



City of Dillingham

**Responsive Brief on Reconsideration of the December 20, 2016
Decision in the Matter of Petition to Annex THE WEARY/SNAKE RIVER
TRACT, THE SNAKE RIVER SECTION AND IGUSHIK SECTION OF THE
NUSHAGAK COMMERCIAL SALMON DISTRICT, AND THE IGUSHIK
VILLAGE TRACT, CONSISTING OF 118 SQUARE MILES OF WATER AND
37 SQUARE MILES OF LAND,
Using Legislative Review Method**

January 19, 2017

BOYD, CHANDLER & FALCONER, LLP

BY:

A handwritten signature in blue ink, appearing to read "B. Chandler", is written over a horizontal line.

Brooks W. Chandler
Attorney for City of Dillingham

The Local Boundary Commission (“Commission”) has improperly granted reconsideration of its decision approving Manokotak’s annexation petition in response to the request submitted by Ekuk¹. Without waiving any rights or arguments regarding the improper grant of reconsideration², the City of Dillingham submits this responsive brief as provided for by the Commission’s January 10, 2017 order.

Upon reconsideration the Commission should approve an enlargement of Manokotak boundaries that mirrors the Commission’s decision on Dillingham’s petition. Only sufficient territory to include the Igushik set net statistical area plus 300’ of water parallel to the line of mean low tide should be included in Tract B. The Commission appears to have assumed this alteration in the proposed boundary would vary from existing ADF&G fishing boundaries when evidence in the record indicated exactly the opposite. There is an existing ADF&G boundary between the Igushik set net statistical area and the rest of Tract B. The Commission’s failure to consider this ADF&G boundary when setting the boundary between Dillingham and Manokotak should be corrected upon reconsideration of the Commission’s approval of Manokotak’s annexation petition.

It appears what Dillingham requests is consistent with what a majority of Commissioner’s preferred at the time Manokotak’s petition was approved. During the December 1, 2016 decisional meeting Commissioner Hargraves repeatedly stated Manokotak’s petition did not meet the standards for annexation. Excerpts of the hearing transcript with these statements highlighted are attached. For example, as to 3 AAC 110.090 Commissioner Hargraves stated, “standard is not met”³. As to 3 AAC 110.130(a), Commissioner Hargraves “questions the entire petition”⁴. Regarding whether the petition was in the best interests of the state Commissioner Hargraves stated, “I cannot believe that people at the constitutional convention foresaw a second-class city of this configuration and size” and “I don’t see how it benefits the state one iota”⁵. Yet on the motion to approve the entire Manokotak petition Commissioner Hargraves voted yes⁶.

ADF&G Statistical Areas, Fish Ticket Reporting and Fish Tax Collection Favor Excluding Most of Tract B

At the December 1, 2016 decisional meeting there were a number of Commissioners who felt only the set net area including Igushik Beach uplands plus waters immediately adjacent thereto should be included in an expanded City of Manokotak. For example, Commissioner

¹ Dillingham’s reference to “Ekuk” also includes the Native Villages of Clark’s Point and Portage Creek and the City of Clark’s Point.

² In summary, these include that it is not a “substantial procedural error” to either; 1) have followed Commission regulations on reconsideration, or 2) for Commissioners to have not known about the reconsideration regulation. And, the Commission did not “fail to consider” any of the regulatory factors for annexation.

³ Dec. 1 Transcript p. 21, (attached).

⁴ Dec. 1 Transcript pp. 37-38.

⁵ Dec. 1 Transcript pp. 69, 82.

⁶ Dec. 1 Transcript p. 113.

Harrington stated it was “just that massive inclusion of the bay that I have problems with”⁷. Commissioner Wilson suggested extending a line “partway” from Tract A continually down to the very bottom of Tract B made sense because “Their basic need is along the shore, not way out in the bay”⁸.

The December 20, 2016 decisional document glosses over these expressed Commissioner statements. For example, in discussing 3 AAC 110.090 and 3 AAC 110.100 in its findings and conclusion, Tract B is not mentioned⁹.

Including the entire Tract B within the City of Manokotak was claimed to be based on a finding “Tract B is made up of established statistical areas set by the Alaska Department of Fish and Game”. The related finding was “splitting this section of the Nushagak District further than the way it is described by ADFG for Manokotak is impractical”¹⁰. Both of these are misstatements which fail to consider the Fish and Game boundary between the Igushik set net fishery and the Igushik drift fishery. The Commission used the wrong Fish and Game boundary in establishing the boundary of the City of Manokotak.

The Igushik set net area is ADF&G statistical area 325-11. This distinct ADF&G statistical area is reflected on fish tickets submitted by processors and Igushik set net permit holders fishing within Tract B¹¹. By far the predominate statistical area reported on fish tickets, which include fish caught by drift permit holders within Tract B, is 325-00¹². This statistical area includes fish harvested both in Tract B and outside Tract B. If the Commission wanted to be “practical”, only statistical area 325-11 should be included within the expanded boundaries of Manokotak.

Doing so will make things a lot easier for collection of fish tax by Dillingham and Manokotak. This was explained in detail by Ms. Brito at hearing in Dillingham and also discussed in detail in Dillingham’s responsive brief¹³. In summary, Igushik set netters fill out fish tickets identifying a specific statistical area. This means it is simple to collect and remit fish tax on fish caught by set net permit holders. But fish caught within Tract B by drift fishermen are not reported as a distinct statistical area. These fish are combined with fish caught outside Tract B in a single delivery to the processor and identified on fish tickets as having been harvested in statistical area 325-00. This means differentiating between fish subject to the Dillingham fish tax and fish subject to the Manokotak fish tax will involve lots of guesswork. Given these facts, including all of Tract B within Manokotak’s boundaries does not allow for the

⁷ Dec. 1 Transcript p. 35.

⁸ Dec. 1 Transcript pp. 17, 47.

⁹ Statement of Decision [Manokotak] pp. 2-3.

¹⁰ Statement of Decision [Manokotak] p. 4.

¹¹ Exhibit J to Dillingham’s February 26, 2016 Responsive Brief, (attached).

¹² The Igushik drift harvest statistical area 325-10 is only identified on fish tickets when the Igushik District is the only area in Nushagak Bay open for drifters. This happens infrequently. Nov. 30 Hearing Transcript pp. 89-94 (Testimony of Ms. Brito).

¹³ Exhibit A (February 26 Responsive Brief Excerpts). Nov. 30 Hearing Transcript pp. 89-94.

efficient and economical tax collection required by 3 AAC 110.970(c)(3). The essential municipal service of levying and collecting taxes can be most efficiently accomplished by including most of Tract B within the enlarged City of Dillingham boundary.

That it is “practical” for the Commission to consider the ADF&G boundary between the Igushik set net fishery and the Igushik drift net fishery is evidenced by the Commission’s use of just such a boundary a few minutes after approving Manokotak’s petition on December 1, 2016. The Commission approved Dillingham’s petition with amended boundaries based on the ADF&G boundary between statistical areas established for set net fisheries (325-31, 325-32, 325-33, and 325-34¹⁴) and statistical area 325-30 which encompasses only the Nushagak Bay drift fishery¹⁵. If it was “practical” to reduce Dillingham’s boundary to exclude east side set net waters, it is equally “practical” to reduce Manokotak’s boundaries to exclude Igushik drift fishing waters located more than 300’ off shore of the mean low tide line adjacent to Igushik beach¹⁶.

For all of these reasons, Dillingham requests that upon reconsideration the Commission should divide Tract B at the boundary of ADF&G statistical area 325-11 and preserve a transportation corridor to statistical area 325-11.

Most of Tract B Should be Included Within the City of Dillingham

For the reasons stated in Dillingham’s Responsive Brief on Reconsideration of the Commission’s December 27 Written Decision on the Dillingham annexation petition, (which Dillingham incorporates herein in their entirety by reference), the remainder of Tract B should be included within the expanded boundaries of the City of Dillingham.

¹⁴ Dec. 1 Transcript p. 173, Statement of Decision [Dillingham Petition] p. 6.

¹⁵ Statement of Decision [Dillingham Petition], p. 6, Exhibit J to Feb 26 Responsive Brief.

¹⁶ 5 AAC 06.331(c) limits set nets to 50 fathoms (300’) in length. 5 AAC 06.331(i) requires set nets to be anchored to the mean low tide line.