
MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Erin Reinders, City Manager
Date: January 12, 2021
Re: City Manager Report

Covid-19 Emergency: The City of Unalaska remains in a state of emergency. City Staff is focused on providing public services, safely adjusting operations, responding to outbreaks and adapting to pandemic related regulatory changes. Incident Commanders (Melanee representing the Clinic and I representing the City) meet together weekly with the Mayor. City staff meets on a weekly basis to discuss any necessary updates. Unalaska Unified Command Stakeholder group meets on a monthly basis, in addition to special meetings as necessary. This group includes representatives from USAFV, Industry, City, Tribe, School and the Clinic.

Strategic Planning: The Strategic Planning facilitator is set to meet with the Mayor and City Council on Thursday, February 25 (9:00-3:30) and Friday, February 26 (9:00-1:00). Calendar invites will be sent to each of you. This process will help Council set goals and focus areas for the coming year that best address community needs and your vision for the future. With added focus, this will help us use our resources more effectively and sustainability.

Fisheries Resource Landing Tax: As we previously mentioned, the Alaska Supreme Court is hearing a lawsuit against the State of Alaska claiming the Fisheries Resource Landing Tax is unconstitutional. City Attorney Brooks Chandler continues to monitor the situation and has provided an updated memo based on a growing understanding of the situation and what he has learned from information provided by Federal Lobbyist Brad Gilman. This memo is attached, and it appears as though the challenge is limited to the Amendment 80 fleet.

Finance Director: Ed Keough has been selected to serve as Unalaska's full time permanent Finance Director. We are working to bring him and his family on island the week of January 18, 2021. Ed holds an MBA and brings with him 15 years of financial management experience including accounting, cash management, grant administration, billing & invoicing, payroll, budgeting, and reporting. He also has supervisor and management experience with focus on strategic development, efficient processes, transparency and the use of technology. Assistant City Manager JR Pearson, who has been involved with this recruitment process every step of the way, and I believe he will a good fit for the organization. Together, will work with Interim Director Jim Sharpe to ensure a solid transition.

Innovative Readiness Training (IRT): Chris Salts with OC, Chris Price with the Q-Tribe and I continue to meet monthly, in keeping with the MOU that all parties signed in August. We are developing a presentation to summarize the report, key recommendations and action items, and some ideas for future IRT support applications. We plan to share this with City Council, Tribal Council and OC's Board in February, to garner their input and identify opportunities to work together. The Tribe has summited a request for IRT support in a feasibility study for a local military presence. This concept was referenced in the IRT Community Assessment from this past fall, and will provide additional information that we all may find useful.

Geothermal PPA: OCCP is finalizing the Air Source Heat Pump study now. DPU Deputy Director Steve Tompkins gave the team the last bit of necessary information last week. EPS has been contacted by the City to work on the integration study, as previously communicated. Steve Tompkins is providing OCCP an update on the integration study's status, but many of the details will depend on OCCP's design and power delivery metrics, and confirmation on the inclusion of a BESS/ESS as part of the planned design. We have been told by OCCP that they are now competitively bidding the power plant and resource gathering system. Bids are due the end of January. OCCP is working through the permitting process with the Army Corps of Engineers, and feel they will begin access road construction this spring. We do not have an update as to their financing plans, but I am hoping to meet with some of the OCCP folks at the end of the week of January 11 and learn more.

Directives to the City Manager: Two directives to the City Manager remain outstanding, both are being worked on by City Staff and require Council engagement:

- *Options for Increased Tobacco Tax (11/27/18). Ongoing.* City Clerk Marjie Veeder has worked with our city attorneys on this complex topic. City Council discussed the Tobacco Excise Tax Ordinance, as well as potential rates and funding dedication approaches at their November 10, 2020 meeting. The Clerk planned to bring the Ordinance back to Council for the January 12, 2021 meeting. However, given the heightened risk level and additional Council Meetings, we now plan on bringing this to Council at the second meeting in January.
- *Fiscal Sustainability Plan and Policy (5/14/19). Ongoing.* Interim Finance Director Jim Sharpe began a discussion with City Council on sustainable long term planning at the December 12, 2019 Council meeting. He provided informational material for Council to review. Staff is proceeding in looking into this issue more, as described in a previous manager reported dated November 24, 2020. The Interim Finance Director plans to discuss this with Council at the January 13, 2021 City Council Work Session.

BOYD, CHANDLER, FALCONER & MUNSON LLP

Attorneys At Law
Suite 302
911 West Eighth Avenue
Anchorage, Alaska 99501
Telephone: (907) 272-8401
Facsimile: (907) 274-3698
bcf@bcf.us.com

MEMORANDUM

TO: Erin Reinders



FROM: Brooks Chandler

DATE: January 9, 2021

RE: Update to November 6 Memorandum on Fish Tax Case

This memorandum updates our November 6 memorandum on the legal challenge to the State's landing tax currently before the Alaska Supreme Court. Specifically a more detailed look at footnote 3 of that memorandum which stated in part: "If the tax is ruled unconstitutional it is likely all companies will stop paying the tax. Those who previously paid under protest may be eligible for a tax refund." Based on materials provided by and discussions with Brad Gilman I now believe the impact of this legal challenge will be limited to the "Amendment 80" fleet¹ which is a relatively small component of the overall catcher processor industry fishing in state and federal waters in the Bering Sea and offshore from the Aleutian Islands.

American Fisheries Act Landing Tax Provision

Fishermen's Finest (owner of the companies challenging the constitutionality of the landing tax) is part of what is commonly known as the Amendment 80 fleet which primarily harvests ground fish other than pollock. Pollock harvesters are subject to the American Fisheries Act ("AFA") which has authorized cooperative fishing ventures the arrangements of which are established by contracts between participants in the fishery. One provision of the AFA requires

¹The "Amendment 80" fleet consists of "head and gut" catcher procesors who fish for yellowfin sole, flathead sole, rock sole, Pacific cod, Atka mackerel, and Aleutian Islands Pacific ocean perch allocations plus allowable bycatch, if any.

these coop contracts to include a commitment to “make payments to the State of Alaska. . . in amounts which would otherwise accrue had pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law”².

Mr. Gilman was present at the creation of this statutory provision which he told me was added at the last minute during adoption of the AFA in 1998. There is a decent chance that this contractual promise will operate regardless of whether the landing tax challenged by Fishermen’s Finest is held unconstitutional. There are two reasons for this: 1) this language could be considered Congressional consent to tax these specific pollock exports and 2) the contract language operates independently of the later enacted state Fisheries Landing Tax which applies to fish first landed in federal waters.

This means the obligation to pay Alaska’s landing tax is not simply a matter of state law. The obligation to pay the tax is a requirement of federal law. It is also a contractual promise made by all signatories to each and every cooperative agreement the existence of which is a prerequisite to qualifying for an allocation of pollock.

As a practical business matter not paying the tax without a very specific court ruling (rather than claiming “me too” status based on the Fisherman’s Finest case) is a huge business risk. In my opinion if the landing tax is held unconstitutional in the Fishermen’s Finest case that ruling would not automatically result in the pollock fleet no longer having to pay the Landing Tax. Any loss of landing tax revenue from pollock catcher-processors would not occur for years down the road even if the State loses the Fishermen’s Finest case. First at least one company fishing pollock would need to start their own administrative appeal process, then go to Superior Court, then at least to the Alaska Supreme Court and possibly beyond. This revenue source is secure from legal challenges³ for at least the next 5 years. Even if a legal challenge was filed the landing tax jurisdiction section of the AFA will provide additional and compelling legal arguments not available to the State in the pending appeal.

I am not sure if the State distinguishes between landing taxes paid by the Amendment 80 fleet and landing taxes paid by the BSAI pollock fleet when sharing revenue with Unalaska. I am sure the pollock catch is significantly larger in value and generates significantly more landing tax.

Let me know if you have any additional questions on this topic.

²Pub. L. 105-277 Sec. 210(f).

³The revenue source is at risk to a legislative decision to stop sharing this revenue with local governments.