

# Delegation moves to halt implementation of *Katie John* decision

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by Jeffrey R. Richardson

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Alaska's Congressional delegation has introduced a proposed moratorium on regulations that would assert federal control over navigable waters in Alaska. Attached as a rider to a continuing budgetary resolution as well as the Interior Department appropriations bill, the proposal has passed a Senate committee but its ultimate fate is uncertain.

The move has prompted protest from Alaska Native leaders who had been counting on the rules to implement a federal court decision extending federal subsistence hunting and fishing jurisdiction over navigable waters. The decision came in the case of *Katie John vs. United States*, in which the Ninth Circuit Court of Appeals ruled in favor of Alaska Natives who asserted that the definition of public lands subject to federal subsistence jurisdiction includes navigable waters in which the

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federal government has reserved water rights. This includes water rights reserved for conservation purposes to meet the needs of wildlife refuges, national parks and other units.

"We're not happy with this rider that goes against a court decision in our favor," said Julie Kitka, president of the Alaska Federation of Natives. "We joined the *Katie John* lawsuit because we felt the federal government should be fully implementing the subsistence title of the Alaska National Interest Lands Conservation Act and protecting both hunting and fishing rights of Alaska Natives, and they weren't. We're not taking it lightly."

Others reacted more strongly.

"It was a heavy blow to learn of the news," said Will Mayo, president of Tanana Chiefs Conference. "We've been fighting for so long and we win so few battles. This (the *Katie John* decision) was such a tremendous victory for the Native community, we were devastated by learning the news of the moratorium."

Heather Kendall, the Native American Rights Fund attorney representing *Katie John* and another Ahtna Athabascan woman in the suit bearing her client's name, described the proposed moratorium as an effort by the delegation to force the Alaska Native community to support a Knowles Administration concept to resolve Alaska's subsistence management problem.

"I believe this is an overreach by the legislative branch into judicial matters," said Kendall. "Overreach is not too strong a word at all. The reaction I've heard is that Native people and organizations are abso-

lutely outraged."

According to a March 6 statement jointly issued by Sens. Ted Stevens and Frank Murkowski and Rep. Don Young:

"As a result of a recent decision by the Ninth Circuit Court of Appeals in *Katie John v. United States*, the Department of the Interior and the Department of Agriculture are beginning preparations for drafting such regulations. Today's legislation would halt even preliminary efforts for a federal takeover through May 15, 1997. The bill states that no funds may be used by either department to 'prepare, issue, or implement regulations, rules, or policies pursuant to Title VIII of the Alaska National Interest Lands Conservation Act to assert jurisdiction, management, or control over navigable waters transferred to the State of Alaska.'"

The statement went on to explain the delegation's rationale for proposing the moratorium on regulations that would assert federal jurisdiction over certain navigable waters:

"This amendment will stop the federal government from taking over our fisheries. We fought hard in the battle for statehood to ensure state management of our waters. The amendment provides a time out to allow Alaskans an opportunity to develop a comprehensive solution to this problem which will preserve state management while protecting those who depend on subsistence resources."

Mitch Rose, press secretary to Sen. Ted Stevens, said the delegation felt that the ongoing Knowles subsistence initiative, and a pending state request for the U.S. Supreme Court to review the Ninth Circuit

decision in *Katie John* made it "premature" for the Interior Department to proceed with regulations.

Bob King, the governor's press secretary, said the Administration had nothing to do with the delegation's effort to block the regulations.

"We're aware of that, (but) the governor's office was not part of the development of the rider," King said. He said the administration is concerned about the extension of further federal jurisdiction in Alaska, and has stated its concerns to the Interior Solicitor's office. He added, "It would be incorrect to conclude that we were trying to pressure people. We've had

no involvement in the development of this rider."

Ron McCoy, an Interior Department spokesman in Anchorage, stated the department was still reviewing the moratorium proposed by the delegation.

"We're very concerned about that language," McCoy said.

Lauri Adams, Alaska regional solicitor for the department, has been working on the Interior team drafting the regulations. She said her understanding is that work on the regulations will continue unless or until the moratorium becomes law. However, she declined to comment on the timeframe in which draft rules might be completed.