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## Sturgeon v. Frost

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## ***Sturgeon v. Frost*, 136 S. Ct. 1061 (2016)**

**Emily Slike**

Tension has long existed between states and the federal oversight invoked throughout the western United States. While courts have clarified some, there are still questions about the oversight the federal government should be afforded. In *Sturgeon v. Frost*, the Supreme Court left the hard questions of state sovereignty and federal land management to the lower appellate courts. However, the Court ruled that Alaska will continue to remain the exception to the rule and that Alaskan conservation system units can be treated differently than other federally managed preservation land throughout the rest of the country.

### I. INTRODUCTION

The historical tension between federal and state control of federally managed preservation land continued when the United States Supreme Court examined how Alaska National Interest Lands and Conservation Act's ("ANICLA") affected the National Park Service's ("NPS") control of federal lands in *Sturgeon v. Frost*.<sup>1</sup> The issue concerned Alaska resident John Sturgeon's use of a hovercraft on an Alaskan river within a system unit, managed by the NPS, which bans hovercraft use.<sup>2</sup> However, Alaska law permits activities that are important to Alaskans, including hovercraft use.<sup>3</sup> Sturgeon argued that § 103(c) of ANICLA prohibited the NPS from regulating "non-public" land in Alaska because the Nation River is owned by Alaska through the Submerged Lands Act, which transferred title and ownership of submerged lands and waters to the state.<sup>4</sup> The NPS argued that, under the reserved water rights doctrine, "it has title to an interest" within the Yukon-Charley Rivers National Preserve System Unit ("Yukon-Charley") boundaries, a unit where the Nation River flows through.<sup>5</sup>

The Supreme Court rejected the Ninth Circuit's ruling that the NPS had the authority to enforce regulations over all federally-owned lands, waters, and national park navigable waterways administered by the NPS nationally.<sup>6</sup> The Ninth Circuit held that because the hovercraft ban does not apply "solely" to the conservation system units in Alaska, the NPS retained authority for hovercraft regulation enforcement.<sup>7</sup> The Supreme Court vacated the decision and remanded remaining questions

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1. 136 S. Ct. 1061 (2016).  
2. *Id.* at 1062.  
3. *Id.* at 1066.  
4. *Id.* at 1068 (citing Alaska National Interest Lands Conservation Act 16 U.S.C.A. Ch. 51 (1980)).  
5. *Id.* at 1063.  
6. *Id.*  
7. *Id.* at 1070.

regarding “public” and “non-public” lands and future management authority.<sup>8</sup>

## II. FACTUAL AND PROCEDURAL BACKGROUND

When the United States purchased Alaska in 1867, 98 percent of the state’s 365 million acres were federally owned, resulting in an absence of federal land grants to the State.<sup>9</sup> In 1958, the Alaska Statehood Act allowed Alaska to choose 103 million acres of federal land to become state-owned allowing for maximum land use “consistent with public interest.”<sup>10</sup> After failed attempts to secure additional acreage for state control, Congress passed ANICLA in 1980.<sup>11</sup> ANICLA reserved 104 million acres of land for preservation and specified that the NPS could not ban activities of particular importance to Alaskans on such lands.<sup>12</sup> ANICLA’s two goals were: (1) to allow for ample protection of Alaskan public land’s “scenic, natural, cultural and environmental values” and (2) to allow for opportunity and satisfaction of Alaska and its people’s economic and social needs.<sup>13</sup> Under ANICLA, preserved lands were placed in “conservation system units” which included “any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument.”<sup>14</sup>

In the fall of 2007, Sturgeon was using his hovercraft for moose hunting on the Nation River when NPS Rangers told Sturgeon that hovercraft use in the Yukon-Charley was forbidden.<sup>15</sup> Sturgeon protested, saying the regulation was not applicable because the river was State-owned, but complied with the order to remove his hovercraft from the area.<sup>16</sup> Apprehensive of criminal prosecution if he continued to use his hovercraft, Sturgeon sued the NPS and several officials in the United States District Court for the District of Alaska, with Alaska intervening in support of Sturgeon.<sup>17</sup> Sturgeon sought declaratory and injunctive relief permitting the use of hovercrafts within the Yukon-Charley boundaries.<sup>18</sup> Summary judgment was granted to the NPS, and the Ninth Circuit partially affirmed.<sup>19</sup>

Further examination of 54 U.S.C. § 100751 was required to determine if § 103(c) creates an exception to the NPS’s general authority.<sup>20</sup>

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8. *Id.* at 1071-72.

9. *Id.*

10. *Id.* (citing Alaska Const. art. VIII, § 1).

11. *Id.* at 1066.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 1066-67.

16. *Id.* at 1067.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

First, the Court examined if § 103(c) addressed the extent of the Park Service's authority over lands within the boundaries of conservation system units in Alaska.<sup>21</sup> The Secretary of the Interior is authorized to recommend regulations regarding "boating and other activities on or related to water located within System units, including water subject to United States jurisdiction."<sup>22</sup> System units are "any area of land and water administered by the Secretary, acting through the Director of the NPS, for park, monument, historic, parkway, recreational, or other purposes."<sup>23</sup> The hovercraft ban was adopted under 54 U.S.C. § 100751(b) and has effect throughout all federally controlled preservation areas.<sup>24</sup> Section 103(c) provides that "only lands, waters, and interests therein to which the United States has title are considered public land included as a portion of the Alaska conservation system units."<sup>25</sup>

Sturgeon, relying on federal land management history, asserted that the NPS was prohibited from regulating "non-public" land as if the land was federally owned.<sup>26</sup> The first part of Sturgeon's argument was that the Nation River is owned by Alaska and therefore cannot be "public" land.<sup>27</sup> The second prong of Sturgeon's argument was that the Nation River is not part of the Yukon-Charley, therefore the NPS lacks regulation authority due to § 103(c)'s second sentence that states no lands conveyed by Alaska... "before, on, or after December 2, 1980 shall be subject to the regulations applicable solely to public lands within the units."<sup>28</sup> Sturgeon's argument concluded that because the hovercraft ban is a regulation over federally controlled preservation areas, and not a generally applicable law, the NPS cannot enforce the ban.<sup>29</sup>

The NPS argued its longstanding authority to regulate waters within federally managed preservation areas, and that § 103(c) does not remove that authority.<sup>30</sup> The NPS maintained that the United States has title to an interest in the water within the boundaries of the Yukon-Charley under the reserved water rights doctrine.<sup>31</sup> The doctrine states that when the federal government removes land from public domain to reserve it for a federal purpose, it reserves then unappropriated water needed to accomplish the reservation's purpose.<sup>32</sup> The NPS concluded its argument stating that the regulation is not solely for public lands, so the ban's enforcement is not prevented.<sup>33</sup>

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21. *Id.*

22. *Id.* (citing 54 U.S.C. § 100751(b) (2014)).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 1068.

27. *Id.*

28. *Id.*

29. *Id.* at 1069.

30. *Id.*

31. *Id.*

32. *Id.* (citing *Cappaert v. United States*, 426 U.S. 128, 138, 96 S. Ct. 2062, 48 L. Ed. 2d 523 (1976)).

33. *Id.*

The Ninth Circuit adopted its own interpretation of § 103(c), determining the phrase “regulations applicable solely to public lands within such units” differentiates between the NPS regulations applying solely to public lands in Alaska, and the NPS regulations applying to federally managed preservation areas across the country.<sup>34</sup> The court further reasoned that the NPS could enforce nationally applicable regulations on “public” and “non-public” property within Alaska’s system boundaries because the regulations do not only apply to public lands within the units.<sup>35</sup> Additionally, the NPS may not apply Alaska-specific regulations to “non-public” lands within the boundaries of the units.<sup>36</sup> In sum, because the hovercraft ban applies to *all* lands administered by the NPS, and *all* navigable waters lying within National Parks, the hovercraft ban is not solely applicable to the Alaskan units.<sup>37</sup> Therefore, the Ninth Circuit found that the NPS authority exists to enforce the hovercraft ban.<sup>38</sup>

### III. ANALYSIS

The Supreme Court disagreed with the Ninth Circuit’s § 103(c) interpretation, and found the view inconsistent with ANICLA’s text and context as a whole.<sup>39</sup> The Court took issue with the Ninth Circuit’s reading which seemed “plausible in the abstract,” but not in reality.<sup>40</sup> The Court discussed how ANICLA creates many exceptions, specific to Alaska, to the NPS’s general authority over federally controlled preservation areas.<sup>41</sup> Of these, the most applicable exception outlines that “National Preserves ‘in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park *except* as otherwise provided in this Act and *except* that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed’ pursuant to applicable law.”<sup>42</sup>

The Court continued to recognize that Alaska is “often the exception, not the rule,” and found the Ninth Circuit’s reading prevented the NPS from recognizing Alaska’s uniqueness.<sup>43</sup> Under the Ninth Circuit’s “topsy-turvy” reading, the NPS could regulate “non-public” lands in Alaska only by rules valid outside of Alaska.<sup>44</sup>

Additionally, § 103(c) distinguishes “non-public” and “public” lands within system units.<sup>45</sup> If the Ninth Circuit’s reading was followed,

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34. *Id.* at 1069-70.

35. *Id.* at 1070.

36. *Id.*

37. *Id.* (emphasis added).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 1071 (citing 16 U.S.C. § 3121(b) (1980)).

43. *Id.*

44. *Id.*

45. *Id.*

in differentiating between “public” and “non-public” land the NPS would have to regulate “non-public” land by rules enforced outside Alaska, and “public” lands following Alaska-specific provisions.<sup>46</sup> If the NPS had authority over “non-public” Alaska lands, an implausible reading of § 103(c) arises.<sup>47</sup> When the Court examined ANICLA with special consideration given to § 103(c), it considered the possibility of all conservation unit land being treated differently than other federally controlled preservation areas.<sup>48</sup> The Court additionally contemplated that within the boundaries “non-public” and “public” lands may be treated differently.<sup>49</sup> Because Alaskan system lands could not be treated differently, and managing “public” and “non-public” lands within the units would require further measures, the Court rejected the Ninth Circuit’s § 103(c) interpretation, vacated the judgement, and remanded the remaining issues.<sup>50</sup>

The arguments not inspected by the Court included: (1) deciding if the Nation River is “public” land under ANICLA because the issue touches on vital state sovereignty and federal authority issues, (2) deciding if the NPS has authority under 54 U.S.C. § 100751(b) to regulate Sturgeon’s activities on the Nation River, even if the river is not determined to be “public” land, or if ANICLA limits the NPS’s authority, and (3) NPS’s alternative argument that under ANICLA it has authority over “public” and “non-public” lands within Alaskan unit areas, to the extent a regulation is written applying specifically to both kinds of land.

#### IV. CONCLUSION

The outcome in *Sturgeon* can be viewed as a victory for Alaska’s uniqueness regarding federal management of preservation areas. But this victory is dampened by the Court’s refusal to address issues regarding the classification of “public” and “non-public” lands within system units, leaving questions about federal management and the NPS’s authority over such lands unknown. While the Court once again established the individuality of Alaska’s land, large questions concerning the battle between state sovereignty and federal management will not be answered until a decision by the Ninth Circuit further clarifies the issues between state and federal land management.

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46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 1071-72.