

LOCAL BOUNDARY COMMISSION
STATE OF ALASKA

In the matter of the Petition for Annexation)
of the Weary/Snake River Tract, the Snake)
River Section and Igushik Section of the)
Nushagak Commercial Salmon District, and)
the Igushik Village Tract, altogether consist-)
ing of approximately 37 Square Miles of Land)
And 118 Square Miles of Water to the City of)
Manokotak)

R E C E I V E D
SEP 09 2015
Local Boundary Commission

In the matter of the Petition for Annexation)
of Nushagak Commercial Salmon District)
Waters and Wood River Sockeye Salmon)
Special Harvest Area Waters, together con-)
sisting of approximately 396 square miles of)
Water and 3 square miles of land (small)
islands) to the City of Dillingham)

REQUEST FOR CONSOLIDATION OF COMPETING ANNEXATION PETITIONS
SEEKING ANNEXATION TO THE CITY OF MANOKOTAK AND TO THE
CITY OF DILLINGHAM, AND FOR POSTPONEMENT OF PROCEEDINGS
RELATING TO CITY OF DILLINGHAM ANNEXATION AS NECESSARY
TO ALLOW FOR CONSOLIDATION

The Petitioners for Annexation of certain lands and waters on the western side of Nushagak Bay in the Bristol Bay Region to the City of Manokotak¹ request consolidation of proceedings relating to their petition for annexation with proceedings under the pending Petition for Annexation to the City of Dillingham of the Nushagak Commercial Salmon District, seeking annexation of all of Nushagak Bay. Consolidation is authorized under LBC regulation 3 AAC 110.430, which provides:

¹ Petitioners for Annexation to the City of Manokotak delivered their completed petition to the Department of Commerce, Community and Economic Development on Tuesday, September 1, 2015, but the department has not yet completed its technical review of the petition under 3 AAC 110.440 so as to accept the petition for filing. The department has stated that it has 45 days from its receipt of the petition within which to conduct the technical review.

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3 AAC 110.430. Consolidation of petitions. If two or more petitions pending action by the commission affect all or some portion of the same boundaries, the chair of the commission may consolidate the informational session, briefing schedule, department reports, commission hearing, decisional meeting, or other procedure under this chapter for one or more of those petitions. The commission may consider relevant information from concurrent or conflicting petitions during the process of rendering its decision on any one petition.

The Petition for Annexation to the City of Manokotak affects a portion of the same boundaries sought by the Petition for Annexation to the City of Dillingham. Dillingham seeks annexation of the entire Nushagak Commercial Salmon District, which encompasses essentially all the waters of Nushagak Bay. The City of Manokotak seeks annexation of three tracts, of which Tract B corresponds to the Igushik section (subdistrict) and Snake River section of the Nushagak Commercial Salmon District. Both of these sections within Tract B are on the western side of Nushagak Bay and thus include a portion of the same waters sought for annexation to the City of Dillingham.² Because of the direct conflict between the two petitions for annexation, there is no good reason to deny consolidation of further proceedings under each petition.

The Manokotak annexation petition and this request for consolidation are both timely under the LBC's scheduling regulation, 3 AAC 110.640(c) which provides:

As provided under 3 AAC 110.430, the commission may postpone proceedings on a petition that has been

² The area proposed for annexation to the City of Manokotak is depicted in the map appearing at Exhibit A-4.1 (p. 55, Annexation Petition) of the Manokotak petition; and the map depicting the entire Nushagak Bay area sought for annexation to the City of Dillingham is shown by the map appearing at p. 30 of the Dillingham petition.

accepted for filing to allow concurrent consideration and action on another petition that pertains to some or all the same boundaries and that has either been accepted for filing or is anticipated to be filed. The commission may postpone the proceedings for an anticipated competing petition only if the anticipated competed petition is received by the department no later than 90 days after the date of the first publication of notice of the earlier petition under 3 AAC 110.450. (Emphasis added.)

The public notice of filing of the Dillingham Petition for Annexation occurred on June 18, 2015; 90 days thereafter is September 16, 2015. The Manokotak petition was received by the department for technical review on September 1, 2015, 15 days prior to the 90 day deadline.

While the foregoing regulation retains the discretion of the LBC to grant or deny a request for consolidation, consolidation of further proceedings under these two petitions is fully warranted as a substantive matter. It is also consistent with practical procedural conditions, because consolidation would not appear to delay consideration by the Legislature of either petition during the first ten days of its 2017 regular session, as is required for the legislative review type of annexation utilized by both petitions.

A. Substantive Issues Relating to the Competing Petitions
Warrant Consolidation

In weighing the substantive merits of the two petitions, consolidation will facilitate the Commission's concurrent and side-by-side review of facts, evidence and testimony offered on behalf of each competing petition for the same areas of Nushagak Bay. The Manokotak petitioners will demonstrate, as their petition documents, that residents of Manokotak and of their summer fishing village in Igushik heavily dominate

the commercial fishing in the Igushik subdistrict section sought in the Mankotak petition, with substantially fewer Dillingham residents fishing this area. Consolidation would facilitate the Commission's direct comparison of such facts and evidence in order to reach a reasoned decision addressing both petitions. The facts, evidence and testimony submitted by each petition regarding the contested area will be directly relevant to the Commission's consideration of both petitions, and inform its decisions on each.

The City of Dillingham's prior petition for annexation, submitted June 14, 2010 and later rejected as an inappropriate filing by the Superior Court in Ekuk vs. Local Boundary Commission, case No. 3DI-12-00022CI in 2014, did not provide a suitable vehicle for the Commission's side-by-side comparison of the respective connections of Manokotak and Dillingham with the contested area, the Igushik fishing section. Manokotak and its residents were prejudiced by Dillingham's inappropriate use of a local option (as opposed to legislative review) annexation, which deprived Manokotak of the ability to participate in a pre-filing hearing, pursuant to 3AAC 110.425(a). Manokotak's later limited opportunity to affect the outcome was prejudiced by its exclusion from the pre-petition process. As noted by the Court in its May 16, 2014 Order on Appeal in Ekuk vs. LBC:

Here the City chose to proceed by local action, so it did not hold a public hearing prior to filing the annexation petition. Rather, the City merely placed copies of its proposed petition in three physical locations in Dillingham and on Dillingham's website, several weeks before filing the petition on July 2, 2010. It was not until late July that the city even provided copies of the

petition to the villages. Written comments on the petition were allowed until October, 2010, but the public hearing on the petition was in Dillingham on April 25, 2011 almost ten months after filing and only a day before the Commission approved the petition. Thus, by the time local citizens were able to express their views on the petition, the petition had already been finalized, and, indeed, the Commission was about to render its decision. . . . Having found that the city should have proceeded by legislative review, the Court concludes that the failure to hold a prefiling hearing violated the respondents' due process rights. [Citations omitted.]

Order on Appeal, pp. 14-15. The court concluded that this process “. . . substantially infringed on the ability of [Ekuk residents] to participate in the annexation process” (Id. at p. 16) resulting in a denial of constitutional due process. The same may be said of the effect of the limited process on Manokotak residents.

The prior Dillingham petition proceedings before the LBC, which involved a hearing in Dillingham but not in Manokotak, presented the Commission with Dillingham's one-sided view of the two cities' relative connections with the Igushik fishing area. Dillingham's current petition clearly seeks to have the Commission simply “rubber stamp” its first decision, without seriously examining the substantive issues that Manokotak now seeks to present.³ But the Commission should now start with a clean slate in examining the relative merits of the two communities' connections with the contested area, under the standards for annexation. Consolidated petitions, with hearings in Dillingham, Manokotak and perhaps elsewhere in Nushagak Bay will result in the

³ Dillingham's current petition, prior to technical review, went so far as to assert that the Commission was bound by its earlier decision and could not change it, an assertion that was rejected by LBC staff in their April 3, 2015 technical review letter.

Commission being fully informed on both petitions at the appropriate moment in its decision-making process, not after it has decided one of the competing petitions. The Commission will then be capable of arriving at a reasoned, balanced and more defensible decision on both petitions. By treating the two petitions in parity in consolidated proceedings, the Commission can assure that all parties have been afforded fairness and due process, and avoid any appearance that it has already decided the issues on the basis of a prior, tainted process.

Manokotak's request for consolidation should be particularly compelling against the backdrop of the Dillingham petition. Dillingham's petition proposes to annex very large territory; in fact, approval of its petition would render Dillingham by far the largest city in Alaska, in terms of its area. Its aggressive effort to seek annexation of all of Nushagak Bay waters for imposition of a fish tax has triggered opposing response from four cities (Manokotak, Clark's Point, Aleknagik, New Stuyahok) and from the village councils of three villages (Ekuk, Koliganek and Ekwok). All of these are concerned that Dillingham's petition encroaches on areas used by residents of their own city or village. Consolidation of the Dillingham and Manokotak petitions would remove much of the perception, and reality, that important boundary issues affecting fishing villages around Nushagak Bay and its feeder rivers are being wholly driven by the Dillingham petition and its supporters.

B. Consolidation Should Not Delay Legislative Review of Either Petition

As a procedural matter, consolidation at this stage will not delay any legislative review of the Commission's decision regarding the current Dillingham petition.

Assuming that the Manokotak petition is accepted for filing within 45 days from the department's receiving the petition, this will occur by October 15, 2015, approximately four months after the Dillingham petition was accepted for filing. Public comments on the Dillingham petition, which is the next step in its current petition schedule, are due on October 1, 2015. If consolidation with the Manokotak petition occurs, the deadline for comment on the Dillingham petition could be maintained or, alternatively, extended to match the public comment deadline on the Manokotak petition. But the department's preliminary report on the Dillingham petition should be postponed so as to occur in conjunction with the department's preliminary report on the Manokotak petition, and the remaining procedures on each petition, including hearings, should be consolidated.

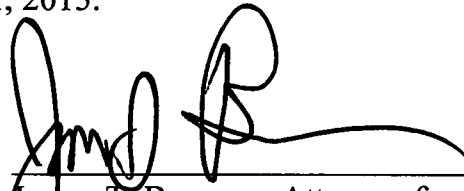
The department's current estimated schedule on the Dillingham petition contemplates the LBC public hearing occurring on May 24, 2016, with a written decision on June 14, 2016, and any potential reconsideration thereof rendered in July, 2016, far in advance of the January 2017 commencement of the next legislative session.

Assuming acceptance and public notice of Manokotak's petition by mid-October, 2015, the Commission's standard timetable would appear to result in a public hearing thereon in late September or early October of 2016. Such scheduling, after completion of the salmon season, would seem ideal for the affected communities. A consolidated hearing on the Dillingham and Manokotak petitions at that time would still allow ample time for the Commission to conduct a decisional meeting and thereafter render a written decision, with reconsideration time exhausted, prior to the commencement of the 2017 legislative session. Even if the Dillingham annexation petition remained under its

present schedule and were not consolidated with the Manokotak petition, it nevertheless would not be eligible for legislative approval until January of 2017, so consolidation should not present any delay in legislative consideration of either petition.

The petitioners for annexation to the City of Manokotak therefore respectfully request that the Local Boundary Commission consolidate some or all of the proceedings under their petition with the remaining proceedings under the Petition for Annexation to the City of Dillingham, and that it postpone some or all of the future proceedings relating to the Dillingham petition to facilitate consolidation.

DATED this 8th day of September, 2015.



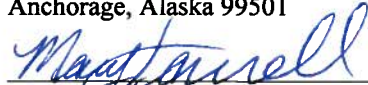
James T. Brennan, Attorney for
Petitioners for Annexation to the
City of Manokotak

CERTIFICATE OF SERVICE

I certify that I am employed at the law offices of Brennan and Heideman, and that on the 8th day of September, 2015, I caused a true and correct copy of the foregoing document to be served via regular U.S. Mail, postage prepaid, on:

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