

ALASKA SUPREME COURT

State, Department of Natural Resources v. Nondalton Tribal Council

268 P.3d 293 (Alaska 2012) · Decided January 20, 2012

SUMMARY

The Alaska Supreme Court held that Appellate Rule 602(a)(2) did not bar tribal councils' challenge to the Bristol Bay Area Plan because the plan was not a final agency decision accompanied by the required appeal notice. The court also held that the Bristol Bay Area Plan was not a regulation under the Alaska Administrative Procedure Act because it guided the Department of Natural Resources' subsequent actions without directly altering the rights or interests of the public.

CASE DETAILS

COURT	Alaska Supreme Court
WRITING FOR THE COURT	Stowers, Justice; Carpeneti, Justice; Christen, Justice; Fabe, Justice; Winfree, Justice
JURISDICTION	Alaska
DECIDED	January 20, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State petitioned for interlocutory review of the superior court's denial of its Civil Rule 12(b)(6) motion to dismiss and the court's rulings that the Bristol Bay Area Plan was a regulation subject to the Alaska Administrative Procedure Act and that Alaska Appellate Rule 602(a)(2) did not bar the Tribes' claims. The Alaska Supreme Court granted review.
STANDARD OF REVIEW	Whether agency action is a regulation is a question of law reviewed under the independent-judgment standard because it does not involve agency expertise. The interpretation of Alaska Appellate Rule 602 is reviewed de novo.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential

PARTIES

State of Alaska, Department of Natural Resources, Tom Irwin, Commissioner of the Department of Natural Resources v. Nondalton Tribal Council, Koliganek Village Council, New Stuyahok Traditional Council, Ekwok Village Council, Curyung Tribal Council, Levelock Village Council, AIFMA Cooperative d/b/a the Alaska Independent Fisherman's Marketing Association, Trout Unlimited, Inc.

TOPICS

administrative procedure act judicial review of agency action rulemaking appellate procedure
statutory interpretation

PRACTICE AREAS

administrative law land use tribal affairs appellate procedure

QUESTIONS PRESENTED

1. Whether Alaska Appellate Rule 602(a)(2)'s time limit for appeals from administrative decisions barred the Tribes' action challenging the Bristol Bay Area Plan.
2. Whether the Bristol Bay Area Plan is a regulation under the Alaska Administrative Procedure Act and therefore subject to judicial review under AS 44.62.300.

HOLDINGS

1. Rule 602(a)(2) did not bar the Tribes' claims because neither the Bristol Bay Area Plan nor its associated land classification order clearly stated that it was a final decision or that affected parties had thirty days to appeal, and DNR did not show that either decision was mailed or otherwise distributed to the Tribes.
2. The Bristol Bay Area Plan was not a regulation under the Alaska Administrative Procedure Act.

KEY QUOTATIONS

"We therefore now explicitly adopt the Batterton analysis as presented in Kachemak as the defining principle underlying the second indicium of a regulation: an agency action does not satisfy the second indicium if it "does not alter the rights of the parties, does not deprive any party of a fair opportunity for public participation, embodies no finding as to a particular application and does not establish criteria by which particular applications should be evaluated." (304)

"The BBAP is an interim measure that guides DNR's behavior, not that of the public." (305)

FACTUAL BACKGROUND

The Alaska Department of Natural Resources adopted the 2005 Bristol Bay Area Plan after a two-year public planning process. The Plan covers nearly 19 million acres and guides DNR's future management of state uplands, shorelands, tidelands, and submerged lands through management intent, land-use designations, and guidelines. It does not itself authorize particular leases, permits, conveyances, or other land-use decisions; those

actions occur through subsequent agency proceedings. More than four years after adoption, the Tribes sued to obtain a declaration that the Plan had no continuing legal force and effect.

PROCEDURAL HISTORY

The Tribes filed an action in the Dillingham superior court seeking declaratory relief that the 2005 Bristol Bay Area Plan was unlawful. The superior court denied DNR's motion to dismiss and ruled that the Plan was a regulation and that Rule 602(a)(2) did not bar the action. DNR petitioned for interlocutory review, and the superior court stayed the proceedings pending review.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the superior court for further proceedings consistent with the opinion after reversing the ruling that the Bristol Bay Area Plan was a regulation.

CASES CITED

- Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520 (1988)
- Thomas v. Bailey, 595 P.2d 1, 2-4 (Alaska 1979)
- State v. Andrus, 429 F. Supp. 958, 963 (D. Alaska 1977)
- Alaska Survival v. State, 723 P.2d 1281, 1289-91 (Alaska 1986)
- Alyeska Pipeline Service Co. v. State, Department of Environmental Conservation, 145 P.3d 561, 564 (Alaska 2006)
- Burke v. Houston NANA, LLC, 222 P.3d 851, 867 (Alaska 2010)
- Alaska Center for the Environment v. State, 80 P.3d 231, 243 (Alaska 2003)
- Jerrel v. State, Department of Natural Resources, 999 P.2d 138, 141, 143-44 (Alaska 2000)
- Stone v. State, 255 P.3d 979, 982 (Alaska 2011)
- Cameron v. Hughes, 825 P.2d 882, 884 n.2 (Alaska 1992)
- Manning v. Alaska Railroad Corp., 853 P.2d 1120, 1124 (Alaska 1993)
- Skudriyk v. Reynolds, 856 P.2d 462, 463 (Alaska 1993)
- Powers v. State, Public Employees' Retirement Board, 757 P.2d 65, 68 (Alaska 1988)
- Kenai Peninsula Fisherman's Cooperative Association, Inc. v. State, 628 P.2d 897, 899-906 (Alaska 1981)
- Kachemak Bay Watch, Inc. v. Noah, 935 P.2d 816, 819, 821, 824-26 (Alaska 1997)
- Kodiak Seafood Processors Association v. State, 900 P.2d 1191, 1197 (Alaska 1995)
- Gilbert v. State, Department of Fish & Game, 803 P.2d 391, 395-97 (Alaska 1990)
- Olson v. State, Department of Natural Resources, 799 P.2d 289, 292 (Alaska 1990)
- Croft v. Pan Alaska Trucking, Inc., 820 P.2d 1064, 1066 (Alaska 1991)
- Batterton v. Marshall, 648 F.2d 694, 707 (D.C. Cir. 1980)

- Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 67-72 (2004)

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