

# Alaska State Legislature

## Legislative Council



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Representative Joe Green, Chairman

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## **Appeals Court Delivers *Katie John* Decision** **Legislative Council Reacts to Results of Subsistence Appeal**

(JUNEAU) - The Ninth U.S. Circuit Court of Appeals today issued an 8-3 opinion affirming a previous Ninth Circuit decision granting federal jurisdiction over some navigable waters in Alaska. In the case, known as *Katie John*, the State of Alaska argued that it has the authority to manage fish in state waters. Opponents argued in favor of federal management on Alaska's navigable waters.

"Although we're disappointed with the *Katie John* decision, we're not at all surprised - the Ninth Circuit has consistently ruled against Alaska," said Rep. Joe Green (R-Anchorage), chairman of the Alaska Legislative Council

Five of the judges simply agreed with an earlier ruling that the federal government has the power to regulate fishing in navigable waters where it has a reserved water right. They held that when the federal government sets land aside for parks, refuges, national forests and preserves, it also reserves certain water rights in navigable waterways near those lands. Three other judges wrote a separate opinion arguing that they would have gone even further and granted the federal government full authority over all navigable waters in Alaska.

"We expected all along that the Ninth Circuit would rule against us," said Green. "But we don't see this as the end. We stand ready to support the administration in an appeal to the U.S. Supreme Court. The last time we appealed a decision by the Ninth Circuit, the Supreme Court reversed it 9-to-0 in a unanimous decision in favor of the state. In fact, the Ninth Circuit is the most frequently reversed circuit court in the country."

State lawyers argued that the federal government reserves only the water rights needed to fulfill federal withdrawals, and that reserved water rights are not meant to grant title to waters and submerged lands, nor confer management authority over fish and game. Historically, states have managed fish and game, especially on navigable waterways.

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Three judges agreed with the State's arguments. In a strongly worded dissent they wrote that the court completely ignored U.S. Supreme Court precedent that requires a clear congressional statement before federal agencies can assume control over navigable waters. Congress has never made such a statement. The dissent concluded that "there is no doubt that Congress meant to create a subsistence priority for rural Alaskans on 'public lands.' But it is far from clear that Congress intended to take away the state's traditional authority to control fishing. ...".

Green cautioned against viewing the ruling as simply a "subsistence" decision. "*Katie John* isn't only about subsistence - it's about the State's fight with the federal government over a basic tenet of state sovereignty - the right to manage our own land and water."

Green urged the Knowles administration to appeal the decision to the U.S. Supreme Court, saying "Alaskans won't be satisfied until we have a final ruling in *Katie John* and the Legislative Council is willing to assist the attorney general in filing an appeal in any way we can."

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