

SENATE JOINT RESOLUTION NO. 26

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY SENATOR WAGONER

Introduced: 2/6/04
Referred: Resources

A RESOLUTION

1 **Requesting the United States Department of the Interior and the United States**
2 **Department of Justice to appeal the decision of the United States Court of Appeals for**
3 **the Ninth Circuit in The Wilderness Society v. United States Fish and Wildlife Service**
4 **and to seek an emergency stay of the decision pending an appeal of the decision to the**
5 **United States Supreme Court.**

6 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 **WHEREAS**, on December 30, 2003, the United States Court of Appeals for the Ninth
8 Circuit ruled in The Wilderness Society v. United States Fish and Wildlife Service (Case No.
9 01-35266) that the stocking of hatchery-reared salmon fry into Tustumena Lake violated
10 provisions of the Wilderness Act (16 U.S.C. 1131 - 1136); and

11 **WHEREAS** the United States District Court for the District of Alaska had ruled in
12 favor of the United States Fish and Wildlife Service and denied a motion for summary
13 judgment on behalf of the plaintiffs; and

14 **WHEREAS** the United States Court of Appeals for the Ninth Circuit erroneously
15 ruled that the stocking of salmon fry in Tustumena Lake was an impermissible "commercial

1 enterprise" that is prohibited by the Wilderness Act, despite the fact that the commercial
2 harvesting occurs outside the Kenai Wilderness; and

3 **WHEREAS** the sockeye salmon enhancement program in Tustumena Lake
4 contributes significantly to the lives and activities of the residents of the Kenai Peninsula and
5 the loss of this project would create substantial hardships for the residents of this area and the
6 many nonresident fishermen who participate in fisheries outside the Kenai Wilderness; and

7 **WHEREAS** the decision is important to Alaskans because Alaska has over
8 50,000,000 acres of Congressionally designated wilderness areas, more than all of the rest of
9 the United States combined; and

10 **WHEREAS** the decision has broad economic implications throughout Alaska
11 concerning the conduct of any commercially related activities, such as guiding, trapping,
12 customary trade, commercial lodges, eco-tourism, and other similar operations, within or near
13 a wilderness area that have been traditionally engaged in by Alaskans; and

14 **WHEREAS** the decision by the United States Court of Appeals for the Ninth Circuit
15 could be broadly construed to prohibit other fish and wildlife management and research
16 programs in wilderness areas designed to benefit a wide variety of users, including some that
17 are commercial in nature; and

18 **WHEREAS** the effects of this decision are not limited to Alaska and will
19 detrimentally affect management of wilderness areas in the other states; and

20 **WHEREAS** the United States Court of Appeals for the Ninth Circuit did not conclude
21 that the stocking of salmon fry in the wilderness area was inconsistent with wilderness and
22 refuge values or with Congressionally established purposes for the withdrawals; and

23 **WHEREAS** the United States Fish and Wildlife Service has officially recognized and
24 approved this program since before the Kenai Wilderness was created in 1980; and

25 **WHEREAS** a one-year emergency stay of the decision of the United States Court of
26 Appeals for the Ninth Circuit is needed to accommodate the release of existing salmon fry this
27 spring;

28 **BE IT RESOLVED** that the Alaska State Legislature respectfully requests that the
29 Department of the Interior and the United States Department of Justice appeal the decision of
30 the United States Court of Appeals for the Ninth Circuit in *The Wilderness Society v. United*
31 *States Fish and Wildlife Service* (Case No. 01-35266) to the United States Supreme Court;

1 and be it

2 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests that
3 the United States Department of the Interior and the United States Department of Justice
4 request a temporary emergency stay of the decision of the United States Court of Appeals for
5 the Ninth Circuit to allow the enhancement project to continue this year while the decision is
6 under appeal.

7 **COPIES** of this resolution shall be sent to the Honorable Gale Norton, United States
8 Secretary of the Interior; the Honorable Theodore B. Olson, Solicitor General, United States
9 Department of Justice; and to the Honorable Ted Stevens and the Honorable Lisa Murkowski,
10 U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska
11 delegation in Congress.