

SUPREME COURT REAFFIRMS STATE SOVEREIGNTY OVER NAVIGABLE RIVERS

Clive Strong, Legal Director for Natural Resources and Environment, CWAG

After a 12-year battle with the National Park Service, including two trips to the Supreme Court, John Sturgeon won the right to continue using his hovercraft on the Nation River in Alaska's Yukon-Charley Rivers National Preserve. In a unanimous decision, Justice Kagan, writing for the Supreme Court, concluded that the Nation River is not "public land" for purposes of the Alaska National Interest Lands Conservation Act (ANILCA), and therefore, the National Park Service lacked authority to preclude Sturgeon's use of hovercraft on the river.

A brief review of the facts is helpful to understanding the Court's decision. For years Sturgeon navigated the Nation River on a hovercraft to access moose hunting grounds. In 2007, the Park Service rangers stopped him from navigating that portion of the Nation River within the Preserve based on nationwide regulations banning hovercraft in the National Park System. Sturgeon responded by commencing a lawsuit in federal court asserting ANILCA precluded application of the Park Service's nationwide regulations in Alaska. He alleged Alaska, not the federal government, owned the bed of the Nation River, and therefore, Section 103(c) of ANILCA precluded application of the Park Service's nationwide ban on hovercraft.

The Court's analysis turned on two points: 1) statutory interpretation of the term "public land" in Section 103(c) of ANILCA; and, 2) ownership of the bed of the Nation River. While the Court's statutory construction analysis only applies to lands within Alaska, its ownership analysis involves significant legal issues affecting public lands, federalism and water rights throughout the nation.

The Ninth Circuit Court of Appeals concluded the federal government had "title" to "an interest" in the Nation River under the federal reserved water right doctrine; thus, the river was public land; and, therefore subject to the Park Service's nationwide ban on hovercraft under Section 103(c) of ANILCA.

Section 103(c) of ANILCA, which provides both a grant of authority to the Park Service and a limitation on that authority. Section 103(c) provides that "only" public lands are included in the Preserve and that "[n]o lands which, before, on, or after [the date of ANILCA's passage] , are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within the [preserve]."

Sturgeon and amici states argued that because the State of Alaska holds title to the bed of the Nation River under the equal footing doctrine, the river was exempted from Park Service regulations under Section 103(c) of ANILCA. ANILCA defines the term "lands" as "lands, waters, and interests therein," and the term "public lands" as "lands" . . . the title to which is in the United States."

While Park Service recognized that the State of Alaska owned the bed of the Nation River, it nonetheless argued that the Nation River was "public lands" under ANILCA because it held an

interest in the title to the Nation River by virtue of the federal reserved water right doctrine. In rejecting the Park Services' argument, the Court adopted the position taken in the amicus brief filed by Idaho on behalf of ___ states that "reserved water rights are not the type of property interests to which title can be held" The Court stated, a reserved water right, "by its nature, is limited. It does not give the Government plenary authority over the waterway to which it attaches. Rather the interest merely enables the Government to take or maintain the specific 'amount of water'—and 'no more'—required to 'fulfill the purpose of [its land] reservation.'"

The Park Service argued alternatively that it had authority to regulate non-public lands in Alaska under its Organic Act authority. While acknowledging that if Sturgeon lived in any state other than Alaska "this suit would not have a prayer of success," the Court stated Section 103(c) of ANILCA "provides that even when non-public lands—again, including water—are geographically within a national park's boundaries, they may not be regulated as part of the park." The Court said this is so because Section 103(c) "exempts non-public lands, including waters, from the Park Service's ordinary regulatory authority." The Court found the Park Service's construction of Section 103(c) would undermine "ANILCA's grand bargain", which resolved "a century-long struggle over federal regulation of Alaska's resources." In exchange for agreeing to the reservation of "huge tracts of land for national parks," Congress intended to ensure Alaskans that non-public lands in Alaska would be excluded from Park Service regulations.