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# Sturgeon v. Frost

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## *Sturgeon v. Frost*, 139 S. Ct. 1066 (2019)

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After two trips to the United States Supreme Court, an Alaskan moose hunter secured motorized access to his hunting ground while establishing Alaska as the exception, rather than the rule, regarding federal land management. In a much-anticipated holding, the Court determined that the surface waters of the Nation River within the Yukon-Charley Rivers National Preserve qualify as "private" land and therefore fall beyond the control of the National Park Service. The decision stripped the Park Service of normal regulatory authority over navigable waters within Alaska's national parks, prompting a concurrence urging Congress to clarify resulting ambiguities.

### I. INTRODUCTION

In *Sturgeon v. Frost*,[1] the United States Supreme Court determined whether the National Park Service ("NPS") could prohibit hovercraft use on the Nation River ("River") within Alaska's Yukon-Charlie Rivers National Preserve ("Preserve").[2] Given the unique provisions of the Alaska National Interests Land Conservation Act (ANILCA), the Court found that the United States did not possess title to the River in the ordinary sense.[3] Therefore, the waters of the River were not "publicly owned," and exempt from the normal regulatory authority of the NPS.[4]

### II. FACTUAL AND PROCEDURAL BACKGROUND

In 2007, John Sturgeon was stopped by an NPS ranger while driving a hovercraft up the River to his moose hunting grounds within the Preserve.[5] Hovercraft use was allowed under Alaska state law, but prohibited by the NPS, which managed the Preserve.[6] Sturgeon complied with the ranger's order to remove his hovercraft, but soon after sued the NPS, seeking an injunction allowing him to continue using his hovercraft to access his hunting grounds.[7]

The United States District Court for the District of Alaska denied Sturgeon relief, holding that the NPS could enforce a nationwide ban on hovercrafts.[8] On appeal, the Ninth Circuit held that NPS regulations apply

1. 139 S. Ct. 1066 (2019).
2. *Id.* at 1071.
3. *Id*. (citing 43 U. S. C. § 1311 (2012)).
4. *Id*.
5. *Id.* at 1072.
6. *Id.*
7. *Id*.
8. *Id.* (citing Sturgeon v. Masica, No. 3:11–CV–0183, 2013 WL 5888230, at *8 (D. Alaska Oct. 30, 2013)).

to all federal land and water, including all navigable waters lying within national parks.[9] Sturgeon successfully petitioned for certiorari to the Supreme Court, which reversed and remanded on the grounds that the NPS could only regulate land and water deemed "public."[10] On remand, the Ninth Circuit determined that since the River ran through the federal Preserve, the NPS had authority to regulate the water and enforce its hovercraft ban.[11] Sturgeon sought certiorari once more, arguing that such a ruling would grant federal control over all surface water within Alaskan national parks.[12]

## III. ANALYSIS

The Court identified two primary issues for consideration: (1) whether the River qualified as public land under ANILCA,[13] and (2) if the River did not qualify as public land, whether the NPS could nevertheless regulate Sturgeon's activities.[14] Additionally, the Court addressed the NPS' plea for a special rule regarding Alaska's navigable waters[15]

### *A. Public Land Under ANILCA*

Before addressing the status of the River, the Court provided a history lesson to illustrate Alaska's unique land ownership scheme demonstrate why it often emerges as the exception, rather than the rule.[16] During statehood, the federal government recognized that Alaska's size and natural resources required a balancing of federal and state regulation.[17] As a result, Congress passed ANILCA in 1980, designating over 104 million acres as Conservation System Units ("CSUs").[18] The Preserve was one of ten national parks created by this process.[19] When creating CSUs, Congress designated borders using "natural features" instead of drawing hard lines following federal ownership boundaries.[20] However, Alaska's combination of public, private, and native ownership made conformity impossible for many areas, including the Preserve.[21] Ultimately, more than eighteen million acres of non-federal land were included in CSUs, giving rise to disputes such as Sturgeon's.[22]

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9. *Id.* (citing Sturgeon v. Masica, 768 F.3d 1066 (9th Cir. 2014)).
10. *Id*. (citing Sturgeon v. Frost, 136 S. Ct. 1061, 1072 (2016)).
11. *Id.* (citing Sturgeon v. Frost, 872 F.3d 927, 934 (9th Cir. 2017)).
12. *Id*. at 1078.
13. *Id*. at 1074.
14. Id. at 1073.
15. *Id.*
16. *Id*.
17. *Id*. at 1073–78.
18. *Id.* at 1075
19. *Id*. at 1069.
20. *Id.* at 1075.
21. *Id*.
22. *Id* at 1075–76.

After explaining the underlying history, the Court then addressed the NPS' ownership claim to the River.[23] Because the ANILCA defined "public land" as "all land, waters, and interests therein" belonging to the United States, if the NPS could establish the River as public land it could assert it regulatory power to enforce a hovercraft ban.[24]

The NPS conceded that the Submerged Lands Act granted states title to land underlying navigable rivers, and instead based its claim on a novel interpretation of the "reserved-water-rights-doctrine."[25] The NPS argued that since the Preserve's purpose is to safeguard water from depletion and diversion, Congress intended to reserve an interest in navigable waters appurtenant to reserved land.[26]

The Court quickly dismissed this argument, stating that reserved water rights are "usufructuary in nature," meaning they are rights for the government to use rather than own.[27] Moreover, even if the NPS had some form of title in the River under the doctrine, such title would merely allow the government to "take or maintain the specific 'amount of water'—and 'no more'—required to 'fulfill the purpose of [its land] reservation.'"[28] Therefore, the NPS could only protect water from "depletion or diversion."[29] Because hovercrafts do not "deplete or divert the waterway," much less touch the surface at all, the Court found a hovercraft ban could not be justified through title under the reserved-water-rights-doctrine.[30] Additionally, because the NPS did not own title to the River, the Court determined it did not qualify as "public land" under ANILCA.[31]

### *B. NPS Regulation of Non-Public Waterways*

The Court then addressed whether the NPS could nevertheless regulate non-public lands within Alaska's CSUs.[32] Crucial to the question, the Court noted, was ANILCA § 103(c), which only allowed the NPS to regulate areas within the CSUs deemed "parkland."[33]

The Court explained that § 103(c) "grew out of ANILCA's unusual method for drawing park boundaries" based on "natural features."[34] Section 103(c) was therefore drafted to limit regulations on the

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23. *Id*. at 1074.
24. *Id*.
25. *Id*. (citing 43 U.S.C. § 1311 (2012)). "[W]hen the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation." Cappaert v. United States, 426 U.S. 128, 138 (1976).
26. *Id*. (citing Winters v. United States, 207 U. S. 564, 576 (1908)).
27. *Id*.
28. *Id*. (quoting *Cappaert*, 426 U.S. at 141).
29. *Id*. (quoting Br. Resp't's 35).
30. *Id*. at 1080. (citing 48 Fed. Reg. 30258 (1983)).
31. *Id*.
32. *Id*.
33. *Id*.; *see* 16 U.S.C. § 3103(c) (2012).
34. *Sturgeon*, 139 S. Ct. at 1074 (citing 16 U.S.C. § 3103(b) (2012)).

"state, native organizations, and private individuals" whose property fell within these all-encompassing borders.[35]

To determine the scope of these protections, the Court broke down § 103(c) sentence by sentence.[36] The first sentence stated that only "public lands" within the CSUs "shall be deemed" part of the units.[37] Placing emphasis on the word "deemed," the Court interpreted this to imply that "all non-public lands (again, including waters) would be 'deemed,' abracadabra-style, outside Alaska's [CSUs]."[38] The second sentence, meanwhile, provided that state, native, and private lands within the CSUs were not subject to "regulations applicable solely to public lands."[39] Finally, the Court noted that the third sentence established an "escape hatch," providing that non-public lands located in CSUs may be regulated by the NPS if the non-federal owner transferred their interest to the government.[40] As a whole, the Court that under § 103(c) non-public lands within the CSUs were free from NPS regulation, unless the non-public landholder conveyed the property to the NPS.[41]

The NPS argued for a different interpretation, however, relying primarily on the word "solely" in the second sentence.[42] Accordingly to the NPS, if regulations applied to both public and non-public lands, it was free to regulate both.[43] The NPS pointed to public policy, stating that requiring park-wide regulations to adjust in accordance with intertwined "non-public" land would limit effective management of the Preserve.[44]
The Court found that this logic ran counter to the intent of ANILCA, and that such an interpretation would nullify the first and third sentences of § 103(c).[45] The Court stated that ANILCA was a "grand bargain" intended to balance "natural, scenic, and historical values" with Alaska's "economic and social needs."[46] While NPS regulation of navigable water would facilitate natural and scenic preservation, it could harm economic and social needs of many Alaskans.[47] The Court also observed that the legislative sponsors of § 103(c) understood that CSUs would not "change the status" of the state, Native, or private land located inside.[48] Additionally, the NPS' interpretation of § 103(c) would destroy the distinction between private and public land contemplated by the section's first sentence.[49] Moreover, the third sentence would become useless since

35. *Id*.
36. *Id*. at 1070 (citing 16 U. S. C. § 3103(c)).
37 *Id*.
38. *Id*.
39. *Id*. at 1083 (citing 16 U. S. C. § 3103(c)).
40. *Id*.
41. *Id*.
42. *Id*.
43. *Id*.
44. *Id*.
45. *Id*.
46. *Id*. (citing 16 U.S.C. § 3101(a)).
47. *Id*. at 1084.
48. *Id.* (quoting 125 Cong. Rec. 11158 (1979)).
49. *Id*.

there would be no need for the NPS to purchase the non-public inholdings if it was already free to regulate.[50] The Court reasoned that the word "solely" was not intended to create on exception for rules applicable to both public and non-public lands, but to clarify which regulations apply to "private" land within the CSUs.[51] Without the word, the statute could be read to exempt the land from a "raft" of additional regulations.[52] Instead, by using the adverb, Congress intended to show that the exemption was exclusive to regulations established by the NPS.[53] Accordingly, the Court held that the language of § 103(c) weighed in favor of Sturgeon and exempted non-public property from NPS regulation.[54]

### *C. Special Authority Over Alaska's Navigable Waters*

Finally, the Court addressed the NPS' additional argument that ANILCA's "statutory scheme" "must at least allow it to regulate navigable waters."[55] The NPS pointed to several supporting factors, including ANILCA's stated purpose to "protect and preserve rivers," and other statutes allowing the NPS to regulate boating and fishing on select rivers.[56]

The Court disagreed, stating that the ANILCA did not allow the "decoupling" of waterways from areas deemed "private."[57] Furthermore, the Court noted that under ANILCA "lands" referred to "land, water, and interest therein," thereby not excluding navigable water from the spectrum of private ownership in the CSUs.[58] Additionally, the Court stated that its ruling did not strip the NPS of all ability to "protect" navigable waters within Alaska's national parks. The NPS remained free to regulate "public lands flanking rivers," enter into "cooperative agreements" with the state or other landowners, offer proposals for management, and even purchase desired land pursuant to the third sentence of § 103(c).[59]

Before concluding, the Court discussed the public policy at play in its uniquely Alaskan decision.[60] While Sturgeon may have been able to find an alternative hunting ground, many of Alaska's rural residents rely on navigable waters for transportation.[61] With over three-quarters of Alaskan communities in areas unconnected to a road system, rivers become critically necessary for access to food, fuel, and health care.[62] The

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50. *Id.*
51. *Id*.
52. *Id*.
53. *Id*.
54. *Id*. at 1085.
55. *Id.*
56. *Id.* at 1085–86 (citing 16 U.S.C. § § 3121, 3170, 3201, 3203(b), 3204 (2012)).
57. *Id*. at 1086 (quoting Br. Resp't's 40).
58. *Id*. (citing A. SCALIA & B. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 228 (2012)).
59. *Id.* at 1086–87 (citing 16 U.S.C. § 3191(b)(7)).
60. *Id.* at 1087.
61. *Id.*
62. *Id.*

Court determined that Alaska needs local control over its rivers to preserve the lifestyle of its rural citizens, and therefore must remain the exception to federal land regulation.[63]

## IV. CONCURRENCE

Justice Sotomayor, joined by Justice Ginsburg, issued a concurrence suggesting Congress resolve uncertainties left by the Court regarding the NPS' remaining authority over navigable waters in Alaska parks.[64] The concurring Justices agreed with the Court's reading of ANILCA Section 103(c), but noted that the holding merely determined the River could not be regulated as part of the National Park System, not that the NPS was prohibited from regulating it at all.[65]

The Justices noted that it would be "absurd" for Congress to expect the NPS to "preserve" Alaska's rivers without giving it power to accomplish that end.[66] If § 103(c) stripped the NPS of all control over non-public navigable waters, it would be incapable of enforcing a variety of banned actions, including polluting and disturbing wildlife.[67] Such actions on the River would impact surrounding public land and limit the NPS' mission to maintain "environmental integrity and preserve undeveloped natural condition."[68]

While the NPS may not assert ordinary regulatory authority over the River, the Justices stressed that under its Organic Act, the agency could still regulate non-public land within the Preserve when necessary to protect adjoining public land.[69] This power would extend to activities "on or relating to water located within [Park] System units."[70] Further, the concurrence stated that the power of the Organic Act is unfettered by ANILCA.[71] While the Organic Act likely would not justify rules against trespass, it may permit regulations on non-public property when necessary to protect surrounding parkland.[72] The Justices noted that this would likely including banning hovercrafts in certain sensitive areas.[73]

Additionally, the concurrence identified the Wild and Scenic Rivers Act ("WSRA") as an additional avenue for the NPS to regulate non-public navigable waterways in Alaska.[74] ANILCA designated twenty six Alaskan rivers under the WSRA and clarified that the NPS retained

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63. *Id.*
64 *Id*. at 1088 (Sotomayor, J., with Ginsberg, J., concurring).
65. *Id*.
66. *Id*. at 1090.
67. *Id*.
68. *Id*. (quoting 16 U.S.C. § 410hh(10) (2012)).
69. *Id.* (citing 54 U.S.C. § 100101(a)).
70. *Id*. (quoting 54 U. S. C. § 100751(a)).
71. *Id*. at 1092.
72. *Id*. (citing 36 CFR §§ 2.22(a), §2.31(a)(1) (2019)).
73. *Id*. (citing General Regulations for Areas Administered by the National Park Service, 48 Fed. Reg. 30258 (June 30, 1983)).
74. *Id*. at 1093; *see* 16 U.S.C. § 1271 (2012).

authority over all navigable water under this designation.[75] Although § 103(c) was intended to generally remove navigable waterways from NPS control, the specific language in WSRA would likely control.[76] Accordingly, the concurrence recommended Congress resolve these ambiguities and "clarify the broad scope of the [NPS'] authority over Alaska's navigable waters."[77]

## V. CONCLUSION

The Court's holding in *Sturgeon v. Frost* represented an appreciation of Alaska's autonomy over its vast lands and waters. By clarifying that the NPS does not have normal regulatory authority over the River, the Court allowed Alaska to retain control and effectively implement ANILCA. Although the decision limited NPS authority in Alaska, future legislation from Congress may clarify the regulatory power of the NPS under the Organic Act, or the Wild and Scenic Rivers Act. But as of now, Alaska remains a notable exception to the rule.

75. *Sturgeon*, 139 S. Ct. at 1090.

76. *Id.* (citing D. Ginsberg & Sons, Inc. v. Popkin, 285 U. S. 204, 208 (1932)).

77. *Id.* at 1093–94.