

Kaktovik wins suit against Watt on refuge

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The Secretary of the Interior violated two federal statutes and the intent of Congress when he re-assigned administration of oil exploration of the William O. Douglass National Wildlife Refuge from the U.S. Fish and Wildlife Service (FWS) to the U.S. Geological Survey (USGS), according to a

U.S. District Court Judge in Anchorage.

Both federal agencies are administered by the Department of the Interior, but U.S. District Judge James A. von der Heydt ruled last week that James Watt's move to transfer control of oil exploration from FWS to USGS, was a "clear error in judgment and beyond his statutory authority." von

der Heydt ordered Watt to re-assign and delegate all responsibility for the preserve to the Fish and Wildlife Service.

The 8.8 million acre refuge is home to the Porcupine Caribou herd which numbers more than 100,000. The Kaktovik villagers depend on wildlife in that herd for much of their food source.

Watt transferred responsi-

bility for overseeing the preserve to USGS in March. The transfer took away from FWS the authority to conduct seismic exploration in the refuge's coastal area and to prepare a report to Congress on possible oil and gas exploration and drilling.

The administrative move was immediately challenged by several groups including the

North Slope Village of Kaktovik which sits in the middle of the refuge, several environmental groups and individuals.

Those groups contended that FWS was given primary responsibility for management of the refuge in two federal acts. Those acts were the National Wildlife Refuge System Administration Act of 1966

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and the Alaska National Interests Lands Conservation Act (ANILCA) of 1980.

ANILCA dictated that the Secretary of the Interior conduct a baseline study of fish and wildlife in the refuge. That study must be published within 19 months of the enactment of ANILCA. Within two years of enactment, the DOI must establish regulations on the initial guidelines for oil and gas exploration. Those guidelines must be based on the baseline study results, must include restrictions necessary to protect fish and wildlife, and must be accompanied by an environmental impact statement on exploratory activities.

ANILCA further states that DOI must report on oil and gas exploration results within five years of the enactment of ANILCA.

When Watt transferred responsibility for the Arctic National Wildlife Refuge to USGS, he left Fish and Wildlife service in charge of that baseline study and gave USGS

lead responsibility for approving exploration plans with FWS concurrence.

Kaktovik and the other groups challenged the transfer on the grounds that village residents use the wildlife resources for food, material and cultural needs. The village charged that a distinct and palpable injury will be caused the village and that damage will be traceable to the fact that the re-assignment will lead to regulations allowing exploration without adequate environmental safeguards.

The court went through several legal questions before ruling against Watt. First, the court stated in its opinion that if the USGS study functions and duties regarding oil and gas exploration involved "administration of the refuge," that re-assignment was beyond Watt's authority. The Congress dictated that the refuge be "administered" by FWS.

The court opinion then stated that The Wildlife Refuge Administration Act requires that FWS is required to control

and direct the refuge by regulating human access in order to conserve the entire spectrum of wildlife found in the Refuge.

The judge stated that ANILCA and the Wildlife Refuge acts demand that "approval of exploration in the Refuge manifestly involves controlling and directing human access to the refuge. This must be done by FWS . . . and the fact that the Secretary's directive allowed FWS concurrence on the subsection regulations does not alter the court's conclusion."

von der Heydt stated that one reason for the Refuge Act was to solve the problem of joint jurisdiction over the refuges.

The opinion quotes the Refuge Act and stated "there will be no joint administration of any units within the system by the U.S. Fish and Wildlife Service and any other agency . . . Joint administration over the refuge is forbidden by Congress."

The judge therefore over-

turned the Watt decision. A DOI spokesperson was uncer-

tain if the ruling would be appealed.