ALASKA CONGRESSIONAL DELEGATION

NEWS RELEASE

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Alaska Delegation Files Supreme Court Amicus Brief in Support of John Sturgeon Case

WASHINGTON, DC – The three members of Alaska's congressional delegation today filed an amicus curiae brief with the U.S. Supreme Court in support of Alaskan John Sturgeon, who is suing the National Park Service over being forced off the Nation River for using a hovercraft to hunt moose, something that he had been doing for decades. The National Park Service claimed it controlled that stretch of the Nation River because it is part of the Yukon-Charley Rivers National Preserve. The State of Alaska claims it is theirs to regulate under the Statehood Act. After the U.S. Court of Appeals for the 9th Circuit sided with the Park Service in *Sturgeon v. Masica*, giving the Park Service expansive rights over state and native land, Sturgeon sought review by the United States Supreme Court. The Supreme Court announced in October that it will hear the case. Oral arguments will take place in January 2016.

At issue in the case is who, under the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), controls state and Native property located within the outer boundaries of ANILCA Conservation System Units. As the brief indicates, Alaska's congressional delegation submits that only the State of Alaska and Alaska Native Corporations, and not the federal government, are empowered to make land use decisions on these non-federal lands. A section of ANILCA was carefully written with Alaska sovereignty in mind and clearly prohibits federal control over such lands and waters. The section, 103 (c), states that no lands owned by "the State, Native Corporation, or private party shall be subject to the regulations applicable solely to public lands within" national parks and preserves. The amicus curiae brief was prepared by Jonathan Katchen and Kyle Parker of Crowell & Moring, Anchorage, Alaska on a pro bono basis for the Alaska congressional delegation.

"As Alaska's Attorney General, I worked to rescind the National Park Service regulations that are at issue in this case and I am pleased that the Supreme Court will be hearing it," **Senator Dan Sullivan said.** "This case is about who should have the right to make land management decisions over state and Native lands – the owners of the land or the National Park Service. Those who made sure that Section 103 (c), as well as other sections that limited federal control, was included in ANILCA – such as Congressman Don Young – envisioned, presciently, that the federal government would persistently attempt to overreach and expand its authority over Alaska lands. Still, the Park Service has chosen to ignore both the letter and the spirit of the law. The Supreme Court should not allow this to stand. As we Alaskans know, our land is our lifeblood. It's our economic and spiritual center. The more the federal government takes, the less control we have over our destiny. Put simply: It is time for the Supreme Court to put to an end the federal government's long history in Alaska of wrongfully seizing power over our lands and resources."

"Today I'm proud to join Senator Dan Sullivan and Congressman Don Young to fight back against the latest chapter in federal overreach: the National Park Service's prohibition of ordinary navigation on state owned waterways that run near or through ANILCA lands. The Alaska National Interest Lands Conservation Act was a carefully crafted compromise which was supposed to demonstrate that subsistence and sportsman land uses, development and stewardship could co-exist in the north. However, as Senator Ted Stevens noted in 2005, no sooner was the ink dry than the federal government began to go back on its promises," **said Senator Lisa Murkowski.** "This is one of the

most recent examples in the 35 year long post-ANILCA struggle to get the federal government to stop treating Alaska as a colony and recognize that we are a sovereign state, admitted to the union on an equal footing with the other 49 states. The federal government's action also severely undercuts the 1971 Alaska Native land claims settlement. If not overturned, our state and Alaska Native corporations face a real threat of having to ask the federal government for permission to use the lands conveyed to them. The federal government simply needs to stop giving with one hand and taking back with the other."

"The actions of the National Park Service represent a new level of arrogance on the part of the federal government," **said Congressman Don Young.** "The intent of the ANILCA was always clear in the minds of Congress and its authors. Mo Udall, Scoop Jackson, Ted Stevens and I all understood the terms of this legislation, which ensured the protection of Alaska's sovereignty and closed the door to future government encroachment. By ignoring the law and dismissing the intent of Congress, the federal government has once again attempted to expand its authority beyond anything ever imagined. I call upon the Supreme Court to recognize the federal government's relationship with Alaska as defined by ANILCA, ANCSA, and the Alaska Statehood Act."

Excerpts from the Alaska Congressional Delegation Amicus Curiae Brief:

- "When courts defer to implausible agency interpretations of statutory language, they are not only allowing the executive branch to increase federal authority unilaterally, they are undermining the separation of powers – the balance so carefully struck in the Constitution – and making it nearly impossible for Congress to effectively limit executive agency authority. That is what has happened in this case."
- "[T]he Park Service's unilateral expansion of its authority over Alaska's lands not only usurps Congress' legislative authority in violation of the separation of powers, it also comes at great expense to the State of Alaska. It is time for this Court to put to an end the federal government's long history of wrongfully seizing power over the State of Alaska's lands and resources to the detriment of the State's citizens, such as Mr. Sturgeon."
- "Alaska guards the rights conferred under the Statehood Act and views the management of its lands, and access to them, as an essential aspect of its sovereignty which sustains Alaska's economy, culture, and way of life. Fidelity to the commitments made in the Statehood Act mandate that the State, Alaskans, and Alaska's congressional delegation must vigorously contest any unwarranted expansion of federal jurisdiction that interferes with the use of and access to Alaska's lands and resources. After all, the rights granted to the State of Alaska in the Statehood Act cannot –and should not – be unilaterally diminished or abrogated by a federal agency."
- "(B)ecause of the Ninth Circuit's holding, which makes a mockery of ANILCA's explicit restrictions on the exercise of federal jurisdiction over nonfederal lands, federal agencies now have the power to promulgate regulations that require Native Corporations to secure approval from the federal government before landing a plane, building a lodge, going for a hike, picking berries, altering a camping site, or even hunting and fishing on Native owned lands located within conservation system units. Consequently, the Ninth Circuit's holding is in direct contravention of the unequivocal commitments made to Native Corporations in ANILCA and ANCSA."

The amicus brief is attached.

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