

# RESOURCE REVIEW

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## Tourism is a bright spot amid economic uncertainty



A Princess cruise ship arrives at the port in Whittier. (Photo courtesy of CLIA – Alaska)

By Kati Capozzi

For the first time since 2009, more than one million passengers are expected to cruise through Alaska's waters this summer. As a result, tour operators, hoteliers, and countless other support service companies in the tourism industry will enjoy a busy season that will result in more jobs and more revenue flowing through the Alaskan economy. From Metlakatla to Nome, the positive economic impacts of more visitors will be felt statewide.

At a recent RDC breakfast meeting presentation, John Binkley, President of Cruise Lines International Association – Alaska, explained the cruise industry provides a different sort of economic pipeline that delivers a resource – tourists, up the coastlines and into Alaska's interior. Binkley half-jokingly referred to this as CAPS, the Cruise Alaska Pipeline System. "It is really similar

to TAPS. It brings economic prosperity up a pipeline corridor. It's another way to get wealth and opportunity to Alaskans, by developing a resource," Binkley commented. CAPS is comprised of cruise ships, rail, and motor coach, the latter delivering passengers as far north as Prudhoe Bay.

At a time when many other industries in Alaska are suffering from low commodity prices and fiscal uncertainty, the tourism industry offers a bright spot in Alaska's economy. However, it has taken several years for passenger numbers to recover from a "head tax" that was instituted in Alaska back in 2007. With more than 1,000 ports globally competing for capital, many cruise ships quickly sailed to more investment friendly waters, and took upwards of 150,000 tourists with them. The Alaska

**TOURISM** continued on page 4

## NEW INVESTMENT NEAR DENALI PARK

Dignitaries and executives from Holland America Group and Carnival Corporation gathered in early June for the dedication of Denali Square, a new major property the company has spent several years and millions of dollars investing in near Denali National Park.

Denali Square is a resort, restaurant, and shopping destination that officially opened earlier this season, further strengthening the in-land experience for cruise passengers while also creating additional job opportunities in the Denali Borough.

Arnold Donald, CEO of Carnival Corporation, told a crowd of invited guests and tourists who had gathered around at the dedication ceremony that the company's "commitment to Alaska is stronger than ever." Orlando Ashford, President of Holland America Line, backed up that commitment with a \$20,000 check to the superintendent of the Denali Borough School District.



From left to right: Holland America Group CEO Stein Kruse, Denali National Park Superintendent Don Striker, Holland America Group Executive Vice President of Land Operations and Customer Services Charlie Ball, Holland America Line President Orlando Ashford, U.S. Senator Lisa Murkowski, and Carnival Corporation CEO Arnold Donald.



# IN CASE YOU MISSED IT: THE BEST OF THE ARE GOLF TOURNAMENT Coal Classic 2016



Alaska Resource Education's (ARE) 24th Annual Alaska Coal Classic Golf Tournament was held at the Anchorage Golf Course in June with 34 teams participating. The annual tournament, sponsored by the Alaska Coal Association, funds ARE education programs in Alaska schools, which educates students about the state's energy and mineral resources, and the role those resources play in modern society. (Photos by Maria Talasz, Stantec)



Enjoying a warm and sunny day of golfing are Jeanine St. John, Lynden; Marleanna Hall, RDC; Deantha Crockett, Alaska Miners Association, and Marilyn Crockett.



RDC board members Jason Brune and John Shively participate in the ARE "Mine the Cookie" exercise at the Coal Classic luncheon.



The ARE tournament features teams from across Alaska's resource industries in support of resource education in Alaska. ARE's curriculum focuses on lessons in mineral, energy, and forestry resources for use in grades K-8 and adaptable to 9-12. The curriculum is correlated to the Alaska State Science Standards for the greatest ease of use and accessibility for educators.





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Growing Alaska Through Responsible Resource Development

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## RESOURCE DEVELOPMENT COUNCIL

is an Alaskan, non-profit, membership-funded organization comprised of individuals and companies from Alaska's oil and gas, mining, timber, tourism, and fisheries industries. RDC's purpose is to link these diverse industries together to encourage a strong, diversified private sector and grow Alaska through responsible resource development.

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# WILL OUR RESOURCES DEVELOP THEMSELVES?

A Message from the Executive Director

The big picture: Alaska contains an immense amount of natural resources, including oil and gas, minerals, metals, coal, fisheries, tourism, and forestry products. But let's focus on just two resources: Coal and forest products.

Coal remains abundant in Alaska with Alaska's only operating coal mine, Usibelli Coal Mine, Inc. (UCM), having over 500 million tons of proven reserves near Healy. In Southcentral Alaska, the Chuitna Coal Project boasts measured reserves of ultra low-sulfur coal in excess of one billion tons on 20,000 acres of State of Alaska leases.

UCM coal fuels power and heat to Interior Alaska from six plants, and has reliably supplied the ultra-low in sulfur, low nitrogen, high in calcium, and quick-burning coal for decades.

The forest products industry in Alaska was once the state's largest private employer, paying family wages and benefiting Southeast communities, as well as the whole state. The industry has since faced severe cutbacks to available harvests, and other detrimental policy decisions. The industry is not limited to wood for heating or construction, but also once included a multitude of forest products.

Alaskans have and continue to face bureaucracy to access and develop these resources, all the while coal seam and forest fires take place year after year. According to the Alaska Division of Forestry, it is common for a coal seam to ignite. By early May, there were four coal seam fires in the Interior near Healy.

In the Matanuska-Susitna valley, not entirely far from the recently legislatively-designated Susitna State Forest, was a small forest fire about the same time. In 2015, somewhere in the neighborhood of 800 acres burned, with an unknown amount of the coal resource squandered without purpose.

Can we afford to allow these resources to self-consume?

If we responsibly develop these resources rather than let them self consume, they can be used for affordable energy production or heat in the nearby communities, or in Fairbanks.

In addition to Southcentral, many areas across the state are at high risk for tundra and forest fires. Recall in May alone, areas of forest and tundra were hit by lightning, causing wild fires that consumed everything in their way.

Groups in opposition of resource development generally won't accept that the world will depend on coal, oil, and natural gas for 80% of global energy through 2040. In contrast, I believe Alaskans know better. As a resource rich, resource dependent state, we know the vital role energy, minerals, fish, and all natural resources play in our livelihoods and economy.

We can't prevent nature from taking its toll, but we can responsibly develop our valuable resources for the maximum benefit of all Alaskans.

As the summer continues on, keep in mind Alaskans will experience another cold, dark winter, a winter that will require the consumption of energy resources for heat and light. Why not make those resources locally produced, by Alaskans, for Alaskans?



**TOURISM** continued from page 1

Legislature responded to this mass exodus by reducing the head tax in 2010, and industry responded by bringing ships back to Alaska. “When you improve tax policy, you increase the throughput. Not unlike the oil industry, when the legislature lowered the tax policy, we increased the throughput of people coming to Alaska through CAPS,” Binkley explained.

Capacity is another reason Alaska is experiencing more tourists this year. Consumer demand and higher profitability means the ships are getting bigger, delivering more people to each port of call. The expansion of the Panama Canal also means that larger ships that have traditionally stayed in the Atlantic regions can more easily transit into the Pacific.

**Alaska’s Share of The Cruise Market: Not What You Might Think**

While the increased visitor numbers to Alaska are good for job creation and our economy, it does not mean that Alaska is increasing its share in the market. In fact, over the last decade, Alaska has gone from

**The cruising industry is growing rapidly and ports around the world are vying for their share of the business.**

an eight percent market share to just slightly above four percent. The cruising industry is growing rapidly and ports around the world are vying for their share of the business.

Asia has seen an incredible rise in cruise passenger traffic and number of ships

heading for Asian ports, specifically in China. It is now the third largest region in terms of passenger capacity, trailing only the

Caribbean and Mediterranean, and accounts for 9.2% of the global market share. These numbers are only expected to increase in the coming years, and it is projected that Asia’s market share will grow to 20% by 2020.

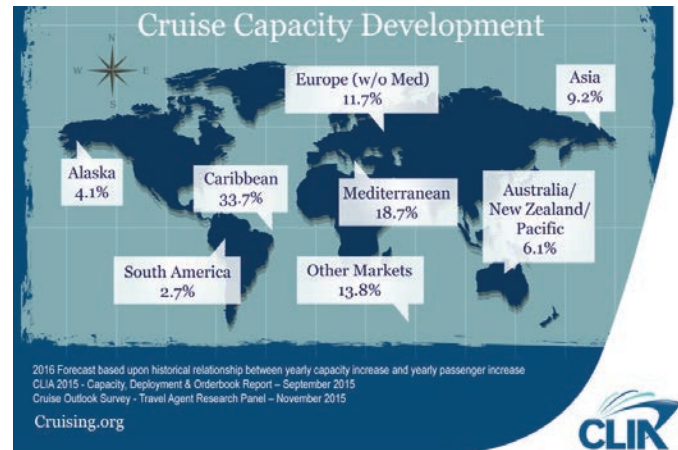
Why is this good for Alaska? According

**Visitor Industry Benefits All Regions In Alaska**

Region	Employment	Labor Income	Spending
Southcentral	19,700	\$644 million	\$2.2 billion
Southeast	11,200	436 million	1.17 billion
Interior	7,000	255 million	648 million
Southwest	1,500	45 million	123 million
Far North	300	12 million	31 million
<b>Total</b>	<b>39,700</b>	<b>\$1.39 billion</b>	<b>\$4.17 billion</b>

Above: Data provided by the McDowell Group for the “Alaska’s Visitor Industry” report published by Alaska Department of Commerce, Community, and Economic Development in 2015.

Right: Competition in the cruise industry is fierce, with emerging markets gaining market share over Alaska.



to Binkley, Asian passengers have a high likelihood of making Alaska their next cruise destination. “Alaska is on the top of many tourists’ minds, specifically coming out of Asia. All the fundamentals are there for continued growth in the cruise industry in Alaska.”

Binkley concluded his presentation by emphasizing the importance of all resource industries in Alaska working together to be successful: “We hope to contribute and grow the economy. We’re all in this together, whatever the visitor industry can do to support other industries in Alaska, we want to be there to do that.”

**FIRST OIL PRODUCTION INCREASE IN ALMOST 15 YEARS**

In a welcome development, data provided by the State of Alaska shows an almost one percent increase of year-over-year oil production during the 12 months ending in March. This is the first such production increase since 2002.

“This is a powerful testament to what a competitive tax policy can do for oil production,” said Kara Moriarty, President and CEO of the Alaska Oil and Gas Association. “What is especially noteworthy about the production increase is that it happened during a period of low oil prices. Despite that challenge, Alaska saw enough investment to realize the first production increase in almost 15 years. It also proves that continued, sustained decline can be reversed given the right investment climate.”

State data shows a 0.87 percent increase in average daily production over 12 months (April 1, 2015-March 31, 2016) versus the same period in 2014-2015, or an increase from 508,047 barrels per day average to 512,456 barrels per day. This announcement comes at a time when the oil and gas industry is again being targeted for a tax increase. Governor Bill Walker’s oil and gas tax bill seeks a tax increase despite companies being cash flow negative at low oil prices.

# Young's federal forest bill gains support from RDC

RDC is supporting federal legislation sponsored by Congressman Don Young which authorizes states to select and acquire certain National Forest System lands to be managed and operated by the state for timber production and other multiple uses.

RDC joins the State of Alaska, the Alaska Forest Association and other business groups in Southeast Alaska in advocating for the establishment of a state-owned two million acre forest from the 17 million acre Tongass National Forest, which the state was unable to select under the Alaska Statehood Act.

Ironically, at statehood, the federal

government would not allow Alaska to select land from the Tongass because it wanted to guarantee an adequate supply of timber to an emerging forest products industry in the region.

Over the past 25 years, federal land policy and regulations have closed off most of previously open areas of the forest to logging. The region has lost two large pulp mills, five large sawmills and scores of jobs. Overall, 90 percent of the industry's 3,000 direct jobs have been lost.

In order to restore and sustain a viable timber industry in Southeast Alaska, at least

one million acres of timber must be managed on a sustained yield basis, according to government foresters.

The Alaska Timber Task Force has recommended a two million acre state forest be established and managed by the State as the best way to insure a reliable, adequate timber supply for industry. This recommendation is also supported by the Alaska Legislature.

Since commercial forest stands are not contiguous in Southeast Alaska, a two million acre forest is needed to allow responsible timber management, including fish and wildlife habitat buffer zones and other uses.



## Sometimes it's obvious when you've had a breach.

The most likely victims of a cyber-breach are small to mid-size businesses – making up more than half of all attacks. Businesses today – no matter their size – need to help keep their data and electronic devices highly secure. If you don't, you risk becoming the target of a cyber-attack.

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# WHAT CAN GOVERNMENT DO TO GROW THE PIE?

A Message from the RDC President, Ralph Samuels

Our system of government is built so that nothing happens quickly. And it is built very well. Three branches of government, two houses in the Legislature, personalities, egos, bureaucrats, elections and a disinterested and uninformed public all combine to make substantive changes very difficult to implement. This is good. Despite what politicians say during election years, we rarely swing too much to the left or the right. These changes happen over time, and generally reflect the views of the voting public, over time.

Nationally, the executive branch has bypassed this system by simply promulgating regulations that are not the implementation of law, but the creation of law. Congress has been unwilling or unable to exert its authority as the lawmaking and appropriating branch of government to slow down the power-hungry bureaucrats. The more powerful the unaccountable bureaucrat, the less powerful the Congress, which is supposed to be the true voice of the people.

At a state level, the Legislature is the voice of the people. And like the citizens of Alaska, the Legislature has many different points of view on how to handle long-term changes to State financing. The Governor, as well as individual legislators from both parties has made the comment that "All sectors of the economy must feel a little pain." I cannot disagree more. The comment should be "As government, we should ask all sectors of the economy what we can do to grow the economic pie."

Does the government need to examine its tax policies? Does the government need to get out of the way with unnecessary regulations?

How can the government actually HELP business grow and prosper instead of the nonsensical view that everyone has to hurt?

How do we get more mines developed? How do we grow the fishing industry in Alaska? How do we get more visitors to come to Alaska and spend money? How do we get more oil in the pipeline?

The concept of growing the economic pie has been lost in deafening shouting matches over who gets to gore whose ox first. While most Alaskans that pay attention to the issue understand that the government cannot either cut or tax its way to a balanced budget, the fundamental questions about both the role of government in regards to investment in the state and the role of government in trying to grow the pie are simply never asked.

**"We as Alaskans need to advocate for making decisions that are good for the economy as a whole, and reject the notion that just because something is good for the government, it is good for Alaska."**

Take a second and think about Alaska in ten years: an increasing operating budget, no capital budget, no cap on spending. If the same attitude that some have towards the private sector continues to be the driving force in public policy, we will revisit the same industries and repeat "Everyone has to hurt a little... again." We will have already shrunk those industries, and we will shrink them again. Until there is nothing left to come for. Extreme environmentalists will still be here, as a shrinking private sector is what they want. The federal government will still be here. But absent a pro-private sector attitude, and the policies that match that attitude, Alaskans in ten years will pray they had the problems we face today. We as Alaskans need to advocate for making decisions that are good for the economy as a whole, and reject the notion that just because something is good for the government, it is good for Alaska.

## FITCH LOWERS STATE OF ALASKA'S CREDIT RATING

In mid-June, Alaska lost its top-ranked credit rating from Fitch Ratings, which downgraded the state from AAA to AA+ with a Negative Outlook. The downgrade followed two other similar downgrades from Moody's and S&P earlier this year. The latest downgrade came as the Alaska Legislature met in special session to consider various elements of a fiscal plan proposed by Governor Bill Walker, including deficit reduction and new revenue measures to balance the state's budget.

The latest downgrade reflects the substantial operating deficits recorded by the state in recent fiscal years and the modest reform efforts taken to date to realign its stressed, petroleum-based revenue structure with expenditure demands. The AA+ rating reflects the still sizable level of reserves at the state's disposal. Fitch said this provides the state with a substantial financial cushion while it seeks fiscal reform.

The Negative Outlook reflects the state's need to reach and maintain budgetary balance given the state's sizable economic concentration in natural resource development, subdued growth prospects for revenue derived from this sector, and expected continued draws on reserves over the medium term.

# Alaska coalition supports Alaska OCS lease sales

RDC joined a coalition of 14 other groups representing tens of thousands of Alaska workers in a letter urging the Obama administration to retain three planned lease sales in Alaska's outer continental shelf (OCS) in the final version of the next five-year offshore leasing program.

The letter says the proposed oil and gas lease sales – one each in the Beaufort and Chukchi seas and Cook Inlet – are critical to the future economic prosperity of Alaska, and to the nation's energy security.

"As an Alaskan coalition that represents tens of thousands of Alaskan jobs, we cannot overstate how critical access and development of the Arctic OCS is to the future health of the Alaskan economy and, ultimately, to the well-being of its citizens," signers of the letter wrote.

The coalition's letter is addressed to Abigail Hopper, director of the Bureau of Ocean Energy Management (BOEM). The agency is currently reviewing the 13 proposed lease sales in the draft 2017-2022 OCS leasing program, including the three in Alaska and 10 in the Gulf of Mexico.

BOEM is considering the three Alaska sales in the final three years of the 2017-2022 program. Outside environmental groups opposed to development in the Arctic are pressing the administration to drop the sales.

**"Without the opportunities afforded by the oil and gas industry, our citizens will lack sufficient opportunities and the Alaskan economy will be substantially compromised."**

The Obama administration last year canceled two lease sales in the Alaska OCS scheduled under the current five-year program, and designated portions of the Beaufort and Chukchi seas off limits. In 2014, President Obama blocked all oil and gas activity in the waters of Bristol Bay. The administration has also closed approximately half of the National Petroleum Reserve – Alaska to development.

Alaska's Arctic OCS constitutes one-third of the nation's reserves and one of the world's largest untapped resources, potentially reaching as high as 26 billion barrels of oil and 132 trillion cubic feet of natural gas. It would constitute the eighth largest oil resource in the world, ahead of



A coalition of Alaska groups are urging the Obama administration to retain three planned lease sales in the Chukchi and Beaufort seas, as well as Cook Inlet, pictured above.

Nigeria, Libya, Russia and Norway.

The coalition, which includes labor unions, pro-development groups and the statewide chamber of commerce; said access to the resources off Alaska's coasts are necessary to maintain the flow of oil in the Trans Alaska Pipeline System and avoid the closure of the 800-mile long national security asset.

"A strong Alaskan economy is not simply effected by the development of the Arctic

public and private-sector wages. More than 72 percent of Alaskans support the responsible development of Alaska's offshore resources.

"Without the opportunities afforded by the oil and gas industry, our citizens will lack sufficient opportunities and the Alaskan economy will be substantially compromised," the letter states.

A recent study by the University of Alaska Anchorage, estimates that an annual average of 54,700 new jobs would be created from OCS development, and sustained through the year 2057, with 68,600 during production and 91,500 at peak employment.

The nation will depend on fossil fuels for at least 80 percent of its energy through 2040. "If we don't develop our Arctic energy resources, the U.S. will face a heavier reliance on foreign imports for a greater share of its energy needs," the letter said.

The letter was signed by representatives of the AFL-CIO Alaska, Alaska Laborers District Council, Teamsters Local 959, Alaska Chamber, Alaska Miners Association, Alaska Oil and Gas Association, Alaska Petroleum Joint Crafts Council, Alaska Support Industry Alliance, Anchorage Economic Development Corporation, ANCSA Regional Association, Arctic Slope Regional Corporation, Consumer Energy Alliance Alaska, Council of Alaska Producers, Americans for Prosperity-Alaska chapter, and RDC. A copy of the letter is available at [akrdc.org](http://akrdc.org).

# Sturgeon v. Frost: setback to federal overreach

Delivering a setback to federal overreach in Alaska, the U.S. Supreme Court in March issued its opinion on *Sturgeon v. Frost*, remanding the case back to the lower courts.

In an 8-0 opinion, the court overturned the 9th U.S. Circuit Court of Appeals decision that the National Park Service could ban the use of hovercraft on the Nation River in the Yukon-Charley Rivers National Preserve. The court found the 9th Circuit's decision "surprising" and "topsy-turvy."

The victory was not decisive for John Sturgeon, the Alaska moose hunter and RDC board member who brought the case forward, and who is now continuing his case in court. However, it does represent a significant win for Alaska's sovereignty. The vacated 9th Circuit ruling has been used, and would have continued to be used, by the federal government as a springboard for extensive federal regulation which would have harmed hunters, other users, and stymied development on state and Native corporation lands.

At issue in the case is who, under the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), controls state and Native land inside the outer boundaries of Alaska's national parks and refuges. The Alaska congressional delegation, the State of Alaska, Native corporations, and several of Alaska trade associations, including, RDC, submitted amicus briefs to the high court in support of Sturgeon.

In its brief, RDC pointed out that the success of Alaska's resource industries – the bedrock of Alaska's economy – is dependent on a series of promises made by Congress that provide access to natural resources. These promises started with the Alaska Statehood Act, continued with the Alaska Native Claims Settlement Act and culminated with ANILCA.

The brief noted that Section 103(c) of ANILCA ensures that any state, Native corporation or other private lands, including lands within Conservation System Units, will not be treated as part of those units and will not be subject to the regulations applicable solely to public lands within those units. The brief said that the regulations at issue in this case could prohibit economic development of state and private lands, rendering the protection granted under Section 103(c) meaningless.

The Supreme Court did not resolve the

question of whether the Park Service could regulate vessel traffic on the Nation River, or if it could regulate other state and Native corporation lands in Alaska. However, Chief Justice John Roberts, who wrote the opinion, found that the 9th Circuit's decision didn't take into account that ANILCA envisioned that public lands in Alaska would not be managed like other lands across the country.

"ANILCA repeatedly recognizes that Alaska is different from its unrivaled scenic and geological values, to the unique situation of its rural residents dependent on subsistence uses, to the need for development and use of Arctic resources with appropriate recognition and consideration given to the unique nature of the Arctic environment," Chief Justice Roberts wrote.

Sturgeon argued that the Nation River, where he was stopped by National Park Service rangers from traveling by hovercraft, is not public land because the Alaska



To contribute to John Sturgeon's legal efforts or for more information, please visit [akrdc.org](http://akrdc.org).

Statehood Act granted the state ownership of submerged lands beneath the navigable waters in Alaska. Sturgeon also argued that under ANILCA the federal government can not apply its regulations on non-public lands inside conservation units.

Eric Fjelstad, Partner with Perkins Coie LLP in Anchorage, noted that unresolved questions raised at the Supreme Court will presumably be addressed on remand.

"Regardless of the state's ownership of the bed of a navigable water, may the federal government nevertheless regulate that land and those waters?" Fjelstad asked. "May the federal government regulate other state, private, and Native corporation inholdings? If it can, what are the limits on this authority? To what extent may the federal government regulate or prohibit building lodges, trails or roads on non-public land and activities on

## U.S. Senator Lisa Murkowski praised Sturgeon as a hero for taking his challenge all the way to the Supreme Court.

navigable waters?"

Fjelstad, who is the RDC board's incoming President, said these concerns are very real as both the National Park Service and the U.S. Fish and Wildlife Service have proposed new oil and gas regulations that would apply to non-federal oil and gas rights exercised in parks and refuges.

Fjelstad noted that in Alaska, an estimated 40 percent of Native corporation land is within federal conservation units.

U.S. Senator Lisa Murkowski praised Sturgeon as a hero for taking his challenge all the way to the Supreme Court and winning this initial and unanimous, victory. "Unfortunately, this decision is not the last step, but only the start of the next chapter in our fight to secure the rights promised to Alaskans," Murkowski said. "We must continue to rally behind John, and support his cause, until lower courts also recognize what the Supreme Court affirmed: that Alaska is different, even exceptional, and that federal overreach is unacceptable."

"I am gratified that the Supreme Court unanimously recognized the unique nature of Alaska and that the 9th Circuit's decision was fundamentally flawed," said U.S. Senator Dan Sullivan. "In Alaska, our land and our waters are our lifeblood. The more the federal government takes, the less control we have over our economic destiny. The people of Alaska know this. John Sturgeon knows this. As evidenced by the opinion, members of the Supreme Court understand this."

"From the beginning, a unified front has argued that the Park Service has overstepped its boundaries through a wholesale neglect of ANILCA and many provisions that protect Alaska's sovereignty," said Congressman Don Young. "While the Supreme Court stopped short of reaching a conclusion, they went to great lengths to describe the uniqueness of Alaska and the historical context to the many instances in ANILCA that prescribe exceptions to the status quo federal management – recognizing that Alaska is often the exception, not the rule."





# THE KEY TO A STRONGER ALASKA AND NATION

## Guest Opinion: U.S. Senator Lisa Murkowski

Increasing access to federal lands and waters for resource production will boost economic growth, strengthen our national security, and cement our nation's role on the world stage.

No state needs or is better positioned to take advantage of new access more than Alaska. We have what virtually no other state has: tens of billions of barrels of oil, hundreds of trillions of cubic feet of natural gas, a massive supply of coal, and countless deposits of hardrock minerals that are just waiting to be safely and responsibly produced.

Alaskans overwhelmingly support resource development, and we recognize that the best time to open new areas and new markets is right now – when commodity prices are low, supply is robust, and when we still have time to address future expectations for supply and demand.

The problem for Alaska is that the federal government continues to block access to resource-rich areas throughout our state. Tens of millions of acres of our lands and waters have been unilaterally withdrawn by the Obama administration, against our strongest objections and, in my view, oftentimes in violation of the law.

The non-wilderness portion of ANWR remains locked away, the federal government has made commercial production all but impossible in the offshore Arctic, and it took far longer than it should have to gain approval for production to begin in the NPR-A, an area Congress already designated as a National Petroleum Reserve.

At the same time, the federal government

continues to pursue regulations that will hurt Alaska's vital mineral production, including the proposed Waters of the United States and Stream Buffer Zone rules. And we have seen a proliferation of wilderness designation derivatives, such as Areas of Critical Environmental Concern, being used to circumvent the "no more" wilderness clause within ANILCA.

Now is a critical moment for the future of Alaska resource production. Recently at the Pipeline Training Center in Fairbanks, a set of distinguished Alaskans contributed directly to the record of the Senate Energy and Natural Resources Committee. At a field hearing, the committee received testimony directly from Alaskans about the best ways to overcome federal overreach.

A dozen stakeholders from our oil, natural gas, mining, labor, and economic development sectors shared their insights and policy recommendations. One of the common themes echoed by the witnesses was that the federal government remains the problem: the source of mounting uncertainty, frustration, and delay across multiple sectors.

My goals for this hearing were to let the record show the contribution to and support for resource production throughout Alaska and to cultivate new policy ideas to support Alaska resource production.

The next steps will be to push to provide access to new areas, right alongside our efforts to promote energy innovation; to rethink the commercial environment in new offshore areas like the Arctic; and to address the implementation of regulatory systems



Alaskans participate at a U.S. Senate Energy and Natural Resources Committee hearing in Fairbanks this spring to share their insights on the best ways to overcome federal overreach.

that will reduce risks, rather than exacerbate them.

Whether it's lifting an outdated export ban, streamlining a burdensome permitting process, or writing a broad bipartisan bill, I am working hard to upgrade our nation's energy policies. In the coming weeks and months, I will develop and introduce legislation that recognizes and reaffirms the promises made to Alaskans at Statehood, in ANCSA, ANILCA, and elsewhere.

There is still no better place to produce energy and minerals than Alaska. Our people understand the fundamental role that energy plays in our daily lives. We welcome the jobs, the revenues, and the security that resource production provides. And we recognize that this is a time to make our industries more competitive, not less.

There's no doubt that we are locked in an uphill battle in the midst of an unfriendly administration. But working together, I remain confident that we will fulfill our vast potential.

## Murkowski presses administration on mitigation policy

U.S. Senator Lisa Murkowski has sent a letter to Dan Ashe, Director of the U.S. Fish and Wildlife Service, calling on the agency to withdraw its proposed policy on mitigation, which attempts to implement a Presidential Memorandum on mitigation.

In her letter, Murkowski echoes concerns she raised in March, noting a paradigm shift from mitigation to net conservation gain and lack of clarity by the administration. Murkowski also urged the Service to exempt Alaska from the proposed policy.

"Implementation of the proposed policy without fundamental changes could have devastating impacts on the livelihoods of many Alaskans," Murkowski wrote in her letter. "Mitigation is a very complex principle. Implementing mitigation presents potentially innumerable variables."

Murkowski asked the Service to re-engage with states, federal agencies, and the public to develop a policy that is clearer and more balanced and allows various mitigation efforts to work in parallel.



# WETLANDS AT THE SUPREME COURT

Guest Opinion: James S. Burling, Pacific Legal Foundation

We're often asked at Pacific Legal Foundation why we spend so much time and effort litigating wetlands issues. From the just-filed Tin Cup case dealing with permafrost wetlands outside Fairbanks, to stock ponds in Wyoming to absent frog habitat in Louisiana, the federal bureaucracy isn't usually fair and reasonable – especially when claiming what lands they can control in the first place.

According to the Constitution, the federal government is one of limited powers. To regulate land, there must be some significant connection to interstate commerce. Often that connection is more of a fiction than reality, necessitating litigation.

Thus, on May 31, the Supreme Court ruled for the landowner in *United States Army Corps of Engineers v. Hawkes Company*. In *Hawkes*, the Corps determined that a peat bog had enough of a connection to a navigable waterway 120 miles away for the federal government to have jurisdiction. The Pierce family, which owns *Hawkes Company* and is in the business of harvesting peat, brought an administrative appeal, arguing the federal government couldn't regulate a wetland that had no connection to interstate commerce. The family won, but on remand the Corps ignored the appeal and reinstated the jurisdictional determination (JD).

*Hawkes* next tried to sue in federal district court, but the case was dismissed because it was too early to sue. Following an adverse precedent from the Ninth Circuit (where PLF represented Fairbanks North Star Borough in an attempt to build a playground), the court and the Corps told *Hawkes* that it had just three choices. First, *Hawkes Company* could abandon its peat mining plans. Second, the family could apply for a permit that would cost several hundred thousand dollars in costs and several years in time. This was after a Corps bureaucrat said the agency would never issue a permit, and even kindly advised a long-term employee to look for a new job. But only after trying in vain to get a permit, could the family

challenge the wetlands JD. The third choice was even worse: harvest the peat anyway and hope for the best in the inevitable civil and criminal enforcement action – risking fines of \$50,000 per day plus considerable time in a federal prison. *Hawkes* appealed.

The Eighth Circuit reversed, holding enough is enough.

The prohibitive costs, risk, and delay of these alternatives to immediate judicial review evidence a transparently obvious litigation strategy: by leaving appellants with no immediate judicial review and no adequate alternative remedy, the Corps will achieve the result its local officers desire, abandonment of the peat mining project, without having to test whether its expansive assertion of jurisdiction.

**“While defenders of property rights are obviously thrilled by the *Hawkes* decision, much work remains.”**

The government appealed to the Supreme Court and oral argument was held on March 30. At the argument, the United States repeatedly argued that the JD was just friendly advice, and not binding agency action with real life legal consequences. It was pretty clear that the Justices weren't buying it and the only question left was how badly the government would lose.

The answer turned out to be very badly. All eight Justices joined the majority opinion written by Chief Justice Roberts and all agreed that landowners have the right to challenge a JD in court. This is huge. For 40 years the Corps has been issuing JDs and denying landowners the right to challenge them in court. Without oversight, the Corps has extended its tentacles into isolated ponds because they were visited by ducks, into vast expanses of permafrost wetlands in Alaska, and even into dry arroyos. Landowners could either file for costly but unnecessary

permits or risk jail time. The Court repeated what it said in *Sackett* – the case where a couple was stopped from building a home in Idaho – landowners shouldn't have to wait “until the hammer drops” before they can challenge the lawfulness of the hammer.

The Court in *Hawkes* found those choices to be unacceptable, and that because the JD is a “final agency action” with “legal consequences,” landowners have a right to judicial review according to the Administrative Procedure Act. The Court found that never before had citizens been forced to become criminal defendants before they could challenge a regulation. Moreover, the vaunted permitting process was “arduous, expensive and long.”

The opinion proceeded to give a laundry list of information requests demanded by the Corps here – from a “hydrogeological assessment of the rich fen system” to groundwater pH studies to an inventory of vegetation “in the area.” But as the Court noted, all of this “adds nothing to the JD” and has no bearing on the question whether the federal government has jurisdiction.

Justice Kennedy, writing for himself and Justices Alito and Thomas, concurred, with a rather startling comment:

“The Act, especially without the JD procedure were the government permitted to foreclose it, continues to raise troubling questions regarding the government's power to cast doubt on the full use and enjoyment of private property throughout the nation.”

At the oral argument, Justice Kennedy mused whether the Clean Water Act might be “unconstitutionally vague.” Now he seems to be casting more doubt on the Act. If anything, this could well portend judicial hostility to the “Waters of the United States” or WOTUS rule. While defenders of property rights are obviously thrilled by the *Hawkes* decision, much work remains. If Congress doesn't reform the Clean Water Act, then the Court is going to have to make its application constitutional. The *Hawkes* decision is a big step in the right direction.





# INDUSTRY DIGEST



## ExxonMobil starts production at Point Thomson

ExxonMobil has started production at its Point Thomson project, the first company-operated facility on Alaska's North Slope.

Central pad facilities are designed to initially produce about 5,000 barrels per day of condensate and 100 million standard cubic feet per day of recycled gas. The recycled gas is re-injected for future recovery. At full rate production, the facility is designed to produce up to 10,000 barrels per day of natural gas condensate and 200 million cubic feet of recycled gas. It is anticipated to reach that level when the west pad well is online in a few months.

The Point Thomson reservoir holds an estimated eight trillion cubic feet of natural gas and associated condensate – a high-quality hydrocarbon similar to kerosene or diesel. The resource represents 25 percent of the known gas on the North Slope. Potential future development will depend on a range of factors such as business considerations, investment climate, and the fiscal and regulatory environment.

“The successful startup of Point Thomson demonstrates ExxonMobil’s project management expertise and highlights its ability to execute complex projects safely and responsibly in challenging, remote environments such as the North Slope in Alaska,” said Neil W. Duffin, President of ExxonMobil Development Company.

ExxonMobil and the working-interest owners have invested approximately \$4 billion in the development of Point Thomson production facilities through 2015. About 100 Alaskan companies have contributed to the success of the project, which received the Project of the Year Award at the Alaska Oil and Gas Association’s 50th Anniversary Conference in May.

Point Thomson is located on state acreage along the Beaufort Sea, 60 miles east of Prudhoe Bay and 60 miles west of the village of Kaktovik.



## RDC urges delay in Record of Decision for Tongass land plan

In June, RDC sent a letter to U.S. Senator Lisa Murkowski supporting her amendment to federal legislation to postpone the signing of the Record of Decision for the Tongass National Forest Land Management Plan (TLMP).

The Record of Decision should not be signed until the U.S. Forest Service completes a full inventory of young-growth timber in the Tongass in a timely manner,” the letter said. “The inventory, combined with a financial analysis of young-growth manufacturing, will enable an accurate determination on the feasibility of early transition to young-growth harvests.”

RDC said that at this time, the proposed early transition to young-growth harvest makes little sense. “The region’s remaining sawmills cannot manufacture their current high-value lumber from small diameter young-growth trees and the cost of shipping small log commodity lumber to the Puget Sound region places Alaska sawmills at a competitive disadvantage to mills that are already producing similar lumber in the Lower 48,” RDC noted.

The current timber supply crisis in Southeast Alaska has resulted in part from the Forest Service diverting some of its timber sale preparation efforts to young-growth projects. In addition, the high-cost constraints of the 2008 TLMP has caused even young-growth log export sales to be marginally economic. See letter at [akrdc.org](http://akrdc.org).

## RDC supports Donlin Gold project

RDC is urging the U.S. Army Corps of Engineers to move forward with the proposed Donlin Gold project in western Alaska.

In comments to the Corps on a draft environmental impact statement studying the project, RDC said Donlin can be developed responsibly, with a strong focus on protecting the environment and wildlife, while preserving cultural activities and offering a lifetime of opportunity for local residents.

“Alaska, and Alaskans alike, depend on the development of natural resources to diversify and support the economy,” wrote RDC Executive Director Marleanna Hall. “Economic opportunities in rural Alaska are often scarce and the lack of family wage jobs in many regions has resulted in an out-migration of Alaska Natives from the lands their ancestors have lived on for thousands of years.”

An estimated 3,000 jobs will be created during the approximate four-year construction phase, and up to 1,200 jobs for the estimated mine life of 27.5 years. These jobs will have a significant and positive impact on the local economy and the state, especially in a region that experiences some of the highest unemployment rates.

Under the Alaska Native Claims Settlement Act, the Calista Corporation selected the mineral rights at the Donlin Gold project site and The Kuskokwim Corporation (TKC) selected the surface estate, both in efforts to benefit shareholders from the development and production of the mineral resources. This economic opportunity for shareholders and descendants of Calista is precisely the purpose behind Congress’ grant of entitlement of these lands to Calista and TKC.

Hall outlined the many social and economic benefits of the Donlin project to the region, state, and to the nation. She noted that through the exploration stages, Donlin has shown a strong commitment to local hire and for supporting communities and cultures in the region.

In her comments, Hall emphasized that Alaska has a rigorous permitting process that has already permitted five large mines under the review of National Environmental Policy Act and the scientifically-based process which includes over 60 major state and federal permits and authorizations. See letter at [akrdc.org](http://akrdc.org).



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