

FIGHTING FOR HOME IN THE MELTING ARCTIC

*By Madeline Stano**

“I know we have a future somewhere. Here on the earth we can do our best. And that’s all we can live with.”

—Andrew, Kivalina resident and whaling captain.

Scientists estimate the Alaska Native Village of Kivalina will become uninhabitable by 2025¹ making its current residents the first climate refugees in the United States and making the future of their unique way of life uncertain.²

The Village sits at the two-square mile southern tip of a six-and-a-half mile barrier reef island between the Chukchi Sea and Wulik River some seventy miles north of the Arctic Circle.³ Kivalina is home to four hundred residents, ninety-seven percent of whom are Native Iñupiat.⁴ Iñupiat means literally “the people” and is a term used by Natives of Northern Alaska to describe themselves and their culture.⁵ The Iñupiat in Kivalina are descendants of the Iñupiat who lived throughout the Northwest Arctic nomadically for thousands of years.⁶ The modern Village of Kivalina did not have permanent residents until 1905 when the Federal Bureau of Indian Affairs built a school there and forcibly compelled attendance of Iñupiat children.⁷

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1. Stephen Sackur, *The Alaskan Village Set to Disappear Under Water in a Decade*, BBC NEWS MAG. (July 29, 2013, 8:15 PM), <http://www.bbc.co.uk/news/magazine-23346370>.

2. *Id.* “Climate refugees” is also a term used by the author to describe those displaced by the environmental and political impacts of climate change.

3. *Kivalina*, NANA REG’L CORP., INC., <http://nana.com/regional/about-us/overview-of-region/kivalina/> (last visited May 22, 2014).

4. *Our People*, NANA REG’L CORP., INC., http://nana-dev.com/about/our_people/ (last visited Mar. 24, 2014).

5. *Inupiat*, UNIV. OF ALASKA FAIRBANKS, <http://www.uaf.edu/anlc/languages/i/> (last updated Jan. 1, 2007).

6. CHRISTINE SHEARER, *KIVALINA: A CLIMATE CHANGE STORY 2* (2011).

7. NANA REG’L CORP., INC., *supra* note 3.

Currently, Kivalina is a self-governing, federally recognized Indian tribe⁸ that practices a subsistence lifestyle like their ancestors, with bowhead whales, seals, caribous, reindeer, and fish playing a particularly important role.⁹

The residents of Kivalina face two major environmental challenges that continue to impact their daily lives tremendously—the neighboring Red Dog Mine¹⁰ and climate change.

The Red Dog Mine is one of the largest zinc and lead mines in the world.¹¹ EPA consistently ranks the Red Dog Mine as the number one polluting facility in the country because it produces over 500 million pounds of toxin-imbued waste rock per year.¹² Kivalina residents began working with Luke Cole¹³ at the Center on Race, Poverty & the Environment in 2002 to challenge the Mine’s illegal pollution discharges, which jeopardized their drinking water and subsistence practices.¹⁴ In July 2006, a U.S. District Court for the District of Alaska granted summary judgment to Kivalina, establishing 618 permit violations against the mine.¹⁵ In 2008, the Court found over 200 more violations,¹⁶ and that the company had been out of compliance with its mine site’s National Pollutant Discharge Elimination System (“NPDES”) permit for twelve out of the last

8. Status established pursuant to the provisions of the Indian Reorganization Act of 1934 and amended in 1936. See Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 67 Fed. Reg. 46,328, 46,332 (July 12, 2002) (listing the “Native Village of Kivalina” as one of the federally acknowledged tribes).

9. See *infra* pp. 4–7.

10. See *Adams v. Teck Cominco Alaska, Inc.*, 414 F. Supp. 2d 925, 929 (D. Alaska 2006); *Red Dog by the Numbers*, NANA REG’L CORP., INC., <http://nana.com/regional/resources/red-dog-mine/red-dog-faq/> (last visited May 22, 2014) (the Mine is located eighty-two miles North of Kotzebue and discharging its effluent in the Wulik River, which is essential for Kivalina’s drinking water and subsistence practice).

11. *Understanding the Toxic Inventory Report*, RED DOG OPERATIONS, <http://reddogalaska.com/Generic.aspx?PAGE=Red+Dog+Site/Environmental+Pages/TRI&portalName=tc> (last visited May 22, 2014).

12. *Id.*

13. *Our Founders: Luke Cole (1969–2009)*, CTR. ON RACE, POVERTY, AND THE ENV’T, <http://www.crpe-ej.org/crpe/index.php/about-us/who-we-are/our-founders> (last visited May 22, 2014).

14. *Climate Justice in Kivalina*, CTR. ON RACE, POVERTY, AND THE ENV’T, <http://www.crpe-ej.org/crpe/index.php/campaigns/climate-justice/kivalina-ak> (last visited May 22, 2014).

15. *Adams v. Teck Cominco Alaska, Inc.*, 414 F. Supp. 2d at 943–44.

16. See AM. ASS’N FOR JUSTICE, HAZARDOUS TO YOUR HEALTH: HOW THE CIVIL JUSTICE SYSTEM HOLDS CORPORATE POLLUTERS ACCOUNTABLE 11 (July 2010) (noting that in 2008 the residents of Kivalina successfully settled with Red Dog Mine after showing they violated the Clean Water Act a total of 800 times).

twelve quarters.¹⁷ Residents, some of whom work at the mine, continue to work with Red Dog on reducing pollution near their homes.¹⁸

You may also know Kivalina from its other legal effort challenging the largest greenhouse gas emitters in the United States for their contribution to global warming.¹⁹ The Alaskan Arctic is warming at twice the global average due to climate change.²⁰ In the twentieth century, the ice barrier that protected Kivalina from severe storms melted significantly.²¹ Throughout the Alaskan Arctic, the sea ice has shrunk by 386,000 square miles over the last twenty years.²² In the past fifty years, Kivalina has lost nearly thirty acres from erosion, sending about half of the livable land into the sea.²³ According to a U.S. General Accounting Office report in 2003, residents of Kivalina are in “imminent danger”²⁴ due to the effects of climate change. “It is believed that the right combination of storm events could flood the entire village at any time . . . remaining on the island is no longer a viable option.”²⁵ The federal government estimated the cost of relocating the village to be between 100 and 400 million dollars.²⁶ Residents did not recover these costs in court and relocation remains unfunded.²⁷

That is the story of Kivalina largely told throughout western mainstream media—a village, through no fault of its own, polluted and doomed. However, despite regulators and courts’ unwillingness to act meaningfully to protect Kivalina, residents continue their decades long fight for their home.

17. *Detailed Facility Report: Red Dog Operations*, ENFORCEMENT AND COMPLIANCE HISTORY ONLINE, ENVTL. PROT. AGENCY, <http://www.epa-echo.gov/echo/> (last updated Sept. 24, 2013).

18. *Featured Project: Red Dog Mine*, NANA REG’L CORP., INC., http://nana-dev.com/industries/mining/red_dog_mine/ (last visited May. 22, 2014).

19. *See* Complaint at 1–2, *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863 (N.D. Cal. 2009) (No. CV 08 1138 SBA) (seeking monetary damages from oil and energy companies for their contributions to global warming and the negative impact their actions have had on the village of Kivalina).

20. SUSAN J. HASSOL, *IMPACTS OF A WARMING ARCTIC: ARCTIC CLIMATE IMPACT ASSESSMENT 10* (2004), available at <http://amap.no/acia>.

21. SHEARER, *supra* note 6, at 127.

22. Complaint, *supra* note 19, at 44.

23. SHEARER, *supra* note 6, at 50.

24. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-04-142, *ALASKA NATIVE VILLAGES: MOST ARE AFFECTED BY FLOODING AND EROSION, BUT FEW QUALIFY FOR FEDERAL ASSISTANCE 4* (2003).

25. *Id.* at 30–32.

26. *Id.* at 32.

27. *See* *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 858 (9th Cir. 2012) (dismissing the case and asserting the solution to Kivalina’s eminent problem rests in the legislative and executive branches).

When I traveled to Kivalina in May of 2013, I was immediately struck not only by the reality of environmental threats they face, but by the strength of the residents' commitment to their community, their land, and their sense of home. I had the opportunity to sit-down and speak with a former client and whaling captain, Andrew, who generously introduced me to his life and Kivalina. As national and local governments, advocates, and communities continue to think about and hopefully plan for climate adaptation and mitigation, it is the voices of those like Andrew and their environmental justice communities that must lead the conversation.

[MS] You've lived your whole life in Kivalina. What was it like growing up in Kivalina?

[A] For me, I enjoyed it because it was my hometown, where I grew up. It was a good life as a young man and as an adult. I would be able to go hunt after school. In winter time—my favorite time—I could go ice fishing and hunt small game.

[MS] Is Kivalina different now than when you were growing up?

[A] It is very different now. The weather is different now. With climate change, it's a lot warmer than before and sadly we get more bad news. We didn't used to know much about the world outside of Kivalina when I was younger, and now we get all the news through the computer. Now that's all that I can think about—the heartache news from all over the world.

The weather makes a big difference here not only for us but for all the animals. We can't hunt every day because of land conditions, low water on the river, no snow, so it's hard to get around. It's really different. The migrations of many animals have changed. The spawning of fish has changed. People used to be able to hunt every week and now they can't.

I can see now our snow is heading down to Minnesota and the like and we're not getting it.²⁸

28. See Eric Roston, *Why is it So Cold? The Polar Vortex Explained*, THE GRID: ENERGY, RES., AND SUSTAINABILITY, (Jan. 7, 2014, 2:22 PM), <http://www.bloomberg.com/news/2014-01-07/why-is-it-so-cold-the-polar-vortex-explained.html> (explaining that the Polar Vortex of 2014 refers to an arctic cold front that brings snow and unusually low temperatures to geographical areas normally unaffected by the arctic cold).

[MS] How have food and eating changed in Kivalina in your lifetime?

[A] I've been eating more Western food because even the greens that grow here don't have time to grow. The weather goes from hot one day and cold the next—nothing can grow. Somebody is not watching our plants. If you're growing a plant in your house and you're not watching it and taking care of it you know you wouldn't get anything out of it. In Kivalina now it's kind of like that. It's also harder to hunt and to fish which means less food.

[MS] I know you achieved great success catching a 59-foot bowhead whale that was able to feed your whole village for quite some time. What was your experience as a whaling captain? Why is whaling important to the people of Kivalina?

[A] My experience as a whaling captain, catching a whale in 1987, was a good experience. In my teen years, I worked for each captain in Kivalina. I learned from all the different whaling captains and appreciated them showing me their knowledge. The elders taught me how to respect the animals—always respect what we are hunting for. It was a gift for me to understand it's all about hunting for your people, I received that from our Creator and He gave us the wisdom to say what we should do.

I'll never deny my Creator; he teaches us what we can have. Whaling is a spiritual thing for the people here up North. It is a spiritual living. Catching a whale from the ice, it was a gift—the Creator gave it to me to experience and feed the people of our village and see what life is all about. You can see the happiness in the people you feed.

[MS] How has whaling changed in your lifetime?

[A] It's warmed up too much. That's what has changed. There are too many openings in the ice. There's also not enough ice. Today, it's hard to go out at all anymore. Right now, I need hovercraft to go out whaling. (Laughs). This year springtime, they went and didn't catch a whale. Only Point Hope got a few. Something deep has changed.

[MS] What was your history with the Red Dog Mine? Why was it important for you to participate in the Red Dog Mine lawsuit?

[A] I worked there at the Port Site and the mine and I became the bear watcher—making sure the bears don't bother workers. I was paying attention and trying to see what was going on, what they were doing to our river. At the same time, I used to be on the committee for Red Dog Mine and NANA.²⁹ We used to go to all their meetings and hear about issues relating to the Mine and our environment.

I became concerned about the river that we drink and the fish that we eat. There were changes to the river and the fish. It's like I became part of the trout and understood how they felt about their river. It's not our river, it's their river. That's where they live and spawn. I knew the river wasn't safe. The mine said they'd make it better but that wasn't the truth. They said they'd make our water better to drink. They were not telling the truth, it was not showing what they said they were doing.

When we tried to ask for help from our people in Alaska, people from the state and environmentalist people, they wouldn't for some reason. They weren't really in tune. Something was different. The State of Alaska wasn't helping the Natives in Alaska. The people of Alaska were all for money. They were hunting for that money, that's why they couldn't help us. They weren't getting money by fixing our river so they were not interested.

It was good to have Luke to do something about our river, tell the truth about what's happening. I appreciated that man; I was telling Luke I was going to make a statue, a monument for him here in Kivalina.

[MS] What has your experience been in United States courts? How did it feel to go through the process?

I really didn't experience the court system, but the information I got from Luke. The other side had big power; whatever we say there

29. See SHEARER, *supra* note 6, at 103 (referring to the Northwest Arctic Native Association, which was created by the 1971 Alaska Native Claims Settlement, and focuses its efforts on tribal economic growth).

was not enough power for us. We were powerless. Luke tried his best. But there were too many Alaskan people; therefore we were powerless to do what we wanted. They were in it for the money.

We were just trying to make sure we have good drinking water, that the fish were safe.

[MS] Would you ever want to live somewhere else?

[A] Maybe. Every time I go out of Kivalina I miss home. Kivalina is my hometown; my parents lived in nearby Alaskan Native Village Point Hope for a while and came back home. And I was happy about their coming home. They could live up further north but they keep coming back. Kivalina is my hometown.

[MS] What makes living in Kivalina so special for you?

[A] The trout! The trout was the best. It was the best food in my life. The trout that spawn in our rivers makes it special.

It's not all about the fish. Also the caribou, the moose, the fur, the wolverines, the foxes, the chickens we had, there was so much to do here in Kivalina, so much to hunt. Even ducks, you know, every season was good about Kivalina, and we have four seasons. You could hunt, didn't have to buy things out of the store, the country, being busy every day.

That's what is so special, the food we got out of our land instead of store-bought. It was all about what the Creator gave us to live with and have to enjoy. Every season that we were able to catch and enjoy and put away for the winter.

That's what was good about Kivalina. Do your own thing. No law. No hunting license. The freedom that we had and enjoying it. The best thing about freedom, our elders were telling us about respect. Respect the animals that you catch. Don't overdo your catch. Limit yourself. Get what you need for our people. Listening to our elders, they are a wise people, that's all what made life good.

[MS] What's your hope for Kivalina's future?

[A] I don't know how to answer that. The weather change has become real for us; I don't know what the weather will do for us. The more you worship our Creator, the more good things will come to you. It's all up to Him. I wish it could be better, I do not know. I know we have a future somewhere. Here on the Earth we can do our best. And that's all we can live with.

Andrew's story highlights Kivalina residents' resiliency and ability to live their truth despite profoundly negative climate impacts. Day in and day out for decades, with virtually no assistance from the outside world, residents discover and implement local solutions to the various impacts of climate change that work for their community.

As droughts, storms, wildfires, and unprecedented snowfalls become more frequent, with the changing climate around the world, the lessons of Kivalina's resilience and ingenuity are essential in building solutions from the ground up. The global problem of climate change requires solutions, both local and international, to be firmly rooted in the leadership of impacted communities.

Kivalina and climate refugee communities like it are also entitled and need the support—financial, technical, legal—of state, federal, international, and private entities as of yesterday. At any point one strong storm could flood all of Kivalina and yet state and federal authorities continue to idly watch. The residents of Kivalina are not responsible for the industrial emissions causing and exacerbating the climate impacts they face, but yet every branch of government refuses to hold anyone accountable or offer any meaningful assistance for their survival.

The majority of residents in Kivalina are young people³⁰ and they deserve an opportunity to live in their Arctic home. When I was playing tag in the McQueen school gymnasium in Kivalina with three elementary school students last May, I asked them what was their favorite color. The three youth looked at me with shock and scoffed at me for asking such an apparently obvious question in the Alaskan Arctic. In unison they answered, "white."

The fight against climate change is really a fight for one's home, one's dignity and one's people—communities like Kivalina are leading the way.

30. U.S. Census Bureau, U.S. Dept. of Commerce, 2010 U.S. Census, *available at* http://www2.census.gov/census_2010/03-Demographic_Profile/Alaska/ (evidencing the majority of Kivalina's populace is under age thirty, with a median age of twenty-one).