

JAMES L. BALDWIN
ATTORNEY AT LAW

October 1, 2010

Local Boundary Commission
c/o Brent Williams
Division of Community and Regional Affairs
Department of Community, Commerce and
Economic Development
550 West 7th Ave., Suite 1770
Anchorage, AK 99501-3510

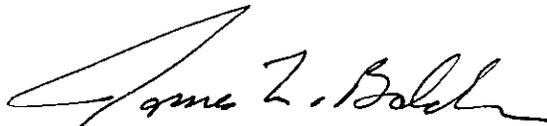
Re: In re Annexation Petition of the City of
Dillingham; filing of Native Village of
Ekuk's brief.

Dear Mr. Williams:

Enclosed you will find respondent's brief in the pending matter before the Local Boundary Commission described above. The petition is accompanied by an affidavit of mailing and an affidavit of respondent certifying to matters required by regulation of the Local Boundary Commission.

You will please note that the Native Village of Ekuk has designated the undersigned to act as its representative in this matter. The designation appears in the body of respondent's brief.

Sincerely,



James L. Baldwin
Counsel for the Native Village of Ekuk

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

IN THE MATTER OF THE PETITION OF)
THE CITY OF DILLINGHAM FOR)
ANNEXATION OF NUSHAGAK)
COMMERCIAL SALMON DISTRICT WATERS)
AND WOOD RIVER SOCKEYE SALMON)
HARVEST AREA WATERS, TOGETHER)
CONSISTING OF APPROXIMATELY 396)
SQUARE MILES OF WATER AND 3)
SQUARE MILES OF LAND)

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, James L. Baldwin, upon oath, depose and state that:

On October 1ST, 2010 I mailed via first class US mail ^{two copies of AZB, UR} the Native Village of Ekuk's

Responsive Brief along with its exhibits to:

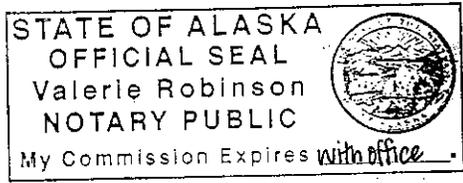
Alice Ruby, Mayor
City Hall
P.O. Box 889
Dillingham, AK 99576

Brent Williams
Division of Community and Regional Affairs
Department of Community, Commerce, and Economic Development
550 West 7th Ave., Suite 1770
Anchorage, AK 99501-3510

Dated at Juneau, Alaska this 1ST day of October, 2010.

James L. Baldwin
James L. Baldwin

SUBSCRIBED AND SWORN TO before me this 1ST day of October, 2010.



Valerie Robinson
Notary Public in and for Alaska

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

IN THE MATTER OF THE PETITION OF)
THE CITY OF DILLINGHAM FOR)
ANNEXATION OF NUSHAGAK)
COMMERCIAL SALMON DISTRICT WATERS)
AND WOOD RIVER SOCKEYE SALMON)
HARVEST AREA WATERS, TOGETHER)
CONSISTING OF APPROXIMATELY 396)
SQUARE MILES OF WATER AND 3)
SQUARE MILES OF LAND)

AFFIDAVIT OF RESPONDENT NATIVE VILLAGE OF EKUK

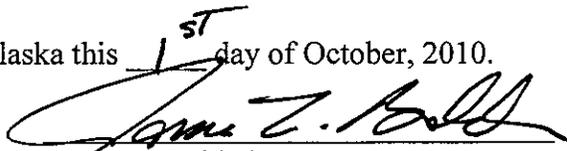
STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, James L. Baldwin, upon oath, depose and state that:

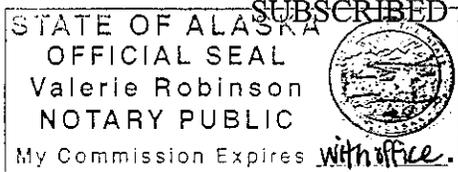
1. My name is James L. Baldwin. I am licensed to practice law in the State of Alaska. I represent the Native Village of Ekuk in connection with the Responsive Brief filed along with this affidavit.

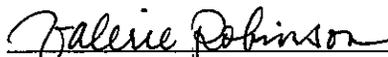
2. To the best of my knowledge, information and belief, formed after reasonable inquiry, the Responsive Brief and exhibits attached to it are founded in fact and are not submitted to harass or cause unnecessary delay or needless expense in the cost of processing the Petition for Annexation filed by the City of Dillingham.

Dated at Juneau, Alaska this 1st day of October, 2010.


James L. Baldwin

SUBSCRIBED AND SWORN TO before me this 1st day of October, 2010.




Notary Public in and for Alaska

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE MATTER OF THE PETITION OF)
THE CITY OF DILLINGHAM FOR)
ANNEXATION OF NUSHAGAK)
COMMERCIAL SALMON DISTRICT WATERS)
AND WOOD RIVER SOCKEYE SALMON)
HARVEST AREA WATERS, TOGETHER)
CONSISTING OF APPROXIMATELY 396)
SQUARE MILES OF WATER AND 3)
SQUARE MILES OF LAND)

RESPONSIVE BRIEF OF THE NATIVE VILLAGE OF EKUK TO THE
ANNEXATION PETITION OF THE CITY OF DILLINGHAM FOR ANNEXATION
OF NUSHAGAK COMMERCIAL SALMON DISTRICT WATERS AND WOOD
RIVER SOCKEYE SALMON HARVEST AREA WATERS

JAMES L. BALDWIN
ATTORNEY AT LAW
227 HARRIS STREET
JUNEAU, ALASKA 99801-1212
PHONE: (907) 586-9988

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

A. FACTS RELEVANT TO THIS PROCEEDING4

B. DILLINGHAM HAS NOT SATISFIED THE STANDARDS IMPOSED BY
LAW FOR ANNEXATION TO A CITY.....9

 1. The Boundaries of the Expanded City would not Contain Territory that
Includes the Community Associated Exclusively with Dillingham9

 2. Petitioner Fails to Prove that the Territory has a Need for City
Government19

 3. Petitioner does not Carry its Burden in Proving that the Territory is
Compatible in Character21

 4. Petitioner Fails to Prove that will it Devote Resources to Provide
Essential Services in the Territory22

 5. The Population will not be Sufficiently Stable to Support Annexation23

 6. Annexation of the Territory is not in the Best Interests of the State
because it Harms the Viability of a Future Borough in the Region.....24

 7. Other Annexations of Water Approved by the LBC are Distinguishable
from the Present Proceeding27

C. THE METHOD OF REVIEW OR RATIFICATION OF THE DECISION OF
THE LBC31

D. DESIGNATION OF REPRESENTATIVE32

JAMES L. BALDWIN
ATTORNEY AT LAW
227 HARRIS STREET
JUNEAU, ALASKA 99801-1212
PHONE: (907) 586-9988

1 The Native Village of Ekuk, a federally recognized tribal government,
2 opposes the annexation petition filed by the City of Dillingham (hereinafter “Dillingham”
3 or “the petitioner”) to annex substantially all of the waters of the Nushagak Commercial
4 Salmon District and the Wood River Sockeye Salmon Harvest Area (WRSSHA).¹ The
5 water area of Nushagak Bay is of regional importance to the Village of Ekuk and other
6 nearby municipalities and villages.² Although Dillingham is an important center for
7 transportation and other purposes, Nushagak Bay and the Wood River are not a part of the
8 community of the City of Dillingham. The City is not alone in having important socio-
9 economic contacts with the territory covered by the petition. The annexation requested in
10 the petition would exclude other villages and municipalities in the region from the benefits
11 that could be derived from administration of these two commercial fishing districts by a
12 regional government or service area. Because the petition is styled as one which uses the
13 local option method requiring a local ratification vote, the residents of other communities
14 with socio-economic ties to Nushagak Bay and Wood River will not have an opportunity to
15 vote on the annexation question. For this and the other reasons set out below petitioner
16 asks the Local Boundary Commission (hereinafter the “LBC”) to protect the best interests
17 of the state by denying the petition.
18

19 _____
20 ¹ The Affidavit of Council President Robert Heyano is attached to this responsive brief as
21 Exhibit # 1. In his affidavit, Mr. Heyano explains the history and geography of Ekuk
22 Village.

23 ² Petitioner makes only passing reference in its petition of the justification for desiring to
24 annex the WRSSHA. Ekuk presumes this is because petitioner considers this territory to be
25 geographically a part of Nushagak Bay. Without this assumption, the annexation of Wood
26 River waters appears to be an afterthought with the main annexation effort directed to
Nushagak Bay Commercial Salmon District waters. Ekuk’s objections to the petition
extend as well to annexation of the WRSSHA as a naturally included part of the Nushagak
Bay region of Western Bristol Bay.

A. FACTS RELEVANT TO THIS PROCEEDING.

1 Dillingham petitions to annex approximately 396 square miles of water and
2 3 square miles of land. The territory to be annexed consists of two fishing districts in
3 Western Bristol Bay and uninhabited islands within those districts. Dillingham argues that
4 the annexation is in the best interest of the state because it would promote “maximum local
5 self government” and “long-term economic vitality of the city.”³ Respondent is the Native
6 Village of Ekuk, a federally recognized tribe governed by its tribal council. Ekuk is located
7 on the Eastern shore of Nushagak Bay. Members of the tribe reside in the municipalities
8 and villages of the Western Bristol Bay region and in places outside the Bristol Bay
9 watershed. Within the village and nearby are a number of set net sites operated by
10 members of the tribe. There is a salmon processing plant (Ekuk Fisheries) on land
11 bordering the village which processes primarily salmon caught at set net sites within
12 Nushagak Bay.
13

14 Dillingham asserts that this annexation will result in efficient and effective
15 delivery of services in the expanded city. The rationale for expansion is that it would allow
16 the city to obtain waters in which substantial sales of salmon occur during the short but
17 productive fishing season of Western Bristol Bay. The fishing season typically averages 40
18 days from early July through mid-August with periodic openings and closing of districts
19 causing vessels to remain on the grounds.⁴ Dillingham proposes to levy and collect a sales
20

21
22 ³ Pet. at p.8.

23 ⁴ Exhibit # 2. For a complete list of ADF&G opening and closure announcements for
24 Bristol Bay West Side go to:
25 <http://csfish.adfg.state.ak.us/newsrelease/select.php?year=2010&dist=DIL&species=400&submit=Go>

1 tax on the sale of raw fish caught in the waters proposed for annexation. Dillingham
2 reasons that many of the fishermen operating in these waters come from outside the region
3 and they should bear the burden of paying for the facilities and services provided by the city
4 that also support the fishery.

5 The territory proposed for annexation contains the Nushagak Commercial
6 Salmon District which is one of the major fishing districts of Bristol Bay. The proposed
7 annexation would also include the WRSSHA. The WRSSHA is a fishing district of lesser
8 importance for revenue generation purposes because it opens only when necessary to
9 regulate escapement into the Wood River system. It covers the mouth of the Wood River, a
10 navigable waterway, to a point near the Southern boundary of the City of Aleknagik.

11 In its petition, Dillingham represents that it is the regional center for fishing
12 activity carried out in Nushagak Bay. However, persons engaged in that fishery are based
13 in other municipalities of the region as well. The Nushagak Bay fishery is not only made
14 up of drift boats, but also set net fishing enterprises. The drift net boats originate from the
15 Nushagak Commercial Salmon District and other districts including Naknek - Kvichak,
16 Ugashik, Egegik and Togiak. All of these districts have municipalities that provide services
17 to the fisheries. The set netters reside in the municipalities and communities of the region
18 as well. This diversity of participation shows that the Nushagak Commercial Salmon
19 District is a resource common to all persons residing in the region.

20 Dillingham argues that a significant amount of the state's fishery business
21 tax is lost to the region by virtue of the Nushagak Commercial Salmon District remaining
22 outside of municipal boundaries. Dillingham supports this contention with a statement that
23 56 to 66 percent of the salmon catch is delivered outside of the bay area for processing and
24

1 represents tax proceeds that are lost to the region.⁵ However, this is not a correct analysis
2 of the allocation of the state fishery business tax. The tax proceeds attributable to fish
3 processed elsewhere may be lost to Dillingham, but this revenue source is not completely
4 lost to other cities in the Dillingham Census area. Each of those cities receives a share of
5 50 percent of the total that is not shared with a municipality in which processing occurs.⁶

6 Dillingham assumes it would not “receive a great increase in fisheries
7 business tax revenues” as a result of the annexation.⁷ However, floating processors operate
8 in Nushagak Bay and it is not known precisely whether they operate inside or outside of the
9 boundaries of an existing municipality. After annexation of the districts, Dillingham could
10 receive 50 percent of the fishery business tax proceeds attributable to some of this
11 processing activity. This increase would cause a reduction in the amount payable to
12 municipalities in regional fishery management areas of the state, including municipalities in
13 the Dillingham Census Area.

14 Dillingham argues that its plans to levy a sales tax on raw fish will result in a
15 more equitable allocation of tax burden to those outsiders who use the city’s harbors and
16

17
18 ⁵ Pet. at p. 7. Petitioner on September 21 changed its petition to reflect these amounts.
19 The corrections were explained by Mayor Ruby as “small errors.” Ekuk does not want to
20 quibble over the fairness of allowing the city to add to its arguments late in the public
comment period and hopes that the city will extend similar courtesy to any other party or
commenter.

21 ⁶ AS 43.75.137 provides for an additional refund of fishery business tax proceeds to certain
22 municipalities in fishery management areas outside of organized municipalities. 3AAC
23 134.050(a) provides a statewide apportionment formula for additional refund amounts to
municipalities in these fisheries management areas.

24 ⁷ Pet. at p.52. Dillingham explains that it is not clear that there would be substantially
25 more processing within the expanded boundaries.

1 other fishery related facilities and services. At present, the city assesses user fees for
2 mooring in the harbor and use of the all tides dock. The city also levies property and sales
3 taxes and is in possession of a reserve fund amounting to approximately \$3 million.⁸ The
4 equitable reallocation of cost argument will appeal to those residents of the city who are not
5 directly engaged in the fishery. However, for residents of the Western Bristol Bay Region
6 who are directly engaged in fishing in the territory proposed for annexation it is an entirely
7 different story. Upon these persons, the tax burden would fall especially hard. This is
8 confirmed by a study prepared for the Bristol Bay Economic Development Corporation in
9 2009 by Northern Economics.⁹ The study reported:

10 (1) drift gill net vessels owned by local residents are on average
11 older, have lower horsepower, are smaller in terms of gross tons, have less
12 fuel capacity, and on average have less capacity for chilling fish than vessels
owned by permit holders residing outside the Bristol Bay watershed;

13 (2) revenue per fishing permit held by local residents is now less
14 than 70 percent of the fishery wide average – this is even more striking for
set net fishers, their revenue earned averages only \$27,000 per season;

15 (3) other non fishery related income for area permit holders is quite
16 limited relative to other income for permit holders who reside outside of the
watershed; and

17 (4) per capita revenue from the drift and set net fisheries of permit
18 holders residing in the watershed has fallen an average of \$516 per year
19 since 1984. Based on these statistics, what the tax scheme gains through
20 efficiency of requiring outsiders to contribute more, it loses in fairness to
21 fishermen of the region and others dependent upon them who will bear a
22 disproportionate burden.

23 ⁸ Pet. at p.32 (single asterisk following “Note 6”).

24 ⁹ Northern Economics, *The Importance of the Bristol Bay Salmon Fisheries to the Region*
25 *and its Residents*, (October, 2009). Only the pages covering the executive summary are
attached to this responsive brief as Exhibit #3.

1 Upon close examination of the petition, it is evident that very little in the
2 way of new services will be offered in the territory to be annexed. Dillingham disavows the
3 provision of any expanded police services. The city states that the Alaska State Troopers
4 will remain the agency responsible for providing public safety services. Dillingham does
5 not claim it will provide additional search and rescue services in the area to be annexed
6 either. Rather, it proposes to provide better "coordination" of search and rescue services
7 that are provided by other persons presumably located in Dillingham. Dillingham proposes
8 a one-time capital expenditure of \$20,000 to establish a cache of materials useful in
9 responding to oil spills.¹⁰

10 Dillingham predicts that it will spend amounts in the first fiscal year after
11 annexation to provide other services in the area to be annexed. However, this new service
12 consists of approximately \$100,000 in costs to be incurred preparing for the levy of a sales
13 tax on raw fish. A small amount (\$20,000) would be provided for police services and
14 \$120,000 for harbor expenses. In each succeeding fiscal year, the City contemplates
15 spending only \$145,000 additionally because of annexation (\$5,000 administration,
16 \$20,000 police, \$20,000 search and rescue coordination and \$100,000 for the harbor). Pet.
17
18

19
20
21
22 ¹⁰ This oil spill cache would be in addition to the oil spill equipment container provided by
23 the state under a community spill response agreement negotiated with the Department of
24 Environmental Conservation. See <http://dec.alaska.gov/spar/perp/docs/perp.pdf>. Under this
25 agreement with the state, the city may use the oil spill response equipment at cost. The City
26 does not provide further information why an additional city funded cache is more efficient
and effective than the one provided by the state.

at p. 32. This is far less than the \$710,883 that it expects to receive from the levy of a 2.5% tax on the sales of raw fish.¹¹

B. DILLINGHAM HAS NOT SATISFIED THE STANDARDS IMPOSED BY LAW FOR ANNEXATION TO A CITY.

The LBC adopted administrative regulations under a delegation from the legislature to provide specific standards for annexation to a city. 3 AAC 110.090 – 3 AAC 110.150 (hereinafter “the LBC regulations”). Set out below is respondent’s position as to whether petitioner satisfies these standards.

1. The Boundaries of the Expanded City would not Contain Territory that Includes the Community Associated Exclusively with Dillingham.

Under the LBC regulations the petitioner must show that the proposed expanded boundaries include “all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. 3 AAC 110.130. Dillingham’s petition shows that all existing services and facilities for the city – other than tax collection, could be provided without the expansion of boundaries. Dillingham is not a poor municipality by area standards.

Of the factors that the LBC considers in reviewing the proposed boundaries, respondent asks the LBC to consider the circumstances of the other municipalities and communities located in the Nushagak Bay region. Certainly Dillingham feels the seasonal

¹¹ Pet. at p.12. Petitioner also discloses that in 2009 it incurred only \$330,000 in annual costs the help serve regional fisheries. Pet. at p. 44.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

effect of this fishery, but so do other municipalities and communities in the region.

1 Dillingham is not alone in providing services for this seasonal fishery. The Commission is
2 requested to take notice that the following municipalities on or near Nushagak Bay receive
3 limited amounts of shared fisheries business taxes from the state: Aleknagik, New
4 Stuyahok, and Manokotak.¹² By law, the state acknowledges that the receipt of this money
5 is to compensate municipalities that “suffer significant effects from fisheries business
6 activities.”¹³

7
8 The LBC is requested to consider the circumstances of Manokotak which is
9 linked by river to Igushik Beach on the Western side of Nushagak Bay.¹⁴ A significant
10 number of the set netters who operate on Igushik Beach are from Manokotak. A significant
11 number of set net sites are located on the western side of the bay in and around Ekuk
12 Village. This population does not use the boat harbor or other major facilities of
13 Dillingham during the fishing season. Yet, their sales of fish would be taxed by
14 Dillingham. This geography and use pattern is ignored in Dillingham’s petition.

15
16 While the expanded boundaries would not leave enclaves within the limits of
17 Dillingham, the proposed boundaries would add territory to the city in a way that
18 gerrymanders the Nushagak Bay region to the point of foreclosing other municipalities and

19
20 ¹² This information is derived from the Community Funding Database set out on Division
21 of Community and Regional Affairs webpage at
22 http://www.commerce.state.ak.us/dca/commdb/CF_Grants.htm.

23 ¹³ AS 29.60.450(a).

24 ¹⁴ Respondent was provided with a copy of Resolution #11-4 (September 17, 2010)
25 adopted by the City of Manokotak which was provided to the LBC as a public comment on
26 the petition. Ekuk incorporates and adopts by reference the facts outlined there for the
purposes of this brief.

1 communities from expanding their boundaries into Nushagak Bay. A prime example would
2 be the effect of the expanded boundaries on the City of Clark's Point. Based on discussions
3 with an elected official of Clark's Point and LBC staff, respondent was informed that
4 Clark's Point expressed intent to reassert an earlier petition to annex territory within
5 Nushagak Bay. These potentially conflicting claims highlight an important geographic
6 consideration affecting the annexation. Where the boundary is drawn between Dillingham
7 and Clark's Point may have a significant effect on taxpayer actions to avoid taxes. The
8 expansion of Dillingham's boundaries could push processors and tenders into the waters of
9 Clark's Point or vice versa, with attendant impacts to be dealt with. In this case, Clark's
10 Point is the municipality less able to deal with such impacts.

11 The proposed new boundaries would likely have deleterious effect on
12 Manokotak and Aleknagik. Manokotak has a long history of connection to Igushik Beach
13 on the West side of Nushagak Bay and considers this area and offshore waters to be part of
14 its community. The Wood River is a transportation corridor to Aleknagik and annexation
15 may be of concern to that municipality.

16 A serious question presented by the petition is whether Dillingham is
17 proposing to annex "territory comprising an existing community."¹⁵ Or, whether in reality
18 Nushagak Bay is territory belonging to a regional community in which many municipalities
19 and villages in the region share a common interest. A city is a community-based municipal
20 government rather than one that is based on geography.¹⁶

21
22
23 ¹⁵ 3 AAC 110.130(c)(1).

24 ¹⁶ 3 AAC 110.005 ("Territory proposed for incorporation as a city must encompass a
25 community.").

The LBC applied the doctrine of community in a 1986 annexation proceeding involving Dillingham and Nushagak Bay which is not distinguishable from the present petition. The LBC observed:

The statutes speak to “a community” when addressing city incorporation and “an area” when addressing borough incorporation. The definition of the word “community” as provided in Black’s Law Dictionary is a “neighborhood” compared to the definition of the word “area” as “a territory, a region”. The instant situation speaks to local boundary actions motivated by problems affecting a territory of people, not a community of people. Clearly a city is not the appropriate vehicle to adequately address problems that are of regional concern.¹⁷

This decision rejected Dillingham’s attempt to annex both substantial amounts of land and water. The quote set out above was addressing the regional character of water area consisting of Nushagak Bay.

In 1987, the former Department of Community and Regional Affairs, acting as staff for the LBC, issued a report on the city’s amended petition to annex somewhat less territory but which also included the waters of Nushagak Bay. In the report, the department recounted the rationale of the LBC’s December, 1986 decision in which it acted upon separate proposals from the Cities of Dillingham and Clark’s Point for annexation of all or significant portions of Nushagak Bay. The department reported:

1. The size, configuration, level of development and other characteristics of Nushagak Bay are clear evidence that it is a region rather than part of a community. State laws governing municipalities provide that, to the extent territories are incorporated; regional territory shall be served by boroughs or unified municipalities, while community territory shall be served by cities. Thus annexation of all or substantial portions of Nushagak Bay by any city is inappropriate.

¹⁷ Statement of Decision for Annexation of Territory to the City of Dillingham para. 13 at page 6 (Local Boundary Commission, December 10, 1986) attached to respondent’s brief as Exhibit #4.

1 2. The need for municipal jurisdiction over Nushagak Bay is of a
2 regional nature. Issues of service delivery, revenue enhancement and
3 impacts to public health and safety are shared by the cities of Clark's Point
4 and Dillingham, as well as other areas bordering and or relying upon the
5 resources of Nushagak Bay. Thus, regional municipal government was
6 judged to be the most appropriate mechanism to address these needs. . . .¹⁸

7
8
9 After this recount of the LBC's rationale, the department concluded

10 [c]ircumstances have not changed since the commission made these
11 findings. Given the clarity of its position with respect to annexation of
12 significant portions of Nushagak Bay by any city, the department concludes
13 that there is no purpose in examining the annexation of this waterway as
14 presently proposed by the City of Dillingham. Rather it is presumed that the
15 commission will reject this aspect of the current proposal as it did four
16 months prior to the submission of the current petition.¹⁹

17 The department's presumption was correct. Dillingham was allowed to annex substantially
18 less water area than requested, leaving Nushagak Bay outside its boundaries. Dillingham
19 now contends circumstances have changed in the 23 years since its last attempt to annex
20 these waters because the fleet servicing facility in Clark's Point is now closed and it does
21 not now serve the drift net fleet as it once did. The problem with this changed circumstance
22 argument is that it addresses only the sad circumstances of a single city in the region and
23 fails to come to grips with the fact that the regional significance of Nushagak Bay has not
24 changed. Clark's Point, Ekuk, Manokotak, and other communities of the region continue to
25 have a common interest in the Nushagak Commercial Salmon District.

26

¹⁸ Former Department of Community and Regional Affairs, Report and Recommendation
to the Alaska Local Boundary Commission on the Petition of the City of Dillingham for the
Annexation of Approximately 421.25 Square Miles of Territory (September, 1987) at p. 15
(on file with the Division of Community and Regional Development) (emphasis added).
An excerpt is attached as Exhibit # 5.

¹⁹ *Id.* at p. 15-16.

Recognition of Nushagak Bay as territory important to the region continued after the 1987 annexation proceedings. On December 4, 1992, the LBC identified the Dillingham Census Area as a “model borough” separate from the rest of the Bristol Bay region.²⁰ There was also action taken in 1997 by the City of Dillingham to annex the Dillingham Census area to the Lake and Peninsula Borough. However, the effort was judged to be divisive and therefore not feasible. As a part of that process, the department suggested that the Dillingham Census Area would be a region appropriate for a borough incorporation petition.²¹

The effect of granting the instant petition would be to transform Dillingham into a regional government without the responsibility for all of the territory of the region or for answering to the residents of other cities and villages that share interest in the waters proposed for annexation. To grant the petition may set in motion the Balkanization of Western Bristol Bay by forcing other municipalities in the region to seek the detachment of territory from Nushagak Bay in order to fairly allocate fishery related tax revenue to cover the impact of the fishery resource related to them.

Dillingham’s argument that Nushagak Bay is part of its community should be rejected because it has a legal flaw. Dillingham argues that temporary seasonal participants in the fishing industry of the region who use city facilities and impact city

²⁰ Model Borough Boundaries p.7 Local Boundary Commission (June 1997 revised).

²¹ *See*, Alaska Department of Community and Economic Development, Chronicle of Borough Developments in the Bristol Bay Region and Update of Revenue Projects Concerning the Proposed Annexation to the Lake and Peninsula Borough (March, 2000) (on file with the Division of Community and Regional Affairs at <http://www.commerce.state.ak.us/dca/lbc/pubs/BBstudy.pdf>).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

services form a community with Dillingham that extends to the area to be annexed. A community “is a social unit comprised of 25 or more permanent residents”.²² The petition describes the community within the territory proposed for annexation as “a seasonal commercial fishing community whose need for public services is limited to port and harbor facilities, landfill services, and public safety.”²³

A temporary workforce or persons comprising a transient fishing fleet are not domiciled in the city or the fishing districts to be annexed. They are domiciled elsewhere. Many members of the fleet and set net permit holders reside in other communities in the Dillingham Census Area. They are not a social unit of permanent residents in the sense intended by the annexation standards in the LBC regulations. Their presence or activity in the area sought to be annexed cannot be used to establish a community of interest between the existing City of Dillingham and the waters of the Nushagak Commercial Salmon District.

Dillingham contends that services and facilities supporting the Nushagak Bay fisheries are now provided “almost exclusively” by and through the City of Dillingham. There is no dispute with Dillingham that it incurs costs in order to provide services and facilities for the Bristol Bay salmon fishery. The LBC found in 1987 that Dillingham did indeed provide services to seasonal workers and members of the fishing fleet. The LBC wrote in its decision:

²² See 3 AAC 110.990(10) (a permanent resident must be domiciled in the city for at least 30 days); See also AS 01.10.055(a) (A person establishes residency by being physically present with the intent to remain indefinitely).

²³ Pet. at p. 48.

1 The seasonal processors and their crews may, on occasion receive some of
2 these services three months of the year. The critical issue is the relative
3 degree to which these services are required. With the exception of the
4 identified 40 square miles area northwest of the current boundaries of the
5 city, it has not been demonstrated that these services are required to the
6 extent that annexation is warranted.²⁴

7 A better example of the proof required can be found in the LBC decision regarding the
8 annexation of waters by the City of Togiak. In that case the LBC found that the severity of
9 alcohol abuse and offenses in the area to be annexed and the city's plans to provide services
10 to the remedy the problem justified annexation.²⁵ For Togiak the boundary expansion was
11 a matter necessary to remedy a clear and present threat to the public safety of the
12 municipality and the territory to be annexed. Dillingham has not put forward facts that
13 provide a similar justification.

14 Dillingham's contention that it is virtually the sole supplier of services and
15 facilities in the region is not entirely accurate. Other communities in the region have
16
17
18

19 ²⁴ Report and Recommendation to the Alaska Local Boundary Commission on the Petition
20 of the City of Dillingham for the Annexation of Approximately 421.25 Square Miles of
21 Territory (Department of Community and Regional Affairs, September, 1987) on file with
22 the Division of Community and Regional Development (emphasis added) at p. 4. An
23 excerpt is attached as Exhibit #5.

24 ²⁵ Statement of Decision in the Matter of the Annexation by the City of Togiak, Alaska,
25 Consisting of Togiak Bay, Consisting of Approximately 183 Square Miles (Local Boundary
26 Commission, January 18, 1985) at p. 1 (on file with the Division of Community and
Regional Affairs).

1 residents who participate in the Nushagak Bay fishery.²⁶ Some of these persons operate
2 drift net vessels and some are land-based set net site operators. These communities provide
3 services and support for their residents and also experience the seasonal impact of fishery
4 activities in their community areas. Their permanent and seasonal residents do not use the
5 services and facilities of Dillingham to the extent that fisherman coming from outside the
6 watershed do. If Dillingham is allowed to annex the fishing districts of Nushagak Bay,
7 many year round residents of the region would pay the proposed sales tax on their catch to
8 pay for facilities in Dillingham that they use very little or not at all. Even though they
9 would be taxpayers of the city, they would not be represented by the City of Dillingham in
10 the same sense that the city represents its residents and qualified voters.

11 Other municipalities and villages in the region provide services to set net and
12 drift net gear holders and processors operating in Nushagak Bay. The village of Ekuk must
13 deal with the influx of approximately 200 persons engaged in the set net fishery and a
14 seasonally operated salmon processing plant as a neighbor.²⁷ It employs a health aide and
15 other employees to deal with refuse disposal, potable water, and for next season – ice for
16

17 ²⁶ According to 2009 reports of the Commercial Fisheries Entry Commission, there are 396
18 limited entry permit holders who reside outside of Dillingham in places within the
19 Dillingham census area, while only 227 permit holders reside in Dillingham. *See* Exhibit 6.
20 In the Nushagak Bay area alone, the City of Manokotak has 84 permit holders and another
21 93 residents who serve as crew. *Id.* Aleknagik has 24 permit holders and another 34
22 residents who serve as crew. *Id.* New Stuyahok has 25 permit holders and another 39
23 residents who serve as crew. *Id.* Koliganek has 18 permit holders and another 25 residents
24 who serve as crew. *Id.* Clark's Point has 11 permit holders and another 17 residents who
25 serve as crew. *Id.* Set net permit holders in the Bristol Bay Region are more likely to
26 reside in the region. According to 2010 reports of 672 active set net permit holders only
131 were nonresidents. Commercial Fisheries Entry Commission - Permit Status Report at
www.cfec.state.ak.us/pstatus/14052010.htm.

²⁷ Affidavit of Heyano attached as Exhibit # 1.

1 fishing operations. Clark's Point has floating processors and tenders stationed adjacent to
2 and within its boundaries. It has a landfill, a health aide, and a state funded airstrip. Ekuk
3 and Clark's point are cooperating in the planning and fund raising for a road connecting the
4 two communities in order to provide a new landfill site to serve both.²⁸ Manokotak has an
5 active fleet of drift net boats and a sizeable number of residents involved in set net
6 operations. The set net operations of the residents of Manokotak are focused mainly on
7 Igushik Beach on the Eastern side of Nushagak Bay. It maintains haul-out facilities,
8 storage, road access to anchorages, health aides, and provides search and rescue services.

9 Reports from the Alaska Department of Fish and Game provide some
10 evidence that drift net boats registered in other districts in Bristol Bay come to Nushagak
11 Bay to fish. According to the commercial fisheries division of the department, 120 drift net
12 boats harvested salmon in both the Naknek-Kvichak District and in the Nushagak Bay
13 statistical areas.²⁹ Of the drift net boats harvesting salmon in the Naknek-Kvichak District
14 that season, nearly 38 percent of them reported their first deliveries of harvested salmon
15 were made in other fishing districts. Approximately 10 percent of these boats report first
16 deliveries in Nushagak Bay before engaging in fishing in the Naknek-Kvichak District.³⁰
17 This is evidence that the services for these vessels may not be centered in Dillingham, but
18 elsewhere in the region. The data reinforces Ekuk's contention that Nushagak Bay is a
19 region that is used and served by communities other than Dillingham. For these reasons,
20

21
22 ²⁸ *Id.*

23 ²⁹ Telephone interview with Cathy Tide, statistical section of the Alaska Department of
24 Fish and Game (September 28, 2010).

25 ³⁰ Exhibit # 7.

1 the territory proposed for annexation does not comprise the community of Dillingham and
2 is not appropriate for annexation to a city.

3 **2. Petitioner Fails to Prove that the Territory has a Need for City Government.**

4 The petitioner tries very hard to tailor the facts to fit the standards for
5 annexation set out in the LBC regulations. However, expansion to include the vacant and
6 unoccupied water indentified in the petition does not support a conclusion that Dillingham
7 would be adding territory considered part of the community it serves. The petitioner is very
8 clear about its underlying intent – which is to generate revenue from sales of raw fish
9 within the two fishing districts proposed for annexation. Dillingham virtually concedes that
10 the territory to be annexed does not have a reasonable need for city government. The
11 petition states “there will not be any residential growth in the area proposed for
12 annexation.”³¹ Dillingham does not propose to assume new powers or responsibility for
13 new services in the area to be annexed, other than the collection of raw fish tax. Nor does it
14 propose to extend any services to the new territory that are now provided within the
15 existing boundaries. Dillingham concedes that the services presently provided to the area
16 sought to be annexed are adequate.³²

17
18
19 The need for services described by Dillingham could be satisfied in part by
20 exercise of extraterritorial powers. Extraterritorial powers of a city must be taken into
21

22 ³¹ Pet. at p.41.

23 ³² Petitioner cites to Alaska State Trooper reports for 2008 that document no public safety
24 responses and for 2009 there were only four calls for assistance, three of which were for
25 search and rescue. Pet. at p. 42.

1 consideration when determining the need for government in an area to be annexed.³³ For
2 example, the oil spill prevention services evidenced by the capital expenditures cited by the
3 city as justification for the annexation could be provided on an extra-territorial basis rather
4 than annexation.³⁴

5 The LBC regulations require an assessment of need for a requested
6 annexation that considers whether government could be provided to the territory by an
7 existing city or an organized borough.³⁵ Dillingham argues that this provision in the
8 regulations must be interpreted to consider only whether an existing city or an existing
9 borough could better provide government to the territory. However, the wording of the
10 provision does not support that interpretation. The section provides

11 Territory may not be annexed to a city if essential municipal services can be
12 provided more efficiently and more effectively by another existing city or by
13 an organized borough³⁶

14 Note that the provision does not add the word “existing” before the words “organized
15 borough” and that the two forms of municipalities are mentioned in separate independent
16 clauses. The clear implication is that a determination whether another entity could more
17 effectively and efficiently provide service should not be so artificially limited. A city may
18 only be considered as an alternative if it is in existence, but a borough as a means of
19 delivering municipal services may be considered even if it does not exist at the time of
20

21 ³³ 3 AAC 110.090(a)(5).

22 ³⁴ AS 29.35.020 (b)(2) (power to exercise extraterritorial power over containment, clean up
23 or prevent the release or threatened release of oil or hazardous substance).

24 ³⁵ 3 AAC 110.090(c).

25 ³⁶ *Id.*

1 evaluation. Dillingham interprets the LBC regulations to permit only consideration of the
2 ability of existing municipalities to provide government services in the territory. It
3 probably wants to avoid consideration of whether a new borough might be a better choice
4 to provide services in the territory. Ekuk urges the LBC to reject this interpretation and
5 continue with its long standing policy of encouraging the formation of a regional
6 government when it would be more efficient and effective.

7
8 **3. Petitioner does not Carry its Burden in Proving that the Territory**
9 **is Compatible in Character.**

10 The LBC’s regulations provide that the territory must be “compatible in
11 character with the annexing city.” 3 AAC 110.100. Of the seven subparagraphs of the
12 character standard set out in section 100, four pertain to population – which is likely not
13 relevant in this case because the territory does not have a permanent resident population.
14 The remaining three subparagraphs focus on the suitability of the territory for community
15 purposes, the extent of existing and reasonably anticipated transportation patterns and
16 facilities, and finally, natural geographical features and environmental factors.

17
18 The sole purpose that Dillingham proposes for the territory is to provide a
19 tax situs for revenue generation purposes. There are existing transportation patterns which
20 have a significant part of the persons and vessels operating in Nushagak Bay spending some
21 time using the facilities available in Dillingham. However, there does not appear to be
22 formally established plans to change the extent of the facilities beyond those in existence.
23 Even considering the capital facilities and use patterns indicated by petition, the natural and
24 geographical features of Nushagak Bay do not particularly favor annexation to Dillingham.

1 Rather, the bay is just as connected to other cities and villages of the region. The amount of
2 fish Harvested from the two fishing districts and delivered to processors located outside of
3 Nushagak Bay proves this point. To the extent these fish are delivered to land-based
4 processors, the municipalities in which they are located have as strong a connection to
5 Nushagak Bay as does Dillingham. Dillingham cannot make a strong case on the
6 “character” standard that it alone meets the requirements of section 100 of the LBC
7 regulations.
8

9 **4. Petitioner Fails to Prove that will it Devote Resources to Provide**
10 **Essential Services in the Territory.**

11 The LBC’s regulations provide that the economy within the proposed
12 expanded boundaries “must include the human and financial resources necessary to provide
13 essential municipal services on an efficient and cost effective level.”³⁷ Dillingham would
14 not satisfy this standard because it does not propose to offer services in the expansion
15 territory other than tax collection, search and rescue coordination (which it presently
16 provides), and a small expenditure on an oil spill cache (which supplements a state cache
17 already present). Dillingham desires to switch the funding source for many fishery related
18 services now provided from the general funds of the city to raw fish tax revenue.
19 Dillingham has adequate revenue to provide these fishery related facilities and services that
20
21
22
23

24

³⁷ 3 AAC 110.110.
25

1 it presently offers while generating a surplus.³⁸ It seeks the new territory only for revenue
2 generation purposes to make the city more “sustainable.” There should be no question
3 about the feasibility and plausibility of the city’s anticipated operating and capital budgets
4 because it appears that it will be taking in substantially more for the raw fish sales tax than
5 it proposes to spend, or even needs. Petition has the necessary resources without expanding
6 its boundaries and this will provide the existing necessary services. The LBC is requested
7 to find that Petitioner has not met its burden of satisfying the standards imposed by 3 AAC
8 110.110.
9

10 **5. The Population will not be Sufficiently Stable to Support Annexation.**

11 The LBC regulations require that the population within the proposed
12 boundaries must be “sufficiently large and stable to support the extension of city
13 government”.³⁹ This standard is largely irrelevant to Dillingham’s petition. The new
14 territory will not add new population to the City of Dillingham. Rather, the population that
15 Dillingham claims for the territory is an unstable and unpredictable seasonal workforce
16 involved in the fishery. This temporary population will be influenced by the strength of
17 salmon runs and markets for the catch. These factors are not necessarily associated with the
18 concept of stability.
19

20 Ekuk acknowledges that the annexation standard set out in 3 AAC 110.120
21 is intended to judge the viability of the expanded municipality and that Dillingham with
22

23 ³⁸ See Affidavit of Erickson, Exhibit # 8, Attachment A (most recent audited financial
24 statement of Dillingham reports \$6.5 million of liquid reserves, an unrestricted surplus
equal to 109 percent of the city’s reported FY 09 expenditures).

25 ³⁹ 3 AAC 110.120.

1 over 2000 existing residents would likely have enough population to provide city
2 government within the territory to be added. However, if Dillingham is going to claim
3 seasonal workers as residents of the territory, it should also be answerable as to whether this
4 population is stable enough to meet the standards. For the foregoing reasons Ekuk requests
5 the LBC to find that Dillingham has not presented proof that it satisfies the standard set out
6 in 3 AAC 110.120.

7
8 **6. Annexation of the Territory is not in the Best Interests of the State because it**
9 **Harms the Viability of a Future Borough in the Region.**

10 The LBC regulations interpret and make specific the statutory requirement
11 that the commission consider whether an annexation to Dillingham is in the best interests of
12 the state. The LBC regulations provide that two factors bear on a best interest
13 determination: (1) whether the annexation will promote maximum local self-government
14 and (2) whether the annexation will result in a minimum of local government units.

15 Whether an annexation to a city promotes maximum local self-government
16 is a fairly simple determination. The LBC regulations provide:

17
18 for city ...annexation in the unorganized borough, whether the proposal
19 would extend local government to territory and population of the
20 unorganized borough where no local government currently exists.⁴⁰

21 The petitioner literally does not meet this standard because the government it intends to
22 provide in the territory, tax collection, will not be provided to any population resident there.

23 Dillingham fails to offer other justification for adding unoccupied territory such as an

24
25 ⁴⁰ 3 AAC 110.981(7).

immediate need presenting a clear and present threat to the public, health, safety or welfare of its community.

Respondent believes that the best interest determination must be interpreted broadly to include the concept that best interests of the state may only be achieved by the establishment of the appropriate kind of local government for the region. It cannot be in the best interest of the state to allow a city to annex fishing districts that are socio-economic centers shared with other communities as well, for the purpose of increasing the revenue source of the city. This is contrary to the best interests of the state when other communities are denied access to the wealth of a region that they have strong financial and social interests in. Without access to this wealth, these communities and their residents are more likely to remain dependent on the state for services.

A factor mentioned in the regulations which bears on the best interest determination is whether the annexation would relieve state government of the responsibility of providing local service.⁴¹ The instant annexation petition clearly would not relieve the state government of a single expense. Dillingham makes it plain that the Alaska State Troopers will continue to provide police protection in the territory to be annexed. Nor, will Dillingham assume responsibility for financing the cost of search and rescue in this territory. The capital expense for an oil spill cache to be funded from expected tax proceeds is really supplementary to the state's own cache, so there would be no savings for this either.

⁴¹ 3 AAC 110.135(a)(3).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 The commission can take notice of the history of attempted borough
2 formation in the Bristol Bay region and the part that Dillingham has played in that history.⁴²
3 Ekuk is mindful of the difficulties experienced by Dillingham in attempting to bring
4 regional government to its part of Bristol Bay. In light of the “marginal” financial viability
5 of a borough in the region, this annexation would have a “significant disincentive to
6 formation of a borough in the region.”⁴³ Contrary to the bare assertions made by petitioner,
7 little evidence of substance is provided that there would be enough revenue available from
8 the taxation of raw fish sales to support both Dillingham and a new borough.⁴⁴ With
9 Dillingham having done so much in the past to promote a regional government, it now has
10 possibly abandoned that effort and is seeking to make the city form of government a
11 substitute for a borough. In 1987, the LBC established the precedent that:

12 Annexation of all or substantial portions of Nushagak Bay by a city would
13 diminish the incentive for, and indeed the feasibility of, borough formation.
14 Thus, annexation of the area by any city was determined not to be in the best
15 interests of the state or the region.⁴⁵

16
17 ⁴² See Alaska Department of Community and Economic Development, Chronicle of
18 Borough Developments in the Bristol Bay Region and Update of Revenue Projects
19 Concerning the Proposed Annexation to the Lake and Peninsula Borough (March, 2000)
20 (on file with the Division of Community and Regional Affairs at
21 <http://www.commerce.state.ak.us/dca/lbc/pubs/BBstudy.pdf>).

22 ⁴³ Affidavit of Gregg Erickson, Attachment #1, attached as Exhibit #8.

23 ⁴⁴ *Id.*

24 ⁴⁵ Former Department of Community and Regional Affairs, Report and Recommendation
25 to the Alaska Local Boundary Commission on the Petition of the City of Dillingham for the
26 Annexation of Approximately 421.25 Square Miles of Territory (September, 1987) at p. 15
(on file with the Division of Community and Regional Development). (emphasis added)
Attached as Exhibit # 5.

1 While petitioner's motives are well intentioned, it should realize that the new boundaries it
2 desires would maximize its financial resources to the detriment of adjacent communities. If
3 it is allowed to tap into this source of tax revenue, Ekuk hopes that the LBC will inquire
4 whether the governing body of Dillingham will be supporting the formation of a regional
5 government or service area to benefit the Western Bristol Bay region. An annexation
6 which serves as a disincentive to borough formation in the Dillingham Census Area cannot
7 be in the best interests of the state.

8 For the foregoing reasons Ekuk requests the LBC to find the annexation
9 proposed in the petition is not in the best interests of the state.

10
11 **7. Other Annexations of Water Approved by the LBC are Distinguishable**
12 **from the Present Proceeding.**

13 Dillingham cites to examples of LBC decisions where existing
14 municipalities were allowed to annex unoccupied water area. The thrust of this argument is
15 that the LBC has established a precedent that such annexations are appropriate for a city
16 and therefore, the petition should be granted. This argument presumes that all annexations
17 of territory are similar in character and that a single determination will fit all succeeding
18 petitions. The better view is that each petition must be judged individually on the facts
19 presented. Merely because Togiak was allowed to annex 183 square miles of water should
20 not be the basis for allowing Dillingham to annex 396 square miles of water. A square mile
21 of water is not a fungible commodity. The annexation standards require a deeper analysis.

22
23
24 In resolving the Togiak petition the LBC believed that Togiak proved the
25 "frequency and severity of public safety problems attributable to heavy traffic in liquor in

1 Togiak Bay during the fishing season.”⁴⁶ There was also proof of the futility of efforts to
2 prevent the sale and importation of alcohol within the present municipal boundaries of
3 Togiak.” *Id.* The LBC found that “additional revenues generated by raw fish taxes would
4 enable Togiak to purchase needed equipment such as a boat and to hire trained personnel to
5 enforce the City’s prohibition of the sale and importation of alcohol in the community.”⁴⁷
6 Finally, the LBC indicated that it took this action in part because the legislature failed to
7 establish a special service area in Togiak Bay for the purpose of providing law
8 enforcement. The facts proven by Togiak are clearly distinguishable from the instant
9 petition.

10 Dillingham cites to an annexation approved for the City of St. Paul located
11 in the Pribilof Islands. St. Paul petitioned for the annexation of two islands and waters a
12 distance of three nautical miles out from its land area. The annexation was granted because
13 of the use St. Paul’s residents made of the waters, the need and desire of the city to exercise
14 coastal zone planning in the waters, and the necessity of the city to legally carry out search
15 and rescue powers in these waters to protect residents and others engaged in the developing
16 bottom fishery.⁴⁸ Again, St. Paul was requesting the territory for the legitimate purpose of
17

18
19
20 ⁴⁶ Statement of Decision (Local Boundary Commission, January 18, 1985) at p. 1 (on file
with the Division of Community and Regional Affairs).

21 ⁴⁷ *Id.* at p. 2.

22 ⁴⁸ Statement of Decision In the Matter of the Petition for Annexation by the City of St.
23 Paul, Alaska of Approximately 194 Square Miles Consisting of Otter Island, Walrus Island
24 and the Territory Three Nautical Miles Seaward from These Islands (Local Boundary
25 Commission, January 19, 1986) (on file with the Division of Community and Regional
Affairs).

1 providing necessary services within the territory to be added. The St. Paul proceeding is
2 distinguishable for this reason as well.

3 Dillingham cites the original incorporation of the City of Egegik as
4 supporting its position that it may annex the waters of a fishing district and that it would not
5 be a disincentive to borough formation because Egegik serves as an example of a city and
6 borough exercising concurrent taxation over the sales of raw fish. As for the incorporation
7 of Egegik, it was proposed that the land area of the community be included in the municipal
8 boundaries along with area of the Egegik Commercial Salmon District. The petitioners
9 there supported this request showing a need for the raw fish tax revenues to cover the cost
10 of the new city's port development, land fill, and police powers because the new city would
11 have no other source of revenue. The LBC observed that there was no other community
12 within 40 miles of Egegik and that while the territory for the city was within an organized
13 borough, the borough did not object to incorporation with the territory indentified. In this
14 regard, the LBC stated:

15 The borough's policy stance supporting this incorporation is a significant
16 factor in determining whether the desired additional services can be provided
17 to the community by annexing to an existing city or to an existing service
18 area (of which there are none). According to borough officials, the borough
19 lacks the financial resources and personnel to provide these additional local
20 services on either an areawide or nonareawide basis.⁴⁹

21 The relationship between the Lake and Peninsula Borough and its included cities was an
22 important factor in the LBC's decision which was tailored to the facts presented there. The

23
24 ⁴⁹ Statement of Decision In the Matter of the March 15, 1994 Petition for Incorporation of
25 the City of Egegik at p. 11 (Local Boundary Commission, January 11, 1995) (on file with
26 the Division of Community and Regional Affairs).

**C. THE METHOD OF REVIEW OR RATIFICATION OF THE
DECISION OF THE LBC.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

In 1987, the Department concluded that the legislative review process was appropriate for the annexation of territory including Nushagak Bay because the annexation of land by Dillingham was not supported by affected residents.⁵⁰ A similar circumstance is present for this proceeding. Seasonal populations claimed by Dillingham to extend its community into the new territory may tend to not support Dillingham's petition. The territory to be annexed has no permanent residents. This leaves only residents of the existing city qualified to participate in the municipal election. This presents a fairness issue which the LBC should consider and resolve.

Another aspect of approval is the issue of statewide significance raised by Ekuk. The fishing districts sought to be annexed by Dillingham are in reality part of a larger community. That community extends at least as far as the boundaries of the Dillingham Census Area and perhaps as far as the entire Bristol Bay Region. If this annexation is sanctioned by the LBC, it may well develop that several municipalities will be carved out of this one regional community, each with a government of its own, resulting in a multiplication of facilities and services, increased tax burdens, and inevitable jurisdictional conflict and chaos. The LBC should carefully consider whether ratification of such a far reaching result should be left in the hands of the voters of the City of Dillingham or the Alaska State Legislature. Under these circumstances, the local option method may not provide adequate protection for the public interest.

⁵⁰ Report and Recommendation to the Alaska Local Boundary Commission on the Petition of the City of Dillingham for the Annexation of Approximately 421.25 square miles of Territory (September 1987) at p. 5.

JAMES L. BALDWIN
ATTORNEY AT LAW
227 HARRIS STREET
JUNEAU, ALASKA 99801-1212
PHONE: (907) 586-9988

Ekuk urges the LBC to deny the petition in its entirety, but if it decides to grant the petition for annexation of the Nushagak Bay Commercial Salmon District and the Wood River Sockeye Salmon Special Harvest Area, the LBC is requested to permit further briefing and comment on the question of the appropriate approval method.

D. DESIGNATION OF REPRESENTATIVE.

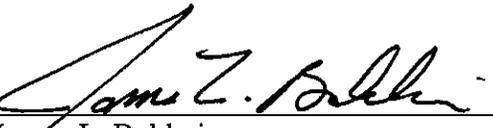
The Native Village of Ekuk designates the following person as its representative for purposes of this responsive brief and any proceedings regarding the Dillingham Annexation Petition:

James L. Baldwin
Attorney at Law
227 Harris Street
Juneau, Alaska 99801-1212
e-mail: redalderlaw@ak.net
Tel: 907-586-9988
Fax: 907-586-9988

The village requests that courtesy copies of all correspondence be also provided to the following person:

Robert Heyano
President
Native Village of Ekuk
PO Box 530
Dillingham, Alaska 99576

Dated this 1st day of October, 2010.

By: 
James L. Baldwin
Counsel for Native Village of Ekuk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

AFFIDAVIT OF ROBERT HEYANO PRESIDENT

NATIVE VILLAGE OF EKUK

STATE OF ALASKA)

)ss.

THIRD JUDICIAL DISTRICT)

I Robert Heyano, upon oath, depose and state that:

1. I am the president of the village council of the Native Village of Ekuk, a federally recognized tribe.

2. Ekuk is located on the east coast of Nushagak Bay, 17 miles south of Dillingham. It is spread out for about 2 miles along a narrow gravel spit that extends from the Ekuk Bluffs in the shape of a hook. The community lies at approximately 58.814986° North Latitude and -158.557684° West Longitude. (Sec. 12, T016S, R056W, Seward Meridian.)

3. The word Ekuk means "the last village down," reflecting that Ekuk is the farthest village south on the Nushagak Bay. The village is mentioned in Russian accounts of 1824 and 1828 as Village Ekouk and Seleniye Ikuk. It is thought that Ekuk was a major Eskimo village at one time. Russians employed Natives as guides for their boats as

they navigated up Nushagak Bay to the trading post at Aleksandrovsk after 1818. Before the North Alaska Salmon Company opened a cannery at Ekuk in 1903, many residents had moved to the Moravian Mission at Carmel. In addition, numerous canneries sprang up during 1888 and 1889 on the east and west sides of the bay, which drew many residents away from the village. Ekuk had a school from 1958 to 1974. Today, the cannery watchman's family are the only year-round residents. In the summer, the village comes alive with cannery crews, commercial fishing, and subsistence activities.

4. Historically a Yup'ik Eskimo village, Ekuk is now used only as a summer commercial and subsistence-use fishing site with an operational salmon processing plant. Many families have set net sites in Ekuk.

5. During the summer months the tribal government in partnership with Bristol Bay Area Health Corporation and Ekuk Fisheries maintains a health aide and clinic in the village area.

6. Air transport is the most frequent means of getting to Ekuk. Ekuk Village Council owns and maintains a 1,200' long by 40' wide dirt/gravel airstrip. Scheduled and charter flights are available from Dillingham during the summer months. A private dock is in use in connection with the processing plant. The cannery has two docks. Clark's Point, two miles north, can be reached by snowmachine during winter and all terrain vehicle in the summer.

7. The Wards Cove Packing Company closed in 2002. During its peak, it employed 200 workers each summer, providing a market for about 80 commercial fishing boats and over 160 beach set net sites. The cannery reopened in 2004 Under the

management of Ekuk Fisheries. The cannery is now the principal facility for processing salmon caught from set net sites on Ekuk Beach of Nushagak Bay.

8. Ekuk cooperates with the Clarks' Point Village council in an effort to resolve a landfill problem shared by these two communities. Ekuk is without a landfill to handle the trash produced from the various fishing operations and habitations in the vicinity of the village. Clark's Point has a landfill but has been notified that the landfill used by the residents of the City of Clark's Point must be relocated further from the state funded airport for safety reasons. Ekuk presently covers the cost of the operation of a waste disposal burn box that handles only a part of the trash accumulated in the village area. Ekuk and Clark's Point are actively planning for a new landfill to be operated by the city. As a part of this plan Ekuk and Clark's Point would jointly work for funding and construction of a road between Ekuk and Clark's Point which would provide access to the landfill and provide an all weather road connection between the two communities. A route alternatives map is attached to this affidavit which shows the intended road and landfill facility.

9. The road would also allow Ekuk and Clark's Point the option of sharing costs for services for police protection and public health aide services. Health aides are now located in both places during the summer months. This would permit these two communities to avoid duplication of services.

10. Ekuk maintains the only source of potable water outside of the cannery available to the set netters in the area of the village. Ekuk owns and, beginning with the

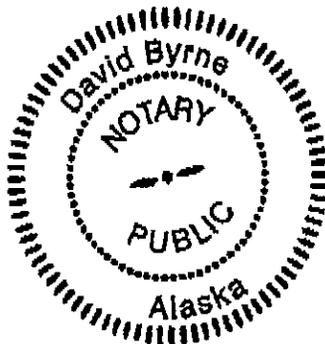
2011 season, will operate an ice machine that will sell ice to set netters involved in the Nushagak fishery.

11. During the fishing season approximately 200 persons are present in the vicinity of the village and are involved in set netting and subsistence activities. These persons reside in various places, including Dillingham, Aleknegik, outside the state of Alaska and other places within the state. A part of the set netters operating within the village are members of Ekuk village.

Dated at Dillingham, Alaska this 29 day of September, 2010.

Robert Heyano
Robert Heyano

SUBSCRIBED AND SWORN TO before me this 29 day of September, 2010.



David Byrne
Notary Public in and for the State of Alaska
My commission expires: 7-26-2014

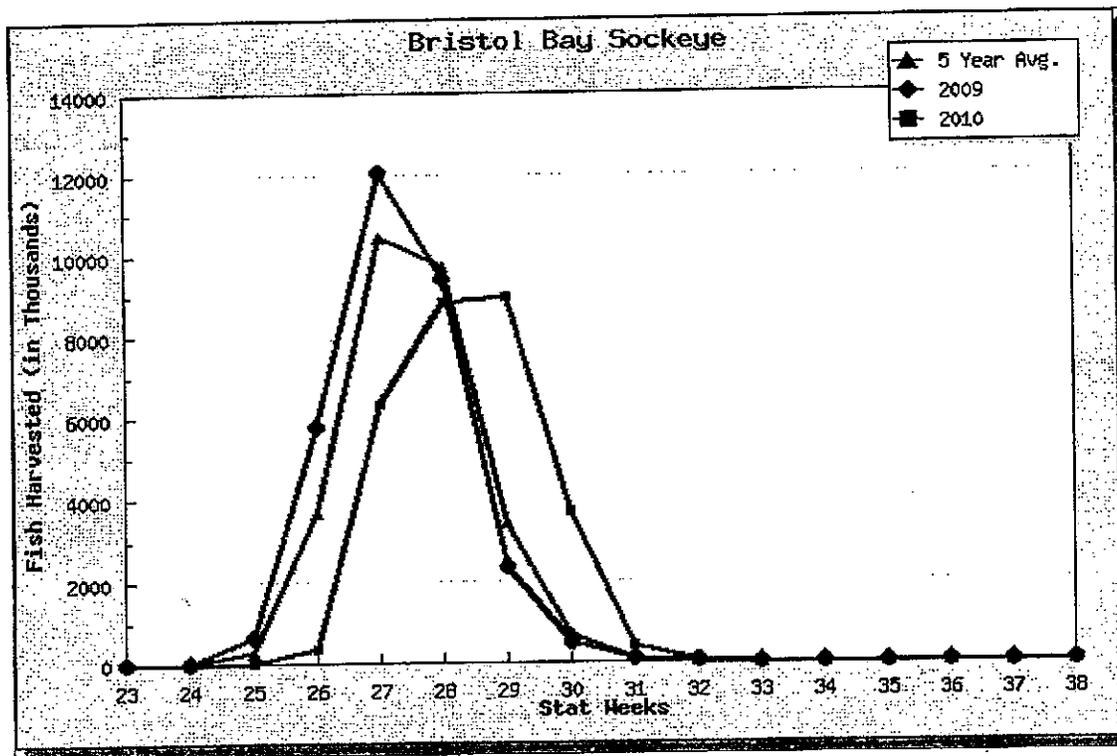


Commercial Fisheries

www.cf.adfg.state.ak.us

2010 Bristol Bay Inseason Sockeye Salmon Harvest Timing

(As Compared to 2009 and 5-year Average)



Total weekly catch is plotted on the last day of the statistical week.

[2010 Preliminary Alaska Salmon Catches - Blue Sheet](#)

[2010 Inseason Alaska Salmon Summary](#)

[Related Statewide Salmon Catch Stats/Fishery Updates](#)

Inseason Harvest Timings for Other Fisheries or Areas of the State:

[AK Peninsula Sockeye Salmon](#) | [Bristol Bay Sockeye Salmon](#) | [Chignik Sockeye Salmon](#) | [Cook Inlet Sockeye Salmon](#)

[Copper River Sockeye Salmon](#) | [Kodiak Sockeye Salmon](#) | [Kodiak Pink Salmon](#) | [Kuskokwim Chinook Salmon](#)

[Nushagak Chinook Salmon](#) | [PWS Pink Salmon](#) | [SE Pink Salmon](#) | [Statewide Sockeye Salmon](#)

[Statewide All Salmon Species](#) | [Yukon River Chinook Salmon](#)

[CF Home](#) | [Salmon Forecast](#) | [Top of Document](#)

Regional Salmon Homes: [Southeast](#) | [Central](#) | [AYK](#) | [Westward](#)

Contact: dfg.dcf.info@alaska.gov