

December 3, 2021

Mr. Aaron Peterson
Assistant Attorney General
Alaska Department of Law
1031 W. Fourth Ave., Suite 200
Anchorage, AK 99501

Via Email: aaron.peterson@alaska.gov

Re: *Department of Law Memorandum to Alaska Board of Fisheries Regarding
Proposal 26*

Dear Aaron,

I represent the Native Village of Chenega, which submitted Proposal 26 for consideration by the Board of Fisheries at its 2021 Prince William Sound/Upper Copper and Upper Susitna Rivers Finfish and Shellfish meeting.

Proposal 26 would establish a new subsistence salmon permit authorizing villages, including the Native Village of Chenega, to harvest salmon in western Prince William Sound. The Alaska Department of Fish and Game (“ADF&G”) staff comments for Proposal 26 acknowledged that if the proposal were adopted, subsistence “fishing opportunity would increase for members of the Native Village of Chenega who do not participate in current subsistence fisheries.” Proposal 26 specifically references the Board’s statutory authority under AS 16.05.330(c) to “adopt regulations providing for the issuance and expiration of subsistence permits for areas, *villages*, communities, groups, or individuals as needed for authorizing, regulating, and monitoring the subsistence harvest of fish and game.” (emphasis added).

However, the Department of Law’s November 24, 2021 memorandum to the Board states that if Proposal 26 were adopted it “would raise significant constitutional concerns.” The memorandum concludes, without offering any analysis or explanation, that Proposal 26 “likely violates the equal protection clause of article I, section 1, the common use clause of article VIII,

section 3, and the uniform application clause of article VIII, section 17 of the Alaska Constitution.”

The memorandum does not explain what “constitutional concerns” the Department of Law has or why the cited constitutional provisions would be implicated by the Board’s adoption of a regulation authorizing a subsistence salmon permit for village councils, such as the Native Village of Chenega. It also does not address the statutory authority cited in Proposal 26, AS 16.05.330(c), which unambiguously delegates authority to the Board to issue subsistence permits to “areas, *villages*, communities, groups, or individuals.” (emphasis added).

There is abundant legal support for the Board’s authority to establish subsistence permits for villages. For example, the Board has adopted regulations authorizing subsistence permits for village councils to operate fish wheels on the Copper River. 5 AAC 01.630(h) provides, “A subsistence fishing permit may be issued to a *village council*, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Glennallen Subdistrict, to operate fish wheels on behalf of members of its village or organization.” (emphasis added). Proposal 26 would be very similar to 5 AAC 01.630(h) and the Native Village of Chenega has proposed substitute language that is nearly identical to existing regulations.

By concluding that Proposal 26 is “likely” unconstitutional without providing analysis or legal support beyond the memorandum’s assertions, the Department of Law fails to provide Proposal 26 with the level of attention that it deserves. The Board (and the public) relies on the Department of Law for impartial legal advice regarding proposals. The Board may be improperly discouraged from supporting Proposal 26 based on the memorandum’s unsupported conclusions. I urge the Department of Law to either provide a full legal analysis supporting its conclusions regarding Proposal 26—or withdraw the comment.

Very truly yours,

LANDYE BENNETT BLUMSTEIN LLP

/s/ Andy Erickson

Andy Erickson

Cc: Alaska Board of Fisheries