the parties.

The above termination provisions are intended to provide ample time to obtain state and federal authorizations and complete the transaction. However, it is the intent of the parties to obtain those authorizations as quickly as possible and complete the sale as quickly thereafter as is practicable.

This agreement shall be terminated if, at any time prior to the Transaction Date, APAu determines that it is not able to meet the payment terms and so notifies APAd in writing.

17. Disputes Resolution.

The parties agree to provide best efforts to resolve any disputes arising out of interpretation of this agreement. Either party may request mediation assistance in disputes, in which case the parties will jointly select a mediator to provide such assistance.

18. Amendment.

This agreement may be modified only by mutual agreement between APAu and APAd. Any such modifications must be consistent with applicable state and federal law.

19. Continuing Support and Assistance.

The parties agree to support and assist each other in the mutually satisfactory resolution of any unforeseen problems associated with the transfer. APAd and APAu recognize that new issues involving the transfer process may arise prior to and after transfer, or that issues considered resolved may need further clarification, implementation, or other resolution. APAd and APAu agree that open lines of communication are desirable after the date of this agreement and after transfer to facilitate the transfer process. To that end, APAd and APAu each agree to exercise their good faith efforts to resolve any such disputes expeditiously. APAd further agrees to use its best efforts to make available an appropriate federal entity to implement this section in the event that APAd as an identifiable federal entity ceases to exist.

DATED this 10th day of February, 1989.

ALASKA POWER ADMINISTRATION

by: Robert J. Cross
Robert J. Cross
Administrator

ALASKA POWER AUTHORITY

by: Robert E. LaResche
Robert E. LaResche
Executive Director

**Lands, Easements and Rights-of-Ways**

Exhibit A consists of this narrative (pages 1 and 2 of 2) and the map labeled "Exhibit A," signed by BLM, USFS and APAd, and dated February 3, 1989.

This exhibit describes and displays present land status for Snettisham Hydroelectric Project and describes in general terms the conveyances of land and land rights contemplated in the purchase agreement.

1. BLM. Refers to Federal lands managed by BLM used for the Snettisham Project for which BLM is to provide APAd rights-of-way sufficient for operation, maintenance, repair and replacement of Snettisham facilities, such rights-of-way to be assigned by APAd to the State of Alaska; and includes Federal lands withdrawn for project purposes subject to selection and conveyance to the State of Alaska.

   Legend Symbols and Description.

   Withdrawals. Refers to approximately 2,671 acres of public lands withdrawn for Snettisham housing such major facilities as the "Snettisham Powerhouse," "Intake Area," "Power Tunnel," "Crater and Long Lake Reservoirs" and "Thane Substation." The total acreage is comprised of the following land:

   a. Approximately 2,666 acres withdrawn for major facilities including the "Snettisham Powerhouse," "Intake Area," "Power Tunnel" and "Crater and Long Lake Reservoirs," such lands subject to selection and conveyance to the State of Alaska on or about the Transaction Date.

   b. Approximately 5 acres withdrawn for the "Thane Substation" for which BLM is to provide APAd rights-of-way, such rights-of--way to be assigned to the State of Alaska.

   BLM Lands. Refers to rights-of-way across State-selected lands covering a small portion of the 138kV transmission line from the Tongass Forest to approximately a mile from "Thane Substation."

2. USFS. Refers to federal lands managed by the Forest Service within the Tongass National Forest.

Legend Symbols and Description.

FS-R/W. Refers to rights-of-way and permits across approximately 40 miles of federal lands housing the majority of the 138kV transmission line between Snettisham and the City of Juneau, such rights-of-way to be provided to APAd for assignment to the State of Alaska.

3. Acquired-Easements.

Map Symbol: Acquired-Easements

Refers to easements acquired by the Corps of Engineers for a small portion of the 138kV transmission line near Thane Substation during construction of Snettisham, such easements to be provided to APAd for assignment to the State of Alaska.

**EXHIBIT B**
**Snettisham Purchase Agreement**
**Future Principal & Interest Payments**
**June 27, FY 1988 Power Repayment Study Data**
**($1,000's)**

| FISCAL YEAR | PRINCIPAL | INTEREST | TOTAL |
|---|---|---|---|
| 1989 | 914 | 2,740 | 3,655 |
| 1990 | 942 | 4,563 | 5,505 |
| 1991 | 994 | 4,534 | 5,529 |
| 1992 | 1,090 | 4,503 | 5,593 |
| 1993 | 1,167 | 4,469 | 5,636 |
| 1994 | 1,253 | 4,433 | 5,686 |
| 1995 | 1,351 | 4,394 | 5,745 |
| 1996 | 1,441 | 4,352 | 5,793 |
| 1997 | 1,544 | 4,307 | 5,852 |
| 1998 | 1,658 | 4,260 | 5,918 |
| 1999 | 1,857 | 4,207 | 6,064 |
| 2000 | 1,748 | 4,152 | 5,901 |
| 2001 | 1,904 | 4,098 | 6,002 |
| 2002 | 1,984 | 4,040 | 6,024 |
| 2003 | 2,383 | 3,974 | 6,357 |
| 2004 | 2,563 | 3,900 | 6,463 |
| 2005 | 2,190 | 3,829 | 6,019 |
| 2006 | 2,935 | 3,752 | 6,687 |
| 2007 | 2,406 | 3,672 | 6,078 |
| 2008 | 2,675 | 3,596 | 6,271 |
| 2009 | 2,972 | 3,511 | 6,483 |
| 2010 | 2,190 | 3,434 | 5,624 |
| 2011 | 3,513 | 3,348 | 6,861 |
| 2012 | 3,619 | 3,241 | 6,860 |
| 2013 | 3,708 | 3,131 | 6,839 |
| 2014 | 3,840 | 3,018 | 6,858 |
| 2015 | 908 | 2,946 | 3,854 |
| 2016 | 935 | 2,919 | 3,854 |
| 2017 | 1,153 | 2,889 | 4,043 |
| 2018 | 3,879 | 2,813 | 6,692 |
| 2019 | 4,142 | 2,692 | 6,835 |
| 2020 | 2,108 | 2,599 | 4,707 |
| 2021 | 4,338 | 2,502 | 6,839 |
| 2022 | 4,467 | 2,370 | 6,837 |
| 2023 | 4,574 | 2,234 | 6,808 |
| 2024 | 4,748 | 2,094 | 6,843 |
| 2025 | 1,221 | 2,004 | 3,224 |
| 2026 | 2,053 | 1,955 | 4,008 |
| 2027 | 4,106 | 1,862 | 5,969 |
| 2028 | 4,230 | 1,737 | 5,967 |
| 2029 | 4,397 | 1,609 | 6,006 |
| 2030 | 4,446 | 1,475 | 5,922 |
| 2031 | 5,450 | 1,328 | 6,778 |
| 2032 | 5,674 | 1,161 | 6,835 |
| 2033 | 5,867 | 988 | 6,856 |
| 2034 | 6,041 | 810 | 6,850 |
| 2035 | 4,776 | 648 | 5,424 |
| 2036 | 6,382 | 480 | 6,862 |
| 2037 | 6,566 | 286 | 6,852 |
| 2038 | 6,197 | 93 | 6,290 |
| TOTAL FY89-2039 | 152,587 | 141,216 | 293,803 |
| TOTAL FY90-2039 | 151,645 | 136,653 | 288,298 |
| TOTAL FY91-2039 | 150,651 | 132,119 | 282,770 |

**EXHIBIT B**
**Snettisham Purchase Agreement**

**Sample Projected Floor Selling Price**
**($1,000's)**

| Transaction Date | Avg of US 30 Year Treasury Yields During 90 Days Prior Transaction | Present Value of Remaining Payments (assumed to occur mid Fiscal Year) | Floor Selling Price Equal Eighty-five (85) Percent of Present Value |
|---|---|---|---|
| Oct 1, 1989 (start of FY90) | 9% | $66,942 | $56,900 |
| Oct 1, 1990 (start of FY91) | 9% | $67,219 | $57,136 |
| Oct 1, 1991 (start of FY92) | 9% | $67,496 | $57,372 |

**Sample Projected Formula Selling Price**
**($1,000's)**

| Transaction Date | Projected Final Interest Rate for the APAu Revenue Bonds plus additional discount | Formula Selling Price Equal to Discounted Present Value of Remaining Payments |
|---|---|---|
| Oct 1, 1989 (start of FY90) | 8.5% + 2% | $57,987 |
| Oct 1, 1990 (start of FY91) | 8.5% + 2% | $58,288 |
| Oct 1, 1991 (start of FY92) | 8.5% + 2% | $58,597 |

**Sales Price Determination**

The above are samples only. The actual US30 average yields and APAu Final Interest Rate will be determined on the Transaction Date. The sales price will be the larger of the floor or formula selling price. If the sales transaction occurs on October 1, 1990, and the average US 30 Treasury yield is 9%; and APAu's cost of borrowing is 8.5%; then the Sales Price would be $58,288,000.

January 25, 1991

**SNETTISHAM PURCHASE AGREEMENT**

**Amendment No. 1**

1. Purpose.

This Amendment No. 1 reflects new information with respect to lands, and extends the terms of the February 10, 1989 Snettisham Purchase Agreement. It also recognizes that, subsequent to the February 10, 1989 Agreement, the Alaska Power Authority became the Alaska Energy Authority.

2. Alaska Energy Authority (AEA).

Wherever used in the February 10, 1989 Agreement, "Alaska Power Authority" or "APAu" means "Alaska Energy Authority" or AEA. This reflects a name change only and does not change the intent of or responsibilities under the February 10, 1989 Agreement.

3. Amendment to Section 4. Assets to be Sold or Transferred.

The sixth (6th) and seventh (7th) full paragraphs under Section 4 of the February 10, 1989 Agreement are amended to read as follows:

> "Federal lands administered by the United States Forest Service (USFS) and Bureau of Land Management (BLM) are used for project purposes. With respect to these lands, the parties intend that approximately 2,666 acres in the vicinity of Port Snettisham and approximately 5 acres of Thane Substation (generally identified in Exhibit A) be selected by the State of Alaska under Statehood Act entitlements and that rights-of-way be provided to APAu to operate and maintain the Snettisham transmission facilities between Port Snettisham and Juneau. Such rights-of-way are included in the assets to be sold and transferred. Alaska will acquire the approximately 2,671 acres under its Statehood Act entitlement; that land is not a part of the assets to be sold by the APAd."

> "The parties intend that, to the extent possible, the sale of Snettisham and accompanying transfer of assets to AEA not result in additional costs to AEA for licenses, permits, or other rights for Snettisham, which costs would not have been encountered under continued Federal ownership of Snettisham. The parties recognize that existing law requires the Forest Service to assess fees for use of rights-of-way for project transmission lines on Forest Service lands."

These changes correct a minor discrepancy between the body of the February 10, 1989 Agreement and Exhibit A of that Agreement and recognize that the U.S. Forest Service must assess a land use fee upon issuance of the Special Use Permit to the Alaska Energy Authority for transmission rights-of-way.

4. Amendments to Section 11. Interim Activities.

Section 11b.(1) of the February 10, 1989 Agreement is amended to read as follows:

> "11b.(1) Assuring that USFS and BLM rights-of-way necessary for operation and maintenance of Snettisham transmission facilities crossing Federal lands will be available to the Alaska Energy Authority as of the Transaction Date."

A new Section 11e. is added:

> "11e. The Parties shall each designate one person and an alternate as representatives to coordinate activities under this agreement."

5. Amendment to Exhibit A.

The narrative descriptions under "1.BLM. Withdrawals" and "1.BLM.a." at page 1 of Exhibit A of the February 10, 1989 Agreement are amended to read as follows:

> "Withdrawals. Refers to approximately 2,671 acres of public lands withdrawn for Snettisham. The total acreage is comprised of the following land:"
>
> "a. Approximately 2,666 acres withdrawn for major facilities including the "Snettisham Powerhouse," "Intake Area," "Power Tunnel," and lands surrounding "Crater and Long Lake Reservoirs," such lands subject to selection and conveyance to the State of Alaska on or about the Transaction Date."

The narrative description under "2.USFS." at page 2 of Exhibit A of the February 10, 1989 Agreement is amended by inserting a period in place of the comma after "City of Juneau" and deleting the phrase "such rights-of-way to be provided to APAd for assignment to the State of Alaska."

6. **Extended Term.**

Under provisions of Section 16 of the February 10, 1989 Agreement, the term of that agreement is hereby extended two full years until February 10, 1993.

7. **Effective Date.**

This Amendment No. 1 to the February 10, 1989 Agreement shall become effective as of the calendar date on which the parties have executed this amendment.

DATED this 25th day of January, 1991.

ALASKA POWER ADMINISTRATION

by: Robert J. Cross
Robert J. Cross
Administrator

ALASKA ENERGY AUTHORITY

by: R LeResche
Robert E. LeResche
Executive Director

August 2, 1989

# Eklutna Purchase Agreement

**Including Amendment No. 1, July 30, 1991**

**Chugach Electric Association, Inc.**

**Matanuska Electric Association, Inc.**

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

**Alaska Power Administration**
**United States Department of Energy**

# Eklutna Purchase Agreement

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**Appended Material:**

**Exhibit A:** Lands, Easements and Rights-of-Ways, Including Map Marked Exhibit A, Dated February 3, 1989.

**Exhibit B:** Future Principal & Interest Payments Projected Selling Price.

**Amendment No. 1, July 30, 1991.**

August 2, 1989

# EKLUTNA PURCHASE AGREEMENT

1. Parties to the Agreement.

The parties to this Agreement are the Alaska Power Administration (A..d), a unit of the United States Department of Energy, and the Municipality of Anchorage d/b/a Municipal Light and Power (ML&P), the Chugach Electric Association, Inc. (Chugach) and Matanuska Electric Association, Inc. (MEA) (Purchasers).

2. Purpose.

This Agreement sets out arrangements, terms and conditions for sale of the Eklutna Hydroelectric Project (Eklutna) to Purchasers, such arrangements, terms and conditions to be implemented if the United States Congress authorizes such sale.

3. Definitions. As used in this Agreement:

"ADNR" means the Alaska Department of Natural Resources.

"ANCSA" means the Alaska Native Claims Settlement Act (PL-92-203).

"APAd" means the Alaska Power Administration, a unit of the United States Department of Energy (including any successor entity).

"Chugach" means the Chugach Electric Association, Inc.

"BLM" means the United States Bureau of Land Management.

"Eklutna" means the Eklutna Hydroelectric Project authorized, constructed and operated pursuant to the Eklutna Project Act of July 31, 1950 (64 Stat. 382, as amended), including any and all property and facilities acquired or used in connection with Eklutna.

"MEA" means the Matanuska Electric Association, Inc.

"ML&P" means the Municipality of Anchorage, d\b\a Municipal Light and Power.

"Purchasers" means ML&P, Chugach, and MEA.

"Actions" means actions, inaction, and omissions.

"Transaction Date" means the date on which ownership of Eklutna is to be transferred to the Purchasers as set forth in Sections 4 and 9.

4. Assets to be Sold and Transferred.

a. The Eklutna assets to be sold and transferred consist of the power production, transmission, associated real property and all other facilities and assets provided or otherwise acquired for Eklutna under the Eklutna Project Act of July 31, 1950 (64 Stat. 382, as amended) including but not limited to:

(1) Eklutna Dam; power intake structure; power tunnel and penstock; the Eklutna powerplant containing two complete turbine-generator sets with ratings of 15,000 kilowatts, each; auxiliary electrical and mechanical systems; a tailrace and tailrace embankment; switchyard, transformers, 115 kilovolt transmission lines connecting the powerplant with Palmer and Anchorage; Anchorage, Palmer and Reed Substations; access roads; maintenance facilities and vehicles; supervisory control and communications systems; various buildings including office, warehouse, and garage; personal property, including spare parts and equipment; and any improvements, replacements and renewals of such major items;

(2) Title in acquired land at Palmer Substation, and easements or rights-of-way for Eklutna facilities on privately owned land as described in Exhibit A; and fee title to lands at Anchorage Substation if the Department of Interior determines that the lands are available under law for conveyance to the Purchasers;

(3) Granted rights-of-way for existing Eklutna facilities located on BLM managed lands and military lands as described in Exhibit A;

(4) Studies, records, drawings, operating data, technical information; water rights including the reservoir rights; licenses and any other permits; accurate location maps of Eklutna facilities tied to public land surveys; acceptable land descriptions of the areas of the easements, permits and licenses showing the location of the Eklutna facilities within the described areas; other tangible rights as required for operations and maintenance of Eklutna facilities; and warranties or other intangible rights associated with the assets to be transferred and sold.

b. Granted rights-of-way for existing Eklutna facilities located on BLM managed lands including lands selected by the State of Alaska and military lands shall:

(1) Be sufficient for operation, maintenance, repairs, renewals and replacements of Eklutna facilities located on such lands, including provisions for access.

(2) Be issued consistent with existing Federal statutes, at no cost to the Purchasers, and remain effective for a period equal to the life of Eklutna as extended by any improvements, repairs, renewals or replacements; provided further that if Eklutna is further sold or transferred to private ownership, BLM may assess such reasonable and customary fees for continued use of the rights-of-way on BLM managed lands and military lands as consistent with law or regulation.

c. The life of Eklutna shall continue as long as Eklutna is capable of generating and transmitting electricity. Temporary interruptions in service or generation of power shall not constitute a termination of the life of Eklutna. Disuse of one portion of the project system shall not cause the life to Eklutna as a whole to terminate.

d. APAd shall provide satisfactory assurance that ANCSA 17(b) easement rights crossing native lands are sufficient for continued operation, maintenance, repair and replacement of Eklutna facilities by the Purchasers.

e. The above description of assets is intended to be general and not precise or all inclusive. As part of the transition activities, the parties will jointly prepare a particularized listing of the assets to be sold and transferred.

f. APAd intends that the sale and transfer of Eklutna to the Purchasers not result in additional costs to the Purchasers for licenses, permits or other rights for Eklutna, which costs would not have been incurred under continued Federal ownership of Eklutna.

g. Nothing in this Agreement shall prevent Purchasers from seeking substantial change in Eklutna. Purchasers shall be responsible for any appropriate approvals by affected government and non-governmental entities required for such substantial change.

h. On the Transaction Date, the APAd shall convey or cause to be conveyed title to all Eklutna assets to the Purchasers by bill of sale or other instrument of conveyance, provided that Purchasers pay or make arrangement for payment under Section 5 of

this Agreement, and provided further that for any assets not available for transfer at the Transaction Date, APAd shall provide:

(1) Mutually satisfactory assurance that such remaining assets will be transferred to the Purchasers subsequently and in a timely fashion, and

(2) Clear authority to the Purchasers for the beneficial use, enjoyment and occupancy of such remaining assets pending their conveyance to the Purchasers.

(3) If APAd fails to perform any of the requirements stated in paragraphs 4(h), 4(h)(1) or 4(h)(2) above, the parties agree to discuss appropriate remedies. The parties may agree to mediation, arbitration or other means to resolve issues presented by a failure of APAd to perform such requirements. Purchasers shall also have an absolute right to terminate the Agreement in the event APAd fails to perform such requirements.

i. If after the Transaction Date some event occurs which prevents APAd from transferring title and beneficial use, enjoyment and occupancy of Eklutna to the Purchasers, the parties agree to discuss and implement appropriate remedies including resolution through negotiation, arbitration or litigation, as appropriate.

5. Price and Payment Terms.

a. If the Transaction Date is October 1, 1989, the selling price shall be $10,435,000.

If the Transaction Date is October 1, 1990, the selling price shall be $9,580,000.

If the Transaction Date is October 1, 1991, the selling price shall be $8,631,000.

If the Transaction Date is other than one of the three above dates, the selling price will be calculated by APAd as the discounted present value as of the Transaction Date of all remaining principal and interest payments after the Transaction Date according to the payment schedule shown on Exhibit B of this agreement plus $1,000,000 ($1 million). Exhibit B payments for the first year will be prorated to reflect the portion of the year remaining after the Transaction Date. Subsequent Exhibit B payments will be assumed at mid-year (April).

The price determination is to be included in the transition plan required under Section 9 below.

b. The Purchasers shall pay the full selling price to the United States Treasury within five years after the Transaction Date. Any portion of the selling price paid after the Transaction Date will carry interest charges payable to the United States Treasury as discussed below. If the full price is paid by the Transaction Date, there will be no interest charges.

The purpose for allowing up to five years for the payments is to provide some flexibility to the Purchasers in arranging for payment and start up costs so as to minimize adverse impacts on Purchasers' ratepayers. The purpose of the interest charges is to assure that the United States Treasury receives the full value of the selling price. The Purchasers shall not seek Federal financing for the purchase.

c. The discount rate to be used for determination of the selling price shall be nine percent (9%).

The interest rate to be charged for payments after the Transaction Date shall be nine percent (9%).

The sales price described above is full consideration for all Eklutna assets described in Section 4 (Assets to be Sold and Transferred).

d. APAd shall not change its rate criteria for the purpose of accelerating principal payments before the Transaction Date. The Purchasers shall not delay their take of allocated power for the purpose of shifting revenues beyond the Transaction Date.

6. <u>Responsibilities</u>.

a. As of the Transaction Date, the Purchasers shall assume all ownership responsibilities for Eklutna and ownership responsibilities of APAd and its successors for Eklutna shall cease, except as follows:

(1) APAd shall be solely responsible for all costs to close out APAd responsibilities including but not limited to Federal employee entitlements and benefits for APAd employees.

(2) The parties recognize that there may be unfinished work as of the Transaction Date which is the responsibility of APAd to complete. Such unfinished work could include incomplete transfer of some assets to be completed by APAd under Sections 4 and 10 or specific APAd responsibilities

arising out of the joint determination of maintenance activities to be completed by APAd under Sections 9 and 10. APAd shall be solely responsible for such unfinished work.

(3) APA shall be solely responsible for any claims or other legal proceedings arising from actions or alleged actions by APAd while APAd managed or operated Eklutna or from actions or alleged actions by APAd in carrying out remaining APAd responsibilities under this agreement after the Transaction Date."

7. Operation and Maintenance Expenses, Revenues.

Operation and maintenance expenses up to the Transaction Date, including all obligations incurred by APAd which require payments after the Transaction Date shall be the responsibility of APAd. Subsequent operation and maintenance expenses shall be the responsibility of the Purchasers. APAd fund balances from Congressional appropriations as of the Transaction Date shall remain with APAd.

All revenues for power sold up to the Transaction Date will be returned to the United States Treasury. The Purchasers shall be responsible for sales of power after the Transaction Date, including the collection and disposition of revenues therefrom.

8. Non-Power Users.

a. The parties do not intend to adversely affect non-power users' rights as a result of transfer of ownership and control of Eklutna from the Federal government to the Purchasers.

As of the Transaction Date, the Purchasers shall assume all APAd responsibilities and benefits with respect to the following agreements, including amendments and supplemental agreements made or entered into prior to the Transaction Date, provided that after the effective date of this Agreement, APAd shall consult with the Purchasers prior to making additional amendments and supplemental agreements:

(1) The agreement dated February 17, 1984, between APAd and the Municipality of Anchorage concerning the Eklutna Water Project; as amended by Supplemental Agreement No. 1 dated August 24, 1988;

(2) The agreement dated November 1, 1982, between APAd and Cook Inlet Aquaculture Association concerning the Eklutna hatchery.

b. The Purchasers shall consult with BLM and ADNR to ensure effective and proper management of lands required for Eklutna.

c. Except to the extent Purchasers determine public recreational uses shall be limited by safety and operational requirements, the Purchasers will continue to make Eklutna lands and water available to the public for recreation uses.

9. Transition Plans and Activities.

a. Within six months after the Congressional authorization is obtained, the Purchasers and APAd shall adopt specific transition plans setting forth the arrangements and a timetable for completing the sale and transfer. The parties intend that the transition plans shall foster an efficient, orderly and expeditious transfer of Eklutna and its operation to the Purchasers, minimize transition costs and minimize adverse impacts on employees. The transition plans and activities shall be developed jointly by the Purchasers and APAd and, among other items, shall include:

(1) The selection of a "Transaction Date" on which ownership of Eklutna would transfer to the Purchasers;

(2) A schedule for payments to the United States Treasury including provisions for reasonable grace periods;

(3) Arrangements and timetable for the transfer of operations, maintenance, power marketing and administration of Eklutna;

(4) A definition of activities and schedules for completing the sale and the assignment of responsibilities for such activities;

(5) A continuation of the consultations and access to records and data, and arrangements and timetable for transfer of data and other records to the Purchasers;

(6) Provisions for environmental, engineering and safety inspections by the Purchasers and APAd and a joint determination by the Purchasers and APAd of specific maintenance activities, including procurement, to be completed by the APAd;

(7) If necessary, provisions for completing any asset transfer actions that may not be completed as of the Transaction Date;

(8) A particularized listing of all the Eklutna assets to be sold and transferred, including photocopies of all

rights-of-way obtained from BLM, accurate location maps of the Eklutna facilities tied to public land surveys, and suitable legal descriptions of all real property interest. The parties to this Agreement recognize that the lands work will not be completed before the date of the transition plans.

(9) A description of the condition of title to the Eklutna assets as of the date of the transition plans, identifying with particularity third party interests and rights and other matters affecting title that may materially impair the ability of the Purchasers to have the full beneficial use, enjoyment, occupancy and operation of the Eklutna assets, and a description of APAd's intended course of action prior to the Transaction Date to remove, resolve or limit such matters.

(10) Transition staffing plans as necessary to assure continuity of operations and minimizing adverse impacts on APAd employees. In this regard, the parties agree that for two years after the Transaction Date APAd Eklutna personnel have first call on post-transfer Eklutna jobs for which they are qualified subject to the labor agreements of Purchasers. The staffing plans shall also consider transferring portions or all of the operations and maintenance functions to the Purchasers in advance of the Transaction Date, if that course of action is found to be feasible and helpful in minimizing adverse impacts to employees. In a manner consistent with their personnel policies and staffing requirements, the Purchasers will assist in locating suitable employment opportunities for displaced APAd employees for a period of two years after the Transaction Date; and

(11) Other matters as may be considered necessary by the parties.

10. <u>Interim Activities</u>.

The parties to this Agreement recognize that, in addition to the transition plans and activities described above, a number of actions need to be taken by the parties and other entities. The asset transfer and sale involves several entities including the Federal, State and local governments and two Alaska Native corporations. The parties intend to maintain full coordination with each of these entities and ensure that legislation authorizing the sale and transfer provides appropriate authority to implement the sale and transfer. The parties shall take all actions necessary to complete the sale and transfer including, but not limited to, the following listed actions:

a. APAd shall prepare Congressional legislation needed to implement this Agreement. The legislation, among other items, shall include provisions to accomplish the following:

(1) Authorize in accordance with this Agreement the sale and transfer of Eklutna to the Purchasers.

(2) Direct and authorize other Federal agencies, including the United States Department of the Interior, to assist and cooperate in sale implementation including transfer of Eklutna assets under their jurisdiction.

(3) Authorize and direct the Secretary of Interior to issue rights-of-way to Alaska Power Administration for subsequent assignment to Purchasers at no cost to remain effective for a period equal to the life of Eklutna as extended by improvements, repairs, renewals or replacements, sufficient for operation, maintenance, repair and replacement of Eklutna facilities located on lands managed by the BLM including land selected by the State of Alaska, and military lands, including access; provided that if Eklutna is further sold or transferred to private ownership, the BLM may assess such reasonable and customary fees for continued use of the rights-of-way on BLM managed lands and military lands as consistent with current law or regulation; provided further that at no additional cost fee title to lands at Anchorage Substation shall be transferred to Purchasers if the Department of Interior determines that the lands are available under law for conveyance to the Purchasers.

(4) Authorize the State of Alaska (State) to select and direct the Secretary of Interior to convey to the State certain Eklutna lands identified in Exhibit A, including the lake bed of Eklutna Lake if not navigable under the Submerged Lands Act and approximately 853 acres of improved lands housing the powerhouse, intake structure, dam facilities, and a portion of the power tunnel under the provision of Section 6 of the Alaska Statehood Act of July 7, 1958, Public Law 85-508, and the North Anchorage Land Agreement of January 31, 1983, such conveyances to be subject to the rights-of-way being provided to Purchasers under Section 10(a)(3) above.

(5) Exempt Eklutna and the Purchasers, including but not limited to subsequent facilities modifications, from jurisdiction of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791), unless such modifications impact Federal lands other than those presently used for Eklutna.

(6) Authorize expenditure of such sums as are necessary to prepare Eklutna assets for sale and conveyance, such preparations to provide sufficient title to ensure the beneficial use, enjoyment and occupancy to the Purchasers of the assets to be sold.

b. APAd shall, in addition to the responsibilities set forth in Section 4:

(1) Prepare all Eklutna assets including but not limited to those assets described in Section 4 (Assets to be Sold and Transferred) for conveyance to the Purchasers including all actions necessary to establish sufficient title to ensure the beneficial use, enjoyment and occupancy to the Purchasers of such assets.

(2) Apply for and obtain BLM rights-of-way necessary for operation, maintenance, repair and replacement of Eklutna facilities located on Federal lands, managed by the BLM, such rights-of-way to be subsequently transferred to the Purchasers.

(3) Provide satisfactory assurance that the Purchasers have sufficient ANCSA 17(b) easement rights for continued operation, maintenance, repair and replacement of Eklutna facilities.

(4) Continue to maintain Eklutna in accordance with prudent utility practices, and Federal, and utility industry standards.

(5) Appoint one person and an alternate to represent APAd for all activities required of APAd after the execution of this Agreement and prior to the Transaction Date.

(6) Manage and operate Eklutna in accordance with prudent utility practices, and Federal and utility industry standards in such a manner as to not diminish the capability of Eklutna to produce energy and power at historic levels.

c. Purchasers shall:

(1) Establish organizational, functional and staffing arrangements for operations, maintenance and administration of Eklutna to be in effect on or before the Transaction Date including the following:

(A) Purchasers agree with each other and the APAd that each Purchaser shall appoint one person and an

alternate to represent that Purchaser for all activities required of Purchasers after the execution of this Agreement and prior to the Transaction Date.

(B) By the Transaction Date, Purchasers shall agree in writing to have an effective organization which shall be responsible for the sale of power, operation and maintenance of Eklutna and, if necessary, Purchasers shall execute power sales agreements to purchase power from Eklutna.

(C) Purchasers shall provide in their organizational agreements that if one or more of the Purchasers are unable or unwilling to purchase its share of Eklutna, then the other Purchasers may purchase that share.

(2) Arrange for the payment of the amounts set out in Section 5 (Price and Payment Terms) to be paid to the United States Treasury.

d. The Purchasers and APAd shall conduct engineering, environmental and safety inspections at Eklutna and jointly determine a list of items or matters they consider necessary to be changed or modified prior to transfer. APAd shall make such changes and modifications prior to the Transaction Date, or provide appropriate assurances that those changes or modifications shall be made. The Purchasers and APAd shall also consensually and jointly determine the acceptability of Eklutna for transfer to the Purchasers. Failure to reach agreement on the joint determination of either the list of necessary changes or modifications or the acceptability of Eklutna for transfer shall constitute grounds for termination of the Agreement.

e. This Agreement may be terminated by Purchasers if, prior to the Transaction Date, the value of Eklutna or its capability to produce energy and power has been diminished by any cause after the execution of this Agreement. Any notice of termination shall be provided to APAd in writing.

f. The parties agree that the above-listed action in subsections (a) through (d) are crucial to the sale and transfer of Eklutna. The Purchasers may elect to terminate this Agreement if the authorizing legislation does not contain substantially the same provisions set forth in Section 10(a) or if APAd fails to complete its obligations under Sections 10(b) and 10(d). APAd may elect to terminate this Agreement if the Purchasers fail to complete their obligations under Sections 10(c) and 10(d).

11. <u>Post-sale Operations, Maintenance and Power Marketing Arrangements</u>.

The Purchasers shall establish appropriate organizational, staffing and administrative arrangements for Eklutna on or before the Transaction Date.

To assist in implementation of these post-sale arrangements, APAd shall make available for inspection and use by the Purchasers all Eklutna records and data and shall consult with the Purchasers on operation procedures, replacement schedules, staffing plans and training on a continuing basis starting on the effective date of this Agreement.

These provisions are intended to ensure that the Purchasers have full opportunity to become fully familiar with Eklutna and to help identify further specific actions that shall facilitate the transfer of operation of Eklutna to the Purchasers.

12. Effective Date.

This Agreement shall become effective as of the calendar date on which all parties have executed this Agreement.

13. Environmental Management.

The parties intend that the transfer of ownership be accomplished in a manner that assures continued compliance with environmental and public safety standards and laws including appropriate dam safety measures. The parties note that, under applicable Department of Energy instructions, APAd is required to prepare a management plan for Eklutna covering environmental and safety requirements.

APAd shall develop and implement such management plan prior to the date on which the transaction plans are adopted and in full consultation with the Purchasers. Failure by the Purchasers to agree to such a plan shall be grounds for termination of this Agreement by the Purchasers.

The Purchasers agree to continue the implementation of such management plan after the Transaction Date, including periodic updates of the plan as needed.

14. Term.

This Agreement shall remain in effect for such time as is necessary to complete the sale of Eklutna to the Purchasers and payments for such sale to the United States Treasury, provided that this Agreement shall terminate two years after the effective date if authorization by Congressional legislation has not been obtained within those two years, and provided further

that this Agreement shall terminate two years after the date of the Congressional authorization if transfer of Eklutna to the Purchasers has not occurred by that time. The above termination dates may be extended by mutual agreement of the parties.

The above termination provisions are intended to provide ample time to obtain Congressional authorization and complete the transaction. However, it is the intent of the parties to obtain such authorization as quickly as possible and complete the sale as quickly thereafter as is reasonably practicable.

This Agreement shall be terminated if, at any time prior to the Transaction Date, the Purchasers determine they are not able to meet the payment terms and so notify APAd in writing.

15. Dispute Resolution.

The parties shall attempt to settle any claim or controversy arising out of this Agreement in good faith. The parties may agree to submit any claim or controversy to a mutually-acceptable mediator, the cost of which shall be borne equally by APAd and Purchasers. The use of such a procedure shall not be construed to affect adversely the rights of either party under the doctrines of laches, waiver or estoppel. Nothing in this section shall prevent any party from resorting to judicial procedures. Any judicial action shall be filed in the Federal court at Anchorage, Alaska.

16. Notice.

All notices under this Agreement shall be in writing directed to the Purchasers through the General Managers of the Purchasers, and to the APAd through the Administrator of the APAd or its successor.

17. Amendment.

This Agreement may be modified only by mutual agreement in writing between the Purchasers and APAd. Any such modifications must be consistent with applicable State and Federal law.

18. Approvals.

Any final sale and transfer of Eklutna shall become effective only on the obtaining of all required regulatory and administrative approvals or on receiving satisfactory assurance that such approvals are forthcoming.

19. Assignment.

This Agreement shall inure to the benefit of, and be binding upon the respective successors and assigns of the parties to this Agreement, provided however, that neither this Agreement nor any interest therein shall be transferred or assigned by any party to any other party except to the United States or an agency thercof, without the written consent of the others whose written consent shall not be unreasonably withheld.

However, any assignment by Purchasers must be made to a successor in interest to the Purchasers and such assignment shall provide that the power from Eklutna be used for the benefit of customers in the service area of the Purchasers. Any of the Purchasers may assign its interest to the Alaska Electric Generation & Transmission Cooperative, Inc. (AEG&T) subject to any existing agreements, including amendments, between Chugach, AEG&T and MEA.

20. Force Majeure.

Failure by either APAd or the Purchasers to perform any of the requirements of this Agreement brought about by causes beyond their control and without fault or negligence of the parties shall constitute an excusable delay. In any instance where excusable delay occurs, the time for completing the work shall be extended by negotiation of the parties.

21. Continuing Support and Assistance.

The parties agree to support and assist each other in the mutually satisfactory resolution of any unforeseen problems associated with the transfer. APAd and the Purchasers recognize that new issues involving the transfer process may arise prior to and after transfer, or that issues considered resolved may need further clarification, implementation or other resolution. APAd and the Purchasers agree that open lines of communication are desirable after the date of this Agreement and after transfer to facilitate the transfer process. To that end, APAd and the Purchasers each agree to exercise their good faith efforts in implementing the terms of this Agreement expeditiously. APAd further agrees to use its best efforts to make available an appropriate Federal entity to implement this section in the event that APAd as an identifiable Federal entity ceases to exist.

22. Relationship of Purchasers.

The covenants, obligations and liabilities of the Purchasers are intended to be several and not joint or collective, and nothing contained herein shall be construed to

create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any of the Purchasers. Each Purchaser shall be individually responsible for its own covenants, obligations and liabilities as provided in this Agreement. No Purchaser shall, by virtue of this Agreement, be under the control of, or be deemed to control, the other Purchaser. No Purchaser shall be the agent of, or have a right or power to bind, the other Purchasers without its express written consent, except as may be expressly provided in this Agreement, or as may be otherwise provided by existing law. The provisions of this Section may be modified by the final approved agreements provided for under Section 10(c)(1).

23. Agreement for Benefit of Parties Only.

As provided in Section 8, above, the parties intend to protect fully the rights of non-power users of Eklutna land and water. The parties do not intend by this Agreement to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement, or as a beneficiary of any duty, covenant, obligation or undertaking established by, or performed pursuant to, this Agreement.

24. Miscellaneous Provisions.

a. The parties agree, upon request of the other parties, to make, execute and deliver any and all documents reasonably required to implement this Agreement.

b. Captions and headings appearing in this Agreement are included to facilitate reference to the Agreement, and they are not to be read as a part of this Agreement, nor shall they have bearing on its interpretation.

c. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREFORE, the parties have caused this Agreement to be executed the day and year written hereafter.

DATED this 2nd day of August, 1989.

CHUGACH ELECTRIC ASSOCIATION, INC.

by: _____
Lace Walls
President

MATANUSKA ELECTRIC ASSOCIATION, INC.

by: _____
Robert L. Husted
President

MUNICIPALITY OF ANCHORAGE
D/B/A MUNICIPAL LIGHT AND POWER

by: _____
Tom Fink
Mayor

ALASKA POWER ADMINISTRATION

by: _____
Robert J. Cross
Administrator

Lands, Easements and Rights-of-Way

Exhibit A consists of this narrative (pages 1 and 2 of 2) and the map prepared by BLM, signed and dated February 3, 1989.

This exhibit describes and displays present land status for the Eklutna Hydroelectric Project and describes in general terms the conveyances of land and land rights contemplated in the purchase agreement.

1. BLM - managed lands and military lands used for Eklutna Project for which BLM is to provide APAd rights-of-way sufficient for operation, maintenance, repair and replacement of Eklutna facilities, such rights-of-way to be assigned by APAd to the Purchasers.

   Legend Symbols and Description.

   Withdrawals. Refers to approximately 863 acres of public lands withdrawn for Eklutna at the "Intake Area," "Power Tunnel," "Eklutna Powerplant" and "Anchorage Substation." The total acreage is comprised of the following land:

   a. Approximately 320 acres withdrawn for the "Power Tunnel" under Public Land Order 1231 dated September 28, 1955.

   b. Approximately 230 acres utilized for the "Intake Area" and approximately 60 acres for a portion of "Eklutna Powerplant" as described by ANCSA 3(e) determination AA-51183 dated July 30, 1986.

   c. Approximately 243 acres utilized for "Eklutna Powerplant" as described by ANCSA 3(e) determination AA-42534 dated September 1, 1982.

   d. Approximately 10 acres withdrawn for "Anchorage Substation" under Secretarial Order dated April 4, 1952.

   State Land-R/W. Refers to rights-of-way across State-selected lands covering the transmission line east of "Eklutna Powerplant" to the Knik River.

   Military Land-R/W. Refers to rights-of-way across military lands used for Eklutna transmission lines.

Acquired-3(e). Refers to approximately 2.5 acres of acquired land used for "Reed Substation" as described by ANCSA 3(e) determination AA-45155 dated July 30, 1985.

2. ANCSA 17(b) Easements.

Map symbol: Native Land - 17(b) Easements.

Refers to rights-of-way that are reserved for portions of the 115kV transmission line, access roads and other Eklutna facilities located on Native corporation lands, and exist as easement reservations in the ANCSA conveyances to the Native corporations pursuant to Section 17(b) of ANCSA. These easements will not be altered by the sale of Eklutna and the Purchasers may use these easements for their intended purposes.

3. APAd Acquired Land and Easements.

Refers to land and easements acquired by the Bureau of Reclamation (predecessor of APAd) during construction of Eklutna and now controlled by APAd. APAd will assign the land and easements to the Purchasers.

Legend Symbols and Description:

Acquired. Refers to approximately 0.8 acres of land owned by APAd at Palmer Substation.

Acquired-Easements. Refers to approximately 33 easements across private lands acquired by the Bureau of Reclamation (predecessor of APAd) and now held by APAd.

4. Other Easements on Private Land.

Map [Symbol]: Note: Other Easements on Private Lands To Be Acquired - See Exhibit A Narrative

Refers to approximately two hundred and fifty (250) parcels of private land located along the 115kV transmission line, many of which require title curative action for purposes of perfecting assignable easement rights or rights-of-way for the Purchasers. APAd shall be responsible for acquiring assignable easement rights or rights-of-way across these lands, for subsequent assignment to Purchasers.

5. Reservoir.

Eklutna Lake as designated on the map is the reservoir described in the body of the Agreement.

**Exhibit B**
**Eklutna Purchase Agreement**

**Future Principal and Interest Payments.**
**(FY 1987 Power Repayment Study Data)**

Units: $1000's

| FISCAL YEAR | PRINCIPAL | INTEREST | TOTAL |
|---|---|---|---|
| 1989 | 693 | 346 | 1,039 |
| 1990 | 1,316 | 316 | 1,632 |
| 1991 | 1,383 | 283 | 1,666 |
| 1992 | 0 | 265 | 265 |
| 1993 | 629 | 258 | 887 |
| 1994 | 1,476 | 231 | 1,707 |
| 1995 | 0 | 213 | 213 |
| 1996 | 1,318 | 196 | 1,514 |
| 1997 | 1,548 | 160 | 1,708 |
| 1998 | 1,586 | 121 | 1,707 |
| 1999 | 1,624 | 81 | 1,705 |
| 2000 | 0 | 61 | 61 |
| 2001 | 1,472 | 43 | 1,515 |
| 2002 | 952 | 12 | 964 |
| TOTAL '89 - 02 | $13,997 | $2,586 | $16,583 |
| TOTAL '90 - 02 | $13,304 | $2,240 | $15,544 |
| TOTAL '91 - 02 | $11,988 | $1,924 | $13,912 |
| TOTAL '92 - 02 | $10,605 | $1,641 | $12,246 |

**Projected Selling Price**

Units: $1000's

| Transaction Date | Present Value of Remaining Payments 1/ | Selling Price |
|---|---|---|
| Oct. 1, 1989 (start of FY 1990) | $9,435 | $10,435 |
| Oct. 1, 1990 (start of FY 1991) | $8,580 | $ 9,580 |
| Oct. 1, 1991 (start of FY 1992) | $7,631 | $ 8,631 |

1/ Discount Rate of 9.0%; payments assumed at mid year.

Eklutna Purchase Agreement
August 2, 1989

Amendment No. 1

1. Purpose.

This Amendment No. 1 reflects new information with respect to lands, extends the term of the August 2, 1989, Eklutna Purchase Agreement ("Agreement"), and states the selling price if the Transaction Date is October 1, 1992, or October 1, 1993.

2. Amendments to Section 10. Interim Activities.

Section 10a.(4) of the Agreement is amended to read as follows:

"10.a.(4) Authorize the State of Alaska (State) to select and direct the Secretary of the Interior to convey to the State certain Eklutna lands identified in Exhibit A, including approximately 853 acres of improved lands housing the powerhouse, intake structure, dam facilities, and a portion of the power tunnel under the provision of Section 6(a) of the Alaska Statehood Act of July 7, 1958, Public Law 85-508, and the North Anchorage Land Agreement of January 31, 1983, such conveyances to be subject to the rights-of-way being provided to Purchasers under Section 10(a)(3) above."

3. Amendment to Section 5. Price and Payment Terms.

Section 5 (a) of the Agreement is amended to read as follows:

"a. If the Transaction Date is October 1, 1991, the selling price shall be $8,613,000.

If the Transaction Date is October 1, 1992, the selling price shall be $9,022,000.

If the Transaction Date is October 1, 1993, the selling price shall be $8,818,000.

If the Transaction Date is other than one of the three above dates, the selling price will be calculated by APAd as the discounted present value as of the Transaction Date of all remaining principal and interest payments after the Transaction Date according to the payment schedule shown on Exhibit B of this agreement plus $1,000,000 ($1 million). Exhibit B payments for the first year will be prorated to reflect the portion of the year remaining after the Transaction Date. Subsequent Exhibit B payments will be assumed at mid-year (April).

The price determination is to be included in the transition plan required under Section 9 below."

4. New Exhibit B.

A new Exhibit B dated June 25, 1991, reflecting the above amendment to Section 5, Price and Payment Terms, is incorporated in the Agreement in place of the original Exhibit B.

5. Extended Term.

The first paragraph of Section 14 of the Agreement is amended to read as follows:

"This Agreement shall remain in effect for such time as is necessary to complete the sale of Eklutna to the Purchasers and payments for such sale to the United States Treasury, provided that this Agreement shall terminate four years after the effective date if authorization by Congressional legislation has not been obtained within those four years, and provided further that this Agreement shall terminate two years after the date of the Congressional authorization if transfer of Eklutna to the Purchasers has not occurred by that time. The above termination dates may be extended by mutual agreement of the parties."

6. Effective Date

This Amendment No. 1 to the Agreement shall become effective as of the calendar date on which all parties have executed this Amendment.

DATED this 30th day of July, 1991.

CHUGACH ELECTRIC ASSOCIATION, INC.

By: Thomas D. Humphrey, Pres
Thomas D. Humphrey
President

7/30/91
Date

MATANUSKA ELECTRIC ASSOCIATION, INC.

By: Jess Lee
Jess Lee
President

7/29/91
Date

MUNICIPALITY OF ANCHORAGE
D/B/A MUNICIPAL LIGHT AND POWER

By: Tom Fink
Tom Fink
Mayor

7/30/91
Date

ALASKA POWER ADMINISTRATION

By: Robert J. Cross
Robert J. Cross
Administrator

July 26, 1991
Date

**APPENDIX B**

**The Fish and Wildlife Agreement**

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. <u>Dam Construction, Modification, Removal or Abandonment</u>.

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. <u>Enforcement of Fish and Wildlife Program and Agreement</u>.

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

CHUGACH ELECTRIC ASSOCIATION, INC.

By: _____ (PMT) Date: 7/30/91
Thomas D. Humphrey, President

MATANUSKA ELECTRIC ASSOCIATION, INC.

By: _____ Date: 7/29/91
Jim Lee, President

ALASKA ENERGY AUTHORITY

By: _____ Date: 8-1-91
Charles Bussell, Executive Director

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

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

STATE OF ALASKA

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