

State of Alaska's
“Unlocking Alaska Waters Initiative”
Threats to the Federal Subsistence Priority

The Norton Bay Watershed Council

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Quiet Title Litigation

- In furtherance of Initiative, state has filed several lawsuits against the United States in the federal District Court of Alaska to quiet title including:
 - North Fork/Middle Fork of the Forty Mile River;
 - Within Lake Clark National Park & Preserve;
 - Within Yukon-Charley Rivers National Preserve.



Quiet Title Litigation (Cont.)

- Underlying the South and Middle Fork of the Koyukuk, Bettles and Dietrich Rivers;
- Sarkar Canoe Route on Prince of Wales Island;
- Stikine, Kandik, Nation, Gulkana, and Knik Rivers;
- Mendenhall Lake & River
 - Popular tourist attraction in S.E. Alaska.



Quiet Title Legislation

- Governor introduced bills in the last and again in this legislative session, to recognize the state's ownership of submerged lands under Navigable waters within the state. [HB 98](#) and [SB 92 state:](#)
- “...purpose of this Act is to clarify and underscore the state's ownership interest in all submerged land underlying navigable waters at the time of statehood, explicitly including those in federal areas.”



Issues with State Lawsuits

- Failure to show that the United States waived sovereign immunity under the Quiet Title Act;
- Cannot prove a dispute to title exists where the United States openly recognizes Alaska's title to undisputed lands;
- Notice of disputes over whether it's ownership of certain lands is subject to a reserved federal right of way occurred when the State received the federal patent;
- Statute of limitations on many of claims already ran.



Issues with State Lawsuits (Cont.)

- United States reserved title to the lands before Alaska became a state to which the federal government expressed its intent to retain title through statehood
- Alaska cannot supplant the United States ownership;
- Department of Justice disclaims interest in all of Middle Fork and part of North Fork of the Forty Mile River
 - Remaining part of North Fork, is not navigable.

Katie John

- Dunleavy's other argument is that the Supreme Court opinion in *Sturgeon v. Frost* paves the way for state ownership of submerged lands within Alaska:
- "John Sturgeon's second Supreme Court victory in 2019 clarified ANILCA, making it clear that federal regulations do not supersede state ownership within ANILCA-established conservation units. It also rejected claims that laws affecting federal land in the lower 48 automatically apply in Alaska, clearly acknowledging our unique circumstances."



Katie John (Cont.)

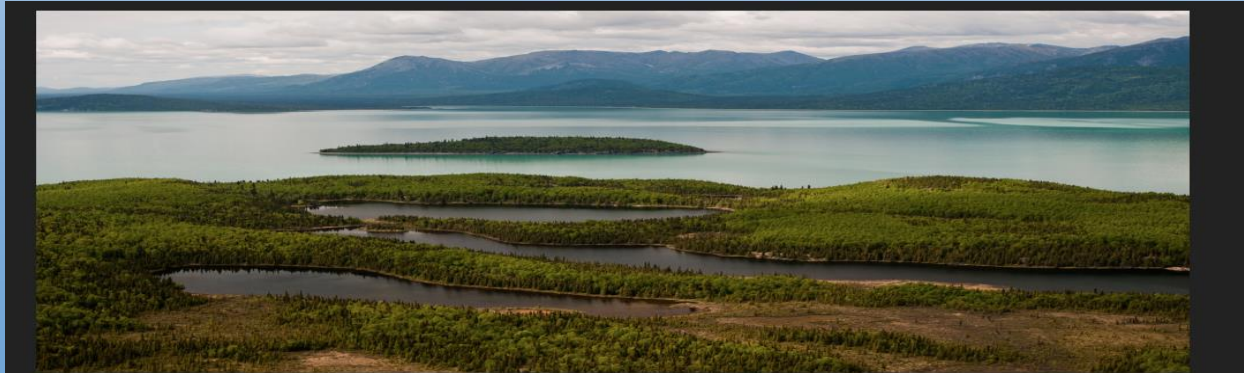
- *Sturgeon* did not completely eliminate federal regulatory jurisdiction over rivers on federal lands;
- Decision does “not disturb the Ninth Circuit’s holdings that the Park Service may regulate subsistence fishing on navigable waters.”
- Biden administration filed lawsuit against the state of Alaska regarding state’s practice of opening subsistence fishing opportunities to all Alaska citizens on the Kuskokwim River, even though the federal government, limits such fishing to only rural Alaskans.
 - Critical to local Alaska Native communities for subsistence fishing, who have suffered through dismal returns for king and chum salmon over the past several years.

Katie John (Cont.)

- Until filing its Kuskokwim lawsuit, the federal government basically stood by while the state set in motion a process for reversing the Ninth Circuit Court of Appeals *Katie John* decision;
- Situation brought about because, with its *Sturgeon* opinion, the Supreme Court has already set the stage to argue that under ANILCA, federal regulations do not supersede state law on rivers running through federal lands;
- Concern is that the state's slew of lawsuits could lead the courts to apply *Sturgeon* to federal subsistence laws and throw out their applicability;
 - One such suit, which calls to extinguish federal ownership over the Koyukuk River—an important subsistence river—could be just such a precursor.

National Park Service Outreach

- Maija Katak-Lukin, the Alaska Native Tribal Affairs Liaison for the National Park Service:
- Recently created federal interagency working group consisting of NPS, BLM, and US Forest Service representatives
 - Developing a consistent policy on navigable waters.
- Will reach out to tribal governments to ask whether they are familiar with the water dispute, whether they would be interested in consulting on protection of tribal interests, and if any tribal members would be interested in joining the working group.



Questions?

