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MEMORANDUM

February 13, 2020

SUBJECT: Person as defined in AS 01.10.060(8)
(Work Order No. 31-LS0811K)

TO: Representative John Lincoln
Attn: Rose Foley

FROM: Marie Marx 
Legislative Counsel

You have asked whether "person" as defined in AS 01.10.060(8) includes "a federally recognized tribe, whether or not that tribe is incorporated in the State of Alaska" for purposes of nominating water for designation as outstanding national resource water. I understand your question to refer to a federally recognized tribe or a corporation organized under 43 U.S.C. 1601 et seq. as amended (Alaska Native Claims Settlement Act) (a Native corporation). Unfortunately, the statutory language relating to this issue is ambiguous, and I recommend that the draft bill clarify this issue.

Section 1 of the draft bill requires that the Alaska Outstanding Resource Water Advisory Commission establish a process for a "resident of the state" to nominate water for designation as outstanding national resource water. AS 01.10.055 explains how a "person" generally establishes residency in the state. AS 01.10.060 provides that in the laws of the state, unless the context otherwise requires, "person" includes "a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person." How these provisions would interact and apply in the context of a nomination by a federally recognized tribe or a Native corporation is unclear, and I could not find any Alaska statutory authority or case law clarifying the issue. If a federally recognized tribe or a Native corporation is not considered a "resident of the state," it would not be able to nominate water for designation as outstanding national resource water through the process established in the draft bill.¹

¹ Nothing prevents a federally recognized tribe or a Native corporation from submitting a nomination directly to the legislature, and nothing prevents the legislature from considering a nomination submitted directly to it. The legislature may review any nomination it wishes, regardless of whether it has been submitted through the commission.

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Given the uncertainty about whether "resident of the state" includes a federally recognized tribe or a Native corporation, or any other organization, if you would like to ensure each may submit a nomination, I recommend the draft bill define "resident of the state" to explicitly include them.²

Please let me know if I may be of further assistance.

MYM:kwg
20-065.kwg

² The term "resident" is defined throughout the Alaska Statutes and generally refers to an individual. However, *see* AS 16.05.940(28) for an expansive definition of "resident" that includes "a partnership, association, joint stock company, trust, or corporation that has its main office or headquarters in the state."