

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672  
5195 SCRA SB 50

If there is a governing body already set up in the Community at the time this Constitution is accepted, the membership may decide to keep that governing body, or it may choose a new form of government.

SEC. 2. *Choice of Officers.*—The Community shall at the same time decide how members and officers of the governing body shall be chosen and how long they shall serve. The Community shall then choose the members to serve on the governing body and such officers as may be thought necessary.

SEC. 3. *Meetings of Membership and Governing Body.*—The Community shall decide when and how often there should be meetings of the whole Community membership as well as of the governing body; also it shall decide what notice shall be given for the calling of meetings and how many members must be present at such meetings in order to do business; and it may make any other rules necessary for the holding of meetings. A general meeting of the whole membership shall be held at least once a year.

SEC. 4. *Record and Report of Community Decisions.*—A record shall be made and kept of all the rules made under sections 1, 2, and 3 of this Article, which record shall be called the Record of Organization of the Native Community of Akiachak. Copies of this record shall be given to the teacher or other representative of the Bureau of Indian Affairs serving the Community. There shall be put in the record the names of all persons chosen to be officers of the Community.

#### ARTICLE IV—POWERS OF THE COMMUNITY

SECTION 1. *Powers F.eld.*—The Community shall have the following powers:

To do all things for the common good which it has done or has had the right to do in the past and which are not against Federal law and such Territorial law as may apply.

To deal with the Federal and Territorial Governments on matters which interest the Community, to stop any giving or taking away of Community lands or other property without its consent, and to get legal aid, as set forth in the act of June 18, 1934, as amended.

To control the use by members or nonmembers of any reserve set aside by the Federal Government for the Community and to keep order in the reserve.

To guard and to foster native life, arts and possessions and native customs not against law.

SEC. 2. *Grants of More Powers.*—The Community may have and use such other powers as may be given to it by the Federal or Territorial Government.

SEC. 3. *Use of Powers.*—The governing body shall put into use such of the powers of the Community as the Community may give to it at general meetings of the membership and shall make reports of its actions to the membership at general meetings.

SEC. 4. *Rule-Making Powers.*—The Community may make rules which are not against law to carry out the words of this Constitution.

#### ARTICLE V—RIGHT OF MEMBERS

SECTION 1. *Right to vote.*—All members of the Community 21 years of age or over shall have the right to vote in Community meetings and elections.

SEC. 2. *Right to speak and meet freely.*—Members of the Community shall have the right to speak and meet together freely in a peaceable way.

SEC. 3. *Right to share in benefits.*—Members of the Community shall have equal chance to share in the benefits of the Community.

#### ARTICLE VI—CHANGES IN THE CONSTITUTION

Changes in this Constitution and By-laws may be made if the changes are approved by the Secretary of the Interior and by majority vote of the Community members voting in an election called by the Secretary of the Interior in which at least 30 percent of the voting membership take part.

#### BY-LAWS OF THE AKIACHAK NATIVE COMMUNITY

##### ARTICLE I—OFFICERS AND THEIR DUTIES

SECTION 1. *Community records.*—The Community or the governing body shall choose one or more members who shall have the duty of keeping records of all actions and decisions of the Community and of the governing body and of giving copies of the records to the representative of the Bureau of Indian Affairs serving the Community.

SEC. 2. *Community funds.*—The Community or the governing body shall choose one or more members who shall have the duty of caring for the Community funds and keeping records of all funds taken in and paid out and giving copies of the records to the representative of the Bureau of Indian Affairs.

SEC. 3. *Officers and agents.*—The Community or the governing body may choose as many officers and agents as it may need to carry out its duties and shall state the length of service and the duties of each officer or agent when he is chosen.

## ARTICLE II—ADOPTION

This Constitution and By-laws shall be in effect when it is agreed to by a majority vote of the Community members voting in an election called for the purpose by the Secretary of the Interior, provided, that at least 30 percent of the voting membership take part. The persons entitled to vote are all the adult native residents in the Akiachak Native Community.

## APPROVAL

This Constitution and By-laws is hereby approved by the Assistant Secretary of the Interior and submitted for acceptance or rejection by the group of Eskimos having a common bond of living together in the Akiachak Native Community, Alaska, in an election called and held under the Instructions of the Secretary of the Interior.

All rules and regulations heretofore promulgated by the Interior Department or by the Bureau of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution and By-laws will be inapplicable to the Community of Akiachak, Territory of Alaska, from and after the date of adoption of this Constitution.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and By-laws.

WILLIAM E. WARNE,  
*Assistant Secretary of the Interior.*

WASHINGTON, D. C., August 6, 1948.

## CERTIFICATION OF ADOPTION

Pursuant to an order, approved August 6, 1948, by the Assistant Secretary of the Interior, the attached Constitution and By-laws was submitted for ratification to the group of Eskimos having a common bond of residence in the Akiachak Native Community, Territory of Alaska, and was on December 3, 1948, duly ratified by a vote of 74 for, and 0 against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended by the acts of June 15, 1935 (49 Stat. 378) and May 1, 1936 (49 Stat. 1250).

ROBERT WASSILI,  
*Chairman, Election Board.*

JOSEPH LOMACK,  
*Secretary, Election Board.*

JACK G. OSKOLKOFF,  
*Government Representative.*

○

BILL SHEFFIELD, GOVERNOR

**DEPT. OF COMMUNITY & REGIONAL AFFAIRS**

**MUNICIPAL & REGIONAL ASSISTANCE DIVISION**

POUCH BH  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-4707

949 E. 36TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508  
PHONE: (907) 561-8586  
PHONE: (907) 561-8182

August 18, 1986  
CERTIFIED # P186066353

PO BOX 348  
BETHEL, ALASKA 99559  
PHONE: (907) 543-3475

PO BOX 41  
NOME, ALASKA 99762  
PHONE: (907) 443-5457

PO BOX 280  
KOTZEBUE, ALASKA 99752  
PHONE: (907) 442-3675

1514 CUSHMAN STREET, ROOM 201  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-7126

PO BOX 10041  
DILLINGHAM, ALASKA 99576  
PHONE: (907) 842-2245

Mr. Willie Kasayulie  
Chairman  
Akiachak IRA Council  
P.O. Box 70  
Akiachak, AK 99551

Dear Mr. Kasayulie:

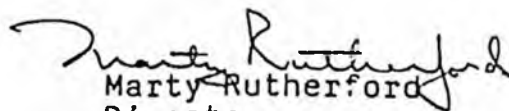
This is to inform you that your Rural Development Assistance grant application has been reviewed by the Department of Community and Regional Affairs. Unfortunately, because of the unique legal circumstance of a municipality still existing, the IRA Council is not eligible to apply for RDA funds. Therefore, your RDA application was not evaluated by the Grant Review Committee.

You may be interested to know that applications for funds totalled in excess of \$6 million, while funding for this round of applications was limited to 28% of that.

If you choose, you may appeal this decision to the Commissioner of the Department of Community and Regional Affairs within thirty days pursuant to 19 AAC 60.130.

Please call Pauline T. Valha at 561-8586 should you have any questions regarding this matter. You may call collect. Thank you for your interest in the Rural Development Assistance grant program.

Sincerely,

  
Marty Rutherford  
Director

Rcvd 12/10/86

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

BEFORE: THE HONORABLE JAMES M. FITZGERALD, JUDGE

NATIVE VILLAGE OF TYONEK,

Plaintiff,

vs.

DONALD PUCKETT, ERNA PUCKETT,  
ALEXANDRA KALOA, ESTHER KALOA,  
FRED SLAWSON, VIRGINIA  
SLAWSON, ALEC CONSTANTINE,  
and OLGA CONSTANTINE,

Defendants.

NO. A82-369 Civil

FRED SLAWSON, VIRGINIA  
SLAWSON, DONALD PUCKETT,  
and ERNA PUCKETT,

Third-Party  
Plaintiffs,

vs.

DONALD STANDIFER, BONNIE  
McCORD, AL GOOZMER, and  
EMIL McCORD, SR.,

Third-Party  
Defendants.

RECEIVED

VOLLINTINE, TAYLOR & CAREY

REPORTER'S TRANSCRIPT

Wednesday, December 3, 1986

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND DECISION

REPORTED BY: JANIS G. ROLLER, CSR, CP

P R O C E E D I N G S

1  
2 THE COURT: I want to place of record now my  
3 decision in Native Village of Tyonek vs. Puckett, et al. and  
4 Slawson, et al., third-party plaintiffs, vs. Standifer, et  
5 al., third-party defendants, A82-369 Civil.

6 This case was argued on motions quite some time  
7 ago. In the course of their arguments, both counsel made  
8 claims of racial discrimination. In reviewing the case, I  
9 have found the issues to be both complex and difficult.  
10 Indeed, the research required on these issues exceeds that  
11 of any other case which comes to mind. It is my purpose now  
12 to place the decision on the record with the hope that, if  
13 time permits, a published decision will be filed in the case.  
14 A transcript of the decision will be prepared and placed in  
15 the record of the case setting forth the reasons upon which  
16 I reach my decision. The parties, if a copy of the  
17 transcript is desired, may order the transcript from the  
18 reporter. It is my intention, upon the filing of the  
19 transcript, to direct the clerk to enter the final order in  
20 this case.

21 Now, turning to the decision, approximately 43 air  
22 miles southwest of Anchorage, on the northwest shore of Cook  
23 Inlet, lies the Village of Tyonek. Tanana Indians, a  
24 subgroup of the Athabaskans, are reported to have inhabited  
25 the surrounding area as early as the eighteenth century,

1 when white explorers and settlers from Russia discovered and  
2 first colonized Alaska. The British navigator Captain James  
3 Cook reportedly observed Athabaskans in the region around  
4 1778 when he mapped Alaska's coastline and explored the  
5 inlet that bears his name. See Darbyshire and Associates,  
6 Tyonek Community Profile (1981); R. D. Arnold, Alaska Native  
7 Land Claims 13 (1978); Federal Field Commission for  
8 Development and Planning, Alaska Natives and The Land 255-57  
9 (1968); see also Claus M. Naske and H. E. Slotniok, Alaska:  
10 A History of the Forty-Ninth State, 18, 27, 31-42, (1979).

11 This proceedings centers around an attempt by  
12 native residents of Tyonek, acting through the Village's  
13 native government established pursuant to the Indian  
14 Reorganization Act of 1934, 25 U.S.C. §§ 473a, 476 (1982),  
15 referred to as the "Native Village of Tyonek," to enforce  
16 two Village ordinances: one prohibiting non-members of the  
17 Village from leasing housing constructed at the Village's  
18 expense, and the other prohibiting non-members from remaining  
19 in Tyonek more than 24 consecutive hours.

20 Tyonek initiated the action by requesting this  
21 court to enforce the two ordinances against four families --  
22 two composed of Village members who "own" Village-subsidized  
23 houses and two composed of non-members seeking to lease those  
24 houses. The four families challenge the validity of the  
25 Village's ordinance prohibiting leasing of the houses,

1 claiming that it violates the federal constitution, the  
2 federal civil rights and fair housing laws, and Alaska law.  
3 The respondents have filed counterclaims against Tyonek and  
4 third-party claims against four of Tyonek's officers.  
5 I conclude that this court lacks subject-matter jurisdiction  
6 over Tyonek's claims, which are based on the Village  
7 ordinances, and, therefore, do not "arise under" federal law.  
8 I further conclude that this court lacks subject-matter  
9 jurisdiction over the respondents' counterclaims and third-  
10 party claims because they are barred by Tyonek's tribal  
11 sovereign immunity and the derivative immunity of its  
12 officers. I, therefore, dismiss Tyonek's claims and the  
13 claims of the respondents.

14           The Tanana Indians, who currently inhabit Tyonek,  
15 have reportedly occupied the surrounding area from as early  
16 as the eighteenth century, when white settlers first  
17 arrived in Alaska. Tyonek appears to have been the site of  
18 a Russian trading settlement in the late eighteenth century  
19 where natives supplied fox pelts to the Russians in  
20 exchange for items of Russian manufacture. That settlement  
21 was destroyed, apparently, because of conflicts between  
22 local natives and the Russians.<sup>1/</sup> See Darbyshire and

23  
24 <sup>1/</sup> The Russian trading settlement was known as  
25 "Tuiunuk," and authorities have indicated that this was  
probably an alternative spelling of Tyonek. See Darbyshire  
and Associates, Tyonek Community Profile (1981). "Tyonek"  
is a Siberian Yakut word meaning "little chief," while  
"Ti-i-u'-nuk" is an Eskimo word meaning the "marsh people."  
Id.

1 Associates, Tyonek Community Profile (1981). Following the  
2 purchase of Alaska in 1867, by the United States, the  
3 American-based Alaska Commercial Company established a new  
4 trading headquarters at Tyonek for the entire upper Cook  
5 Inlet. The post was operating by 1875, and became a major  
6 disembarking point for people and supplies when gold was  
7 discovered at Resurrection Creek near Turnagain in the 1880s.  
8 See id. Although Tyonek has been moved twice since that  
9 time, the village has remained in essentially the same  
10 location. See Darbyshire and Associates, Tyonek Community  
11 Profile (1981).

12           President Woodrow Wilson, in 1915, withdrew over  
13 25,000 acres surrounding the Village of Tyonek and  
14 established the Moquawkie Reservation "for the benefit of  
15 Alaskan Natives of that region." Executive Order 2141,  
16 February 27, 1915. In 1939, the Natives living in the  
17 Village established the "Native Village of Tyonek" by  
18 adopting a constitution and bylaws under section 16 of the  
19 Indian Reorganization Act of 1934, 25 U.S.C. §§ 473a, 476  
20 (1982), and a corporation charter under section 17 of the  
21 act, 25 U.S.C., § 477 (1982), both of which were approved  
22 by the Secretary of the Interior.

23           Article II of the Village constitution and bylaws  
24 limited membership in Tyonek to those individuals then on  
25 the official list of Native residents maintained by the

1 Village, the children of Tyonek members, and other Alaska  
2 Natives who established homes in the Village and were  
3 accepted as members. The constitution provided that Tyonek  
4 members could willingly renounce their membership, could  
5 have it revoked for good cause, or could lose their  
6 membership if they "moved[d] away from the Village,  
7 intending not to return." Article II also authorized Tyonek  
8 to establish any further rules concerning membership as  
9 might be from time to time required.

10 Tyonek's Village counsel, in 1942, adopted Village  
11 Rule No. 4, which prohibits non-members of the Village  
12 (other than government employees) from remaining in the  
13 Village more than twenty-four consecutive hours without  
14 Tyonek's consent.<sup>2/</sup>

15 In 1965, several oil companies paid Tyonek  
16 approximately twelve million dollars for oil and gas

17  
18 <sup>2/</sup> According to official Tyonek records, the precise  
19 wording of Rule No. 4 is as follows:

20 Any white men except government men  
21 or outsider coming in is allow [sic] to  
22 stay only 24 hrs. If weather permits  
23 them to go [sic]. And is not allowed to  
24 bring any liquor [sic]. Article No. 4  
25 have [sic] to be put up in posters. And  
anyone destroying these papers will be  
subject to penalty. Twenty-five dollars  
fine if caught destroying the poster  
[sic].

25 Laws of Native Village of Tyonek, Rule No. 4, May 18, 1942.

1 exploration rights in the area surrounding the Village.  
2 The Tyonek council allocated part of those proceeds to  
3 construct approximately sixty houses in the Village and  
4 established a "Family Plan" under which families comprised  
5 of Village members could apply to the Village for "housing  
6 allowances" to build and furnish new homes. On October 5,  
7 1965, during the construction of the "Family Plan" houses,  
8 the Tyonek council unanimously passed Village Ordinance No.  
9 65-32, which provided that:

10 [T]he interests of members of the  
11 Village in houses which are acquired by  
12 such members by virtue of the Family  
13 Plan of the Village cannot be sold,  
14 conveyed, leased, mortgaged, or  
15 otherwise alienated by any member of the  
16 Village to a person, corporation, or  
17 other legal entity which or who is not a  
18 enrolled member of the Village of  
19 Tyonek, Alaska. It is the purpose of  
20 this [ordinance] to insure that private  
21 interests in houses in the Village or in  
22 the Moquawkie Reservation may only be  
23 held by enrolled members of the Village.  
24 Should any alienation be attempted in  
25 violation of this resolution, the same  
shall be void.

19 Tyonek Village Ordinance No. 65-32, October 5, 1965. <sup>3/</sup>

20  
21 <sup>3/</sup> Ordinance No. 65-32 was amended in 1981 by Tyonek  
22 Ordinance No. 81-1, which retained most of the original  
23 ordinance's language, but added an express prohibition  
24 barring Tyonek members from bequeathing or devising their  
25 interests in Family Plan houses (and the land on which those  
houses are located) to non-members of Tyonek. Tyonek  
Ordinance No. 81-1 provides that:

(Footnote Continued)

1 Title to all houses acquired under the Family Plan was  
2 taken subject to the conditions imposed by Village  
3 Ordinance No. 65-32.

4 Congress, in 1971, enacted the Alaska Native Claims

5  
6 3/ (Footnote Continued)

7 The interests of the tribal members  
8 of the Native Village of Tyonek in  
9 houses acquired by such members by  
10 virtue of the Family Plan, and the land  
11 upon which such houses are located,  
12 shall not be sold, conveyed, leased,  
13 mortgaged, encumbered, bequeathed,  
14 devised, or otherwise alienated, by any  
15 member or any other person or entity, to  
16 a person, corporation, or other entity  
17 which is not or who is not an enrolled  
18 member of the Native Village of Tyonek.  
19 The purpose of this ordinance is to  
20 ensure that private interests in houses  
21 in Tyonek village or in the former  
22 Moquawkie reservation may be held only  
23 by enrolled members of the Native  
24 Village of Tyonek. Any alienation or  
25 disposition in violation of this  
ordinance shall be void. No non-member  
may inherit any member's interest in the  
property described herein, whether by  
testamentary disposition or intestate  
succession, or otherwise. Any such  
purported disposition shall be void, and  
in such event, the village council may  
dispose of the deceased member's  
interest in such property to such of his  
or her heirs who are enrolled members of  
the Native Village of Tyonek as it may  
in its discretion decide, giving  
preference to the heir or heirs who live  
in the village.

24 Tyonek Village Ordinance No. 81-1, July 7, 1981. Tyonek is  
25 not seeking to enforce the provisions added by the 1981  
amendments in this action, nor are the defendants and  
third-party plaintiffs challenging those provisions.

1 Settlement Act, 43 U.S.C., §§ 1601-1628 (1982). Section 19  
 2 of the Claims Act, 43 U.S.C. § 1618, revoked almost all  
 3 native reservations in Alaska, including the Moquawkie  
 4 Reservation. Section 8, 43 U.S.C. 1607, authorized the  
 5 Native residents of each Village or city in Alaska to  
 6 establish a Village corporation, through which they would  
 7 receive land and other benefits under the Claims Act.  
 8 Shortly after the passage of the Claims Act, the Native  
 9 residents of Tyonek formed the for-profit Tyonek Native  
 10 Corporation, to which was conveyed all the lands formerly  
 11 in the Moquawkie reservation.<sup>4/</sup> The Claims Act did not  
 12 expressly change the status of Tyonek or its IRA Village  
 13 government, nor did the Claims Act expressly revoke or  
 14 amend Tyonek's Family Plan or Ordinance 65-32. Tyonek  
 15 Native Corporation has not been directly involved in  
 16 administering Tyonek's Family Plan housing, although it  
 17 currently holds the surface estate of the lands on  
 18 which that housing is located.

19 The present dispute arose in 1981-1982 when two  
 20 Tyonek-member families leased their Family Plan houses to  
 21 two families not composed of Tyonek members. From  
 22 approximately 1977 until 1981, Donald and Erna Puckett and  
 23

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24 <sup>4/</sup> Although Tyonek's residents have established an ANCSA  
 25 village corporation, Tyonek has not organized as a  
 municipality under Alaska law. The village lies within the  
 boundaries of Alaska's Kenai Peninsula Borough, and the  
 Tyonek Village Council is the only village governing body.

\*

1 their four children lived at the Tyonek Timber Camp outside  
2 the Village. Donald Puckett worked at the timber camp.  
3 Erna was employed part of that time as the secretary at the  
4 R. L. Bartlett School in Tyonek, and their children  
5 attended the Bartlett School. In September 1981, most of  
6 the operations of the timber camp were closed down, and,  
7 on September 30, 1981, the Pucketts requested permission  
8 in writing from Tyonek's village council to reside in the  
9 village for the remainder of the 1981-1982 school year.  
10 The council granted permission, and on October 8, 1981, the  
11 Pucketts signed a lease agreement with Esther Kaloa, a  
12 Village member, to lease her Family Plan house until  
13 June 15, 1982.

14 On April 28, 1982, Tyonek Village president Donald  
15 Standifer wrote the Pucketts on behalf of Tyonek to notify  
16 them that they must vacate the Kaloa house at the end of  
17 the school year, which was May 27, 1982. However, the  
18 Pucketts and Kaloa, on April 30, 1982, renewed their lease  
19 agreement for an additional year, until June 25, 1983.  
20 They included a provision in the agreement that: "[S]hould  
21 the Native Village of Tyonek, by act of the council, vote  
22 to remove lessees, by court action, this lease is  
23 automatically voided." on June 8, 1982, Standifer again  
24 wrote the Pucketts on behalf of Tyonek to remind them that  
25 the school year had ended and that their authorization to

1 rent the Kaloa house had, therefore, elapsed. The Pucketts  
2 refused to vacate the Kaloa house.

3 In December, 1981, Fred and Virginia Slawson  
4 sought permission from the Tyonek council to reside in the  
5 Village, but were denied permission. Fred Slawson is a  
6 shareholder of Tyonek Native Corporation and Cook Inlet  
7 Region, Inc., and he and his wife have family in Tyonek;  
8 but the Slawsons are not enrolled members of the Village.  
9 On May 29, 1982, the Slawsons leased the Family Plan house  
10 of Village members Alec and Olga Constantine, and made the  
11 house their residence. The Slawsons, on June 2, 1982,  
12 made a written request to the Tyonek council for permission  
13 to remain in the Constantine house, but they were again  
14 denied permission. The Slawsons continued to reside in  
15 the Constantine house.

16 Tyonek brought this action in 1982 to evict the  
17 Pucketts and Slawsons and to enjoin the Kaloas and  
18 Constantines from leasing or otherwise alienating their  
19 Family Plan houses to non-members of the Village. Tyonek  
20 seeks to enforce Village Ordinance 65-32 against the Kaloas  
21 and Constantines, contending that it subsidized the  
22 construction and furnishing of their houses on the express  
23 condition that the houses be used exclusively by Village  
24 members. Tyonek also seeks to enforce Village Rule No. 4  
25 against the Pucketts and Slawsons because they have remained

1 in the Village for more than twenty-four hours without the  
2 consent of Tyonek.

3 By answer, the respondents have challenged the  
4 validity of Tyonek Ordinance 65-32 under federal and  
5 Alaska law,<sup>5/</sup> and have brought claims for damages and  
6 injunctive relief against Tyonek and several of its  
7 officers. The Pucketts claim that in addition to filing  
8 this action, Tyonek and its president Standifer, vice  
9 president Bonnie McCord, secretary-treasurer Al Gozmer,  
10 and Village administrator Emil McCord, Sr., have engaged in  
11 other actions intended to drive them from the Village.  
12 According to the Pucketts, these included circulating  
13 petitions demanding that the Pucketts leave Tyonek,  
14 spreading rumors impugning the character of Erna Puckett,  
15 and changing Tyonek's policy to require all non-members of  
16 the Village to pay for their electricity, although Tyonek  
17 members receive free electricity. The Pucketts also allege  
18 that their property has been damaged by vandals and that  
19 their house was once stoned by unidentified persons, but  
20 they do not allege that Tyonek's officers were personally  
21 involved in either of these activities.

22 \_\_\_\_\_  
23 5/

23 The defendants challenge the validity of Village  
24 Ordinance No. 65-32, and do not specifically challenge the  
25 validity of either Village Rule No. 4 or Village Ordinance  
No. 81-1.



1 premised entirely upon Village Ordinance 65-32 and Village  
2 Rule No. 4. Tyonek has failed to identify any federal law,  
3 treaty, or constitutional provision upon which it is  
4 relying.<sup>6/</sup> See, generally, Price v. Hawaii, 764 F.2d 623,  
5 628 (9th Cir. 1985).

6 To the extent that Tyonek's ordinances are  
7 equivalent to municipal or borough ordinances, Tyonek's  
8 claims plainly do not "arise under" federal law. See 28  
9 U.S.C., 1331. Even assuming that Tyonek qualifies as an  
10 "Indian tribe" and that its complaint therefore alleges  
11 violations of "tribal" ordinances, this alone is not  
12 sufficient to establish "federal question" jurisdiction  
13 under section 1331. The Ninth Circuit Court of Appeals has  
14 expressly ruled that actions brought to enforce tribal laws  
15 and ordinances do not constitute actions "arising under"  
16 the laws of the United States, and therefore do not qualify  
17 for section 1331 jurisdiction. See Boe v. Fort Belknap  
18 Indian Community, 642 F.2d 276, 279-80 (9th Cir. 1981).

19 \_\_\_\_\_  
20 <sup>6/</sup> While Tyonek's amended complaint indicates that it is  
21 seeking to enforce Village Ordinance No. 65-32 and Rule No.  
22 4, Tyonek's action could also be characterized as one to  
23 enforce the terms of its Family Plan housing contracts with  
24 the Kaloa and Constantine families. Yet even if viewed as a  
25 contract action, Tyonek's action still arises under Alaska  
state contract law and therefore does not provide a basis  
for federal subject-matter jurisdiction. See Gila River  
Indian Community v. Henningson, Durham & Richardson, 626  
F.2d 708, 714-15 (9th Cir. 1980), cert. denied, 451 U.S. 911  
(1981).

1           Moreover, the fact that Tyonek has an IRA  
2 government and that the ordinances involved in this case  
3 were "promulgated . . . under the authority of the IRA"  
4 does not automatically transform this into an action  
5 "arising under" the IRA, since Tyonek's claims "do not  
6 involve a dispute or controversy respecting the validity,  
7 construction, or effect of the IRA" itself. See Boe v.  
8 Fort Belknap Indian Community, at 279; also Littell v. Nakai,  
9 344 F.2d 486, 488 (9th Cir. 1965), cert. denied. 382 U.S.  
10 986 (1966). I conclude the IRA does not provide a basis  
11 for invoking section 1331 jurisdiction over Tyonek's claims.

#### 12                           Indian Tribes Jurisdiction

13           Tyonek also contends that this court has subject-  
14 matter jurisdiction over its claims based upon the  
15 "Indian tribes" jurisdictional provision, 28 U.S.C. 1362,  
16 which provides that:

17                   [D]istrict courts shall have original  
18 jurisdiction of all civil actions,  
19 brought by any Indian tribe or band with  
20 a governing body duly recognized by the  
21 Secretary of the Interior, wherein the  
matter in controversy arises under the  
Constitution, laws, or treaties of the  
United States.

22           28 U.S.C., 1362.

23           The Ninth Circuit has noted that the "arises  
24 under" proviso contained in section 1362 is virtually  
25 identical to the "arises under" language found in section

1 1331. See Gila River Indian Community v. Henningson,  
2 Durham and Richardson, 626 F.2d 708, 710, 714 (9th Cir.  
3 1980), cert. denied, 451 U.S. 911 (1981). Section 1362's  
4 legislative history indicates that Congress passed the  
5 provision in 1966 specifically to enable Indian tribes to  
6 bring "federal question" cases, of the type normally brought  
7 under section 1331, in federal court without having to  
8 satisfy section 1331's then existing \$10,000 amount-in-  
9 controversy requirement. The legislative history does not  
10 indicate that Congress intended to broaden Indian tribes'  
11 access to federal courts in any other respect. See Gila  
12 River Indian Community v. Henningson, Durham and Richardson  
13 at 710-714; accord Arizona v. San Carlos Apache Tribe, 463  
14 U.S. 545, 559-60 n.10 (1983); see also S. Rep. No. 1507,  
15 89th Cong., 2d Sess. 2-3 (1966); H. Rep. No. 2040, 89th  
16 Cong., 2d Sess. 2, 4 (1966); [1966] U.S. Code Cong. and  
17 Admin. News 3145; see also Dillon v. Montana, 634 F.2d 463,  
18 469 (9th Cir. 1980); Housing Authority of the City of  
19 Seattle v. Washington Department of Revenue, 629 F.2d 1307,  
20 1312 (9th Cir. 1980). Hence, in order to interpret the  
21 "arises under" language of section 1362 consistently with  
22 the similar language contained in section 1331, and in  
23 order to fulfill Congress' intent as revealed in section  
24 1362's legislative history, the Ninth Circuit has expressly  
25 ruled that if an action does not qualify as "arising under"

1 federal law for purposes of section 1331, it cannot be  
2 brought in federal court under section 1362.<sup>7/</sup> Gila River  
3 Indian Community v. Henningson, Durham and Richardson,  
4 626 F.2d at 714.

5 Because Tyonek's claims in this action do not  
6 "arise under" federal law for purposes of section 1331, they  
7 also cannot be brought under section 1362.- I conclude that  
8 section 1362 does not provide federal subject-matter  
9 jurisdiction over Tyonek's claims.

10 Federal Declaratory Judgment Act Jurisdiction

11 Finally, Tyonek contends that this court has  
12 subject-matter jurisdiction over its claims under the  
13 Federal Declaratory Judgment Act, 28 U.S.C., 2201, which  
14 provides that:

15 In a case of actual controversy  
16 within its jurisdiction . . . any court  
17 of the United States, upon the filing of  
18 an appropriate pleading, may declare the  
rights and other legal relations of any

19 <sup>7/</sup> It should be noted that section 1362 does provide  
20 certain jurisdictional advantages to Indian tribes over  
21 section 1331, even now that section 1331's  
22 amount-in-controversy requirement has been eliminated.  
23 Section 1362 provides Indian tribes with an exemption to the  
24 Anti-Injunction Act, 28 U.S.C. section 1341 (1982), and thus  
25 permits them to seek injunctions in federal district court  
against the assessment or collection of state taxes, see Moe  
v. Confederated Salish and Kootenai Tribes, 425 U.S. 463,  
474-75 (1976), and at least one court has held that section  
1362 removes states' eleventh amendment immunity to suit in  
actions brought by Indian tribes. Oneida Indian Nation v.  
New York, 691 F.2d 1070, 1079-80 (2d Cir. 1982).

1 interested party seeking such  
2 declaration, whether or not further  
relief is or could be sought . . . .

3 28 U.S.C., 2201.

4 It is firmly established that "[t]he Declaratory  
5 Judgment Act does not provide an independent jurisdictional  
6 basis for suits in federal court." Fiedler v. Clark, 714  
7 F.2d 77, 79 (9th Cir. 1983) (citing to Skelly Oil Co. v.  
8 Phillips Petroleum Co., 339 U.S. 667, 671-74 (1950)).

9 Instead, the act "merely provides an additional remedy where  
10 the court has an otherwise valid jurisdictional basis to  
11 consider the case." Karmali v. INS, 707 F.2d 408, 409 (9th  
12 Cir. 1983) (citing Skelly Oil); accord Fiedler, 714 F.2d at  
13 79; Milner-Wohl Co. v. Commissioner of Labor and Industry,  
14 685 F.2d 1083, 1090 (9th Cir. 1982); Alton Box Board Co. v.  
15 Espirit De Corp. 682 F.2d 1267, 1274 (9th Cir. 1982);  
16 Janakes v. United States Postal Service, 768 F.2d 1091, 1093  
17 (9th Cir. 1985); see also Franchise Tax Board v. Construction  
18 Laborers Vacation Trust, 463 U.S. 1, 15-16 (1983). (quoting  
19 from Skelly Oil). "Since there is no basis for this court to  
20 exercise subject-matter jurisdiction over Tyonek's claims  
21 under sections 1331 or 1362, or under any other provision,  
22 the Court has no subject-matter jurisdiction over Tyonek's  
23 claims under section 2201.

24 Lacking subject-matter jurisdiction over Tyonek's  
25 claims under section 1331, 1362, or 2201, or under any other

1 provision, I dismiss Tyonek's claims for lack of subject-  
2 matter jurisdiction. 8/

3 Subject-Matter Jurisdiction over the Pucketts'  
4 and Slawsons' Counterclaims and Third-Party Claims

5 The Pucketts and Slawsons 9,10/ have brought counter-  
6 claims against the Village and third-party claims against  
7 its officers Standifer, Goozmer, and the McCords, claiming  
8 that these parties violated the United States Constitution,  
9 federal civil rights and fair housing laws, the Indian  
10 Civil Right Act, 25 U.S.C., § 1302 (1982), and Alaska law by  
11 attempting to enforce Ordinance 65-32 11/ against them and

12  
13 8/ I note, without deciding the issue, that Tyonek would  
14 appear to be entitled to pursue its claims in the Alaska  
15 state courts. The Alaska courts are courts of general  
16 jurisdiction, and are therefore authorized to resolve claims  
17 based on local or village ordinances and Alaska contract  
18 law. Moreover, even if the village of Tyonek is considered  
19 to be "Indian country", as Tyonek maintains, and its  
20 ordinances are considered to be "tribal" ordinances, the  
21 Alaska state courts are still authorized to exercise  
22 jurisdiction over Tyonek claims. See 28 U.S.C. § 1360(a),  
23 (c) (1982).

24 9/ The Kaloas and Constantines have not filed  
25 counterclaims against Tyonek or third-party claims against  
Tyonek's officers.

10/ The Kaloas and Constantines have not filed  
counterclaims against the Village or third-party claims  
against its officers.

11/ The Pucketts and Slawsons have not raised any  
claims based upon alleged attempts of the Village or its  
officers to enforce Ordinance No.4, which prohibits white  
persons and, presumably, other non-members of the Village,

(Footnote continued)

1 attempting to evict them from the Family Plan houses where  
2 they reside.<sup>12/</sup> The Pucketts and Slawsons seek declaratory  
3 and injunctive relief, as well as compensatory and punitive  
4 damages.

5 Tyonek and its officers maintain that the Pucketts'  
6 and Slawsons' counterclaims are jurisdictionally barred by the  
7 Village's tribal sovereign immunity and that respondents'  
8 third-party claims against Standifer, Goozmer and the McCords  
9 are barred by those individuals' derivative immunity as  
10 Village officers. I agree. I conclude, based upon Tyonek's  
11 history and the manner in which the federal government has  
12 dealt with Tyonek, that the Village possesses sovereign  
13

14 (Footnote Continued)  
15 from remaining in Tyonek for twenty-four consecutive hours  
16 without Village permission. Thus, my analysis of Ordinance  
17 No. 4 in the context of reviewing the Pucketts' and  
18 Slawsons' counterclaims and third-party claims is merely for  
19 purposes of explaining the extent and limitations of the  
20 Village's sovereign powers, as well as to provide guidance  
21 to the parties regarding future actions they may undertake.

22 <sup>12/</sup> The Pucketts and Slawsons allege specifically that  
23 the Village and its officers violated article IV, section 2  
24 of the United States Constitution, the first and fourteenth  
25 amendments to the Constitution, the Civil Rights Act of  
1871, 42 U.S.C. §§ 1981-1983, 1985 (1982), the Fair Housing  
Act, 42 U.S.C. §§ 3604, 3617 (1982), the Indian Civil Rights  
Act, 25 U.S.C. § 1302 (1982), and Alaska Statutes §  
18.80.210 (1985) (guaranteeing the right to obtain housing  
accommodations without discrimination based on race, color,  
or national origin). The Village also allege that Tyonek  
and its officers intentionally and tortiously interfered  
with their contractual agreement to lease the Kaloas' and  
Constantines' houses and with Erna Puckett's employment  
contract with the school, all in violation of Alaska law.

1 immunity from suit like that of any other Indian tribes  
2 in the contiguous United States. I further conclude that  
3 neither the federal government nor Tyonek has waived the  
4 Village's immunity in this case or consented for the Pucketts  
5 and Slawsons to bring counterclaims against it. I also  
6 conclude that the claims of the Pucketts and Slawsons against  
7 Tyonek's officers are based upon conduct within the scope  
8 of these officers' official capacities and within the scope  
9 of the authority that the Village is capable of bestowing  
10 upon them. I conclude that the claims of the Pucketts  
11 and Slawsons, including their third-party claims, should be  
12 dismissed for lack of subject-matter jurisdiction.

#### 13 Tyonek's Immunity From Suit

14 Tyonek maintains that the counterclaims against it  
15 are all barred by its sovereign immunity as an "Indian  
16 tribe" or as an entity similar to an Indian tribe. The  
17 Supreme Court and other courts have consistently held that  
18 Indian tribes "possess[ ] the common-law immunity from suit  
19 traditionally enjoyed by sovereign powers." Santa Clara  
20 Pueblo v. Martinez, 436 U.S. 49, 58 (1978); Puyallup Tribe,  
21 Inc. v. Department of Game of Washington, 433 U.S. 165,  
22 172-73 (1977); A.K. Management Co. v. San Miguel Board of  
23 Mission Indians, \_\_\_\_\_ F.2d \_\_\_\_\_, \_\_\_\_\_ (9th Cir. 1986);  
24 Squaxin Island Tribe v. Washington, 781 F.2d 715, 723  
25 (9th Cir. 1986); Quantum Exploration, Inc. v. Clark, 780

1 F.2d 1457, 1459 n.4 (9th Cir. 1986); Hardin v. White  
2 Mountain Apache Tribe, 779 F.2d 476, 478 (9th Cir. 1985);  
3 Big Spring v. United States Bureau of Indian Affairs, 767,  
4 F.2d 614, 617 (9th Cir. 1985); Chemehvevi Indian Tribe  
5 v. California State Board of Equalization, 757 F.2d 1047,  
6 1050 (9th Cir.) rev'd on other grounds, 106 S.Ct. 2890  
7 (1985); see also Three Affiliated Tribes of Fort Berthold  
8 Reservation v. Wold Engineering, 106 S.Ct. 2305, 2313 (1986);  
9 Felix Cohen, Handbook of Federal Indian Law 324 (2d ed. 1982);  
10 W.C. Canby, Jr., American Indian Law 73 (1981)  
11 Indian Tribes possess immunity from suit "because  
12 they are sovereigns predating the Constitution," American  
13 Indian Agricultural Credit Consortium, Inc. v. Standing  
14 Rock Sioux Tribe, 780 F.2d 1374, 1378 (8th Cir. 1985);  
15 United States v. United States Fidelity and Guaranty Co.,  
16 309 U.S. 506, 512-13 (1940), and it is considered "a  
17 necessary corollary to Indian sovereignty and self-  
18 governance," Wold Engineering, 106 S.Ct. at 2313, essential  
19 "to preserve [tribes'] autonomous political existence . . .  
20 [and] tribal assets," Chemehvevi, 757 F.2d at 1051, as well  
21 as "to promote the federal policies of tribal self  
22 determination, economic development, and cultural autonomy  
23 Standing Rock Sioux Tribe, 780 F.2d at 1378; Maryland  
24 Casualty Co. v. Citizens National Bank, 361 F.2d 517, 521-22  
25 (5th Cir.), cert. denied, 385 U.S. 918 (1966); Adams v.

1 Murphy, 165 F. 304, 308-09 (8th Cir. 1908); Atkinson v.  
2 Haldone, 569 P.2d 151, 169 (Alaska 1977) (because of their  
3 limited revenue base, Indian tribes find lost assets more  
4 difficult to replace than other governmental bodies; Felix  
5 Cohen, Federal Indian Law, at 324-28; Note, In Defense of  
6 Tribal Sovereign Immunity, 95 Harv. L. Rev. 1058 (1982).  
7 Tribes have been held to possess this immunity even when they  
8 have not been officially recognized as Indian tribes by the  
9 federal government, when they have no prolonged course of  
10 dealing with federal or state governments, when they do not  
11 reside on reservations or in "Indian country," and "'even  
12 after dissolution of the[ir] tribal government[s].'"  
13 Bottomly v. Passamaguoddy Tribe, 599 F.2d 1061, 1065 and  
14 nn.5-6 (1st Cir. 1979) (quoting United States Fidelity and  
15 Guaranty Co., 309 U.S. at 512); Maryland Casualty Co., 361  
16 F.2d at 521-22; Hailr v. Saunooke, 246 F.2d 293, 296 (4th  
17 Cir. 1957). The matter of Tyonek's immunity from suit in  
18 this action is jurisdictional. See Big Spring, 767 F.2d at  
19 617; Chemehvevi, 757 F.2d at 1051; Kennerly v. United States,  
20 721 F.2d 1252, 1259 (9th Cir. 1983); Puyallup Tribe 444 U.S. at  
21 172-73; United States Fidelity and Guaranty Co., 309 U.S. at  
22 512-13, and must therefore be "address[ed] first and  
23 resolve[d] irrespective of the merits of the [Pucketts' and  
24 Slawsons'] claim[s]." See Chemehvevi, 757 F.2d at 1051;  
25 Rehner v. Rice, 678 F.2d 1340, 1351 (9th Cir. 1982), rev'd

1 on other grounds, 463 U.S. 713 (1983); California ex rel.  
 2 California Department of Fish and Game v. Quechan Tribe of  
 3 Indians, 595 F.2d 1153, 1154 (9th Cir. 1979).

4           The Pucketts and Slawsons maintain that even if  
 5 the Village constitutes a tribe possessing immunity from  
 6 suit, Congress and Tyonek have taken actions that have  
 7 waived Tyonek's immunity as to the present action. They  
 8 suggest that three specific actions have waived Tyonek's  
 9 immunity: (1) Tyonek's initiation of the present  
 10 litigation; (2) Congress' enactment of the Indian Civil  
 11 Rights Act of 1968, 25 U.S.C. §§ 1301-1341; and (3) Tyonek's  
 12 adoption of a "sue and be sued" clause in its corporate  
 13 charter. 13/

14  
 15           13/ As noted above, the Puckett's and Slawson's do not  
 16 appear to contend that Congress's enactment of ANCSA has  
 17 waived the Village's immunity from suit. The Ninth Circuit  
 18 has consistently "rejected the contention that congressional  
 19 enactments unrelated to immunity may implicitly grant  
 20 authority to bring suit against Indian tribes." Chemehuevi  
 21 Indian Tribe, 757 F.2d at 1053; see Rehner v. Rice, 678 F.2d  
 22 1340, 1351 (9th Cir. 1982), rev'd on other grounds, 463 U.S.  
 23 713 (1983). ANCSA does not contain any provisions  
 24 explicitly mentioning or waiving the immunity of village  
 25 governments organized under IRA section 16. See generally  
 43 U.S.C. §§ 1601-\_\_\_\_\_.

21           Similarly, the Puckett's and Slawson's do not contend  
 22 that Congress's enactment of 28 U.S.C. § 1360, commonly  
 23 known as Public Law 280, operates to waive the Village's  
 24 immunity from suit. Public Law 280 authorizing particular  
 25 states to exercise civil and criminal jurisdiction over the  
 Indian country within their boundaries, and it was extended  
 to cover Alaska in 1958. See Wold Engineering, 106 S.Ct. at  
 2314 ("We have never read Pub. L. 280 to constitute a waiver  
 of tribal sovereign immunity . . . .").

1           The Supreme Court and other courts have  
2 consistently ruled that while Congress and individual tribes  
3 have the authority to waive a tribe's immunity from suit,  
4 such waivers "'cannot be implied but must be unequivocally  
5 expressed.'" Santa Clara Pueblo, 436 U.S. at 58; A.K.  
6 Management Co., \_\_\_\_ F.2d at \_\_\_\_; Big Spring, 767 F.2d at  
7 617; Chemehuevi Indian Tribe, 757 F.2d at 1052-53;  
8 Kennerly, 721 F.2d at 1258-59; Rehner v. Rice, 678 F.2d  
9 1340, 1351 (9th Cir. 1982), rev'd on other grounds, 463 U.S.  
10 713 (1983); Standing Rock Sioux Tribe, 780 F.2d at 1378;  
11 Ramey Construction Co. v. Apache Tribe, 673 F.2d 315, \_\_\_\_  
12 (10th Cir. 1982); Parker Drilling Co. v. Metlakatla Indian  
13 Community 451 F. Supp. 1127, 1136 (D. Alaska 1978); see  
14 also Wold Engineering, 106 S.Ct. at 2313, Puyallup Tribe, 433  
15 U.S. at 172-73; Squaxin Island Tribe, 781 F.2d at 723 n.11.  
16 I conclude that none of the claims for waiver asserted by  
17 the Pucketts and Slawsons is sufficient to waive Tyonek's  
18 immunity from suit.

#### 19                   The Indian Civil Rights Act

20           The Pucketts and Slawsons contend, based upon the  
21 Tenth Circuit's decision in Dry Creek Lodge, Inc. v.  
22 Arapahoe and Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980),  
23 cert. denied, 449 U.S. 1118 (1981), and its progeny, that  
24 the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301-1341,  
25 "constitutes a waiver of [Tyonek's] sovereign immunity under

1 the facts in this case." I do not agree.

2           The Supreme Court held in Santa Clara Pueblo  
3 that "[n]othing on the face of . . . the Indian Civil Rights  
4 Act purports to subject tribes to the jurisdiction of the  
5 federal courts in civil actions for injunctive or  
6 declaratory relief," and that "suits against a tribe under  
7 the Act are barred by its sovereign immunity from suit."  
8 Santa Clara Pueblo, 436 U.S. at 59. However, in Dry Creek  
9 Lodge, the Tenth Circuit interpreted the decision in Santa  
10 Clara Pueblo to apply only to actions involving "internal  
11 [disputes] between tribal members and . . . tribal govern-  
12 ment[s]," and held that the Indian Civil Rights Act, in  
13 effect, waives tribal immunity in cases brought against  
14 tribes by non-Indians who "have no remedy within the tribal  
15 machinery nor with the tribal officials in whose election  
16 they can . . . participate." Dry Creek Lodge, 623 F.2d at 685;  
17 see also White v. Pueblo of San Juan, 728 F.2d 1307, 1312  
18 (10th Cir. 1984) ("the Dry Creek decision ought to be  
19 interpreted to provide a narrow exception to the traditional  
20 sovereign immunity bar from suits against Indian tribes in  
21 federal courts," in light of Santa Clara Pueblo and because  
22 an "expansive interpretation of Dry Creek [would] open[ ]  
23 up the scope of lawsuits against the tribes"); Jicarilla  
24 Apache Tribe v. Andrus, 687 F.2d 1324, 1346 (10th Cir. 1982).  
25 The respondents contend that because they are not members

1 of the Village and because they have raised "'particularly  
2 egregious allegations of personal restraint and deprivation  
3 of personal rights,'" against Tyonek and its officers, their  
4 counterclaims and third-party claims qualify under the  
5 exception created in Dry Creek Lodge, and are, therefore,  
6 not barred by Tyonek's immunity.

7           However, the exception carved out in Dry Creek  
8 Lodge does not appear to be authorized explicitly by the  
9 language or legislative history of the Indian Civil Rights  
10 Act or by the Supreme Court's analysis in Santa Clara  
11 Pueblo. See Santa Clara Pueblo, 436 U.S. at 58-72 (noting  
12 that "it is highly unlikely that Congress would have  
13 intended a private cause of action for injunctive and  
14 declaratory relief to be available in the federal courts to  
15 secure enforcement of section 1302," and that the Indian  
16 Civil Rights Act legislative history "indicates that the  
17 Indian Civil Rights Act was generally understood to  
18 authorize federal judicial review of tribal actions only  
19 through the habeas corpus provisions of 25 U.S.C. § 1303").  
20 Since, as has been noted, "waiver[s] of [tribal] sovereign  
21 immunity "'cannot be implied but must be unequivocally  
22 expressed,'" id. at 58, the policy justifications  
23 articulated by the Tenth Circuit in Dry Creek Lodge seem  
24 insufficient to establish a waiver of tribal immunity under  
25 the Indian Civil Rights Act. See Dry Creek Lodge, 623 F.2d

1 at 685-86 (Holloway, J., dissenting) (concluding that  
2 Santa Clara Pueblo's "broad" language and far-reaching  
3 conclusions preclude the result reached by the majority).  
4 Moreover, the Ninth Circuit has expressly rejected the  
5 Tenth Circuit's analysis in Dry Creek Lodge and has  
6 "recognized that the Santa Clara Pueblo holding 'foreclosed  
7 any reading of the Indian Civil Rights Act as authority for  
8 bringing civil actions in federal court to request . . .  
9 forms of relief [other than habeas corpus]:" R.J. Williams  
10 Co. v. Fort Belknap Housing Authority, 619 F.2d 979, 981  
11 (9th Cir. 1983); accord National Farmers Union Insurance Co.  
12 v. Crow Tribe of Indians, 736 F.2d 1320, 1322-23 (9th Cir.  
13 1984) ("Congress has expressly limited federal court review  
14 of a claimed violation of the Indian Civil Rights Act to  
15 encompass a single remedy: the writ of habeas corpus . . .  
16 A civil suit to enjoin violations of the Indian Civil Rights  
17 Act is not cognizable in federal court.") rev'd on other  
18 grounds, 105 S.Ct. 2447, 2450 and n.3 (1985); Williams v.  
19 Pyramid Lake Paiute Tribe, 625 F. Supp. 1457, 1458 (D. Nev.  
20 1986). I reject respondent's contention that the Indian  
21 Civil Rights Act waives Tyonek's immunity for the purposes  
22 of the present litigation.

23 The respondents also contend that Tyonek waived its  
24 sovereign immunity by initiating the present litigation.  
25 I disagree. The Ninth Circuit has held that an Indian

1 tribe's initiation of an action against a party does not  
2 waive the tribe's immunity from suit as to counterclaims  
3 brought by that party. Squaxin Island Tribe, 781 F.2d at  
4 723; Chemehuevi, 757 F.2d at 1053; and see also United States  
5 Fidelity and Guaranty Co., 309 U.S. at 513. According to  
6 the Ninth Circuit, it would be necessary for the tribe to  
7 consent to be sued under the counterclaim, - see Squaxin  
8 Island Tribe, 781 F.2d at 723 n.11, in order to find that  
9 a tribe has waived its immunity as to the counterclaim and  
10 for a court to require subject-matter jurisdiction over that  
11 counterclaim. Tyonek did not consent to be sued on the  
12 counterclaims raised by the Pucketts and the Slawsons.  
13 I reject respondents' contention that Tyonek waived its  
14 sovereign immunity as to their counterclaims by initiating  
15 the present lawsuit.

16 Finally, the respondents contend that Tyonek's  
17 adoption of a "sue and be sued" clause in its corporate  
18 charter effectively waived its sovereign immunity for the  
19 purposes of this action. I reject this contention.  
20 Although the tribes clearly have the capacity to waive their  
21 sovereign immunity by adopting "sue and be sued" clauses in  
22 their corporate charters, see, e.g., Standing Rock Sioux  
23 Tribe, 780 F.2d at 1379; Fontenelle v. Omaha Tribe of  
24 Nebraska, 430 F.2d 143, 147 (9th Cir. 1970); Maryland  
25 Casualty Co. v. Citizens National Bank, 361 F.2d 517, 521-22

1 (5th Cir.), cert. denied, 385 U.S. 918 (1966), such clauses  
2 waive the tribes' immunity only with regard to actions  
3 taken by the tribe in its corporate capacity under section  
4 17, of the Indian Reorganization Act and not the actions it  
5 takes in its governmental capacity under section 16 of the  
6 Indian Reorganization Act. See Ramey Construction Co. v.  
7 Apache Tribe, 673, F.2d 315, 320 (10th Cir.-1982); Parker  
8 Drilling, 451 F. Supp. 1127, 1131, 1136-37; Kenai Oil and  
9 Gas, Inc. v. Department of Interior, 522 F. Supp 521, 528-29  
10 (D. Utah 1981); Atkinson v. Haldane, 569 P.2d 151, 175  
11 (Alaska 1977).

12           Since Tyonek is being sued in its section 16,  
13 governmental capacity, rather than its section 17, corporate  
14 capacity, the "sue and be sued" clause contained in its  
15 corporate charter does not operate to waive its sovereign  
16 immunity in this action. I reject the respondents' claims  
17 that the "sue and be sued" clause contained in Tyonek's  
18 corporate charter nullifies the tribal government's defense  
19 of sovereign immunity.

20           For all of these reasons, I reject the  
21 respondents' waiver claims. I conclude that Tyonek  
22 possessed sovereign immunity as to those counterclaims, and  
23 that the counterclaims against Tyonek must be dismissed for  
24 lack of subject-matter jurisdiction.

25           I turn now to the derivative immunity of Tyonek's

1 officers.

2           The four Tyonek officers, whom the Pucketts and  
3 Slawsons have sued in this action, contend that the third-  
4 party claims against them are barred for lack of  
5 jurisdiction, and they further contend that the third-party  
6 claims are barred by their derivative immunity as officers  
7 of an Indian tribe. I agree with the contentions of  
8 Tyonek's officers. The officers of an Indian tribe possess  
9 immunity from suit so long as they are acting in their  
10 representative capacity and within the scope of the  
11 authority that the village is capable of bestowing upon  
12 them. See Hardin, 779 F.2d at 479. Thus to the extent that  
13 Tyonek, acting in its section 16 sovereign governmental  
14 capacity, possessed the authority to exclude nonmembers of  
15 the Village from its "Family Plan" housing, and to the extent  
16 that Tyonek officers, who have been named in this action,  
17 did not exceed the scope of their delegated authority, those  
18 officers have derivative immunity from suit in their actions  
19 to enforce Tribal Ordinance 65-32.

20           There is no basis in the record for a conclusion  
21 that the four Tyonek officers acted beyond the scope of  
22 their delegated authority in their attempts to enforce the  
23 ordinance. Their actions consisted of letter writing,  
24 circulating petitions, engaging in public criticism of the  
25 Pucketts and the Slawsons, attempting to terminate the

1 leases of the respondents, and, finally, in initiating  
2 this lawsuit. Although the Pucketts and the Slawsons have  
3 alleged in their pleadings that certain acts of vandalism  
4 occurred to their property, there is no evidence in the  
5 record or even any express allegation that any of the four  
6 third-party defendants was personally responsible for these  
7 acts. I conclude that the Tyonek officers did not act  
8 beyond the scope of their delegated authority as elected  
9 representatives of Tyonek's section 16 government entity.

10           Whether Tyonek's officials possess derivative  
11 immunity from suit centers around a single question: Did  
12 Tyonek, acting in its section 16, governmental capacity,  
13 have authority to exclude non-members of the Village from  
14 its "Family Plan" housing? I conclude that it did.

15           The record indicates the "Family Plan" houses were  
16 constructed with funds that the Village obtained from oil  
17 and gas leasing in part of the Moquawakie Reservation during  
18 the 1960s. The secretary of the Interior issued those  
19 leases in 1963 pursuant to his authority under 25 U.S.C.  
20 § 398(a), which authorizes oil and gas leasing of unallocated  
21 lands within executive order reservations such as the  
22 Moquawakie Reservation:

23           Unallotted lands within the limits  
24 of any reservation or withdrawal created  
25 by Executive Order for Indian purposes  
or for the use or occupancy of any  
Indians or tribe may be leased for oil

1 and gas mining purposes in accordance  
2 with the provisions contained in [25  
U.S.C. § 398].

3 25 U.S.C. § 398a: Fondahn v. Native Village of Tyonek, 450  
4 F.2d 520, 521 (9th Cir. 1971); Ollestead v. Native Village  
5 of Tyonek, 560 P.2d 31, 33 (Alaska 1977).

6 Pursuant to 25 U.S.C. § 398b, the proceeds from  
7 the oil and gas leases were held by the federal government  
8 in trust "for the use and benefit of the Tyonek Indians,  
9 who [were] to be consulted regarding the expenditure of  
10 funds." Fondahn, 450 F.2d at 522; Ollestead, 560 P.2d at  
11 33. Section 398b provides that:..

12 The proceeds from rentals,  
13 royalties, or bonuses of oil and gas  
14 leases upon lands within Executive Order  
15 Indian reservations or withdrawals shall  
16 be deposited in the Treasury of the  
17 United States to the credit of the tribe  
18 of Indians for whose benefit the  
19 reservation or withdrawal was created or  
20 who are using and occupying the land,  
21 and shall draw interest at the rate of 4  
22 per centum per annum and be available  
for appropriation by Congress for  
expenses in connection with the  
supervision of the development and  
operation of the oil and gas industry  
and for the use and benefit of such  
Indians: Provided That said Indians, or  
their tribal council, shall be consulted  
in regard to the expenditure of such  
money, but no per capita payment shall  
be made except by act of Congress.

23 25 U.S.C. § 398b. Thus, by the express terms of section  
24 398b, the funds obtained from Tyonek's oil and gas leases  
25 were held in trust for members of the Village alone. It was

1 completely logical, therefore, for Tyonek to use those funds  
2 in 1965 to build housing for Village members only, and to  
3 attempt to restrict the extent to which these houses would  
4 benefit or be used by non-members of Tyonek. I conclude  
5 that a section 16 Indian governmental entity, such as  
6 Tyonek, possesses the authority to impose restrictions  
7 upon the use of property held in trust for the benefit of  
8 its members, and to prevent that property from being  
9 alienated or diminished. I conclude that Ordinance 65-32  
10 constituted a valid exercise of Tyonek's powers as a  
11 section 16 governmental entity, and that the attempts by  
12 Tyonek's officers to enforce that ordinance that have been  
13 challenged by the Pucketts and the Slawsons in this action  
14 did not exceed the scope of Tyonek's sovereign power.

15           Since the third-party defendant officers all were  
16 acting in their representative capacities and within the  
17 scope of their authority as validly delegated by Tyonek, I  
18 conclude that the claims against them are barred by their  
19 derivative immunity as officers of the tribe. See Hardin,  
20 779 F.2d at 479-80. Therefore, I dismiss the Pucketts' and  
21 the Slawsons' third-party claims against Tyonek's officers  
22 for lack of subject-matter jurisdiction.

23           That will complete this decision, which, as I  
24 have indicated, will be filed with the Clerk, and will  
25 constitute the decision in this case.

(

1 I also direct the Clerk, upon the filing of  
2 the decision to prepare a final order dismissing the  
3 claims of Tyonek and the counterclaims of the respondents  
4 and to dismiss the third-party claims against Tyonek's  
5 officers. The approval of the final order prepared by the  
6 Clerk shall constitute the final judgment in this case.


7 (Court adjourned.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL REPORTER OF THE  
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA,  
DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED 1  
THROUGH 35 INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH  
OFFICIAL REPORTER OF THE PROCEEDINGS HEREINBEFORE  
AND REDUCED TO TYPEWRITING TO THE BEST OF MY ABIL

  
\_\_\_\_\_  
JANIS G. RÖLLER

# MEMORANDUM

*Kasayukie*  
State of Alaska

TO: Ernst Mueller, Commissioner  
Department of Environmental  
Conservation

DATE: May 11, 1982

FILE NO: 366-654-82

TELEPHONE NO: 365-3600

FROM: WILSON L. CONDON *WLC*  
ATTORNEY GENERAL

SUBJECT: Indian Reorganization  
Act Councils and Village  
Safe Water Projects

By:  
Douglas K. Mertz  
Assistant Attorney General

You have asked our advice on certain questions raised by representatives of the Indian Reorganization Act Council of the Village of Minto. Specifically you have asked whether and under what conditions the state may contract with or make grants to an IRA council to carry out projects under the Village Safe Water Act, AS 46.07.010 -- 080. That act is a means of funding water and sewer projects in small unincorporated communities and second class cities. A number of the unincorporated communities have IRA councils, which are organizations set up pursuant to the Indian Reorganization Act, 25 USC §476-477. Membership in IRAs is restricted to natives living within the community. In the past there has been some confusion as to whether the state could make grants to or contract with IRA councils or whether a different entity to receive the grant for the community, such as a non-profit corporation, would be required.

The Village Safe Water Act calls for two separate phases to the contract process, the construction phase and the operation phase of the facilities. For the construction of facilities under the Act, AS 46.07.040 permits the department to contract with "public agencies or private non-profit organizations, or otherwise." There is no language in the statute itself which limits the discretion of the department in choosing among these alternatives, and the use of the phrase "or otherwise" makes the department's discretion indeed broad. The only conceptual difficulty we perceive in using the "otherwise" category to include IRA councils, is the fact of the racially exclusive make-up of such organizations. Art. I, sec. 3 of the Alaska Constitution prohibits discrimination on the basis of race or color; this and other constitutional provisions can be read as prohibiting the expenditure of public funds to the benefit of a racially exclusive group. However, we have opined in the past that there is no bar to the use of a restricted organization for delivery of essentially public services so long as that organization agrees to perform the services in a way which is in fact non-discriminatory (see Memorandum of

May 11, 1982

Advice by Assistant Attorney General Rodger Pegues, April 27, 1981). Thus, as a mere conduit for the delivery of state benefits, we believe an IRA council could properly receive such a contract so long as it agreed to a clear non-discrimination clause which applied to the execution and delivery of all services rendered under the contract.

Another possible difficulty is the fact that some IRA councils have claimed that under federal law they are entitled to sovereign immunity for certain aspects of their functions. As a matter of sound public policy and good sense, the state could not, we believe, contract where the possibility of such a claim existed. Therefore, before a contract were entered into with an IRA council, it would be necessary to have a clear and explicit waiver of sovereign immunity for all purposes connected with that contract. This office would be happy to provide model language for such a waiver.

Under the above conditions, it would be proper for the department to contract with an IRA council for construction of a Village Safe Water facility. We do not mean to imply, however, that the department is under the obligation to do so. From the words of the statute, it is clear that the department has discretion as to which type of grantee it will choose to contract with. We have already had discussions with your department as to developing a policy on this matter, and we see no legal impediment to a policy which permitted contracts with IRA councils if those councils were indeed representative of the community as a whole, but which declined IRA participation if a substantial portion of the community considered itself excluded from representation by that council. We would be happy to participate with you further in development of such a policy.

The second, and more difficult, question involves the proper entity for operation of the facility once it is completed. Under AS 46.07.050, it is the responsibility of the village "governing body" to operate the facility. Under subsection (c) of that section, the commissioner may "when necessary" require the creation of a non-profit corporation for that purpose. And in any case, when an unincorporated community becomes incorporated under state law, whatever entity is operating the facility is then obligated to turn over its powers and duties to the new municipal corporation. The statute does not define "governing body," so the initial question is whether an IRA council fits within that category and is therefore eligible to contract with the state for operation of the facility. Since AS 46.07.050(c) hypothesizes a situation where the "governing body" would turn over the facilities to a newly-created municipal incorporation,

then clearly "governing body" was intended to encompass more than state-chartered municipalities. However, we can find no record of any consideration by the legislature of whether IRA councils would qualify. There is no doubt that in certain communities, an IRA council may, in fact, perform functions which to some degree parallel those usually performed by a regularly-constituted local government. In other communities, an IRA council may be much more limited in its activities and may, in fact, coexist with other bodies which arguably fit within the definition of "governing body". Thus, if IRA councils were always to be considered "governing bodies" within the meaning of the Village Safe Water Act, anomalous situations could result in which the council, as representative of part of the community, would in effect compete with other entities representing other portions of the community.

We believe the above difficulties can be resolved by reference to the discretion, embodied in AS 46.07.050(c), of the commissioner to contract with non-profit corporations rather than governing bodies "when necessary." The general intent of the legislature would be fulfilled by a process in which the department made an initial determination of the actual demographic and political situation in the community in order to determine whether any particular entity claiming status as "governing body" truly represented the community as a whole. Thus, as in the analysis suggested above in reference to the construction phase, the department would look toward whether any substantial portion of the community considered itself unrepresented by or excluded by that entity. If so, by definition, that entity would not qualify as the "governing body" of the entire community, and the department would, of necessity, have to find another organization such as a non-profit corporation to operate the facility on behalf of the entire community.

To put it in more concrete terms, the result is that in villages with IRA councils where the population is overwhelmingly native and no other organization but the IRA council performs functions parallel to those of a local government, the IRA council could be said to be, for the limited purposes of the Village Safe Water Act, the defacto "governing body" of that community; and the IRA council would then be eligible for a contract for operation of the facilities. In contrast, in a community where a substantial portion of the population is not eligible for membership in the IRA council or where a substantial portion of the population through some means makes clear that it does not consider the council as representative of themselves, then the council could not be considered the "governing body" of the entire

May 11, 1982

community and it would not be eligible to hold a contract for operation of the facilities. In the latter situation, creation of a non-profit corporation would be the statutorily-mandated alternative. In either case, at such time as a state-chartered municipality was created, operation of and title to the facilities would have to be turned over to the new municipality.

We do not mean to imply by the above that an IRA council which was found by the department to be the defacto equivalent of a "governing body" would, in the eyes of the state, actually have the status of a self-government. Instead, we merely believe that because an IRA council may, in some instances, perform functions which would be performed by an actual local government if such existed, it is within the intent of the legislature to consider such a council a "governing body" of the community within the limited meaning given to that term by the legislature in AS 46.07.050. And finally we repeat what should be clear, that to qualify as a "governing body" for purposes of receiving state authority to operate the Village Safe Water facilities, the council would once again have to agree to operate the facilities and deliver the services without discrimination and would have to waive whatever sovereign immunity they enjoy.

Please let us know if you have any further questions.

DKM:cdd

# MEMORANDUM

# State of Alaska

TO: Marty Rutherford, Director  
Municipal & Regional Asst. Div.  
Dept. of Community &  
Regional Affairs

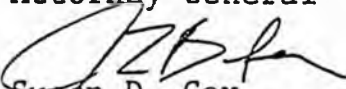
DATE: July 15, 1986

FILE NO.: 663-86-0548

THRU: TELEPHONE NO.: 465-3600

SUBJECT: Transfer of nonprofit  
corporation's assets  
acquired with unin-  
corporated community  
aid grant money

FROM: Harold M. Brown  
Attorney General

By:   
Susan D. Cox  
Assistant Attorney General  
Governmental Affairs-Juneau

You have asked us whether a nonprofit corporation formed to receive and spend aid to unincorporated communities under ch. 60, SLA 1981 may, upon dissolution, convey its assets to a Native council. We have concluded that once aid money has been distributed to and spent properly by a qualified corporate entity, neither the community aid legislation nor the department's regulations prohibit a conveyance of the corporation's assets. While we encourage the transfer of assets to another nonprofit corporation, we believe that, under the provisions of the corporations code pertaining to the dissolution of nonprofit corporations, a Native council could receive the assets along with the liabilities of the nonprofit corporation. However, in no event should a transfer be approved unless the recipient agrees to use the assets in a nondiscriminatory way for the benefit of the community and for a public purpose, to waive sovereign immunity with respect to the corporation's liabilities and the operation of the assets, and to transfer capital projects financed under ch. 60, SLA 1981 to a municipality if one is later incorporated.

## I. BACKGROUND

When the legislature created the unincorporated community aid program in ch. 60, SLA 1981, it specified that only "an incorporated entity or a federally chartered entity that does not possess sovereign immunity" could receive and spend an unincorporated community's aid entitlement. Sec. 2(c). Where more than one entity from a community qualified, preference was given to a nonprofit corporation organized for receipt of the aid. Id.

The legislature directed that the aid money be spent for social services, capital projects, or operating expenses of capital projects. Sec. 2(d), ch. 60, SLA 1981. Before receiving aid money, a qualified entity was required to submit a resolution adopted by it that identified how the money would be spent under the program, identified each party owning a capital project for which money would be spent or that would be responsible for the

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Municipal & Regional Asst. Division  
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maintenance and operation of a capital project, and agreed that each capital project for which money would be spent under the program would be operated on a nondiscriminatory basis for the benefit of the public. Sec. 2(e) (emphasis added).

Although the legislature anticipated that nonprofit corporations would be formed to receive and spend the unincorporated community aid, it made no provision in ch. 60, SLA 1981 for the disposition of assets of such corporations upon dissolution. This is problematic because the corporations were expressly authorized to spend the aid money on capital projects (defined as public facilities or equipment that may be necessary to construct, operate or maintain a public facility or service). Capital projects, unlike social services or operating expenses, are tangible assets that continue to exist after the money has been spent. The general question is what should be done with these assets if the nonprofit corporation that paid for them with aid money under the ch. 60 program is dissolved; specifically, you ask whether a Native council, an entity that could not receive or spend the aid money, can nevertheless be the recipient of assets purchased with aid money in a corporate dissolution. \*/

## II. THE COMMUNITY AID PROGRAM

It is clear that a Native council could never have qualified to receive and spend the aid money under ch. 60, SLA 1981, as long as they maintained that they possessed sovereign immunity. See 1982 Inf. Op. Att'y Gen. (July 12; 663-82-0767); 1981 Inf. Op. Att'y Gen. (Oct. 2; J66-0192-82). However, the unincorporated community aid program legislation is silent on the subject of whether such a council can later assume control of property purchased by a community nonprofit corporation with aid dollars. The only limitation of any kind on ownership of capital projects is found in a program regulation, 19 AAC 44.045(d), which provides

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\*/ The situation before you involves the Black River Corporation in the village of Chalkyitsik. The corporation received \$83,491.45 before it was involuntarily dissolved April 15, 1986 for failure to file a required biennial report with the commissioner of commerce and economic development. We understand the Tanana Chiefs Conference has proposed on behalf of the corporation that the corporate assets, but not the liabilities, be transferred to the Native council of Chalkyitsik. The corporation will not be receiving any further aid payments because it is not in good standing and the program ended June 30, 1986.

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(d) Before receiving a grant from the unincorporated community aid account, the entity must agree in writing to transfer ownership of capital projects financed under this chapter to the municipal government if the community incorporates as a city under AS 29.18.

This limitation is reflected in the boilerplate of your grant agreements, in Article 19 of Attachment A. In the instant situation, however, no municipality has been formed and the capital project financed by the aid program has remained in the control of the local nonprofit corporation, which is now involuntarily dissolved.

Your regulations appear to contemplate an end to departmental oversight over the use of aid money upon complete expenditure of a community's aid entitlement and submission of a final financial report. 19 AAC 44.085. While the department is obligated to pay the aid only to a qualified entity and to see that the money is spent in accordance with the regulations and the entity's resolution, neither the legislation nor the regulations direct the department to manage ongoing use of the facilities or equipment once purchased. Consequently, unless there is relevant language in your grant agreements of which we are unaware, we conclude that disposition of these assets by a nonprofit corporation upon dissolution is generally controlled by AS 10.20.290 -- 10.20.452, subject to a few specific conditions.

### III. THE CORPORATIONS CODE

The law governing formation, operation, and dissolution of nonprofit corporations is found in the corporations code, AS 10.20. Article 5, specifically AS 10.20.290 -- 10.20.452, covers dissolution. The law clearly provides a procedure for distributing the assets of a nonprofit corporation in the process of dissolution. First, all liabilities and obligations of the corporation must be paid and discharged, or adequate provision for them must otherwise be made. AS 10.20.295(1). This requires the corporation to take care of all liabilities and obligations before transferring any assets, or to make some other provision (such as having the transferee assume the liabilities with the assets). Second, in the case where some condition requires return, transfer, or conveyance of assets in the event of dissolution, the assets must be returned, transferred, or conveyed accordingly. AS 10.20.295(2). Because there is no express language governing transfer of corporate assets in the program's legislation, regulations, or grant agreements, we do not believe this section mandates any specific transfer, to the state or to any other party, upon dissolution.

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Third, and most significantly,

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

....

(3) assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, under a plan of distribution adopted as provided in this chapter;

AS 10.20.295(3) (emphasis added). In this case, the assets were received and held by the corporation subject to the legislative limitation that they be operated on a nondiscriminatory basis for the benefit of the public. Sec. 2(e), ch. 60, SLA 1981. Similarly, the grant agreement required that expenditure of the aid money be for a public purpose. For these reasons, the capital project funded by aid money can only be transferred or conveyed by the corporation "to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation." AS 10.-20.295(3).

We would encourage transfer to another Alaskan nonprofit corporation, although we believe that a Native council can qualify to receive assets under the definition above. However, in no event should the transfer of assets to a Native council be allowed without a waiver of sovereign immunity with respect to the operation of those assets. The waiver must be broad enough to protect the rights of any creditors of the dissolved corporation. Additionally, any successor in interest to the nonprofit corporation is bound to operate or use those assets on a nondiscriminatory basis for the benefit of the public and for a public purpose. Finally, the transferee must agree to transfer any capital projects financed under the ch. 60 program to a municipality if one is later incorporated. We will ask the Department of Commerce and Economic Development to confer with you upon receipt of

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a plan of distribution for the corporation at issue to verify that these conditions are met.

In closing, we make several final observations. A dissolved corporation that owns real or personal property continues to exist through its board of directors for five years after the date of dissolution for the purpose of conveying, transferring, or releasing the real or personal property. AS 10.20.452. Additionally, a dissolved corporation continues to exist through its board of directors for the purpose of being made a party in any action or proceeding arising before dissolution and involving the title to real or personal property. Id. In no case would a transfer of assets be legal without first making some provision for liabilities in a plan of distribution. AS 10.20.295(1). If the dissolving corporation does not submit a plan of distribution to the commissioner of commerce and economic development, the assets will eventually escheat to the state. AS 38.95.200(b), sec. 12, ch. 133, SLA 1986.

We hope this helps you in dealing with future dissolutions of nonprofit community corporations, whether voluntary or involuntary.

SDC/pjg

cc: Willis Kirkpatrick, Director  
Div. of Banking, Securities & Corporations  
Dept of Commerce & Economic Development

Jeff Bush, Assistant Attorney General  
Dept of Law - Commercial Section

Doug Mertz, Assistant Attorney General  
Dept of Law - Natural Resources Section

February 17, 1987

Honorable Arliss Sturgulewski  
Chair, Community & Regional  
Affairs Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Re: SB 50; dissolution of a municipality

Dear Senator Sturgulewski:

You have requested our opinion on several questions regarding sec. 2 of SB 50. The questions will be answered individually below.

1. Are there statutory or constitutional problems with the distribution of public assets to a group which may limit the decision making process on how those assets are used to only members of the group, or to some portion of the population of the former municipality less than all the registered voters?

The basic constitutional problem in this section arises because it would have public assets of a dissolved municipality distributed to nonpublic entities, i.e., private nonprofit corporations and Native councils organized under the Indian Reorganization Act. Article IX, sec. 6 of the Alaska Constitution says, "No ... public property shall be transferred, ... except for a public purpose." Article X, sec. 2 requires all local government power to be vested in cities and boroughs. Both private corporations and IRA councils (whose membership is restricted by federal law to Natives) are not elected by or responsible to the entire electorate. We believe it would be unconstitutional to transfer public assets to private organizations which may not serve as substitute local governments under the Alaska Constitution, and to allow those organizations to make discretionary decisions about assets which belong to the entire population of the dissolved municipality. The concern here is responsibility to the entire population of the former municipality, not just to registered voters.

However, occasionally a local nonprofit or Native council may be in the best position to administer local assets, par-

Hon. Arliss Sturgulewski, Chair  
Community & Regional Affairs Committee  
Alaska State Legislature

February 17, 1987  
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Re: SB 50, dissolution

ticularly when it has broad support from the community. In such cases, it may be possible to accomplish almost the same and despite the restrictions noted above, through the device of retaining title to the assets -- and ultimate control -- in the state, but contracting with a local organization to administer assets. Such delegations must be subject to strict controls to insure public access to facilities and state oversight, and truly discretionary governmental authority may not be delegated. But, day-to-day operation of the former municipality's assets may be turned over to a local private entity. We believe this can be accomplished under present law.

2. Are there statutory or constitutional problems with the distribution of public assets to a group which may expand the decision making process on how those assets are used to include members of the group who are not registered voters?

Please see the answer to question 1.

3. Does the Local Boundary Commission (LBC) have the power to place binding conditions on the assignment of assets and the provision of services?

Yes. The powers and duties of the LBC are listed in AS 44.47.567. Furthermore, sec. 2 of SB 50 gives the LBC the specific power needed to provide for the distribution of assets and liabilities upon dissolution of a municipality.

We hope this memorandum adequately addresses your concerns. Please do not hesitate to contact this office if you have further questions.

Sincerely yours,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:  
Marjorie L. Odland  
Assistant Attorney General

MLO/pjg

cc: Hon. David Hoffman, Commissioner  
Department of Community &  
Regional Affairs

February 1987

Dan Bockhorst  
Div. of Municipal & Reg. Assistance  
Dept. of Community & Regional Affairs  
Anchorage, Alaska 99508  
949 East. 36th Ave. Suite 404

Unorganized Borough  
POB 19  
Aleknagikm Alaska  
99555

Dan Bockhorst:

We the people of the Unorganized Borough including the 40 square mile area northwest of the City of Dillingham Petition our Unorganized Borough Assembly to be called into session..

On April 24, 1986 the City Council of the City of Dillingham passed a resolution authorizing the filing of a petition for annexation of 918.25 square miles of territory under the provisions of 29.06.040(b). On May 1, 1986, the Department of Community of Regional Affairs received the authorized petition. Under 19 AAC 10.530, the City published notice of the filing of its petition on June 27 and July 4, 1986, in the Bristol Bay Times but not in commonly understood terms and during time when most people were fishing or cut off from the City of Dillingham by heavy rains and the resulting marshy conditions. Most of the people outside of the City of Dillingham and many of those city residents never to this day have seen the map published at that time and those who did found it confusing and misleading in that it was fuzzy and titled Existing & Proposed Boundary but with no clarity as to where the existing boundaries were nor any listing of territory covered by the proposal.

On April 23, 1986, the City of Clark's Point submitted a petition for annexation of area included within the territory proposed for annexation by the City of Dillingham. The State of Alaska Department of Community and Regional Affairs received this petition and passed it on to the Local Boundary Commission.

Opposition to the City of Dillingham's proposal lined up:

- May 25: Saguyak Incorporated (Clark's Point Native Corporation)
- June 12: Choggiung Limited (Dillingham Native Corporation)  
(objecting to certain points. What these points are, may only now, in February 1987, be coming to the surface)
- July 24: Secretary for the City council of Manokotak

On October 4, 1986, a public hearing was conducted by the Local Boundary Commission in Dillingham and one in Clark's Point. There does not appear to have been an attempt to contact property owners in the areas of annexation before these hearings, at least not in the area proposed to be annexed. Many people were totally ignorant of fact that they had been included and even upon hearing of the hearings though they were for Clark's Point residents and Dillingham residents only. The attitude was one of "Gee, I hope these two cities work out their differences."

After the public hearings, rumors were that the City of Dillingham had left out Warehouse Mountain Remote Parcel/Open to Entry State Land.

At this point it became apparent that the submission of competing annexation requests was motivated by the desire of Dillingham and Clark's Point to obtain the revenue generated by raw fish taxes. This would be available to them only through annexation of at least a portion of Nushagak Bay. In order to justify reaching out that far as a city, Dillingham had to take into it's boundaries what was in between to make it contiguous territory to its boundaries. (19 AAC 10.070(1))

The Local Boundary Commission told the two cities to compromise and revise their boundary requests with how they could share revenues and municipal services. October 24th, the two cities met with the Department of Community and Regional Affairs, but even with help they could not come to a resolution of their conflicts.

By now it was November. After the meetings with Clark's Point the City of Dillingham City Council Members passed Resolution #86-66 requesting the Local Boundary Commission to judge the competing annexation petitions on their own merits.

It is difficult to say how many people actually ever saw the petitions to evaluate their accuracy as to facts.

Questions arose raising concerns of a regional nature:

- November 3: The Bristol Bay Native Corporation (the regional corporation) raises issues.
- November 4: 70 landowners submitted a petition in opposition Department of Community and Regional Affairs
- November 21: John Pearson, City Council Member in the City of Dillingham representing himself submitted a letter rebutting the arguments against annexation presented by Marie Luckhurst and the 70 landowners petitioners
- November 21: William P. Johnson's letter arrived in the Department of Community and Regional Affairs questioning the revised western boundaries of the annexation area. It noted that "the City Council pulled back the boundaries sufficiently to exclude all City Council and immediate family members who staked land within the State Open to Entry Area."

Right after this, the Alaska Attorney General's office was requested to provide advice on how the Local Boundary Commission should handle two proposals for annexation where the proposals overlap in the area to be annexed.

On November 13th, the Attorney General advised the Department of Community and Regional Affairs that the common law doctrine of "prior jurisdiction" should be applied in this instance. This meant the Local Boundary Commission should act on Clark Point's petition first and on November 22nd they did and then acted upon the proposed annexation request from the City of Dillingham.

By December most people did not know what was going on with the

proposed boundaries for annexation. The only two year round residents of the Warehouse Mountain Remote Parcel/Open to Entry Land (Township 12 South, Range 56 West, Seward Meridian, Alaska/Warehouse Mountain Remote Parcel Area 9051/Open to Entry Land) received rumors that they "may have been left in the boundaries" and Roslyn Gallagher went to the City Manager's office and asked the secretary "Are we in the boundaries?" The secretary said, "I don't believe so." There in the in/out box was the map so Roslyn made a copy and took it home where her husband Gary Gallagher compared it to the survey map. Even then it was difficult to be sure because the map was so small, that was used to send in on the proposed boundaries, and there was no mention of the Warehouse Mountain area in terms the Gallaghers could understand. This was the day before the revised boundaries went to the Local Boundary Commission.

Almost immediately after this the Gallaghers learned, also, from rumor that Council had pushed back boundaries to exclude Council members and immediate members of their families who staked land within the Open to Entry Land. The Gallaghers and other members of Dillingham and the adjacent communities and areas were offended that this had taken place and considered this behavior unworthy of those who hold public office. They also felt that the Warehouse Mountain area is rural and separating part of it into city boundaries was not warranted.

In January, Gary Gallagher went to Anchorage where he met with Tom Hawkins, a Land Manager. Hawkins referred him to Dan Bockhorst, Supervisor of Grants Administration Section/Local Boundary Commission Staff, Department of Community and Regional Affairs, Municipal and Regional Assistance Division. Dan Bockhorst sent Gary a copy of a page from the government municipal code which reads as follows:

Sec. 29.45.580. Differential tax zones. A city may by ordinance establish, alter, and abolish differential tax zones to provide and levy property taxes for services not provided generally in the city or a different level of service than that provided generally in the city. (12 ch 74 SLA 1985)

Dan Bockhorst also sent the Gallaghers a copy of the Statement of Decision for Annexation of Territory to the City of Dillingham that by then had already gone to the State Legislature. It had a date of December 10, 1986 on it and was signed by Alaska Local Boundary Commission Robert Eder, Chairman and attested to by Staff Member Gene Ksni (spelling is hand written and unclear).

Mr. & Mrs. Gallagher live in Warehouse Mountain, an area that begins about three miles from the present boundaries of the City of Dillingham and is marshy tundra with occasional outcroppings of high spruce covered ground capable of sustaining human settlement. The area is commonly called Warehouse Mountain and appears as Warehouse Mountain on National and State maps. The Gallaghers are the only year round settlers in the Warehouse Mountain area. They travel the 4 3/4 miles from the Aleknagik Lake Road by three-wheeler, snow machine or on foot. There is only a short road through Choggiung Native Corporation land and most of the year, this road is impassable. The land after this road drops down hill where the Gallaghers travel across marshy tundra and open springs, forced to follow a different route than that planned by the designers of the "Warehouse Mountain Paper Road." (referred to herein as "paper road" because that is where

' it will probably stay "on paper in a State engineer's office.") There are places where the road is planned over areas where the bottom drops out. Local contractors who are familiar with the cost of filling holes with gravel in the building of roads estimate that to build the planned road could cost as much or more than 3.5 million dollars.

The Gallaghers by February were reading the State Constitution, the State Statutes and the State Administrative Codes trying to figure out how to remedy what had happened.

It was obvious to them, upon reading the Conclusions of Law and the Findings of Fact of the Alaska Local Boundary Commission, that the case for annexation of the approximate 40 square mile area northwest of the City of Dillingham that included part of the Warehouse Mountain Remote Parcel/Open to Entry Land was falsely represented.

The boundary also includes land that extends Dillinghams boundaries to include a remote area of Wood River. There is a small settlement of homes in the area. These people are also opposed to the annexation. They have had their homes in the area for years and do not feel the City can extend services to them without access to the area by roads. They also must get to their homes by three-wheelers, snow machines, (or skiffs, summer only).

The land the City identifies as developed land immediately adjacent to the Aleknagik Lake Road has also, been included. Those residents that bought property in the 4 subdivisions known as Ahklun View Estates, Ahklun View Estates North, Ahklun Subdivision III and Lars D. Nelson Subdivision, were aware of the fact that their Lots were outside City Limits. These people bought property "Out the Road" to get away from the City Limits and were told by Choggiung at the time that they would be informed if the City planned to annex them and that it would go to a vote of the affected people. These people were not personally informed of the City's plans to annex them. Services out the road are last on the list because the City small maintenance crew has priority to take care of City Streets.

#### CRITIQUE OF FINDINGS OF FACT:

Item 10, "The annexing city has demonstrated that it is capable of and willing to extend full municipal services to the identified 40 square mile area northwest of the City of Dillingham in immediately upon annexation." The Gallaghers find it morally repugnant to see others endure hardship in the City of Dillingham in order to provide the cost of gravel to fill up the bog to make a road for them so that they may enjoy municipal services. But, they say, "We are not going to be "in" a "City" and expect less.

At a recent City Council Meeting, Gary Gallaher challenged Mary Darling, City Council Member, to get a fire truck and he'd borrow a set of checkered flags to start her off just to see how long it would take her to get into his cabin at Warehouse Mountain.

Two days later someone tried to drive some kind of a truck in

and make it, only six feet or so from the Aleknagik Lake Road before they were stuck. Whoever it was broke down a large spruce tree to the base, using it and a winch to get pulled out. the City Council may be willing to provide services out there but that willingness on paper does not make them capable.

Item 14. "Using of a method other than legislative review for annexation of the identified 40 square mile area northwest of the City of Dillingham would have been in appropriate." In this item, the report indicates 'There is no indications they want to do so, or will do so' when mentioning the option the Local Boundary Commission has in Place: LOCAL ACTION/ELECTION. Even though the decision may not rest with the people of the area to be annexed, the people have the right to know and the right to representation.

The people of the State of Alaska when delegating authority, do not in doing so give their agencies the right to decide what is good for people to know and what is not good for them to know.

It is the policy of the State of Alaska to encourage settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest. (State Constitution, Article VIII, Section 1)

The Gallaghers plan a small scale farm on their little five acre ridge but so far have been unable to get their garden to grow. They are not clear now that they can go on with their development plans and are puzzled that the Department of Natural Resources was not involved in the decision making process since most of the land is presently subject to this agency's protection.

A local boundary commission or board shall be established by law in the executive branch of the state government...The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action. (State Constitution, Article X, Section 12)

Neither year round residents nor land owners were informed regarding the changes in boundaries nor were they informed regarding the options they could exercise according to the procedures established by the Boundary Commission itself.

Because the people of the approximate 40 square mile area northwest of the City of Dillingham have been mis-represented either to or by the Boundary Commission and have not been privy to full disclosure of matters affecting service delivery and economic development of natural resources, we believe we have a right to democratic representation from a regional form of government which might better serve us than a city government.

The Legislature shall provide for the performance of services it deems necessary or advisable in unorganized borough, allowing for maximum local participation and

responsibility. The legislature may also exercise any power or function in any unorganized borough which the assembly may exercise in an organized borough.  
(State Constitution, Article X, Section 6)

We the people call our unorganized borough into session.

As proud members of the State of Alaska we want nothing less than responsible democracy.

February 4, 1987, Roslyn Gallagher sent the following telexed message to each legislature, representative and each committee:

SUBJECT: Unorganized Borough Assembly

Annexation 40 Square Mile area Northwest of Dillingham Warehouse Mountain Open to Entry Remote Parcel Area 9051 Local Boundary Commission Facts item 1, 10 and 14 mis-represented. We call our unorganized borough assembly (State legislature) into session (Constitution Article X, Section 6, Section 12, Article VIII, Section 1)

February 5, 1987, Thomas Tilden, P.O.Box 786, Dillingham-- signed the petition being circulated against the City of Dillingham's proposed annexation. This is significant in that Tilden is one of Dillingham's City Council Members and he is one who has actually traveled into the territory proposed for annexation, into Warehouse Mountain in the area of the Gallagher area 5 acres, and Wood River Remote area.

February 6, 1987 an article appeared in the Bristol Bay Times, on page 3 under petition Drive "The commission denied both cities claims to the water, but gave Dillingham the 40 square miles of land including 9 square miles of the Open to Entry Land the City never asked for."

February 9, 1987, Marie Luckhurst sent the following telex;

SUBJECT: proposed Annexation by the City of Dillingham

To our Senators and Representatives-matter of annexation of City of Dillingham -Request you to support and present our personal letters, Petition by landowners and petition to the State Legislature. (in-route) during final decision by the Legislature on Feb 20, 1987.

Letters and landowners petition sent to Herrman-Petition to Legislature in-route Herrman, Sturgelewski, Zaroff, Springer.

We believe the City Council of Dillingham is not acting responsibly in their decision to annex the identified 40 square mile area northwest of the City of Dillingham. The enclosed petition supports the beliefs of the citizens of Dillingham and the area residents who will be affected. A whole community is being affected by the few City Council Members decision.

We hope you will Consider the evidence and truths.

Written and Signed "by the people" and make your decision to Disapprove the Petition for Annexation of territory to the City of Dillingham known as "the identified area 40 square miles northwest of the City of Dillingham."

*Gary Gallagher*  
*Marie Luckhurst*

CLERKS, UNORGANIZED BOROUGH

# PEOPLE'S COLUMN

## City manager writes on annexation

The proposed land area to be annexed to the City of Dillingham may become official by March, 1987. The recent Local Boundary Commission decision to approve the annexation of approximately forty square miles of land area will now be forwarded to the Alaska Legislature for final authorization during this session.

What does this mean for the residents and property owners within the annexed area? Municipal services including police, fire, and emergency medical will be provided to this area. The residents will also be included within the Dillingham School District. Residents will continue to have access to the existing "downtown" facilities including the library/museum, dock, harbor and the streets and sidewalks.

What will this cost me? It takes money to provide services and operate and maintain facilities. The City of Dillingham property tax provides revenues to defer some of these costs.

Property owners within the annexed area will have the city-wide 3 mill tax levy ap-

plied to their properties, too. However, specific exemptions apply such as Native allotments, which are not taxed.

Based on the existing mill rated, an owner of a \$100,000 house (including land) would have an annual property tax bill of \$300. This 3 mill rate is among the lowest in the state at this time. Also, the eligible properties will not be taxable until the 1988 tax year.

Will all of the existing city laws and regulations apply to the annexed area? The Dillingham Municipal Code applies to the entire city. However, the City Council does have the authority to amend the existing code and will undertake a review of the code as it applies to the annexation area.

Comments or questions can be directed to City Hall (842-5211) or the City Council members.

by Jeff Labahn  
Dillingham City Manager

Unorganized Borough Proclamation to our Proclaimed 1987 Feb/8 SouthWest Region/Alaska in the interest of the general good.

Citizens do make this solemn proclamation that there be no passing into law of the annexation of the approximate forty square miles northwest of the City of Dillingham without there first being a meeting of the Assembly of the Unorganized Borough Representative Warehouse Mountain Open to Entry Land Remote Parcel Area 9051 Wood River Hanson Point, the Cities ~~of Dillingham and Dillingham~~ and Dillingham, and all other areas of disputed boundaries within the approximate 40 square miles northwest of the City of Dillingham and the approximate 9.8 miles disputed between the two cities and any other territories the State Legislature deems appropriate to be included acting in the public interest.

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. (State of Alaska Constitution, Article X, Section 6)

WHEREAS; The legislature may also exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough; (State of Alaska Constitution, Article X, Section 6)

WHEREAS; The people of Alaska do not lose their sovereignty by legislative authority to an agency of the government and in delegating authority do not in so doing give their agencies the right to decide what is good for people to know and what is not good for them to know;

a local boundary commission or board shall be established by law in the executive branch of the state government (State of Alaska Constitution, Article X, Section 12)

WHEREAS; The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action;

WHEREAS; The local boundary commission did not make option local action/election available and yet had established such procedures;

WHEREAS; The people of the approximate 40 square miles northwest of Dillingham have been mis-represented either by city government to state agency or by a state agency to the state legislature and have not been privy to full disclosure of matters affecting service delivery and development.

We the people of the Unorganized Borough believe our problems of service delivery, revenue enhancement, public health and welfare threats, and management of development might better be served were we to have representation in a regional government than a city government.

Attn: Daw Bockhorst

PETITION TO THE STATE LEGISLATURE

Please copy and distribute to Com. Members.

Thank You.

We the undersigned, petition the Legislature to disapprove the Proposal by the City of Dillingham to annex land that will extend Dillinghams boundaries 11 1/2 miles on the Aleknagik Lake Road, up Wood River to include the State Land Disposal area south of Belt Creek to the North-west to include State Open to Entry (OTE) land from 11 mile to Warehouse Mountain.

This land includes parcels that are remote and without access to roads. The City does not intend to provide roads to the area but does plan to collect property taxes from the property owners. The City would be obliged to provide equal services to all land owners but cannot possibly expect to provide Police, Fire, EMT, and School Busing to these remote areas.

We are also concerned about the City's ordinance that bans the discharge of firearms within the City limits. The area has traditionally been used by local hunters and trappers and would adversely affect the right of the traditional use of the land for that purpose.

Dillingham has plenty of land to grow within the existing city limits. We believe adding the proposed land to the city boundary will only cost the city more money and could eventually end up costing the taxpayer more in increased taxes to pay for added services to the remote areas to be annexed.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

Richard G. Tubbs Richard G. Tubbs Box 848 Dillingham AK 99576

Phillip C. Charley, Jr. Phillip C. Charley, Jr. Box 861 Dillingham AK 99576

Arlene J. Hambley Arlene J. Hambley Box 903 Dillingham, AK. 99576

Leon L. Kanan Leon L. Kanan P.O. Box 1250 DILLINGHAM

Rhonda McLeod Rhonda McLeod Box 961 Dillingham 99576

Shirley Marshall Shirley Marshall Box 501 Dillingham, AK

Valerie Sittles Valerie Sittles Box 783 Dillingham, AK

Lorna L. Sisco LORNA L SISO Box 15 Dillingham

Kathy Johnson Kathy Johnson Box 865 Dillingham

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PETITION TO THE STATE LEGISLATURE

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PLEASE PRINT NAME

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ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
JAN R ALEXANDER	<i>[Signature]</i>	P.O. Box 690 Dillingham, AK
JOHN B FLYNN	<i>[Signature]</i>	P.O. Box 1550 Dillingham, AK
ALAN K JOHNSON	ALAN K JOHNSON	P.O. Box 352 Dillingham, AK
SUGAN DIESEN	SUGAN DIESEN	Box 103 Dillingham, AK
Alice Ruby	Alice Ruby	Box 121 Dillingham, AK
Kathleen Anderson	Kathleen Anderson	Box 1530 Dillingham, AK
Shirley Schreeder	Shirley Schreeder	Box 116 Dillingham, AK
Lawrence F. Curtis	<i>[Signature]</i>	Box 796 Dillingham, AK
J. M. J. J. J.	<i>[Signature]</i>	Box 133 Dillingham, AK
JOE SCANDERA	Joe Scandera	Box 44 Dillingham, AK
Bessie A. WAHL	Bessie A. WAHL	Box 125 Dillingham, AK
Katie M. Andersen	Katie M. Andersen	Box 886 Dillingham, AK
Eina Martiniuk	Eina Martiniuk	Box 636 Dillingham, AK
JERI NELSON	JERI NELSON	Box 386 Dillingham, AK
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Address]</i>

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

Frank S. ...  
John ...  
P.O. Box 355

**Schools before police; city spends too much**

I read with dismay, in your Feb. 6 issue, of the proposed doubling of our property tax to pay for a shortfall in the school budget. Before any consideration is given to raising taxes, let's look at an area where existing monies may be available.

Presently we have approximately \$800,000 in the Public Safety budget. I feel this should be cut in half and contribute \$400,000 to the school budget. In 1974-1975 when I was serving as mayor, we had a public safety budget of approximately \$50,000 — and a population of about 1600. In slightly over ten years our population increased by about 500 while our Public Safety budget increased by \$750,000.

Do we need that much Public Safety? I think not. The national average of police officers is approximately 1.5 officers per 1000 people. The City of Dillingham has about 5 per 1000, double the national

average. It seems to me are buying new police cars every year, and I saw an officer with a radar gun! Is this really needed?

Before the city raises our taxes they should and must look at this and other options. Or will the Public Safety ask for more money to patrol the 40 square miles of annexed land?

I am against the annexation, by the way.

Freeman Roberts  
Dillingham

*[As one of the 500 who washed up on the beach after Freeman's term as mayor, I apologise to all concerned for my part in making the city such a tough place to live that the council had to multiply the police budget so outrageously. A point of clarification, however: state bureaucrats, not local school officials, are the authors of the tax proposal headed last week, which tax we'll have our legislators to thank for if it's approved. — Ed.]*

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
ARLEN E. RUBY	<i>Arlen E Ruby</i>	Box 121 DILLINGHAM, AK
BARBARA S. LOUW	<i>Barbara Louw</i>	Box 64 Dillingham, Alaska
Freeman A. Roberts	<i>Freeman A Roberts</i>	Box 252 Dillingham AK
Carole R. McMurray	<i>Carole R. McMurray</i>	Box 794, Dillingham, AK
Janice K. McCarty	<i>Janice K McCarty</i>	Box 566 Dillingham, AK
MATTHIAS M. O'CONNOR	<i>Matthias M O'Connell</i>	Box 331 DLG, AK 99576
Charles Arns	<i>C Arns</i>	Box 1609 DLG
Emily M. ROBERTS	<i>Emily M. Roberts</i>	Box 252 DLG AK 99576
ROGER S SCHUYLER	<i>Roger S Schuyler</i>	Box 676 DLG 99576
JAMES L. FOLBORN, SR.	<i>James L Folborn Sr</i>	Box 444 DLG 99576
Edmund Mulholland	<i>Edmund Mulholland</i>	Box 76 - 99576
WILLIAM J. O'CONNOR	<i>William J O'Connell</i>	Box 133 Dillingham 99576
JAMES L. O'CONNOR	<i>James L O'Connell</i>	Box 65 Dillingham AK 99576

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME

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ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
George Andrew	George Andrew	Box 197 Dlg. AK.
Mike merlino	Mike Merlino	Box 306 DLG AK
John Owens	John Owens	Box 894. DLG, AK
NEIS G JOHNSON	Neis G Johnson	Box 197 DLG, AK
Charles E Wattier	Charles E Wattier	Box 784 DLG AK
Robert Rossi	Robert Rossi	P.O. 151 Dlg Ak
Dennis Olson	Dennis L Olson	Box 537 Dlg Ak
<del>Emily Olson</del>	<del>Emily Olson</del>	<del>Box 537 Dlg Ak</del>
Scott J. White	Scott J White	Box 326 DLG- AK.
ANTHONY REX GWYTHER	Anthony Rex Gwyther	Box 728 DLG- AK.
Ira Katchak	Ira Katchak	Box 473 Dlg, AK
Maureen L wentz	Maureen Wentz	Box 286 Dlg
CM KEESOM	CM Keesom	Box 453 Dlg
Chris Carby	Chris Carby	Box 653 DLG
Jean K Schlosser	Jean K Schlosser	Box 123
<del>Karen Smeaton</del>	<del>Karen Smeaton</del>	<del>Box 768</del>
Rose M Heyano	Rose Heyano	Box 1409 DLG, AK 99576
Sandra E. Nelson	Sandra E Nelson	Box 477 Dlg. AK.
Bob Pritchard	Bob Pritchard	Box 1249 Dlg AK
Jean Pritchard	Jean Pritchard	Box 1249 DLG, AK.
Sharon M. Bloniarz	Sharon M. Bloniarz	Box 352 DLG, AK
LEE FLYNN	Lee Flynn	Box 1530
<del>James J. Johnson Sr.</del>	<del>James J. Johnson Sr.</del>	<del>Box 144 Dlg</del>
Mike VanVeenburg	MIKE VANVEENBURG	P.O. Box 1064
LINDA C Hilders	Linda Charles	Box 10 - DLG
Anna Marie Akelkole	Anna Marie Akelkole	Box 644 Dlg.
Della Clark	Della Clark	Box 184 Dlg. AK. 99576

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Mike Taghara	<i>[Signature]</i>	Box 122 Dlg.
Karen Smeaton	<i>[Signature]</i>	Box 768
Alvin Gordon	<i>[Signature]</i>	Box 331
Emily L. Olsen	<i>[Signature]</i>	Box 537
Carol Shade	<i>[Signature]</i>	Box 871
Karen Corty	<i>[Signature]</i>	Box 653
Nannie M. Jordan	<i>[Signature]</i>	Box 142 Dlg.
Ernie W. Silset	<i>[Signature]</i>	Box 1449 Dlg.
Hilda M. Shade	<i>[Signature]</i>	Box 765 Dlg.
Theresa A. Mueh	<i>[Signature]</i>	Box 481 Dlg.
Alexandra Backford	<i>[Signature]</i>	P.O. Box, Dlg.
Mary F. Havel	<i>[Signature]</i>	Box 104 Dlg.
Jeanne M. Luvina	<i>[Signature]</i>	Box 866 Dlg.

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Carl E. Gleditsch	Carl E. Gleditsch	Box 10026 DLG
Carl E. Gleditsch	Carl E. Gleditsch	Box 10026 DLG
Dorothy M. Fleck	DOROTHY M FLECK	Box 43 DLG 99576
Elin Ahlstrom	ELIN AHLSTROM	Box 437 DLG, AK 99576
Michael Sogmoen	Michael Sogmoen	Box 437 DLG, AK 99576
Bill Lutz	Bill Lutz	Box 271 DLG, AK 99576
Anuska Olson	Anuska Olson	Box 456
Wanda Fulton	Wanda Fulton	Box 522, DLG
June Ingram	June Ingram	Box 851 DLG
June Ingram	JUNE INGRAM	Box 851 DLG
Roxanne Christensen	Roxanne Christensen	Box 371 DLG
Raymond Christensen	Raymond Christensen	Box 371 DLG
Frank Monty O'Connor	Frank Monty O'Connor	Box 310 DLG

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ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Gail Kurtz	Gail Kurtz	Box 416 Dlg. AK
John R. Kurtz	John R. Kurtz	Box 416 Dlg AK
Teresa Flensburg	Teresa Flensburg	Box 77 Dlg. Ak.
PAUL KROPPA	Paul Kroppa	BOX 10155 DLG AK
MARK JOHNSON	Mark Johnson	" 628 " "
Dale Huffman	Dale Huffman	Box 394 Dlg
Wayne F. Schroeder	Wayne F. Schroeder	Box 126 Dlg 99526
Sam Ah	SAM AHKINS	Box 425 DLG 995
Sassa A. Dunn	SASSA DUNN	Box 778-Dlg. AK
Norman Johnson	Norman Johnson	Box 865 Dlg. AK
Gust Bachtel	(Box 806) Gust Bachtel	Dillingham, AK 99523
M R Reuter	Box 803	DILLINGHAM AK
George L. Nelson	George L. Nelson	P.O. Box 85
Kevin M. Johnson	Kevin M. Johnson	P.O. Box 907 DLG, AK

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Genie Schlosser	Genie Schlosser	Box 945 DLG AK
John A. Heyano	John A. Heyano	Box 523 DLG AK
Nick F. Smootson	Nick F. Smootson	Box 895 DLG AK
Senia K. Brunson	Senia K. Brunson	Box 557 DLG AK
JAYLE FREUND	Jayle Freund	Box 282 DLG
Jesse T Smootson	Jesse T Smootson	Box 10000 DLG
LYNN BRUX	Lynn Brux	Box 885 DLG
JACK ASANO	Jack Asano	Box 378 DLG
ERIZ SHADE	Eriz Shade	Box 2
Jean Barrett	Jean Barrett	Box 55
Marina Jo Nelson	Marina Jo Nelson	Box 108 DLG AK
LAURENCE Sorenson	Laurence Sorenson	Box 191 DLG
HELESA TURNER	Helena Turner	Box 627 Dillingham
Michael Branch	Michael Branch	Box 733 DLG
CLINT REINTGES	Clint Reintges	Box 1490 DLG
KENNETH M ROULLIER	Kenneth M Roullier	Box 233 DLG
Dorothy M Flensburg	Dorothy M Flensburg	Box 43 DLG
RACHAEL D. KOHLER	Rachael D. Kohler	Box 757, DLG, AK

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
JUDY PATTERSON	<i>Judy Patterson</i>	Box 198 Dillingham
<del>Denise Olson</del>	<del><i>Denise Olson</i></del>	<del>Box 2825 - 10 mil - Lake.</del>
WESLEY A. BUCHER	<i>Wesley Bucher</i>	P.O. Box 668 Dillingham
Herman E. Schroeder, Jr	<i>Herman E. Schroeder, Jr</i>	Box 236 Dillingham
Rebecca h. Nelson	<i>Rebecca h. Nelson</i>	Box 36 Dillingham
FAY SHORT	<i>Fay Short</i>	Box 843 Bethel AK
<del>Jack J. Rupp</del>	<del><i>Jack J. Rupp</i></del>	<del>Box 366 Dillingham</del>
Bill A. Maines	<i>Bill A. Maines</i>	Box 494 Dlg Ak 99576
Mark D. Curtin	<i>Mark D. Curtin</i>	Box 387 Dlg Ak 99576
HOWARD B. GRAYBOFF	<i>Howard B. Grayboff</i>	Box 228 Dlg Ak 99576
<del>James Wiley</del>	<del><i>James Wiley</i></del>	<del>Box 604 Dlg Ak 99576</del>
<del>Charles Kussakoff</del>	<del><i>Charles Kussakoff</i></del>	<del>Box 47 Dlg Ak 99576</del>
<del>Isaac Kussakoff</del>	<del><i>Isaac Kussakoff</i></del>	<del>P.O. 171 Dlg Ak 99576</del>
Andrew Nielsen	<i>Andrew Nielsen</i>	Box 892 Dlg, Ak 99576
Katherine A. Nielsen	<i>Katherine A. Nielsen</i>	Box 892 Dlg, Ak 99576

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Patti Darden	Patti Darden	Box 251, Dlg.
Richard E. Womack	Richard F. Womack	Box 392 DLS
Martin Kilmer	MARTIE KILMER	Box 1189 Dlg
Stephen A. Lemmon	[Signature]	Rm 930, Dlg
[Signature]	[Signature]	Box 824 Dlg
F. Tuttle	FREDDY TUTTLE	Box P.O. 302 DLG
Deanna E. Hardin	Deanna E. Hardin	Box 597 Dlg.
Ronald K. Coleman	RONALD K. COLEMAN	Box 601 DLG
Frank Wilber	FRANK WILBER	Box 221
Jack Wilber	Jack Wilber	Box 160
Betty Wilber	Betty Wilber	Box 168
Carol L. Myhre	CAROL L. MYHRE	Box 482 DLG
John R. Hurley	John R. Hurley	Box 484
Julie Kelf	Julie Kelf	Box 681
DAGEN H. NELSON	DAGEN H. NELSON	Box 477
ELLAMAE CHANEY	Ellamae Chaney	Box 13

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
ROSLYN GALLAGHER	Roslyn Gallagher	Warehouse Mountain T12S, R56W P.O. Box 19, Aleknagik Seward Meridian
Carla Merriner	Carla Merriner	Box 284 DLG.
THOMAS TILDEN	Thomas Tilden	Box 786 DLG.
Russ Rolf	Russ Rolf	Box 681 Dillingham
GARY GALLAGHER	Gary Gallagher	Box 19 ALEKNAGIK AK.
IRMA R. SCHROEDER	Irma R. Schroeder	Box 236 DILLINGHAM MILE 22 1/2 ALEX.
Myrtie Carty	Myrtie Carty	Box 358 Dillingham AK.
Steve D. Hardin	Steve D. Hardin	mile 9 1/2 outside city limits
NICK WAHL	Nick Wahl	MILE 6, LAKE RD DILLINGHAM AK 995
JIM McMURRAY	Jim McMurray	MILE 6 1/2 LAKE RD DLG.
Verna Schmitt	Verna Schmitt	Mile 10 Lake Rd Dillingham Aleknagik
Jack N. Jordan	Jack N. Jordan	P.O. Box 173

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

Paul Ribick

*Paul Ribick*

P.O. Box 755 D.L.C.

Henry E. Skads

*Henry E. Skads*

P.O. Box 2 D.L.C.

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
JAMES CARTY	<i>James M. Carty</i>	Box 358 Dillingham Ak. 99576
JAMES A WARD	<i>James A Ward</i>	Box 124 DLG AK 99576
STEVE NICHOLSON	<i>Steve Nicholson</i>	Box 912 DLG AK 99576
VERL LUCKHEART	<i>Verl Luckheart</i>	Box 140 DLG AK 99576
LOYD F. O'CONNOR	<i>Lloyd F. O'Connor</i>	Box 65 DLG
JEAN L. O'CONNOR	<i>Jean L. O'Connor</i>	Box 65 Dillingham AK 99576
MARIO FERRARO	<i>Mario Ferraro</i>	Box 253 Dillingham
DANA CUTTINS	<i>Dana S. Cuttins</i>	Box 670 DLG
JACK E. PARKIN	<i>Jack E. Parkin</i>	Box 515 DLG
THOMAS E. WILSON JR	<i>Thomas E. Wilson Jr</i>	Box 385 DLG
GORDON L. JENSEN	<i>Gordon L. Jensen</i>	Box 764 - DLG
Josephine A. Jensen	<i>Josephine A. Jensen</i>	Box 764 - DLG
Shannon's Pond	<i>Shannon's Pond</i>	



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PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Joe Hiratsuka	<i>Joe Hiratsuka</i>	P.O. Box 736 Dlg.
MARGUERITE B. KALLSTROM	<i>M. (Marguerite) Lorde Kallstrom</i>	Box 550 Dlg.
DAN WIARD	<i>Daniel P. Wiard</i>	Box 917 Dlg.
<i>Mark W. Hill</i>	<i>Mark W. Hill</i>	Dlg. Ak.
Bryant Gregoire	<i>Bryant Gregoire</i>	Box 426
R. Burkowski	<i>R. Burkowski</i>	Box 382 DL
Raymond N. Gregoire Jr	<i>Raymond N. Gregoire Jr</i>	Box 326 Pk 6
Bruce Hansen	<i>Bruce Hansen</i>	Box 1209
Rob Carpenter	<i>Rob Carpenter</i>	Box 701
Phillip R. Carpenter	<i>Phillip R. Carpenter</i>	P.O. Box 761
<i>Phillip R. Carpenter</i>	<i>Phillip R. Carpenter</i>	Box 713
<i>Mick Filipek</i>	<i>Mick Filipek</i>	Box 185 DLG
Wanda M. Oberholzer	<i>Wanda M. Oberholzer</i>	Box 285 Dlg.
Mae B. Lemmon	<i>Mae B. Lemmon</i>	Box 712 Dlg.

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
ANNAMARIA FERRARO	<i>Annamaria Ferraro</i>	Box 253 Dillingham, Ak. 99576
Dorothy B. Angasan	<i>Dorothy B. Angasan</i>	Box 623 Dillingham, AK 99576
Zacharias Brink	<i>Zacharias Brink</i>	Box 666 Dillingham, AK 99576
Cristy Willer Tilden	<i>Cristy Willer Tilden</i>	P.O. Box 786 Dillingham, AK 99576
Jacqueline Dennis Greedigan	<i>Jacqueline Dennis Greedigan</i>	P.O. Box 565 Dillingham, AK 99576
Brenda Akelkok	<i>Brenda Akelkok</i>	P.O. Box 134 Dillingham, AK 99576
Wassiliusia Pennis	<i>Wassiliusia Pennis</i>	Box 406 Dillingham, AK 99576
Ilean Sylvester	<i>Ilean Sylvester</i>	P.O. Box 915 Dillingham, 99576
Alan Backford	<i>Alan Backford</i>	P.O. Box 22 Dillingham, AK
Adolph Johnson	<i>Adolph Johnson</i>	P.O. Box 264 Dillingham, AK
Debbie Lee	<i>Debbie Lee</i>	P.O. Box 634 Dillingham, AK
DARYL MOORE	<i>Daryl Moore</i>	BOX 662 DILLINGHAM, AK
Elizabeth S. Dettler	<i>Elizabeth S. Dettler</i>	Box 554 Dillingham, AK 99576
D. L.	<i>D. L.</i>	

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Shirley Higgins	Shirley Higgins	Ln. 1219 Dlg. AK
DAVID M. JACKSON	David M. Jackson	Box 3 Dillingham, AK
KATHERINE C. JACKSON	Katherine C. Jackson	Box 3 Dlg, AK 99576
MARY D. SAGMOEN	Mary D. Sagmoen	Box 54 Dlg. AK 99576
RONALD J. Kihle	Ronald J. Kihle	Box 447 Dlg. Id.
IVIE C. LONG	Ivie C. Long	Box 1310 Dlg. AK
ANNA K. LONG	Anna K. Long	Box 1310 Dlg. AK
MARY B. WATTS	Mary B. Watts	Box 543 Dlg. AK
HENRY J. KILMER	Henry J. Kilmer	Box 1189, Dlg. AK
DOUGLAS A. TURNER	Douglas A. Turner	Box 904 Dlg. AK
E. FAYE TONDS	E. Faye Tonds	Box 362, Dlg. AK
DOROTHY S. WILSON	Dorothy S. Wilson	Box 142 Dlg.
MARJORIE A. NELSON	Marjorie A. Nelson	Box 572 Dlg.
MARIO FERRARO	Mario Ferraro	Box 253 Dlg.
George M. Flensburg	George M. Flensburg	Box 72 Dlg.
MARILYN SHULER	Marilyn Shuler	Box 266 Dlg.
BEZ PETERSEN	Bez Petersen	Box 397 Dlg.
SAM EVELAGE	Sam Evelage	Box 314 Dlg.
JOAN EVELAGE	Joan Evelage	Box 755 Dlg.
SHELLEY FARLER	Shelley Farler	Box 130 Dlg.
DAVID FARLER	David Farler	Box 618 Dlg.
STEVEN SHADER	Steven Shader	Box 871 Dlg.
CHUCK WALLACE	Chuck Wallace	Box 431 Dlg.
ROY W. WALLACE	Roy W. Wallace	Box 47 Dlg.
WILLY W. WALLACE	Willy W. Wallace	Box 752 Dlg.
DANA CLARK	Dana Clark	Box 110-110
ELIYNE INGRAN	Eliyne Ingram	Box 355 Dlg.

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS BOX 768 DLG
Martin L. Smeaton	<i>Martin L. Smeaton</i>	10 mile
Marie A. Luckhurst	<i>Marie A. Luckhurst</i>	P.O. Box 637 Dillingham Ak
Uic. A. Luckhurst	<i>Uic. A. Luckhurst</i>	P.O. Box 637 Dillingham Ak
Carolyn Hoge	<i>Carolyn Hoge</i>	Box 183 DLG AK 99576
Virgil Luckhurst	<i>Virgil Luckhurst</i>	P.O. Box 409 DLG AK 99576
VIRGIL W. Smeaton	<i>Virgil W. Smeaton</i>	Box 895 DLG AK 99576
Robert D. Kallstrom	<i>Robert D. Kallstrom</i>	Box 550 DLG AK 99576
Diane E. Folsom	<i>Diane E. Folsom</i>	Box 444 DLG AK 99576
MARK R. DIXON	<i>Mark R. Dixon</i>	Box 1064 DLG AK 99576
WILLIAM C. Luckhurst	<i>William C. Luckhurst</i>	Box 633 DLG AK 99576
Gay Buckles	<i>Gay Buckles</i>	Box 133 DLG AK 99576
LARRY WILSON	<i>Larry Wilson</i>	Box 298 DLG AK 99576
Russ Brown	<i>Russ Brown</i>	Box 183 DLG AK 99576
...	...	...

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Paula F. Brunner	Paula F. Brunner	Box 567 Dlg. AK
Jackson M. McCormick	Jackson M. McCormick	PO Box 157 Dlg. AK
Keith A. Roullet	Keith A. Roullet	DLG.
PATRICIA Roullet	Patricia Roullet	Box 333 Dlg. AK
VERN "B" LUCKHURST	Vern B. Luckhurst	Box 11 Dlg. AK
George Skire	George Skire	Box 1R Dlg. AK
Joe Charney	Joe Charney	Box 13
VERL LUCKHURST	Verl Luckhurst	Box 16 Dlg. AK, 99576
Gloria Bernatze	Gloria Bernatze	Simpson Estates
Rick Murphy	Rick Murphy	Box 732 Dlg.
Richard C. Schoester	Richard C. Schoester	Box 1409 Dlg.
Richard C. Schoester	Richard C. Schoester	Box 915 Dlg.
Mystice Noden	Mystice Noden	Box 47 Dlg.
Tatiana R. McCormick	Tatiana R. McCormick	Box 157, Dlg. AK
Jerry Libby	Jerry Libby	Box 646 - Dlg. AK
FRED NODEN	FRED NODEN	#7 Dlg.
Amelia Christensen	Amelia Christensen	P.O. Box 203 Dlg. AK
Nick Christensen	Nick Christensen	P.O. Box 203, Dlg. AK
Eunice WAHL	Eunice Wahl	P.O. Box 17 Dlg. AK
Cheryl Shade	Cheryl Shade	Box 172 Dlg. AK
Betty Lopez	Betty Lopez	Box 28 Dlg.
Evelyn J. Barrett	Evelyn J. Barrett	P.O. Box 55
Ronald W. Caldwell	Ronald W. Caldwell	P.O. Box 694
Charles N. Backford	Charles N. Backford	Box 414
Leo S. Aguilera Jr.	Leo S. Aguilera Jr.	Box 138
Louie P. Jones	Louie P. Jones	

BRISTOL

# BayTimes

Vol. 7 No. 6

Dillingham, Alaska

February 6, 1987

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## Petitioners protest city annexation

by Bruce Baltar  
BayTimes staff

Residents of the area proposed for annexation to the City of Dillingham have mounted a petition drive aimed at stopping the city's expansion.

"Why should we be part of the city when we don't even have road access to our homes?" asked one resident who is helping circulate the petition, initiated by V.A. and Marie Luckhurst.

Opposition to the annexation attempt became vocal following a Nov. 22 Local Boundary Commission decision which approved city annexation of 40 square miles north of its existing boundaries.

The addition includes several areas without road access, such as the state Open To Entry (OTE) land west of 11 Mile on the Lake Road, and settled Native allotments along Wood River.

Gary and Rosyln Gallagher, the only year-round OTE residents, oppose the annexation, and are particularly incensed by lack of prior notice that their cabin near Warehouse Mountain might be included. They say they did not know their area was under consideration when the boundary commission held hearings here last August.

"We simply don't feel what's happened over these boundaries is responsible representative government," Rosyln Gallagher said.

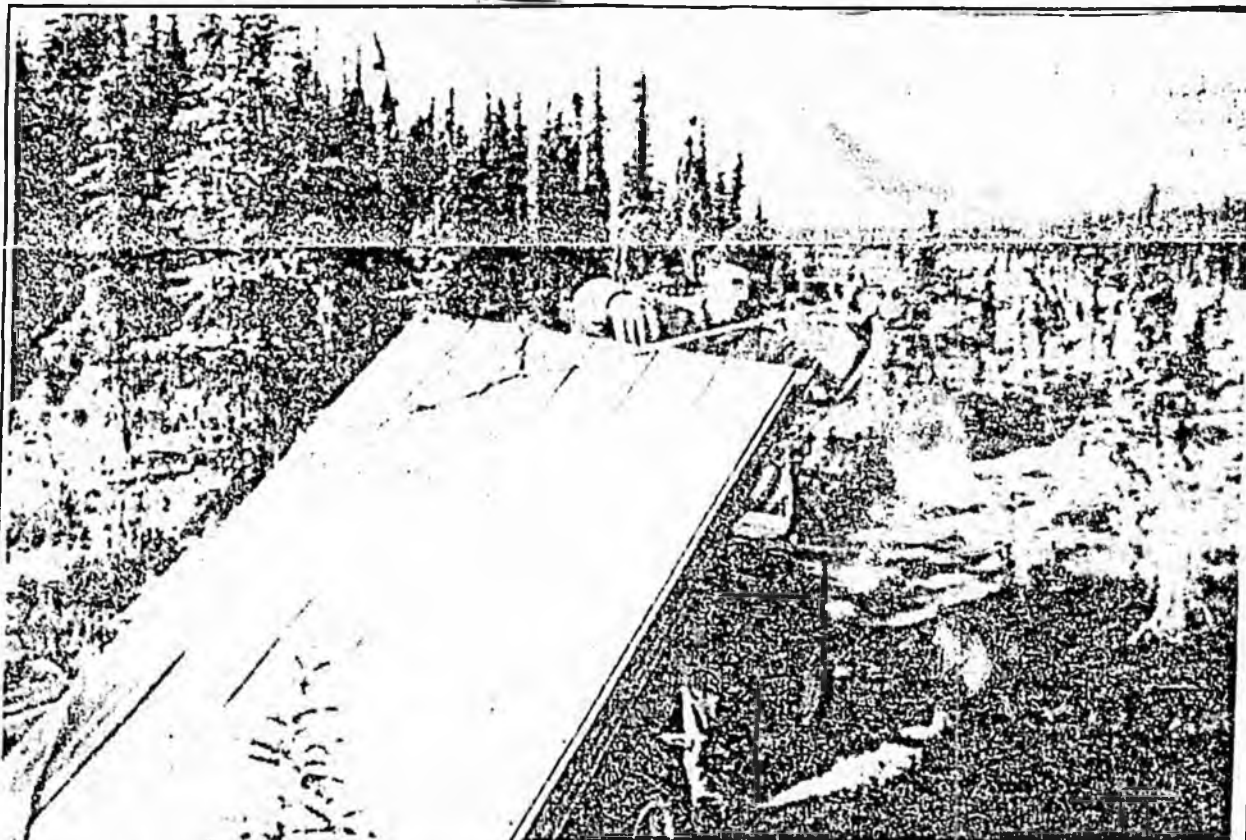
"What's worse is that facts have been misrepresented to the Local Boundary Commission by the City of Dillingham, and worse yet, the commission has included absolutely preposterous statements in its findings of facts," she said.

Specifically, Gallagher objects to an LBC finding that the city is capable of extending "full municipal services" to the annexation area.

Both Gallaghers ridicule the notion that the city will be able to provide any services to their cabin, which is located nearly five miles off the Lake Road and is accessible only by foot or off-road vehicles.

AnnaMaria Ferraro, whose home is within the annexation area at Hanson Point on Wood River, also opposes the annexation. She says that preservation of lifestyle is her chief concern.

"I don't believe that without road access to our homes,



By three-wheeler in summer and sled in winter, Gary Gallagher packed materials nearly 5 miles to build his cabin on the state open-to-entry land.

(OVER)

See PETITION-Page 3

## Petition drive

Cont'd from Page 1

we should be part of any city ordinances," she says.

Ferraro adds that her opposition to the annexation has nothing to do with city taxation, pointing out that her tax burden would not increase. Her house on Wood River is on a Native allotment and would not be subject to property taxes, she says. And she already pays taxes on her property in town.

Ferraro said Wednesday that as of her last count 246 local residents had signed the petition, which then had been circulating less than a week. She estimated that about 100 additional signatures were on copies of the petition still in circulation.

She says that many people who live within existing city boundaries have signed the petition because they fear city resources will be spread too thin if it attempts to provide services to the annexations.

"There have been a lot of comments that (city residents) are not getting proper service as it is," she said.

Organizers will send the signatures to the legislature in the hope that it will vote

down the annexation. The commission's decision was submitted to the legislature last week, and that body has 45 days to act on the proposal. If it does nothing the annexation will go into effect.

The annexation effort began last spring. The main objective was to obtain Nushagak Bay waters so that the city would receive a share of the fish taxes floating processors pay the state.

But the village of Clarks Point was also seeking to annex the bay, and Dillingham officials feared that if they did not respond in kind, the Dillingham might permanently lose out on the fish revenues.

The commission denied both cities' claims to the water, but gave the Dillingham the 40 square miles of land — including 9 square miles of OTE land the city never asked for.

Procedurally, officials say there is no way to modify the LBC decision. The legislature can only approve or deny it. City officials have offered no indication that they might be considering withdrawing support for the annexation.

Telecommunication  
#0078

TO: C.B. BETTISWORTH

FROM: DAN BOCKHORST

RE: MUNICIPAL INCORPORATIONS BY MAIL

Please substitute the attached draft letter on the above referenced subject for the one provided to you previously. After discussing the matter further with Division of Elections, I am still convinced that elections by mail are inappropriate for incorporation matters. I substantially rewrote the letter to add some other thoughts on the matter and to address issues raised by the Division of Elections. I think the letter in its present form is more persuasive.

RECEIVED

FEB 17 1987

GB Co.

February 19, 1987

The Honorable Stephen McAlpine  
Lieutenant Governor  
State of Alaska  
P.O. Box AA  
Juneau, Alaska 99811

Dear Lieutenant Governor McAlpine:

We have recently learned that the state election code was amended to allow selected state elections to be conducted by mail (AS 15.20.800). It seems certain that the effect of the amendment will be to increase voter participation at such elections. While that might generally be considered a desirable effect, we do have reservations regarding such elections as they relate to issues involving the Local Boundary Commission.

Before presenting our concerns, however, we wish to note that state elections may be conducted by mail only if they are held "at a time other than when the general, party primary, or municipal election is held." Because of this limitation, we conclude that the goal of this new provision is probably more to reduce the cost of conducting special elections than it is to enhance voter participation in state elections. If it was the latter, certainly all state elections would be conducted in that fashion.

The Division of Elections conducts several types of elections relating to issues involving the Local Boundary Commission. These consist of municipal incorporation, dissolution, merger and consolidation elections. At this time, our reservations concerning elections by mail are limited to municipal incorporation elections (AS 29.05.110). Our specific concerns are twofold:

- I. How will an election conducted by mail affect the outcome of an incorporation proposition?
  - A. Voting by "uninformed" voters
  - B. Voting by "qualified non-resident" voters
  
- II. Is there greater opportunity for abuse of voting privileges (through electioneering and fraud) during an election conducted by mail?

A discussion of these two concerns follows.

The Honorable Stephen McAlpine  
February 19, 1987  
Page Two

I. EFFECT OF AN ELECTION CONDUCTED BY MAIL ON THE OUTCOME OF THE INCORPORATION PROPOSITION

Our experience has been that typically fifty to sixty percent of the individuals qualified to vote in municipal incorporation elections actually do so. Further, incorporation propositions are typically decided by fairly narrow margins. For example, 55% of the eligible voters participated in the last municipal incorporation election (Northwest Arctic Borough). At least 3,140 individuals were qualified to vote on that proposition, while only 1,727 actually did vote. Of those that voted, 983 (56.9%) voted in favor of incorporation while 744 (43.1%) voted against incorporation. Thus, the issue was decided by a margin of 239 votes, less than eight percent of the total number of registered voters.

Given the typical narrow margin in deciding incorporation elections, we are certain you will appreciate our concern over a change in procedures which might influence the outcome of such elections. As indicated earlier, we feel that an incorporation election conducted by mail will result in greater voter participation. However, we are concerned that the increase in voter participation may come largely from "uninformed" voters and individuals who are qualified to vote but who do not live in the community or region. For reasons stated later in this letter, we speculate that the majority of these individuals will cast ballots to maintain the status quo (i.e. vote against incorporation).

Such circumstances would make future incorporations less likely. The Local Boundary Commission has always been a strong advocate for the formation of municipal governments whenever we judge that they have met the minimum standards set out in law. The basis for this position is Article X, § 1 of the Alaska Constitution which states:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

In Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974), the Alaska Supreme Court found that this provision of the constitution favors upholding organization of boroughs [and by implication, cities -- at least those in the unorganized borough] whenever the requirements for incorporation have been minimally met.