

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, ALASKA 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

Scott M. Kendall
Alaska Bar No. 0405019
Jahna M. Lindemuth
Alaska Bar No. 9711068
Holmes Weddle & Barcott, P.C.
701 West 8th Avenue, Ste. 700
Anchorage, AK 99501
Phone: 907.274.0666
Fax: 907.277.4657

Attorneys for Defendant Bristol Bay Regional Seafood Development Association

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

Trefim Andrew, Tim Anelon, Gary
Nielsen, Henry Olympic, Abe Williams,
and Braden Williams,

Plaintiffs,

vs.

Bristol Bay Regional Seafood
Development Association, United Tribes of
Bristol Bay, and SalmonState

Defendants.

Case No. 3AN-19-6026 CI

**DEFENDANT BRISTOL BAY REGIONAL SEAFOOD ASSOCIATION'S
REPLY IN SUPPORT OF MOTION TO DISMISS AND RESPONSE TO
STATE OF ALASKA'S AMICUS BRIEF IN SUPPORT OF PLAINTIFFS**

I. Introduction

Plaintiffs and the State ask this court to scrutinize BBRSDA's board actions and take the extraordinary step of declaring the UTBB and SalmonState contracts so far beyond the Association's mandate as to be *ultra vires*. But absent clear statutory restrictions on the Association's goals of "promotion and marketing," BBRSDA's

duly-elected board members can decide what methods best protect and promote the value of the Bristol Bay fishery and the commercial fishing industry that relies on it. It is beyond dispute that BBRSDA has an overall mission to promote and market Bristol Bay seafood products in addition to “promotion of improvements to the commercial fishing industry.”¹ Where the dispute arises is apparently in how to realize that mission. BBRSDA considers its duty to “promote and market” Bristol Bay seafood contingent on the ongoing existence of the product itself. If Bristol Bay salmon as it is—or is perceived—on the seafood market ceases to exist or loses its unique “wild, clean, and healthy” luster, there will be nothing for BBRSDA to promote or market, and that cannot be what the Legislature intended. If the Pebble Mine diminishes the value or abundance of the fishery, the Legislature cannot have meant for the BBRSDA to stand silent, rather than standing up to promote “the commercial fishing industry.”²

This is a statutory interpretation case—an issue of law for this court. This court must ask itself whether BBRSDA can effectively fulfill its statutory mandate by promoting the value and abundance of their fishery if it is wholly barred, as the State proposes,³ from in any way participating in the permitting process for Pebble Mine. Plaintiffs and the State disingenuously characterize the Pebble Mine as something that “might have an effect on fish habitat.” However, they do not contest that development

¹ AS 44.33.065(a)(1)(A)&(B).

² *Id.*

³ See Brief of Amicus Curiae, SOA at 8, stating that BBRSDA’s governing statute does not allow it “to participate in a federal permitting process...”.

of the proposed mine, standing alone, could have a negative effect on the value of Bristol Bay salmon—impacting both the seafood products and commercial fishery that BBRSDA was designed to promote.

Because protecting both Bristol Bay seafood’s value and abundance is core to BBRSDA’s mission of marketing seafood and promoting improvements to the commercial fishery, this court should reject Plaintiffs’ and the State’s artificially narrow view of AS 44.33.065 and grant the motion to dismiss.

II. Argument

A. **Plaintiffs agree that legality of the contracts is a question of law with no disputed facts, but their brief appears to ignore a central issue in the case: “promoting” must mean something more than “marketing.”**

Plaintiffs concede, and agree with BBRSDA, that this case turns on a pure question of law and they do not point to any facts in dispute.⁴ However, other than this key concession, Plaintiffs’ brief misses the point of this case entirely. It first mischaracterizes BBRSDA’s argument. BBRSDA does not argue that its Articles and Bylaws authorize actions otherwise prohibited by statute.⁵ This is a statutory interpretation case. The only issue is whether AS 44.33.065 is properly interpreted to absolutely bar the challenged contracts. But when Plaintiffs finally turn to the proper interpretation of the statute, they again miss BBRSDA’s point. Relying solely on a

⁴ See Plaintiffs’ Opposition at 3 and Opposition generally.

⁵ Plaintiffs’ Opposition at 4.

false dichotomy between what they label as “environmental protection” and the “marketing and promotion” of the Bristol Bay fishing industry, they fail to address the meaning of the term “promotion” in the statute — the critical issue before the court — and how it must mean something more than “marketing.” BBRSDA’s actions in promoting the fishery, and the industry that relies on it, do not amount to state regulation, and BBRSDA is *not* seeking authority to act like the Alaska Department of Fish & Game.⁶ Through these contracts, BBRSDA seeks nothing more than to promote the interests of their industry and fishery during the limited DEIS comment window—there is no element of regulation implicated.

Plaintiffs’ argument is meant to reinforce the false dichotomy in Plaintiffs’ opening brief and distract from the only issue facing this court - the proper interpretation of “promotion” in AS 44.33.065, a term that must be read to include public advocacy for the commercial fishery in order to avoid constitutional infirmities under the Alaska and United States constitutions.

B. BBRSDA’s statutory duty to promote the Bristol Bay fishery, and the commercial fishing industry that relies on it, includes the ability to assess and mitigate a clear and present threat to the fishery’s value, brand, and abundance.

The sole issue facing this court is the proper interpretation of AS 44.33.065, and specifically the term “promotion.” BBRSDA’s statutory goals are to market and promote Bristol Bay seafood, as well as promote improvements to the commercial

⁶ Plaintiffs’ Opposition at 6.

fishing industry in the region. Often this means maximizing the per-pound value and abundance of the seafood product. To that end, BBRSDA may choose any method reasonably calculated to achieve its goals. For example, advertising Bristol Bay's pristine environment is one way to maximize per-pound value. Affirmatively seeking to stop or modify an industrial mining proposal located at the heart of this watershed is another.

The State's conflation of goals and methods reinforces Plaintiffs' false premise that the mining and fishing industries are unrelated. It is a calculated maneuver to divorce the challenged contracts from BBRSDA's statutory duty to promote the commercial fishing industry in Bristol Bay.

The State's brief also attempts to limit the breadth of BBRSDA's mission and powers by selectively quoting from AS 44.33.065. Disingenuously, the State repeatedly implies that BBRSDA's sole, narrow mission is to promote and market "Alaska seafood products."⁷ The State repeatedly refers only to seafood products and ignores the part of BBRSDA's mission that is also to promote "improvements to the commercial fishing industry" in Bristol Bay.⁸ The BBRSDA is a "development" association, not simply a marketing organization as the State implies. In order to mean anything, "promotion" must mean something more than marketing.⁹

⁷ Brief of Amicus Curiae, SOA at 10.

⁸ AS 44.33.065(a)(1)(B).

⁹ As the State agrees, in a statute "every word, sentence or provision . . . [has] some purpose, force, and effect." Brief of Amicus Curiae, SOA at 10 (citing *Cent. Recycling Servs., Inc. v. Municipality of Anchorage*,

In addition, the State demands the narrowest possible definition of the word “promote,” claiming that the “six specific purposes enumerated in AS 44.33.065(a)(1) do not support” the UTBB or SalmonState contracts because they “must be construed consistently with RSDAs’ overall purpose of ‘promoting and marketing Alaska seafood products.’”¹⁰ In short, the State asks this court to interpret that language to somehow curtail or limit the other clear language. However, there is no evidence of any such intent within the statute.

The value of Bristol Bay seafood lies in its per-pound market price and abundance. “Promotion and marketing” of seafood products from the region requires the association to maximize both. And as noted in the Association’s prior pleadings, the legislative history of AS 44.33.065 and basic rules of statutory construction support a broader reading of BBRSDA’s powers and duties than the narrow, self-serving one the State and Plaintiffs advance here. The purpose of the Association and seafood marketing tax is “the *development* of their fishery resources in that region.”¹¹ The Legislature recognized that these associations “would provide a valuable tool for Alaska’s commercial fishermen. Regional associations are able to focus on the unique areas where the fish are harvested, building on Alaska’s reputation for *pristine waters* that yield superior fish.”¹² So the Legislature contemplated that these associations

389 P.2d 54, 58 (Alaska 2017)). It cannot be disputed that the word “promotion” was included in the statute to give RSDAs a broader purpose than just “marketing” seafood.

¹⁰ Brief of Amicus Curiae, SOA at 10.

¹¹ COMMITTEE MINUTES (HOUSE RES) 3/5/04

¹² COMMITTEE MINUTES (HOUSE FIN) 3/23/04 (emphasis added).

would “build[] on” and defend the reputation that Alaska’s fish come from an unspoiled environment.

The State acknowledges—as it must—that BBRSDA “may engage in education and research programs” with the unwritten caveat that “this education and research must be in the service of its overall mission to promote and market regional seafood products.”¹³ Again, this narrow construction is based on the false premise that somehow BBRSDA must ignore its other statutory obligations, such as seeking to improve the commercial fishing industry in Bristol Bay. The State further concedes that the Association “could conceivably undertake research to ascertain the effects of the proposed mine on regional fishery resources and consumer perceptions in order to more effectively promote and market Bristol Bay seafood.”¹⁴ But the State argues if this education and research takes place in a political realm, it magically becomes forbidden conduct. This argument again builds on the false dichotomy between the Bristol Bay fishery and the Pebble Project. There is absolutely no question that public and market awareness of the Pebble Mine and its potential impact on Bristol Bay salmon is very high.¹⁵ As discussed at length in the opening brief, the market reality is that Bristol Bay salmon and the specter of Pebble Mine being developed there are enmeshed in the public mind and the global fisheries market. Consumers choose to pay

¹³ Brief of Amicus Curiae, SOA at 10.

¹⁴ *Id.* at 10. The State also directs into a “flood-gates” or a “slippery slope”-type argument that strays far afield from the two contracts at issue here. The court need not engage with the State’s irrelevant hypotheticals.

¹⁵ Wink Afft.at ¶¶ 12-13.

more for wild sockeye salmon because it is a healthy, abundant, premium wild salmon species from a pristine, unspoiled, and nearly untouched environment.¹⁶ The cachet and unique value of Bristol Bay seafood comes in large part from this fact and its associated image.¹⁷ The permitting and ongoing threat of large-scale mining in the heart of Bristol Bay could jeopardize the salmon resource and be fatal to its brand.¹⁸

There apparently is no dispute that BBRSDA has invested millions in marketing Bristol Bay seafood with a focus on its unique character as “wild” and from a pristine environment, nor is there any dispute that this investment has in part resulted in the value of the fishery increasing from an average of \$156 million in 2012-16 to exceeding \$270 million in both 2017 and 2018.¹⁹ BBRSDA²⁰ and major seafood buyers nationwide²¹ are concerned that the very existence of a large scale mine in Bristol Bay could, in and of itself, diminish the price and demand for the region’s seafood. Accordingly, a nexus between BBRSDA’s contracts and its mission to promote both improvements to the commercial fishery and the marketability of Bristol Bay seafood is well established.

¹⁶ *Id.* at ¶ 13.

¹⁷ *Id.*

¹⁸ *Id.* at ¶ 14.

¹⁹ *Id.* at ¶ ¶ 8-10.

²⁰ *Id.* at ¶ ¶ 12, 14, 15, and 21.

²¹ *See e.g.* Exhibit 4, a small sample from just this week’s excerpts from public comments on the Army Corps of Engineers’ DEIS by major seafood purchasers: Inland Seafood, the largest seafood distributor in the southeast region of the United States www.inlandseafood.com.; Pacific Seafood www.pacseafood.com; and the Seattle Fish, Co. www.seattlefish.com.

BBRSDA agrees that its enabling statute must be read so that “every word, sentence or provision . . . [has] some purpose, force, and effect.”²² When the Court does that, it should have little trouble finding the UTBB and SalmonState contracts lawful. Alaska Statute 44.33.065 is replete with words, sentences, and provisions that support both contracts. As discussed herein, the BBRSDA is a “development” association organized not just to market seafood, but also to promote “improvements to the commercial fishing industry.” It may “educate,” “research,” “advertise,” and “cooperate” with entities “engaged in work or activities similar to the work” of the association, “including entering into contracts for joint programs of consumer education, sales promotion, quality control, advertising, and research.”²³

If the Legislature wanted to narrowly define these terms, impose specific restrictions on them, or otherwise limit their scope, it could have. It didn’t, instead leaving the means and methods of marketing, promotion, industry improvements, education, and quality control to the discretion of the BBRSDA board. Basic separation of powers principles counsel that this Court “may not read into a statute that which is not there.”²⁴ *Nowhere* does AS 44.33.065 (or any other statute) affirmatively limit the means or methods by which the Association may educate, research, control quality, or promote improvements to the commercial fishing industry. The only explicit limits on

²² Brief of Amicus Curiae, SOA at 10 (citing *Cent. Recycling Servs., Inc.*, 389 P.2d at 58).

²³ See AS 44.33.065.

²⁴ *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 192 (Alaska 2007).

specific methods employed by RSDAs are those contained in 3 AAC 149.080.²⁵ Because those restrictions apply only to state financial assistance funds, they do not apply here.²⁶ *However*, the restrictions do demonstrate that it is *possible* to put specific limits in place through statute or regulation when they are actually intended by the law.

Because the law designates a number of broad purposes for RSDAs to serve but omits (apart from 3 AAC 149.080) any specific restrictions on the methods to achieve those purposes, the State's and Plaintiffs' interpretation fails under the principle of *expressio unius est exclusion altrius*. This principle "establishes the inference that, where certain things are designated in a statute, 'all omissions should be understood as exclusions.'"²⁷ The omission of specific statutory restrictions on RSDAs' methods means those restrictions simply do not exist.

Absent such restrictions, it is left to the Association to decide what means and methods best meet the goals of promoting and marketing Bristol Bay seafood. To that end, enhancing product value through marketing efforts focused on "wild" salmon from a pristine watershed, and attempting to either prevent or positively influence the development of a major industrial mine in the heart of that watershed, are two sides of the same coin. *Both* actions promote the Bristol Bay fishery and promote improvements to the commercial fishing industry in the region. BBRSDA spending

²⁵ This regulation prohibits state financial assistance provided under AS 44.33.065(d) from being used for: 1) the purpose of disadvantaging an unrepresented seafood development region; 2) price negotiations between fishers and processors; or 3) lobbying municipal or state officials.

²⁶ See Section C, *infra*.

²⁷ *Ranney v. Whitewater Engineering*, 122 P.3d 214, 218-19 (Alaska 2005).

millions on the former while ignoring the latter would be a dereliction of the Board's duties. In short, competently "promoting" and "marketing" Bristol Bay seafood demands that BBRSDA involve itself in the federal public comment period on the Draft EIS, because Pebble Mine can and will impact both the market perception (i.e. the value) of their fish, and, potentially, its abundance.

C. Bristol Bay fishers voluntarily tax themselves to fund the BBRSDA, and use of these monies cannot be characterized as the State subsidizing BBRSDA activity with State money.

To buttress its interpretation of "promotion" in AS 44.33.065(d) as prohibiting the challenged contracts, the State now characterizes the seafood development tax in AS 43.76.350-.399 as "state money" giving the State the right to closely regulate and monitor BBRSDA's speech and activities.²⁸ The State is incorrect. As accurately described earlier in the State's brief, the fishers within a region elect to tax themselves for purposes of funding the development association.²⁹ The "state financial assistance" referenced in AS 44.33.065(d) is grant funding that the association can apply for; .065(d) does not cross reference the seafood development tax in AS 43.76. Yet the State now argues that there is no such thing as grant funding and "state financial assistance" is coterminous with the seafood development tax in AS 43.76.

The State has completely reversed its prior position, held for many years, regarding the nature of BBRSDA's self-assessed funds and its inability to restrict the

²⁸ Brief of Amicus Curiae, SOA at 15-20.

²⁹ *Id.* at 3-5; AS 43.76.350-.399.

Association's activities. This reversal suggests that the State is playing politics to silence BBRSDA during the limited DEIS comment period because the current administration supports the Pebble Project. Specifically, the State previously addressed this exact issue at least twice, across two prior administrations, and essentially endorsed a position opposite to the State's *current* stance both times.

In 2013, under the Parnell Administration, the Department of Commerce addressed a complaint regarding BBRSDA activities perceived to be "anti-Pebble" and somehow improper. The Department of Commerce—in consultation with the Department of Law—addressed the questions of: 1) whether funds generated from the RSDA's seafood development tax were subject to the same restrictions as funds given as state financial assistance; and 2) whether the State has the actual authority to substantively control BBRSDA's activities and expenditures.

At that time, the State concluded that, although BBRSDA's tax revenue "passes through the state's general fund... it is treated differently than state financial assistance... because it is a tax that is voluntarily paid into the state's general fund and automatically passed through to the RSDA, without specific request, on an annual basis."³⁰ Accordingly, those funds were not subject to the same State controls and regulatory prohibitions as state financial assistance.³¹ With respect to the propriety of

³⁰ See Exhibit 5, December 16, 2013 letter from Joe Jacobson, Director of the Division of Economic Development in the Department of Commerce, Community, and Economic Development to Representative Charisse Millett (emphasis added) at 1-2.

³¹ *Id.* at 1.

BBRSDA’s activities the State explained that “...any activities that could be construed as explicitly anti-Pebble are bundled with broader seafood marketing campaigns, making this somewhat of a gray area.”³² Finally, the State concluded that, regardless of whether the activities—in the Department’s opinion—fell outside of BBRSDA’s core mission, the State had no authority over those activities under the “current statutes and regulations.”³³ The relevant statutes have not changed since the date of this letter.

In 2018, under the Walker Administration, the Department of Commerce revisited this issue and stood by the prior letter on the issue of “what constitutes state financial assistance and finds that generated tax revenue is distinct from state financial assistance.”³⁴ That letter also reiterated that the State “lack[s] the statutory or regulatory authority to govern RSDA activities.”³⁵

The State’s long-held prior position on RSDA activities—made in consultation with the Department of Law and maintained across multiple administrations—was the correct one. As in prior years, BBRSDA retains great latitude in how it spends the membership’s self-assessed tax proceeds in promoting the Bristol Bay fishery and fishing industry. Absent specific changes to the RSDA statutes, the State lacks the statutory or regulatory authority to closely control the substance or venue of those activities. The State’s newly-found position that RSDA’s are absolutely barred from

³² *Id.* at 2.

³³ *Id.*

³⁴ See Exhibit 6, February 23, 2018 letter from Mike Navarre, Commissioner of the Department of Commerce, Community, and Economic Development to Speaker of the House, Bryce Edgmon.

³⁵ *Id.*

participating in any federal permitting process is utterly bereft of support in the statutes, regulations, or past State practice.

But as discussed in the opening brief, even if the self-assessed seafood development tax was “state financial assistance”—which it is *not*—there is no prohibition on using such funds to promote the fishery by participating in the Pebble EIS process. The only specific prohibitions are affirmatively listed in 3 AAC 149.080; BBRSDA cannot use state financial assistance “to the disadvantage of a seafood development association,” nor use grant funds “for price negotiations between fishers and seafood processors,” nor “pay expenses associated with lobbying a municipality ...or an agency of the state.” It is undisputed that no such funds or activity are at issue in this case.

D. This Court must interpret the statute to allow First Amendment rights of association and free speech.

The State misses the point of BBRSDA’s constitutional argument. This is a statutory interpretation case, and this Court must interpret AS 44.33.065 to avoid constitutional infirmities. BBRSDA agrees that its members cannot “choose the association’s goals,” which are set forth in statute. However it does not follow, as the State suggests, that a statutorily-created entity therefore has *no* freedom of association or freedom of speech rights at all. To the contrary, the Alaska Supreme Court has stated that: “[s]imply put, a statute which affects our highly valued first amendment rights

must be precisely drawn in order to fully preserve those rights.”³⁶ And “where constitutional issues are raised,” the Court “[has] a duty to construe the statute, where it is reasonable to do so, to avoid dangers of unconstitutionality.”³⁷ There are no exceptions to these basic principles of constitutional avoidance and statutory construction for statutes that create entities or organizations. The statute should be read in a way that preserves—not limits—associative freedoms.

Earlier in its brief, the State concedes that “promotion” can be interpreted in several different ways, but argues for a very narrow construction.³⁸ Given this concession of ambiguity, interpreting the statute to preserve first amendment rights logically follows. “It is axiomatic that freedom of speech and the correlative freedom of association are fundamental rights which lie at the foundation of our system of government . . . the First Amendment is designed to ensure that individuals are able to speak (and associate) free from unnecessary government restraint.”³⁹

But when it comes to its constitutional analysis, the State assumes that there is a clear statutory limit on what BBRSDA can do—the very issue before the court, and instead argues that the State can constitutionally limit the use of State funds by

³⁶ *Summers v. Anchorage*, 589 P.2d 863 at n. 10 (Alaska 1979) (citing *Edwards v. Louisiana*, 372 U.S. 229, 236 (1963); *Larson v. State*, 564 P.2d 365, 372 n. 13 (Alaska 1977)).

³⁷ *Bonjour v. Bonjour*, 592 P.2d 1233, 1238 (citing *Larson*, 564 P.2d at 372; *Hoffman v. State*, 404 P.2d 644, 646 (Alaska 1965)).

³⁸ Brief of Amicus Curiae, SOA at 9.

³⁹ *Alaska Gay Coalition v. Sullivan*, 578 P.2d 951, 959 (Alaska 1978).

development associations.⁴⁰ The State leapfrogs the proper interpretation of the statute, and then mischaracterizes the self-assessed taxes as state monies it can closely control.

As a threshold matter, all BBRSDA funds are self-assessed through the seafood development tax in AS 43.76, and although BBRSDA is permitted under AS 44.33.065(d) to accept “state financial assistance” – grant dollars — for its work, it does not do so.⁴¹ As discussed above,⁴² the AS 43.76 tax proceeds are not “state funds.” And, up until the filing of its amicus brief, even the State itself agreed with this fact.⁴³

Moreover, even if the self-assessed taxes are properly characterized as state funds, the State is incorrect that the moment “state money” flows to an organization—even one that is a creature of statute—the State instantly becomes entitled to police the organization’s speech by “decid[ing]” what speech “its money can and cannot be spent on.”⁴⁴ “The First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.”⁴⁵ Indeed, the government cannot insist that its funds be used (or not used) contingent on whatever message it happens to agree with. This is the logical conclusion of the State’s position here, and it leads to an “impermissible restriction” even if the restriction itself were “enacted ...

⁴⁰ Brief of Amicus Curiae, SOA at 16.

⁴¹ Affidavit of Andy Wink at ¶ 19.

⁴² See Section C, *infra*.

⁴³ *Id.*

⁴⁴ Brief of Amicus Curiae, SOA at 16.

⁴⁵ *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984).

. to control the use of public funds.”⁴⁶ In sum, the UTBB and SalmonState contracts are not being paid with “state money.” But even if they were, the State’s insistence that they be enjoined, because the State doesn’t like their message or impact, far exceeds its authority to ensure that state funds are used for statutorily-authorized purposes.

In any event, BBRSDA is not claiming that the First Amendment guarantees limitless speech to any statutorily-created organization. It is simply asking the Court to construe the term “promotion” in AS 44.33.065 in a manner that allows BBRSDA to advocate for the Bristol Bay fishery and preserves these contracts. Here and as argued above, there is no affirmative restriction on promotion or marketing, and the State concedes these terms are at least ambiguous. Accordingly, BBRSDA is not “invok[ing] the right to freedom of association to disregard its statutory limitations.”⁴⁷ Quite the opposite, it is relying on the UTBB and SalmonState contracts to meet them.

⁴⁶ *Legal Services Corp. v. Velasquez*, 531 U.S. 533, 543 (2001) (holding unconstitutional a restriction prohibiting local recipients of LSC funds from engaging in certain types of legal representation).

⁴⁷ Brief of Amicus Curiae, SOA at 16.

III. Conclusion

For the above reasons, and for those stated in the original Memorandum in Support, the court should grant BBRSDA's Motion to Dismiss.

DATED this 9th day of May 2019, at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, PC
Attorneys for Defendant Bristol Bay
Regional Seafood Development
Association

By: 

Scott M. Kendall
Alaska Bar No. 0405019
Jahna M. Lindemuth
Alaska Bar No. 9711068

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, ALASKA 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, ALASKA, 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via mail and email this 9th day of May 2019 on:

David A. Bledsoe, Esq.
Sarah Schirack, Esq.
Sasha A. Petrova, Esq.
Perkins Coie LLP
1029 West Third Avenue, Ste 300
Anchorage, AK 99501-1981
DBledsoe@perkinscoie.com
SPetrova@perkinscoie.com
slangberg@perkinscoie.com

Joseph W. Geldhof, Esq.
Law Office of Joseph W. Geldhof
2 Marine Way, Ste 207
Juneau, AK 99801
joeg@alaskan.com

Michael Newman, Esq.
Native American Rights Fund
745 West 4th Avenue, Ste 502
Anchorage, AK 99501
mnewman@narf.org

and a courtesy copy to:

Dario Baorghesan, Esq.
Assistant Attorney General
dario.borghesan@alaska.gov


Legal Secretary

X:\7202\31562\PLDS\DRAFTS\REPLY TO OPPOSITION TO MOTION TO DISMISS.050619.DOCX

Available at:

<https://pebbleprojecteis.com/publiccomments/drafteiscomments>

mary.smith@inlandseafood.com

1651 Montreal Circle
Atlanta, Georgia 30084

Commercial Fisheries, No Action Alternative :

Alaska's natural resources, including Bristol Bay's salmon runs, are a valuable resource that need to be protected at all costs. Bristol Bay is a sustainable source of wild salmon that feeds the world - this is important to Alaska economically, and as a source of identity. As the sustainability director for a large Atlanta-based seafood distributor I can tell you that millions of consumers around the southeast recognize Bristol Bay salmon when they see it in their grocery stores and restaurants - they know Bristol Bay salmon is responsibly harvested from a well managed source - and part of that management means protecting the home rivers of these salmon. The Pebble Mine is a direct threat to these fish, and the people who depend on them - in primary and secondary ways. We need to prioritize keeping Bristol Bay healthy - and that means no Pebble Mine.

Minimize Comment

May 8, 2019 9:29:29 AM AK Caleb Wardell (Pacific Seafood Group) , Website

cwardell@pacseafood.com

6006 SE Stephens St
Portland, Oregon 97215

Commercial Fisheries, No Action Alternative :

A mine being built near the Bristol Bay sockeye run could have a large negative effect on our business. We sell 10's of millions of dollars of Sockeye salmon from this region and cannot replace the resource with another area's fish, as no other area in Alaska has the same quantities of Sockeye salmon. Even if the runs are not largely effected consumers are highly sensitive to the water that the seafood is caught in and the perception of fish caught below a large mine having toxic chemicals in them would diminish the ability of our company to sell seafood from the region. This would impact the large number of vendors, team members, customers, and consumers that all catch, process, buy, sell, or eat seafood from Bristol Bay.

Minimize Comment

May 8, 2019 11:44:03 AM AK Derek Figueroa (Seattle Fish Company) , Website

derek@seattlefish.com

6211 E 42nd Ave
Denver, California 80216

Commercial Fisheries , No Action Alternative :

Bristol Bay, Alaska is the world's largest source of premium, wild salmon, accounting for over half of global sockeye salmon harvest volume. The proposed Pebble Mine poses a significant threat to this resource and all those who benefit from it face, especially given the location at the headwaters of major river systems. The proposed Pebble Mine will likely damage not only the

area's unparalleled biological productivity, but could damage consumer perception and demand for Alaska sockeye. We are very concerned about the impact this would have on more than 2,000 Alaska fishing businesses, and suspect this is concerning for your business as well. Most disturbingly, the Draft Environmental Impact Statement (DEIS) on the proposed mine does not address the potential for negative impacts on demand for Alaska sockeye. Seattle Fish Company employs 225 in the mid-west and provides quality seafood to more than 1600 restaurants and grocery stores. Access to healthy, safe and domestic seafood is very important for our clients and partners. Pebble Mine is a danger to seafood access for that group. For these reasons we wholeheartedly opposed this dangerous mine.



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Commerce, Community,
and Economic Development

DIVISION OF ECONOMIC DEVELOPMENT

P.O. Box 34159
Juneau, AK 99803-4159
Main: 907.465.2510
TDD: 907.465.5437
Fax: 907.465-2103
Toll free: 1.800.478.10AN (5626)

December 16, 2013

Representative Charisse Millett
716 West 4th Avenue, Suite 620
Anchorage, AK 99501

Dear Representative Millett:

Thank you for initiating the discussion regarding the Regional Seafood Development Association (RSDA) Program, seafood development taxation, and prohibitions on the use of state financial assistance. Specifically, your inquiry originated over concern the Bristol Bay Regional Seafood Development Association (BRSDA) used state financial assistance to carry out activities perceived to be in opposition to other regional resource development efforts. Since our meeting on September 24th, we have thoroughly reviewed legislative history, statutes and regulations, and department history regarding this issue. We also consulted the Department of Law regarding the following points of concern: 1) appropriate RSDA activities; 2) seafood development taxation; 3) defining state financial assistance; 4) appropriate uses and prohibitions of state financial assistance; and 5) DCCED programmatic regulatory authority. We apologize for the delayed response and appreciate your patience in this matter.

With regard to your concerns and questions, a critical consideration is determining whether revenue generated via the seafood development tax is considered state financial assistance. Without receiving state financial assistance from DCCED, the state has limited programmatic regulatory authority. After close review of RSDA Program statutes (AS 44.33.065), seafood development tax statutes (AS 43.76.350 – AS 43.76.399), and related regulations (3 AAC 149.010 – 3 AAC 149.950), it is the department's position that generated tax revenue is distinctly different than state financial assistance and the two are not to be treated as equivalents.

Seafood Development Tax Revenue as State Financial Assistance

Revenue generated via the two-percent seafood development tax is not considered state financial assistance and therefore not subject to the regulatory prohibitions provided by 3 AAC 149.080. While the tax revenue passes through the state's general fund via legislative appropriation to RSDAs, it is treated differently than state financial assistance (i.e., grants, loans, and other assistance) because it is a tax that is voluntarily paid into the state's general

fund and automatically passed through to the RSDA, without specific request, on an annual basis. Furthermore, RSDAs have the option of voting to terminate the tax at any time. Legislative intent, per hearing minutes, provides further support for the differentiation between state financial assistance and generated tax revenue.

In addition to considering financial resources, it is equally important to revisit the RSDA Program founding intent, overall purpose, and RSDA scope of work as delineated by state statute. Statutes and regulations are clear the primary purpose of the RSDA Program and RSDA activities are to promote and market Alaska's seafood products.

RSDA Role and Responsibility

As provided by AS 44.33.065, RSDAs are established for the explicit purpose of promoting and marketing Alaska seafood products including six enumerated activities: 1) promoting seafood; 2) working to improve commercial fishing industry infrastructure; 3) developing educational, research, and advertising materials promoting seafood products; 4) preparing market research and product development plans; 5) cooperating with Alaska Seafood Marketing Institute; and 6) collaborating with a variety of entities to develop commodity standards and future markets for seafood products (paraphrased).

→ We share your concerns regarding RSDAs conducting activities not authorized by enabling statutes, supported by legislative intent, or aligned with the aforementioned six core functions. However, it is unclear if this actually occurred; per *BBRSDA Project Report to Members* (October 2013, attached), any activities that could be construed as explicitly anti-Pebble are bundled in with broader seafood marketing campaigns, making this somewhat of a gray area. Furthermore, even if BBRSDA did engage in activities outside of its authority, it is unclear in statute and regulations what authority DCCED has to take corrective action.

While current statutes and regulations may not provide the resolution you seek regarding allowable use of generated tax revenue, the department will advise RSDAs to remain focused on promoting and marketing Alaska seafood products, as required by statute and regulation. Please feel free to contact me with any questions or comments regarding this determination.

Sincerely,



Joe Jacobson
Director

Representative Millett
December 16, 2013
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Cc: Susan Bell, Commissioner, DCCED
Nicole Grewe, Development Manager, DCCED
Jim Andersen, Loan Manager, DCCED
Micaela Fowler, Legislative Liaison, DCCED



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Commerce, Community,
and Economic Development
OFFICE OF THE COMMISSIONER

P.O. Box 110800
Juneau, AK 99811-0800
Main: 907.465.2500
Fax: 907.465.5442

February 23, 2018

The Honorable Bryce Edgmon
Alaska House of Representative
Speaker of the House
State Capitol, Room 208
Juneau, AK 99801

Dear Speaker Edgmon,

Thank you for initiating the discussion regarding the Regional Seafood Development Association (RSDA) Program, seafood development taxation, and prohibitions on the use of state financial assistance. You requested that we provide an update to former director Jacobson's letter of December 16, 2013 on these topics, and affirm that the Department of Commerce, Community, and Economic Development's (DCCED) position remains consistent.

DCCED stands by Jacobson's letter with regard to what constitutes state financial assistance, and finds that generated tax revenue is distinct from state financial assistance. The RSDA Program intent and purpose have not changed since the December 2013 letter was sent, nor has the lack of statutory or regulatory authority to govern RSDA activities been addressed.

I hope this provides you adequate information, please let me know if you need further information.

Sincerely,

A handwritten signature in cursive script that reads "Mike Navarre".

Mike Navarre
Commissioner

Enclosure.