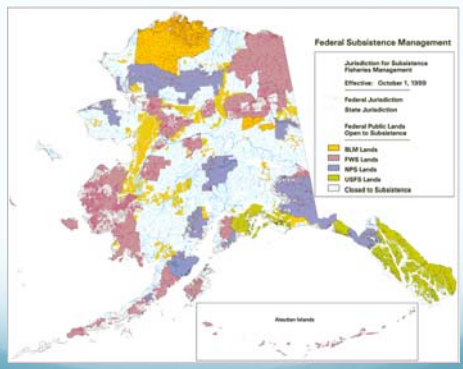
The Katie John Litigation

1985-2014

Katie John at Batzulnetas



Alaska -- Key Developments

- Aboriginal rights – Original occupancy
- Russia and Treaty of Cession – 1867
- Organic Acts of 1887 & 1901; Status Quo
- Statehood Act – 1959 – Land Selections
- Land Freeze
- Oil Discovery at Prudhoe Bay

Federal Preemption of State Law

- "The Congress Shall have Power To . . . regulate Commerce with foreign nations, among the several States, and with the Indian Tribes." U.S. Constitution, Art. I, § 8, cl.3
- The President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur;" Treaty Clause, Art. II, § 2

Subsistence Protections

- Alaska Native Claims Settlement Act, extinguishes aboriginal land claims and hunting and fishing rights (1971)
- Marine Mammal Protection Act – 1972 (Native exception)
- Endangered Species Act – 1973 (Native exception)

Subsistence Protection in Federal Law

- Native only preference or “rural” preference?
- Cooperative management regime to accommodate state interests

ANILCA -- 1980

- Alaska National Interest Lands Conservation Act (1980)
- Establish new conservation system units (Parks Widlife Refuges, etc.,) and enlarge preexisting units for conservation, recreation, scientific study, wilderness values, historic and archeological sites
- Provides that subsistence uses shall be the priority use on **public lands**

- “the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes.”

16 U.S.C.A. § 3114

"subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption . . . and for customary trade.

16 U.S.C.A. § 3113

Public Lands Definition

- Land, water and interests therein, title to which is held by the United States
- State law preempted on federal public lands, unless,
- State adopts its own rural preference subsistence law

Katie John Litigation

- 1964 -- Upriver Fisheries on the Copper River Closed by State (people fish anyway for subsistence needs)
- ANILCA Passes in 1980
- 1985 -- Original Lawsuit against State to Provide Priority
- 1990 -- McDowell Decision: State Drops Out of Management

Fishwheel

Katie John, Cont.

- 1990 – Federal Management of Hunting on Public Lands, but no fishing
- 1991 – Katie John, Doris Charles, Mentasta Village Council Sue U.S.
- 1994 – Judge Holland holds all navigable waters subject to federal priority

- 1995 – 9th Circuit Court of Appeals rules that Federal Reserved Waters are "public lands"; remand to agency to determine which waters are covered
- 1999 – Secretaries of the Interior and Agriculture announce determination of federal reserved waters

- 2001 – En Banc Panel Affirms 1995 Katie John Decision
- 2005 – State files and loses (in 2009) new lawsuit challenging the 1999 rules as too broad; Katie John loses companion suit alleging that rules are too narrow
- 2013 – Ninth Circuit upholds District Court ruling, *Katie John v. United States*, 720 F.3d 1214 (2013).
- 2014 -- Petition for cert. denied, Alaska v. Jewell , No. 13-562

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