



City of Bethel

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Julie Sande, Commissioner
State of Alaska Department of Commerce, Community and Economic Development
P.O. Box 100800
Juneau, AK 99811
dcced.commissioner@alaska.gov
BY EMAIL ONLY

Jason W. Brune, Commissioner
State of Alaska Department of Environmental Conservation
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BY EMAIL ONLY

Dear Commissioners Sande and Brune:

On behalf of the City of Bethel (City), I write to express serious, long-standing, and immediate concerns with the State of Alaska's (SOA) Rural Utility Business Advisor Program (RUBA) in the Department of Commerce, Community and Economic Development (DCCED) and the administration of associated grant funding by the State's Department of Environmental Conservation (DEC), Division of Water, Village Safe Water Program (VSW).

To be clear, these issues are not caused by any of the competent and conscientious State employees who administer these programs; rather, the State itself has created a constantly shifting bureaucratic maze that has made it harder than ever to access critical infrastructure funding in Rural Alaska, despite that funding being more readily available than ever.

The State claims it wants sustainable water and sewer systems and is concerned about customers' ability to pay; yet it encourages Bethel—a City with some of the highest utility rates in the nation—to assume state and federal loans when there is grant funding readily available for critical infrastructure projects. Most recently and urgently, and as described further below, the State's arbitrary deduction of a single point off a certain State scoring metric has resulted in the loss of a \$19 million (nineteen million dollars) funding opportunity for water and sewer projects in Bethel. This must change.

Below is a description of both the long-standing issues and immediate barriers that the State has arbitrarily erected to water and sewer infrastructure planning and construction. The State



is preventing Bethel residents and—presumably—many other Rural Alaskans from accessing sanitary water and sewer service in their homes, despite the existence of programs and ample funding streams dedicated to exactly that purpose.

I. THE LONG-STANDING ISSUES

A. Background: Inequitable Access to Water and Sewer in Bethel and Rural Alaska.

As you are likely aware, virtually all households in the United States have piped water and sewer services, but many homes in Rural Alaska, including in Bethel and the surrounding Yukon-Kuskokwim Delta Region, do not. Piped water and sewer services play a key role in individual and public health and basic sanitation. Infants in communities without adequate sanitation are eleven (11) times more likely to be hospitalized for respiratory infections and five (5) times more likely to be hospitalized for skin infections. In villages with very limited water service, one in three infants requires hospitalization each year for lower respiratory tract infections.

Over the last 30 years, the federal government and the SOA have made major strides in bringing Rural Alaska essential water and sewer services, but the biggest barrier is funding. However, in 2021, the Infrastructure Investment and Jobs Act (IIJA) made billions of dollars in federal funding available to tribes and local governments in Rural Alaska to plan and build those facilities. While most of the funding is federal, the SOA provides matching funds through the VSW Program, which also has a project management component that assists communities with project planning, design, and construction.

This is where the problems begin.

Although not mandated by Congress or the Legislature, the SOA has imposed several requirements for funding eligibility, including an approved “Sustainability Plan” and a Minimum Operations & Maintenance (O&M) “Best Practices” score. These metrics were developed to assess systems’ current technical capacity and predict long-term sustainability. While this is a worthy goal, neither metric accurately assesses current technical capacity of systems nor predicts sustainability. Rather, “Best Practices” and the “Sustainability Plan” are serving as gate-keeping mechanisms that undermine the fundamental purpose of these programs, which is to bring water and sewer infrastructure to Rural Alaska.



B. The “Best Practices” and “Sustainability Plan” Barriers.

1. The “Best Practices” Barrier.

As noted above, to be eligible for construction funding, VSW requires an approved Sustainability Plan. It also requires an O&M Best Practices score of 60. But as explained further below, the State’s use of “Best Practices” has resulted in the City’s inability to access critical water and sewer funding.

The SOA developed “Best Practices” in 2014 as a tool to replace an even less effective system: the RUBA “essential indicators,” which required that 27 specific criteria be met. The new “Best Practices” tool was supposed to identify where technical assistance program efforts could be most effective. But after replacing the RUBA assessments, it became clear that the SOA was not using this tool as intended.

VSW asserts that their “Sustainability Plan” and “Best Practices” requirements are necessary to meet Section 1420(a) of the federal Safe Drinking Water Act, which provides that new systems must “ensure that all new community water systems and non-transient, noncommunity water systems commencing operations after October 1, 1999 demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.” However, the Act does not prescribe how this showing is made, and provides for exemptions and variances.

Unserved communities and underserved water and sewer systems are frequently considered financially inoperable without a subsidy. These systems have the same core facilities to maintain, operator certification requirements, and regulatory sampling requirements as a piped system, but without the revenue that piped customers generate. Paying customers in a piped utility help build the economy of scale needed to maximize the “Best Practices” score. Full-time operators, bookkeepers, and regulatory sampling all raise that score. So it’s no surprise that the percentage of homes served with pipes directly correlates with a community’s “Best Practices” score.

Unserved communities average approximately 40 points, closed haul communities like Bethel average 45 points, and piped communities average 62 points. These averages and other data analyses show that it is the lack of a piped system itself that often leads to a low “Best Practices” score. Obviously, this creates an ironic “Catch-22” that would be almost laughable if the stakes were lower. Existing piped systems raise a community’s “Best Practices” score,



but communities need a high “Best Practices” score to qualify for funding to construct piped systems in the first place.

2. The “Sustainability Plan” Barrier.

First-time piped service projects requesting construction funding for a project to install piped water and/or sewer must have a completed “Sustainability Plan” approved by a “Multi-Agency Review Committee.” A key component of this Plan is the “Affordability Matrix,” which sets the maximum affordable residential rates based on the calculated affordability for the lowest quintile of the community. If this requirement were in place when existing piped systems were constructed, not a single piped water system in the Yukon-Kuskokwim Delta would have been built, including in Bethel. Yet none of these systems have suffered a catastrophic failure and have been operating successfully for many years with high collection rates.

The “Sustainability Plan” framework is built on deeply flawed data. It relies on U.S. Census data and socio-economic indicators to assess the economic burden of water and sewer bills on families. But the results of that analysis are not contextualized at the community level. For example, many Rural Alaska villages are a mix of economic systems composed of subsistence and cash economies. Because many households engage in subsistence activities, their need for cash to purchase food is likely lower than households in other parts of the U.S. Many of these communities also qualify for other subsidies such as the heating assistance program, which are not captured in the Census data and other metrics used to develop the framework. But they do lower the monthly cash burden for families and make more money available for water and sewer. Additionally, the metric captures economic burden, but not willingness to pay. Published peer-reviewed research from around the globe and real-world examples in Rural Alaska show that communities are willing to pay for services that can improve their health and standard of living.

Clearly, the “Sustainability Plan” is intended to ensure the long-term viability of a piped water system, which is an important and worthwhile goal. But neither the “Sustainability Plan” (nor “Best Practices”) accurately evaluates the technical capacity of systems nor predicts their long-term sustainability. In short, “Best Practices” is a poor predictor of ability to operate a system, and the “Affordability Matrix” requirement of the “Sustainability Plan” is an unrealistic measure of a household’s willingness to pay for essential water and sewer services.



II. THE IMMEDIATE ISSUE

A. Arbitrary Gatekeeping by the State, Inconsistent Scoring, and Lack of Notice: Bethel's Capital Improvement Project (CIP) Application and the Loss of Access to \$19 Million in Funding Because of the State's Deduction of a Single Point.

The State refuses to allow the City of Bethel to even apply for capital improvement funds because of a one-point deficiency in the City's "Best Practices" score. As a result, the City is being prevented from even seeking \$19 Million in construction funding for a new water and sewer sanitation project. Inexplicably, the City's Fiscal Year 2023 "Best Practices" Score was originally a 49—28 points lower than its Fiscal Year 2022 "Best Practices" score, despite the City submitting almost an identical tranche of documents to RUBA for scoring purposes.

The City completed its Community-Wide Piped Water and Wastewater Preliminary Engineering Report and submitted it to DEC for review and approval. The first phase in the twelve-phase plan to pipe the City is to construct a water distribution center on the highway. This project is expected to cost \$19,046,969 and is the project for which the City is urgently seeking funding.

On February 6, 2023, the VSW notified the City and other interested stakeholders by letter that state and federal grant funds would be released through the VSW Capital Improvement Project (CIP) competitive application process. In that letter, the VSW stated that applicants needed a Spring 2023 O&M "Best Practices" score of at least 60 "to be eligible to apply for a CIP construction project," and that applicants' "Best Practices" scores would arrive in mid-March, at which time the State would also notify the City of its "eligibility to apply for CIP construction funding."

As noted above, when the City's "Best Practices" score arrived, it was initially a 49 out of 60. The City asked the State to complete an off-cycle best practices scoring and was denied, even though the letter stated that Bethel is eligible if it has a funded CIP construction project, which it does—the Bethel Heights Water and Sewer Improvements Project. The State agreed to review the documents submitted by the City and rescore them. The State decided to award the City 10 more points in the Revenue category, apparently having just discovered that the City is collecting sufficient water and sewer revenues to cover expenses.

Among the scoring elements, RUBA asked the City to submit a budget ordinance showing the City Council's adopted FY 2023 budget. The City received zero points in the budget category, despite sending RUBA the City Council's FY 2023 budget ordinance, because the State believed the budget did not include revenues (it did—and it also showed that revenues



exceeded expenses) or a “cover sheet stating that Council has seen and formally approved the budget.” The City Council’s budget ordinance is law appropriating public funds. The State should not require a “cover sheet” to attest to its veracity.

The State also deducted points because of a known paperwork issue with the Internal Revenue Service. Specifically, the IRS informed the City that a particular form was no longer required, but has failed to input that information into its system. The State understands that this form is no longer required, but because the IRS has not updated its database to reflect that fact, the State claims that the IRS “can still assess fines for noncompliance” and therefore deducted points from the City’s “Best Practices” score. The City has been working with the IRS to address this issue, but has been unable to reach a human being at the agency to correct it. Nonetheless, the State penalized the City for an IRS-caused technical error that it is well aware does not reflect reality or any tax obligation on the part of the City.

Another aspect of the “Best Practices” scoring mechanism is the lack of State guidance and help provided to cities like Bethel. Even if the City’s budget ordinance was deficient because it did not reflect revenues—which, once again, it did—then the State should have informed the City before the score arrived in March 2023. The State should have given Bethel a chance to correct the budget ordinance, not penalize the City with a huge score deduction three months after the document was submitted. The State could easily have met with Bethel officials in person (it has offices right next to City Hall) and explained exactly what documents needed to be submitted and when, and how those documents should look. In other words, the State should be trying to help the City access this funding—not acting as obstructionist gatekeepers.

Finally, and without notice, RUBA updated its 2010 “Best Practices” guide in April 2023, in the middle of the evaluation period, thus all but guaranteeing that applicants could not follow the new guidance.

B. The Ask.

The City respectfully requests that you immediately make Bethel eligible to apply for CIP funding and correct the inequitable and mistaken deduction of the one point that is standing in the way of \$19 million in critical infrastructure funding. More broadly, the City requests that the “Best Practices” and “Sustainability” barriers be removed as gatekeeping functions for water and sewer facilities planning and construction funding. The City further requests that the State provide adequate notice of any changes to its guidance, and create a checklist of document requirements by date from year-to-year. The State must then score the documents the same way every time, rather than moving the goal posts midway through the game.



III. CONCLUSION

Piped water and sewer infrastructure is the single most important tool to improve health outcomes in Rural Alaska and is critical for compliance with the Safe Drinking Water Act. Piped water and sewer prevent disease and suffering and save money and lives. Yet the State's current administration of water and sewer infrastructure grants and arbitrary gatekeeping of their funding is perpetuating longstanding health disparities in Bethel and the surrounding region.

Real world data belies the State's claims that "Best Practices" and "Sustainability Plan" requirements predict a utility's technical capacity or long-term sustainability. They are simply unnecessary barriers preventing Bethel and other communities from accessing funding to plan and build safe drinking water and sewer systems.

With IIJA funding, Bethel is finally positioned to build a long overdue piped water and sewer system. My job as the Bethel City Attorney is to help the City minimize its liabilities and maximize its entitlements, and to advocate zealously for my client's interests. Bethel is entitled to water and sewer infrastructure funding. We respectfully ask the State to stop obstructing its own citizens' health and well-being.

Sincerely,

Libby Bakalar
City Attorney

cc by email only:

Randy Bates, Director, Division of Water, DEC
Jason Bluhm, Program Manager, VSW
Sandra Moller, Director, DCRA
Dan Winkelman, President and CEO, Yukon-Kuskokwim Health Corporation
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Valerie Nurr'araluk Davidson, President/CEO, Alaska Native Tribal Health Consortium
State Representative CJ McCormick
State Senator Lyman Hoffman
Nils Andreassen, Executive Director, Alaska Municipal League
Bethel City Council