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Legislature Files in Katie John Case

(ANCHORAGE) – Rep. Joe Green (R-Anchorage), Chair of the Alaska Legislative Council, announced that the Alaska State Legislature filed a motion to intervene and a petition for certiorari for John v. United States with the U.S. Supreme Court today.

“Because Gov. Knowles decided not to appeal the Katie John case to the U.S. Supreme Court, we had no choice except to move forward ourselves in defense of Alaska’s right to manage her own waters,” said Green. “If the Supreme Court grants these motions, it will allow the Legislature to take over the suit and appeal the Ninth Circuit Court’s decision.”

At issue in the case is who controls over 100,000 miles of navigable rivers and streams in Alaska. The federal District Court found that federal laws extended to state waterways when rural Alaska resident Katie John sued in 1990 to enforce federal subsistence provisions in the Alaska National Interests Lands Conservation Act (ANILCA), provisions that are at odds with Alaska’s Constitution.

The Ninth Circuit Court upheld the District Court’s decision that federal “public lands” include all navigable waters in Alaska in which there is a federal reserved water right. Green said this is clearly a federal encroachment on the rights granted to Alaska at statehood under the “equal footing” doctrine and under the Submerged Lands Act of 1953. “This decision not only places Alaska’s right to manage state waters at risk, but also sets a precedent that could allow the federal government new areas of control in the other 49 states,” said Green.

Some people think that amending Alaska’s Constitution to reflect a rural subsistence priority will eliminate the need to appeal the Katie John decision, but Green says this is not the case. “These are two different issues. If we allow this decision to stand, the federal government will have a good argument for controlling any activity that occurs along a navigable waterway in Alaska,” said Green. “For example, miners who use water from nearby streams or companies who want to build bridges or pipelines across navigable waters could face an extra layer of federal permitting and might even be prohibited from doing so.”

The Legislative Council acts on behalf of the Alaska State Legislature during the interim between sessions. The other parties in the case, Katie John and the federal government, will now have several weeks to respond to the Legislature’s filings.

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