

**SB**

**133**

<TARGET><BILL>SB 133</BILL><SUBJECT>SB  
133</SUBJECT><COMM>SSTA28</COMM></TARGET>

**SENATE COMMITTEE REPORT  
First Committee of Referral**

*Rules*

DATE: 1/22/14

FURTHER:

**Date of 5-Day Notice:** 2-20-14  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 2-25-14

**State Affairs Committee** considered SENATE BILL NO. 133

SB 133-KATIE JOHN DAY

"An Act establishing May 31 of each year as Katie John Day."

and recommends:

- be replaced with CS \_\_\_\_\_ ( \_\_\_\_\_ )  Same Title  New Title
- adopt previous CS \_\_\_\_\_ ( \_\_\_\_\_ )  Same Title  New Title
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
<i>ADM</i>			<input checked="" type="checkbox"/>	<i>1</i>

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	<i>Wielechowski</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<i>Giessel</i>	<input checked="" type="checkbox"/>			
CHAIR: <i>[Signature]</i>	<i>Dyson</i>	<input checked="" type="checkbox"/>			

# ALASKA STATE LEGISLATURE



Senator Donald C. Olson

Alaska State Capitol  
Room 508  
Juneau, Alaska 99801-1182  
(907) 465-3707  
sen.donny.olson@akleg.gov

DATE: January 24, 2014

TO: Senator Fred Dyson  
Chair, Senate State Affairs Committee

FROM: Senator Donald Olson

A handwritten signature in black ink, appearing to read "Don Olson" followed by a large stylized "A" and the word "FOR" written below it.

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I respectfully request a hearing for SB 133 establishing May 31 as Katie John Day — at your earliest convenience.

My staff contact for this legislation is David Scott, who can be reached at 465-3877.

Thank you for your consideration of this request.

# ALASKA STATE LEGISLATURE

## SENATOR DONALD C. OLSON SENATE DISTRICT T

### *Session*

Alaska State Capitol, Rm. 508  
Juneau, AK 99801  
(907) 465 3707  
Fax (907) 465 4821  
Sen.Donny.Olson@akleg.gov



### *Interim*

716 W. 4<sup>th</sup> Ave. Ste 530  
Anchorage, AK 99501  
Toll Free 800 597 3707  
(907) 269 0254  
Fax (907) 269 2031

### Sponsor Statement

SB 133

Katie John Day

Athabascan elder Katie John was known for her determination and success in fighting for subsistence rights and for her traditional teachings, humor, gentle spirit and loving ways. Katie John died May 31, 2013. She was 97 years old and resided at Mentasta Lake. John was an Alaska icon who devoted her life to ensuring that her people had the opportunity to carry on traditional subsistence fishing in their ancestral homeland.

Katie John was raised in the traditional manner, living off the land under the tutelage of her mother, grandmother and other elders of her community. A consummate teacher, John was always willing to share her ancestral traditions, culture and history. She was known and respected throughout Alaska and around the world. Ahtna President Michelle Anderson said, "She taught us stories of our culture and history. She was a big part of our lives. Now her history belongs to the public, to the people."

Passionate about preserving Athabascan culture and language, Katie John has been involved with teaching her Native Language since 1974 and helped create the alphabet for the Ahtna dialect. She received an honorary doctor of laws degree from the University of Alaska Fairbanks in 2011.

John and her husband, Chief Fred John, who died in 2000, raised 14 children and 6 foster children together. She leaves behind approximately 250 grandchildren, great-grandchildren and great-great-grandchildren.

Due to the great importance of her role in shaping Alaska, SB 133 would establish the date of May 31<sup>st</sup>, as Katie John Day in her memory and honor.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: SB 133  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: SB133-DOA-FAC-02-21-14  
Title: KATIE JOHN DAY  
Sponsor: OLSON  
Requester: Senate State Affairs

Department: Department of Administration  
Appropriation: General Services  
Allocation: Facilities  
OMB Component Number: 2429

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version

Prepared By: Tom Mayer, Director  
Division: Division of General Services  
Approved By: Curtis Thayer, Commissioner  
Agency: Department of Administration

Phone: (907)465-5677  
Date: 02/21/2014 08:40 AM  
Date: 02/21/14

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. SB 133

**Analysis**

This bill establishes May 31 of each year to honor Katie John. The Department of Administration, Division of General Services does not anticipate any fiscal impact from the proposed legislation.



ALASKA FEDERATION  
OF NATIVES

December 20, 2013

Governor Sean Parnell  
P.O. Box 110001  
Juneau, AK 99811-0001

Dear Governor Parnell:

As you know, we lost a much respected elder last spring when Katie John passed away. Katie lived a traditional lifestyle and fought for decades to be able to pass that way of life on to her children and grandchildren. Preserving our cultures and access to food is extremely important to Alaska's Native people. When Katie was told that she couldn't live the lifestyle she grew up living, she became the lead plaintiff in a series of lawsuits that wound through the state and federal court systems. Sadly, that fight continues even though she has passed on.

At our annual convention in October, The Alaska Federation of Natives (AFN) not only honored her throughout the convention, we passed a resolution requesting the State of Alaska to declare May 31 to be "Katie John Day." The resolution is attached for your reference.

As she is an important Alaska Native leader, we hope you will take this request to heart. Please let me know if you have any questions. Thank you.

Sincerely,

Julie Kitka  
President

cc: Alaska Federation of Natives Board of Directors  
State of Alaska House Leadership  
State of Alaska Senate Leadership  
Rep. Bryce Edgmon, Bush Caucus



Alaska Federation of Natives  
2013 Annual Convention  
Resolution 13-1

- TITLE:** HONORING KATIE JOHN & NAMING MAY 31 AS "KATIE JOHN DAY"
- WHEREAS:** The Alaska Federation of Natives (AFN) is the largest statewide Native organization in Alaska and its membership includes 118 federally-recognized tribes, 133 village corporations, 13 regional corporations, and 11 regional nonprofit and tribal consortiums that contract and run federal and state programs; and
- WHEREAS:** The mission of AFN is to enhance and promote the cultural, economic, and political voice of the entire Alaska Native community; and
- WHEREAS:** Katie John, a respected and cherished Ahtna Elder, passed away on Friday, May 31, 2013; and
- WHEREAS:** Katie John was the champion, the leader, and the lead plaintiff in a long and tenuous legal battle addressing Native subsistence fishing rights; and
- WHEREAS:** the lawsuit endured by Katie John was filed after the State of Alaska refused her and Doris Charles, access to a long-abandoned fish camp in Wrangell-St. Elias National Park and Preserve; and
- WHEREAS:** Katie John fought not only to maintain her family's fish camp, but to pass her traditional way of life and practices to her children and grandchildren; and
- WHEREAS:** Katie John endured a decade long battle through the state and federal court systems, fighting for the subsistence hunting and fishing rights of all Alaska Natives; and
- WHEREAS:** her fight culminated in a 2001 Ninth Circuit Court of Appeals ruling stating that the subsistence fisheries protections provided under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) did in fact extend to all navigable waters in which the federal government owned reserved water rights, effectively allowing subsistence fishing to continue unrestricted in those areas; and
- WHEREAS:** without her persistence and unwillingness to concede, Alaska Natives as a whole would not be able to practice and enjoy traditional lifestyles, passing the ways of Native people on to the next generations, and ensuring traditional culture and heritage practices are never forgotten; and

WHEREAS: in recognition of her fighter spirit and courageous battle, the University of Alaska Fairbanks decreed Katie John with an honorary doctorate of law degree during the 2011 spring commencement ceremony, to be forever revered as Dr. Katie John.

NOW THEREFORE BE IT RESOLVED by the delegates to the 2013 Annual Convention of the Alaska Federation of Natives, Inc. honors Katie John for her lifetime of accomplishments and her contributions to Alaska Native peoples

BE IT FURTHER RESOLVED that AFN requests the State of Alaska to declare May 31 Katie John Day as this is the day the State of Alaska allows Alaska Native people to put their fishwheels in the water.

SUBMITTED BY:	ALASKA FEDERATION OF NATIVES BOARD OF DIRECTORS
COMMITTEE ACTION:	DO PASS
CONVENTION ACTION:	PASS



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## Katie John, who sued state, US over Native subsistence rights, dies

By MIKE DUNHAM

[mdunham@adn.com](mailto:mdunham@adn.com) May 31, 2013

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Katie John near her fishwheel on the Copper River in Alaska in a 1994 file photo.  
ERIK HILL — Anchorage Daily News



- Related Links:
- Link1994 profile of Katie John
- Related Stories:
- UAF awards degree to Athabascan elder Katie John

Athabascan elder Katie John of Mentasta Lake, a powerful and effective advocate for subsistence rights, died early Friday at the Alaska Native Medical Center in Anchorage. A statement from Ahtna Inc., the regional Native corporation of which she was a member, gave her age as 97.

John gained fame as the lead plaintiff in a series of lawsuits aimed at ensuring Alaska Native fishing and rights. Her legal actions polarized public opinion between those who believed she was entitled to take salmon from her traditional land, which the state had closed to fishing, and others arguing that such taking amounted to special treatment. The resulting court rulings led to major changes in how wildlife is allocated in Alaska.

The "Katie John Case" (actually several cases) involved a traditional fish camp, Batzulnetas, now part of Wrangell-St. Elias National Park and Preserve. John had grown up near that spot. Fishing was closed there in 1964. Twenty years later, John and another elder, Doris Charles, petitioned the state to allow them to fish there. When they were denied, the Colorado-based Native American Rights Fund took up their cause.

Robert Anderson, now a professor of law and director of the Native American Law Center at the University of Washington, represented the pair. He recalled being impressed by the force of John's personality.

"She had an innate leadership quality that affected everybody around her," he said. "She was inspirational to work for."

NARF sued the state to reopen Batzulnetas to fishing in 1985. A federal court agreed, and, in time, the federal government took over management of game on federal lands in Alaska. Those regulations, however, excluded fishing.

A new suit was brought, this time against the U.S. secretaries of interior and agriculture. In 1994, a federal judge ruled that Washington, not the state, had authority over both public land and navigable waters in Alaska.

A federal appeals court upheld John's claim. Appeals for reconsideration were made and dismissed until 2001, when a final opportunity to appeal to the U.S. Supreme Court came to the desk of then-Gov. Tony Knowles.

While weighing his options, Knowles visited John at Batzulnetas. Among those present was Heather Kendall-Miller, now senior staff attorney with NARF's Anchorage office.

"Her strength was apparent as she described how she had raised and fed 20 children (including 6 adopted children) by the generations-old customary and traditional subsistence practices that she had learned from her parents," Kendall-Miller wrote. "She was determined that her children and grandchildren would carry on those practices as well."

"I learned more that day than is written in all the boxes of legal briefs in this long lasting court battle," Knowles later said.

On Aug. 27, he called John to say the state would not pursue the appeal.

"We must stop a losing legal strategy that threatens to make a permanent divide among Alaskans," he said at the time. "I cannot continue to oppose in court what I know in my heart to be right."

Legalities were far from over, however. In 2005, NARF again represented John challenging the federal agencies' implementation of previous rulings as too limited. The matter again went to the Ninth Circuit Court. A decision is still pending.

Doris Charles died in 2002.

With news of John's passing, tributes quickly accumulated.

"She was known and respected throughout Alaska and the world," said Ahtna President Michelle Anderson in a press release. "She lived what she believed. If not for Katie John and her fighter spirit, we would not have the subsistence rights we are still fighting to retain today."

"She was unafraid to challenge any bureaucrat standing between her Native people and their opportunity to fish, whether that was a State of Alaska ... or a National Park Ranger," wrote Sen. Lisa Murkowski, who described John as "a piece of Alaska's soul."

John's granddaughter, Kathryn Martin, said her legacy was teaching "honesty, trust, love and forgiveness" to her family: "Her grandchildren, great-grandchildren and great-great-grandchildren are the reason she fought for her fishing rights, to make sure her family would have a way to feed themselves forever."

Anderson recalled her bright sense of humor. He told of hiking into Batzulnetas with John shortly after taking her case. He was a young and obviously unarmed city lawyer, not quite knowing what to expect in the wilderness where the tenacious older woman was leading him.

"There was a huge bear track in the middle of the trail," he said. "She looked at me and said, 'Big bear track. You got a gun?'"

He might have been scared at that moment but he saw the twinkle in her eye and they both laughed.

"She was a cool person," he said. "She's an appropriate centerpiece for the Native subsistence movement to protect hunting and fishing rights."

Ahtna officials said John was born and raised in Slana and Batzulnetas to Chief Charley (also called Sanford Charley) and Sarah Sanford. She married Mentasta Traditional Chief Fred John Sr. when she was 16. At the time of her death, she counted more than 250 descendants. Passionate about preserving Athabascan culture and language, she helped create the alphabet for the Ahtna dialect. She received an honorary doctor of laws degree from the University of Alaska Fairbanks in 2011.

Funeral arrangements are pending. Those seeking additional details or wishing to make a donation should contact Kathryn Martin at 907-360-7476 or at [kmartin@ahtna-inc.com](mailto:kmartin@ahtna-inc.com).

A detailed chronology of Katie John's legal battles and photos are posted at the Native American Rights Fund website.

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Reach Mike Dunham at [mdunham@adn.com](mailto:mdunham@adn.com) or 257-4332.

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## Native American Rights Fund

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### Current Cases & Projects | Katie John v. Norton

**Katie John v. Norton**  
Attorney: Heather Kendall-Miller

#### Katie John - Her Life and Legacy

On May 31, 2013, the Ahitna elder, matron and icon, passed away at the age of 97. Katie John was a long-time client of the Native American Rights Fund (NARF) who represented her in federal court litigation for nearly thirty years. The *Katie John* litigation, more than any other subsistence case exemplifies the contentious battle waged between federal, tribal and state interests over jurisdiction of Alaska Native subsistence fishing rights.

Katie John is an Ahitna Athabaskan Indian and the daughter of the last chief of Batzulnetas. She was born in 1915 near the present day community of Siana and lived with her family at the Native Village of Batzulnetas from the time of her birth until 1937. Batzulnetas, which means "Roasted Salmon Place," is a historic upper Ahitna village and fish camp and is located at the confluence of Tanana Creek and Copper River within what is now the Wrangell-St. Elias National Park.

Batzulnetas is a revered spot among the upper Ahitna who have fiercely defended this site for generations. Oral history and early written accounts tell of a massacre of Russians by the upper Ahitna at Batzulnetas around 1794, provoked by the abduction of women and the Russians driving out the men in the winter without adequate clothing. In 1885, nearly one hundred years later, Lt. Henry T. Allen arrived in Batzulnetas. With the Ahitna's help, he became the first non-Native explorer to cross one of the passes from the Copper River to the Tanana River in Alaska's Interior.

Batzulnetas was occupied by the upper Ahitna on a year-round basis until the mid-1940s when the villages were relocated to Mentasta so that their children could attend school. Residents of Mentasta are nearly all from, or have their roots in, Batzulnetas. A few Batzulnetas people moved to Dot Lake, Northway and other communities in the area and continued to participate in the salmon fishery at Batzulnetas through family, friends, or by personally returning there to fish.

Katie's father was Sanford Charlie and her mother was named Sarah. The family and other Batzulnetas village members relied on the salmon for much of their food, boiled, fried, and sometimes roasted. It provided sustenance throughout the year.

Alaska became a state in 1959 and assumed management of fish and game in 1960. In 1964, the State closed down the subsistence fishery at Batzulnetas and near other fishing sites in the upper Copper River and its tributaries under the guise of conservation, although there was no documentation of any need to do so. Closure of Batzulnetas ended its regular use as a fish camp. Nevertheless, Katie John and other residents of Mentasta village and former Batzulnetas returned regularly to visit, gain experience the spiritual and cultural satisfaction derived from being present where they grew up and where their ancestors made their home. Traditional fishing continued, albeit subject to harassment by state officials. Aboriginal fishing practices were protected under the federal law of aboriginal title, although those protections were weak. The Alaska Native Claims Settlement Act of 1971 ended any theoretical or formal protection of aboriginal subsistence uses, but in 1980 the subsistence Title C interest Lands Conservation Act (ANILCA) was passed. That federal law was intended to protect customary subsistence uses by Alaska Natives and other rural residents.

In 1984, Katie John and another Ahitna elder, Dons Charles, submitted a proposal requesting that the Alaska State Board of Fisheries open Batzulnetas to subsistence fishing. The request was denied, despite the fact that downstream users were permitted to take hundreds of thousands of salmon for sport and commercial uses. The Native American filed suit in 1985 under Title VIII of ANILCA, to compel the State to re-open the historic Batzulnetas fishery. Although the State subsequently adopted regulations prohibiting subsistence fishing, in 1990, the federal district court set aside this regulation as too restrictive. Before the State Board could react, the Alaska Supreme Court's *McDowell v. State* decision held that the state's "rural" priority was unconstitutional under the state constitution. As a result of the *McDowell* case, fish and game management in Alaska was divided into two regimes - one governed by state law and the other by federal law.

Initially, the Alaska Supreme Court put its *McDowell* decision on hold. The Court did this so the State would have time to amend its Constitution, or otherwise bring it into compliance with ANILCA. But the Legislature failed to act, and the Secretaries of Interior and Agriculture announced their intent to take over management of subsistence public lands effective July 1, 1990.

Unfortunately, this was not helpful to Katie John. Initially the federal government adopted regulations which extended federal management to game on federal public lands in all navigable waters. NARF then filed suit on behalf of Katie John in federal court against the Secretary of the Interior, claiming that the Secretary had unlawfully constructed ANILCA's reach, and that Congress intended to protect subsistence fishing activities in navigable waters as well as game on the public lands. Katie John's ANILCA's public lands definition applies to navigable waters because of the federal government's navigational servitude, or under the federal reserved water rights doctrine. President Clinton took office, Katie John and Dons Charles petitioned the federal government to change their legal position in the litigation, which did occur on a limited district court case.

A number of other subsistence cases were also filed in the wake of *McDowell* and Judge Holland of the federal District Court decided to manage them jointly. One is *Babbitt*, a case brought by the State of Alaska alleging that the Secretary of the Interior lacked the authority to manage federal lands even when the State was out of ANILCA. Judge Holland segregated out the claims of the subsistence cases that were being jointly managed, and decided to address first what became known as the "who" issue. The "who" issue referred to the question of whether the federal government or the state possessed authority to manage federal public lands and waters, and referred to ANILCA's definition of "public lands" and whether that phrase included some or all navigable waters.

In March 30, 1994, federal Judge Holland ruled that, the Secretary of the Interior, not the State of Alaska, possesses the statutory authority under ANILCA to regulate waters when the State is not in compliance with ANILCA. The court further held that "for purposes of Title VIII of ANILCA, the United States holds title to a regulated water. He concluded that ANILCA's subsistence fishing priority extends to all navigable waters in Alaska based on the navigational servitude doctrine. That doctrine holds that the federal government has a superior interest in the regulation of navigable waters and need not pay compensation for takings when the United States alters a water way for the public. This power is so great, Judge Holland reasoned, that it is akin to a property interest and vests title to navigable waters in the federal government. The government brings navigable waters squarely within the definition of public lands. Judge Holland did not reject the reserved waters theory as a basis for finding a federal title interest in navigable waters, but declined to apply because in his view, it would be difficult to administer and was likely more limited in scope.

The State and federal governments appealed this decision to the Ninth Circuit Court of Appeals in 1995, but the State elected to drop that part of the appeal that dealt with the State's challenge to Secretarial authority to manage fish and game. The only issue that went up on appeal was the "where" issue which turned on the definition of "public lands." The United States had changed its legal position at the very close of the district court litigation to agree with Katie John's secondary legal theory premised on the federal reserved waters doctrine.

The Ninth Circuit issued a more limited ruling than the district court. It rejected the broad theory that was based on the federal government's navigational servitude and Katie John's claim based on the reserved waters doctrine. That doctrine holds that whenever the federal government withdraws lands from the public domain for a federal purpose, it reserves water necessary to accomplish the purposes of the reservation. The government's reserved water interest has been held to be a property interest which can be taken. The court concluded that because it was clear that Congress intended to protect subsistence fishing when withdrawing public lands in Alaska, ANILCA's subsistence fishing priority extends to those navigable waters in which the United States owns so-called "reserved water rights," or about 50% of Alaska's inland waters.

Shortly after the Ninth Circuit issued its ruling, the Alaska Supreme Court addressed the same issue in the case *Totemoff v. State*. In that case the state was prosecuted for taking a deer with the use of a spotlight. He defended arguing that the state lacked jurisdiction to prosecute since the offense took place in federal waters. The Alaska Court rejected his claim and specifically took issue with the *Katie John* ruling stating that it was not bound by decisions of federal courts other than the United States Supreme Court on questions of federal law. The State of Alaska immediately filed the *Totemoff* decision with the Ninth Circuit, urging it to reconsider its decision. The Ninth Circuit refused.

The State of Alaska then asked the United States Supreme Court to review the case but the Court refused and the case was remanded to the agencies, the Department of Agriculture, for the purpose of adopting regulations to identify which waters in Alaska were federally reserved and thus fell within ANILCA's priority. That was in 1996. Senator Ted Stevens adopted a moratorium against publication of a final rule. He justified the moratorium as necessary to give the Alaska Legislature more time in a year for a constitutional amendment. The moratorium would expire within a year if the Legislature failed to act. Senator Stevens and Congress subsequently included their annual federal appropriations bills in the hope that the legislature would act. When the fourth moratorium expired without legislative action, the regulations became final.

In January 1999 the federal government issued its regulations identifying the waters in Alaska which fall under federal management. Before the regulations became final, Alaska petitioned the Ninth Circuit Court of Appeals to hear the case en banc. The Court agreed to have 11 judges hear the State's en banc appeal.

After briefing and oral argument, on May 7, 2001, the Court of Appeals reaffirmed its earlier ruling and stated that "the [1995] judgment rendered by the prior panel of the district court should not be disturbed or altered by the en banc court." Three of the eleven judges wrote separately to express their view that they would have adopted more expansive reasoning and extended the priority for subsistence fisheries to all navigable waters. Three other judges dissented and expressed their view that Title C subsistence protections do not extend to any navigable waters at all.

Governor Knowles initially had 60 days to seek review by the United States Supreme Court, but he requested a 60 day extension until October 4, so he could give the consideration. During this period the Alaska Native community organized the Fourth "We The People March" on August 21 and used the event to generate public support and to urge Governor Knowles to forego any appeal to the United States Supreme Court (see pictures below).

On the morning of August 27, 2001, Governor Knowles called Katie John by telephone to tell her that "The State of Alaska will not appeal the *Katie John* case to the Court." He went on to tell her "that from this time on, the State will do everything we can to protect your subsistence rights." A few weeks before making his decision had traveled to Batzulnetas to meet personally with Katie John, then-86 years old. As they sat near the stream where Katie John's father and mother subsistence fish, Governor Knowles heard a simple but compelling message: "Katie John said she only wanted to protect her right to subsistence so she can raise and provide for her she knows how, in the way taught by her parents and earlier generations."

Upon his return from his meeting with Katie John, Governor Knowles revealed "I learned more that day than is written in all the boxes of legal briefs in this long last-in-understand the strength, care and values that subsistence gives to Katie John's family, and to the thousands of similar families from Metlakatla to Bethel, from Norvik Barrow. I know - we all know - that what Katie John does is not wrong. It is right - right for her, right for the village. He acknowledged that the State of Alaska has basic right of rural Alaskans to provide for themselves and their families."

Shortly after Governor Knowles announced his decision, a lawsuit was filed by the Alaska Constitutional Legal Defense Conservation Fund in state court on September 25, enjoining the governor to carry the appeal forward. The case was heard by Judge Reese who entered an order on September 25. In that order Judge Reese stated that

[S]eparation of powers precludes this court from ordering the Governor to take a position pending litigation, i.e. further appeal of the *Katie John* decision. It would be an inappropriate exercise of the equitable power of the court under Civ. Rule 65 to assume such a mandatory injunction, this is not an extreme or exceptional case and political remedies are available to plaintiffs, and they have suffered no injury, nor is injury imminent. The *Katie John* litigation decisions of the Governor or State of Alaska are political by nature, and are not subject to control by this court.

That decision was appealed and affirmed by the Alaska Supreme Court on September 27, 2001.

On October 4, 2001, the date in which the Governor's petition to file before the Supreme Court was otherwise due, the Alaska State Legislature filed a petition for leave to petition for a writ of certiorari to the United States Supreme Court to carry the appeal forward. That petition was denied.

Litigation did not stop there. On January 5, 2005, the State of Alaska filed a lawsuit in the U.S. District Court for the District of Columbia challenging the final rule implementing the *Katie John* mandate which established that the United States must protect subsistence uses of fisheries in navigable waters where the United States possesses a reserved State's new lawsuit, the State challenged the Federal agencies' implementation of the mandate by arguing that the reserved waters doctrine requires a quantification to fulfill specific purposes.

On January 7, 2005, Katie John, again represented by NARF, filed a counter lawsuit in the U.S. District Court for the District of Alaska challenging the Federal Agency rule implementing the prior *Katie John* mandate as being too restrictive in its scope. Katie John's complaint alleged that the Federal agencies should have included Alaska as public lands and further that the federal government's interest in water extends upstream and downstream from the Conservation Units established under the Alaska Lands Conservation Act. The State of Alaska intervened and challenged the regulations as illegally extending federal jurisdiction to state waters. The cases were co- Judge Holland.

On September 9, 2009, the Court entered an order upholding the agencies' final rule as reasonable. While rejecting Katie John's claim that the agency had a duty to 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 purpose. The case was appealed to the U.S. Court of Appeals for the Ninth Circuit and has been fully briefed. Argument took place on July 25, 2011 and a decision is expected and appeals will likely be brought by the parties and it could still be a number of years before a final decision is rendered.

With Katie John's passing, her determination to protect and preserve the Alaska Native subsistence way of life will live on through her family, her children, her grand children. It has been an honor and privilege for all of us at NARF to have worked with such a great and wonderful matriarch. She is an inspiration to all Native people who believe in right and justice. Rest in peace, Katie, your legacy lives on.

