

Knowles calls for 'quiet diplomacy' on subsistence

by Anna M. Pickett
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The 9th U.S. Circuit Court last week handed Alaska Natives a significant legal victory in their long battle for subsistence rights. In the case of *Katie John vs. the United States* (and related litigation that had been merged with it), the three-judge panel ruled that the federal government has authority to manage fisheries throughout many areas of the state in order to fulfill subsistence needs.

However, the court stopped short
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of upholding the decision by District Court Judge F. Russell Holland that the federal government could assert such authority over all navigable waters in the state. Instead, the judges indicated that federal authority would extend to navigable waters in and around national parks, refuges and other federal conservation units and left it to federal agencies to make more specific boundary decisions. Their conclusion stated in part:

"We recognize that our holding may be inherently unsatisfactory. By holding that public lands include some specific navigable waters as a result of reserved water rights, we impose an extraordinary administrative burden on federal agencies. We accept a complicated regulatory scheme requiring federal and state management of navigable waters. Let us hope that the federal agencies will determine promptly which navigable waters are public lands subject to federal subsistence management. As long as federal and state regulation is necessary, we expect the federal agencies and the state to cooperate fully to protect and provide the opportunity for subsistence fishing in navigable waters.

"If we were to adopt the state's position, that public lands exclude navigable waters, we would give meaning to the term 'title' in the definition of the phrase 'public lands.' But we would undermine congressional intent to protect and provide the opportunity for subsistence fishing.

"If we were to adopt Katie John's position, that public lands exclude navigable waters, we would give federal agencies control over all such waters in Alaska. Alaska does not support such a complete assertion of federal control and the federal agencies do not ask to have that control.

"The issue raised by the parties cries out for a legislative, not a judicial, solution. If the Alaska Legislature were to amend the state constitution or otherwise comply with ANILCA's rural subsistence priority, the state could resume management of subsistence uses on public lands including navigable waters. Neither the heavy administrative burden nor the complicated regulatory scheme

that may result from our decision would be necessary. If Congress were to amend ANILCA, it could clarify both the definition of public lands and its intent.

"Only legislative action by Alaska or Congress will truly resolve the problem."

Gov. Tony Knowles said the state would continue to challenge some aspects of the appellate decision.

"It left unclear what waters federal management does apply to, saying that the rural subsistence priority in ANILCA applies to waters in which the government has "reserved" water rights. While that obviously applies to national parks and refuges, the implications of what that means are still unclear. The uncertainty created by this is troubling," Knowles said. "The court's acceptance of the complicated dual management scheme is also clearly unacceptable to the state."

Knowles said he agrees wholeheartedly that there should be a legislative solution to the subsistence management, and that it should stay out of the courts.

"I have long maintained that we need an Alaska solution to the subsistence dilemma, a solution that recognizes both the importance of subsistence to the rural economy and way of life and also the importance of the state's right to manage fish and game in Alaska."

In a prepared statement, Knowles said, "Now I think it is time for some quiet diplomacy - for the leadership of all sides of this issue to come together and see if we can, indeed work out an Alaskan solution to this uniquely Alaska problem."

He announced that Lieutenant Governor Fran Ulmer will lead that "quiet diplomacy" effort.

State Sen. Georgianna Lincoln of Rampart said she has mixed feelings about the Katie John decision. While it represents some progress towards protection of Native rights, the issue is far from complete resolution.

"I agree with the governor, that a constitutional amendment is the resolution," said Lincoln. "I think you have to pull various interest groups together. I don't have any fear of putting the vote out to the people."