ALASKA DEPARTMENT OF NATURAL RESOURCES
Water Resources Section

TO: Akis Gialopsos, Commissioner DNR DATE: August 26, 2022

FROM: Carl Reese FILE: LAS 27264

The subject water right case file has been reviewed for accuracy and conformance with statutes and regulations. The project diverts 395 cubic feet per second (cfs) of water from Grant Lake to generate electricity for Kenai Hydro LLC. The applicant originally applied for 458 cfs but the volumes were reduced as designs were solidified. The following comments, recommendations, or corrections are presented.

Check for duplicate water use: None.

Effect on fish and game: The project was evaluated by the Alaska Department of Fish & Game (ADFG) and the U.S. Fish and Wildlife Service (USFWS). Extensive comments on fish and wildlife resources were presented and conditions placed in the Federal Energy Regulatory Commission (FERC) license (Docket # P-13212). These conditions will be required under the permit. ADFG deemed Grant Lake and the steeper upstream sections of Grant Creek are not salmon habitat. These waters are not on the ADFG Catalog of Anadromous Waters. However, the waters downstream of the proposed powerhouse are salmon habitat on the catalog. The project will store water in Grant Lake during spring melt and other high-water events and draw down the lake approximately forty feet during winter. Thus, low flows in the salmon rearing sections of the creek that occur in winter will be higher downstream of the powerhouse than the natural hydrology. Resource agencies deemed this positive for fish populations as flows can be naturally low in winter. Minimum bypass flows will be required in the non-cataloged section of the creek throughout the year to protect habitat for bears, wolves, moose, and other wildlife that inhabit the area.

Public and Agency Notice: Agency notice was sent to ADFG and the Department of Environmental Conservation (DEC) on October 29, 2021 to November 29, 2021. DEC and ADFG did not comment.

Public Notice occurred the Alaska Online Public Notice System April 8, 2022 through May 9, 2022. Six people commented. The USFWS also commented. USFWS reiterated comments in the FERC license that the project

	minimize impacts to fish and wildlife to the extent practicable. The responses to issues presented by public commentors are in Appendix A.
Prior appropriators:	This water source does not have prior appropriators that could be unduly affected as 'unduly affected is defined in 11 AAC 93.970 (38).
Proposed means of construction:	Adequate. The applicant is a well-established utility with a track record of building similar projects.
Proposed use of water:	Beneficial. Water will be used to generate electricity.
Effect upon access to navigable or public water:	No foreseen effects upon access to navigable water ways.

It is interpreted that the proposed use of water is in the public interest. This file contains no evidence of a likelihood of harm to the public interest.

Application for Water Right to Permit to Appropriate Water

NECESSARY ACTIONS:

[✓] Concurrence :_____ [ ] Other :_____

Signature

08/31/2022
Date

An eligible person affected by this decision of the department, and who provided timely written comment or public hearing testimony to the department, may request reconsideration to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any request for reconsideration must be received by the Commissioner's Office within twenty (20) calendar days after issuance of the decision under 11 AAC 02.040. The Commissioner may order or deny a request for reconsideration within thirty (30) calendar days after issuance of the decision. If the Commissioner takes no action on a request for reconsideration within thirty (30) days after issuance of the decision, the request for reconsideration is considered denied. The Commissioner's decision on reconsideration, other than a remand decision, is a final administrative order and decision of the department. An eligible person must first request reconsideration to the Commissioner before seeking relief in superior court. The Alaska State Courts establish its own rules for timely appealing final administrative orders and decisions of the department.

Reconsideration may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918 or sent by electronic mail to dnr.appeals@alaska.gov. Reconsideration must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at $200 under the provisions of 11 AAC 05.160(a)-(b). A .pdf or print copy of 11 AAC 02 may be obtained by contacting Erik Fossum via phone at (907)-269-8429, via email at erik.fossum@alaska.gov, and is also available on the department's website at https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf .

Appendix A.

Grant Lake Hydroelectric Water Rights, LAS 27264.

Issue Summary

Subject	Issue Summary	Response	Recommended Revision
Materials in the water right application don't match those in the easement and lease application	The method of taking in public notice, easement, and lease differ from the application for water rights. Similarly, the volume of water in public notice, easement, and lease application differ from the application for water rights.	The designs changed since the water right application. The lease and the easement applications differ from the water right application because KEA applied for land use authorizations years after the FERC license was issued. The details of the project changed in the intervening years. It is expected that the designs of a project will change and evolve from its initial phases. This occurs because details are added and through the public process in developing a FERC license. The water right application is made early in the design process for a project of this size but the water right is not adjudicated until the designs are closer to complete. DMLW requires a new water right if the water volume increases or there is a substantial change in the location of the powerhouse or the intake location. The application was submitted in 2009 and requested less water than the public notice because volumes were scaled down as the project developed. Similarly, the method of diversion was initially a dam nine feet in height above the current lake level but that changed during the design process. As the project developed the height of the proposed dam decreased such that the maximum height of the lake does not increase.	none

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The current project description differs from the water right application.	The current project description says the structure will be from 675' to 715' (40' in height, not 9 feet as in the application).	The designs changed since the water right application. The project's current description is a lake tap type structure capable of drawing the lake down. The drawdown is not the height of the dam. The cofferdam controls outflow at the current elevation of the lake or below.	none
Transmission lines	Overhead transmission lines could affect float plane access.	Acknowledged	The water right will include a condition that requires that power lines allow float planes to land on the lake.
Benefit of the project	How will the project be determined to be beneficial?	The project will be deemed beneficial if the water is used to generate electricity for the Railbelt and wildlife, fisheries, and recreation are protected. The applicant will be required to monitor and report water use and electricity production to the DNR. Conditions on the permit require the utility to follow all applicable laws, including those protecting state resources and monitoring requirements set forth in the FERC license. Wildlife and fisheries impacts (negative and positive) will be monitored by the ADFG. The FERC license allows for changes to bypass flows, ramping rates, tailrace minimum flows and other aspects of operation to change as needed. Benefit to the state will be determined based on monitoring.	The final water right will require the utility to submit a Statement of Beneficial Use per Alaska 11 AAC 93. The Statement of Beneficial Use triggers an

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			analysis to determine if the project met the goals to use the water and protect state resources.
Tourism impacts	The visual impacts could affect tourism. Visual impacts will be seen on a local level in Moose Pass but the electricity is being sent to Homer. How does this benefit Moose Pass?	The project has the potential to benefit the state. Furthermore, the project will create jobs in Moose Pass.	none
Project will endanger fish and wildlife	The natural stream flow in Grant Creek (bypass reach) is very low in mid-to-late winter; reducing the flow even more can not be a good thing for the critters that live there.	The project includes a bypass pipe and weir that ensures minimum flows to the bypass reach for wildlife. These flows were approved by ADFG and can be modified as needed.	none

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The Project Will Degrade Recreational and Scenic Values	Grant Lake, Grant Creek, Upper Middle and Lower Trail Lakes and the rivers that connect them are all prime, easily accessible recreation areas for the people in this area of the Kenai Peninsula. There is no justification to negatively alter this prime recreation area and its viewscape. The negative visual impacts of an access road, aerial transmission lines, and related development across this scenic landscape are impossible to conceal or mitigate. The project will be a visual eyesore and also introduce noise and light pollution if utilities are developed.	The project will be managed to protect habitat and public recreation values. Visual screening of development in the area will be required to protect the recreational and historical experience.	none

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There is little local benefit because the electric utility isn't local	The visual impacts could affect tourism. Visual impacts will be seen on a local level in Moose Pass but the electricity is being sent to Homer. How does this benefit Moose Pass?	The project has the potential to benefit the state. DNR's responsibilities are to all Alaskans. Furthermore, the project will create jobs in Moose Pass. Specific conditions may be made when conditions warrant.	none
Project provides positive economic benefits to the state.	This Project will provide benefits for Alaskans for generations to come. Hydroelectric power provides a dispatchable renewable energy resource, the ability to follow intermittent renewables, spinning reserve, energy storage, voltage support and system resiliency. While generally capital intensive to build, hydro power inevitably ends up being most utilities low cost of power.	Acknowledged	none

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Project Will Benefit the Environment, HEA members, and the Entire Railbelt Electrical Grid	Extensive environmental review through the long EIS and FERC process shows that the project has minimal impact on local ecologic resources. In fact, there are some potential benefits. Grant Lake hydro is designed with multiple different intake levels to allow for a coordination of outflow water temperature with the temperature regime in Grant Creek. In addition to protecting downstream fish populations from potential effects of the project, this can also be used to protect downstream fish populations from climate-change induced high temperature events in the creek. These events are becoming more and more common in Alaska streams, and propose a significant risk to salmon populations.	Acknowledged	none