

Alaska Department of Law

Federal Laws and Litigation Report
SUPPLEMENT

Dated: February 10, 2016

The following are updates to the 2016 Federal Laws and Litigation Report that have occurred since the report was submitted on September 9, 2015:

I. Federal Laws or Actions that Conflict with, or Attempt to Preempt, State Management of its Lands and Resources

Item 2 on Page 5: Clean Power Plan Rule by the Environmental Protection Agency Under Section 111(d) of the Clean Air Act: The U.S. Supreme Court recently halted implementation of the Clean Power Plan rule until the conclusion of the case, which could include an appeal to the U.S. Supreme Court. The State continues to monitor this case, even though Alaska was exempted from the final rule.

Item 5 on Page 7: National Park Service (NPS) regulations that apply to “waters subject to the jurisdiction of the United States located within the boundaries of the National Park System, including navigable waters and areas within their ordinary reach . . . and without regard to the ownership of submerged lands, tidelands, or lowlands.”: The U.S. Supreme Court granted Mr. Sturgeon’s petition for certiorari, and oral argument occurred in January. Mr. Sturgeon’s case and the State’s case had been separated by the Ninth Circuit. While the court denied the State’s case on mootness grounds, the Ninth Circuit found in favor of the National Park Service on the merits in Mr. Sturgeon’s case. The State submitted an amicus brief in support of Mr. Sturgeon and participated in the oral argument before the U.S. Supreme Court. The State is awaiting the Court’s decision.

Item 9 on Page 10: Potential Listing of the “Alexander Archipelago Wolf” in Southeast: The United States Fish and Wildlife Service issued a decision to not list the wolf as an endangered or threatened species.

Item 10 on Page 10: Application of 2001 Roadless Rule in areas like the Tongass National Forest: The State filed a petition of certiorari with the U.S. Supreme Court in October, seeking to have the Court review the decision striking down the Alaska exemption to the Roadless Rule (*Organized Village of Kake v. U.S. Dept. of Agriculture*).

Item 12 on Page 11: Non-Drilling Oil and Gas Exploration Plans for ANWR under Section 1002 of ANILCA: The State decided not to appeal the district court’s ruling upholding Secretary Jewell’s denial of the State’s proposed exploration plan.

III. Federal Litigation in Which the State Intervened in Support of a Federal Action

Item 1 on Page 14: Taking Land into Trust for Tribes – *Akiachak Native Community v. Dept. of Interior* (D.C. Cir., 13-5360): The oral argument on the appeal will occur March 4, 2016.

Item 7 on Page 15: Big Thorne Timber Sale – *SEACC v. U.S. Forest Service* (AK Dist. Ct., 1:14-cv-00013-RRB; 9th Cir., 15-352332): The oral argument on the appeal took place on February 3, 2016. The State is awaiting the court's decision.

IV. Federal Litigation in Which the State Filed or Joined in an Amicus Brief

(New Item, Page 17)

7. ***United States Army Corps of Engineers v. Hawkes Co., Inc.* (Supreme Court).** Alaska will be joining other states in filing amicus briefs in support of the private plaintiff. The case addresses whether an approved jurisdictional determination issued by the Army Corps of Engineers under the Clean Water Act is “final agency action” subject to judicial review.