

Native American Rights Fund

Indigenous Peoples' Rights

<https://www.narf.org/ninth-circuit-court-of-appeals-issues-decision-in-important-subsistence-case-katie-john-v-united-states/>

Campaign and Advocacy

On July 3, 2013, a panel of the Ninth Circuit Court of Appeals issued a decision affirming the federal district courts decisions upholding the 1999 Final Rules promulgated by the Secretary of the Interior and the Secretary of Agriculture to implement part of the Alaska National Interest Lands Conservation Act concerning subsistence fishing and hunting rights.

In 2005, the State of Alaska filed a lawsuit challenging a federal agency final rule implementing the mandate in a prior Alaska Native subsistence case which established that the United States must protect subsistence uses of fisheries in navigable waters where the United States possesses a reserved water right. *Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995) (Katie John I). The State challenged the federal agencies implementation of the mandate by arguing that the reserved waters doctrine requires a quantification of waters necessary to fulfill specific purposes. Katie John moved for limited intervention for purposes of filing a motion to dismiss for failure to join an indispensable party. In 2007 the court upheld the agency's rule making process identifying navigable waters in Alaska that fall within federal jurisdiction for purposes of federal subsistence priority.

To counter the States challenge, Katie John, Tanana, Charles Erhart and the Alaska Inter-Tribal Council filed a lawsuit in the U.S. District Court for the District of Alaska to challenge the federal agencies final rule as being too restrictive in its scope. Katie John alleged that the federal agencies should have included Alaska Native allotments as public lands and that the federal governments interest in water extends upstream and downstream from Conservation Units established under the Alaska National Interest Lands Conservation Act. The State of Alaska intervened and challenged the regulations as illegally extending federal jurisdiction to state waters. In 2009 the Court upheld the agencies final rule as reasonable. While rejecting Katie Johns claim that the agency had a duty to identify all of its federally-reserved water rights in upstream and downstream waters, the court stated that the agency could do so at some future time if necessary to fulfill the purposes of the reserve. The case was appealed to the U.S. Court of Appeals for the Ninth Circuit

The Ninth Circuits decision last week is an important affirmation of the fishing priority in those federal waters identified by the agency rule-making. The State of Alaska will have the option of seeking rehearing in front of the 9th Circuit, or asking the U.S. Supreme Court to review the decision.

To read NARFs full press release on the decision, [click here](#). To read a copy of the Ninth Circuits decision, [click here](#). And, to read a history of the litigation and Katie Johns life and legacy, [click here](#).

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