



# TRUSTEES FOR ALASKA

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Alaska's non-profit public interest environmental law firm

June 2011 Legal Brief

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Dear Friend,

Trustees for Alaska works strategically to address some of the most important environmental issues affecting Alaska. We represent a wide range of clients from native villages, community and citizen groups, local and national conservation groups, statewide coalitions, hunting and fishing groups, as well as individual Alaskans. Please read on to learn more about some of our current work.

Sincerely,

Trish Rolfe  
Executive Director

## Trustees for Alaska Welcomes Valerie Brown Back

Valerie Brown rejoined Trustees for Alaska this Spring as Senior Staff Attorney after private practice, where she focused on wildlife law, land use, hazardous waste, and marine resource issues. Valerie graduated from the University of Oregon School of Law with certificates in Environmental Law and Ocean and Coastal Law. While at law school Valerie participated in the Environmental Clinic at the Western Environmental Law Center and interned at NOAA in the Office of General Council. Before joining Trustees for Alaska the first time in 1998, Valerie served as a clerk to Judge Alfred T. Goodwin on the Ninth Circuit Court of Appeals and also as a law clerk for Justice Allen T. Compton of the Alaska Supreme Court. Prior to attending law school, Valerie was the Executive Director of the Alaska Wildlife Alliance. While at AWA, Valerie served on the Alaska Department of Fish and Game's Wolf Management Planning Team. She currently serves as a fee arbitrator for the Alaska Bar Association, and is a member of the Federal Court Fund Committee.

We are thrilled to have Valerie rejoin the staff at Trustees for Alaska.

## Trustees for Alaska is Working with Bering Sea Tribes to Protect Marine Subsistence Resources



Global warming is devastating ecosystems in Alaska, and coastal communities are being disproportionately impacted. Alaska Native people living on the coast are witnessing many changes in seasonal patterns, sea ice and animals. In recent years, Bering Sea ice has been forming

later in the year and melting early in spring. Regular scientific surveys show that during recent years that were especially warm, 45 species of fish shifted the center of their range northward. While ocean temperatures vary year-to-year, the trend over time is expected to be warming. With rising temperatures and changes in annual sea ice, commercially valuable fish species are expanding to more northern waters. Large-scale fishing fleets are increasing the pressure to expand operations into these new areas.

In 2007, the North Pacific Fishery Management Council (NPFMC) voted unanimously to establish a northern bottom trawl boundary as a precautionary measure to prevent movement of this fleet northward beyond its current footprint while a long-term plan for the northern Bering Sea is being developed. The NPFMC is now moving forward with plans to develop a Northern Bering Sea Research Plan which could open previously closed areas to bottom trawling through a special research permit. Bottom trawling could be allowed in this area on a large scale in the future.

Also in 2007, eight Tribes from the Bering Sea region in western Alaska established the Bering Sea Elders Advisory Group. The group now has 40 formal tribal members by resolution. Each participating Tribe designates an Elder and an alternate to serve on the board of directors. The group's mission is to enable Alaska Native Tribes to fully participate in the federal fishery management process on upcoming decisions affecting the Bering Sea from Kuskokwim Bay to Bering Strait. The Bering Sea Elders Group provides traditional guidance for protecting subsistence and the tribes' way-of-life.



The Bering Sea Elders Group has asked Trustees for Alaska, in addition to the Alaska Marine Conservation Council and the Native American Rights Fund, to provide legal and strategic advice and support to help them develop long-term protection for the northern Bering Sea that will safeguard subsistence hunting and fishing areas and areas of biological importance to the species that tribes rely on for survival. This coalition will be working in the NPFMC process for the Northern Bering Sea Research Plan and other Magnuson-Stevens Act issues.

Learn more about the issues by visiting [www.beringseaelders.org](http://www.beringseaelders.org).

*by Valerie Brown, Senior Staff Attorney*

Support Trustees for Alaska

Trustees for Alaska is the only Alaska-based non-profit public interest law firm providing legal counsel to protect and sustain Alaska's natural environment. We provide legal counsel to diverse constituencies on the major environmental policy issues facing Alaska.

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## Protecting Clean Water is the Basis for Two New Lawsuits Filed by Trustees for Alaska

### EPA's Approval of Water Quality Variance Draws Lawsuit

In April, Trustees for Alaska filed suit on behalf of the Native Village of Point Hope, Alaska Community Action on Toxics and the Northern Alaska Environmental Center challenging the Environmental Protection Agency's (EPA) approval of a site-specific criteria (SSC) for Red Dog Creek. This SSC allows significantly higher levels than under the previous criteria of total dissolved solids (TDS) to be discharged into Red Dog Creek.



During the wastewater treatment process at Red Dog Mine, water is pumped from the tailings pond to wastewater treatment facilities, where considerable amounts of lime are added to reduce the pH of the water and precipitate metals out of solution. This addition of lime results in high levels of TDS in the wastewater. The waste rock piles are also a significant source of TDS, and the runoff from those piles is also directed into the tailings facility. In the 24 years of operations at Red Dog Mine, Teck has not been able to comply with the stringent TDS limits in its permit. Hundreds of violations were established in a Clean Water Act lawsuit brought by residents in Kivalina. In addition, studies have been done on the fish species in Red Dog Creek that show that high levels of TDS affect egg fertilization.

Despite these studies and Teck's chronic history of TDS violations and levels in excess of those established in the SSC, EPA approved the SSC. The lawsuit alleges that EPA violated the Clean Water Act by approving the SSC without sound science and without requiring the State of Alaska to analyze the impacts of degrading the water quality in Red Dog Creek, Ikalukrok Creek and the Wulik River.

To review the Complaint, please [click here](#).

*by Brook Brisson, Staff Attorney*

### Conservation and Native Groups Concerned about Alaska's Clean Water Policies Challenge State's Antidegradation Implementation Methods



In an effort to protect clean water, eight conservation and tribal organizations filed suit in Alaska Superior Court to challenge the Alaska Department of Environmental Conservation's (DEC) issuance of Interim Antidegradation Implementation Methods (Interim Methods) without any public input. The Interim Methods, issued in July of 2010,

govern how the DEC will analyze and make decisions regarding the protection and degradation of water quality when making permitting decisions.

Under the Interim Methods, the State can allow water quality to be degraded if DEC determines that it's important for economic development without balancing other uses and values. "While economic development is important, protection of clean water is vitally important for our subsistence and culture," said Patrick Norman, Chief of the Native Village of Port Graham. "Unfortunately, DEC's Interim Methods elevate economic considerations above subsistence needs instead of ensuring that subsistence is given equal consideration."



"The State has a responsibility to protect the well-being of our Tribal members, including ensuring safe water for present and future needs. Our people and way-of-life will be directly impacted by further water degradation, and deserve the opportunity to voice our concerns," said Lily Tuzroyluke of the Native Village of Point Hope. "We need a seat at the table to protect our subsistence from further pollution, in the best interests of our communities and environment."

"A central purpose of allowing public participation is to ensure that the final policy is strong and that all factors were considered in the decision making process," said Pete Dronkers of the Northern Alaska Environmental Center. "By failing to allow the public to participate in the development of the Interim Methods, the DEC excluded very important perspectives from the decision and the final product reflects that."

"The reality is that the DEC has dragged its feet in issuing this implementation plan for fourteen years," said Buck Lindekugel, Grassroots Attorney for Southeast Alaska Conservation Council. "Now, instead of allowing the public to participate in the formation of this very important plan, the DEC issued these Interim Methods without any public review or participation."

The challenge was brought by Trustees for Alaska on behalf of the Alaska Center for the Environment, the Alaska Community Action on Toxics, Cook Inletkeeper, the Native Village of Point Hope, the Native Village of Point Graham, the Northern Alaska Environmental Center, Nunamta Aulukestai, and the Southeast Alaska Conservation Council.

Under the Clean Water Act (CWA), each state must have both an antidegradation policy and implementation procedures in place as part of its water quality standards. The antidegradation policy provides varying levels of protection for water bodies depending on the water quality of the water body and the implementation procedures outline the analysis that the agency must complete prior to allowing degradation of water quality, as well as the process for fully protecting high quality waters. Alaska developed an antidegradation policy in 1997 but has yet to issue legally adopted implementation procedures. As the State takes over the permitting process under the Clean Water Act from EPA, it is imperative that the State has all the legal requirements in place to protect water quality.

To review the Complaint, please [click here](#).

*by Brook Brisson, Staff Attorney*

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