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Opinion analysis: The justices wish Sturgeon “good hunting” in *Sturgeon v. Frost*

The Supreme Court ruled unanimously yesterday in favor of Alaskan John Sturgeon, who waged a 12-year battle against the National Park Service over its ban on hovercraft in park preserves. As a result of the decision, Sturgeon can once again “rev up his hovercraft in search of moose” on the Nation River in the Yukon Charley Preserve. This is the second time this fight has come before the Supreme Court. On one hand, it involves important legal issues affecting public lands, federalism and water rights. But on the other, it is a narrow case over the special circumstances of federal lands in Alaska.

As a quick recap, Sturgeon was navigating the Nation River on his hovercraft in 2007 when Park Service officials stopped him and told him that his craft was not allowed under nationwide regulations banning hovercraft in the National Park System. Sturgeon filed a lawsuit in federal court, claiming that the nationwide ban did not apply in Alaska, given the unique language of the Alaska National Interest Lands Conservation Act. The U.S. Court of Appeals for the 9th Circuit upheld the ban, not once but twice.

This time, the Supreme Court took certiorari on two issues:

> First, does “the Nation River qualif[y] as ‘public land’ for purposes of ANILCA”? Second, “even if the [Nation] is not ‘public land,’” does the Park Service have authority to “regulate Sturgeon’s activities” on the part of the river in the Yukon-Charley?

As it turns out, the answer to both questions is “no.”

Justice Elena Kagan, writing for the court, went into detail about the unusual circumstances surrounding the admission of “Seward’s Folly” to the union in 1959, and the compromises that were forged between the United States and Alaska. ANILCA, she wrote, reflects those compromises by attempting to balance two potentially conflicting goals that reflect the century-long struggle over federal regulation of Alaska’s resources. This is no easy balance, as Kagan noted: “[I]f … you see some tension within the statute, you are not mistaken.”

First, Congress intended to advance the national interest in conserving “huge tracts of land for national parks.” At the same time, however, Congress also committed to protect Alaskans’ economic well-being and the state’s subsistence-based economy. ANILCA achieves the second goal in part by “mitigat[ing] the consequences to non-federal owners whose land wound up in those new system units.” Congress assured the state and its citizens that “their [lands] wouldn’t be treated just like” federally owned property.

In balancing these two “Janus-faced” goals, ANILCA enables the Park Service “to protect—if need be, through expansive regulation—‘the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska.’” But “public lands (and waters) was where it drew the line—or, at any rate, the legal one.”

Once again, just as it did in *Sturgeon I*, the Supreme Court emphasized ANILCA’s “repeated recogni[tion] that Alaska is different.” In setting the boundary lines of National Park units in Alaska, Congress followed “topographic or natural features,” rather than enclosing only federally owned lands as it had done in the lower 48 states, where federal reserves were drawn from the larger public domain. “The upshot was a vast set of so-called inholdings—more than 18 million acres of state, Native, and private land—that wound up inside Alaskan system units.”

In the rest of the country, Congress authorized the Secretary of Interior to “prescribe such regulations as [he] considers necessary or proper for the use and management of System units.” This grant of authority makes no distinction based on the ownership of the lands or waters within the system units. The general rule “is that the Park Service may regulate boating and other activities on waters within national parks—and that it has banned the use of hovercrafts there.”

ANILCA turns this authority on its head, “reflecting the simple truth that Alaska is often the exception, not the rule.”

> ANILCA changed nothing for all the state, Native, and private lands (and waters) swept within the new parks’ boundaries. Those lands, of course, remain subject to all the regulatory powers they were before, exercised by the EPA, Coast Guard, and the like. But they did not become subject to new regulation by the happenstance of ending up within a national park.

In addition to ANILCA’s dual purposes, the Supreme Court’s rationale rests on two key points—statutory construction and ownership.

> Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit. No lands which, before, on, or after December 2, 1980, 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 such units. If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly.

To unpack this convoluted provision, the court turned to ANILCA’s definitions of “land” and “public lands.”

> The term “land,” as found in all three sentences, actually—and crucially for this case—“means lands, waters, and interests therein.” §3102(1). The term “public lands,” in the first two sentences, then means “lands” (including waters and interests therein) “the title to which is in the United States.” … “Public lands’ are therefore most but not quite all lands (and again, waters and interests) that the Federal Government owns.”

This tees up the ownership issue, which is the sole aspect of the opinion with broader implications, because the federal government holds water rights for public lands throughout the nation.

The 9th Circuit had concluded that the United States has “title” to an “interest” in the Nation River, under the federal reserved water rights doctrine, which recognizes rights to water for the primary purposes of federal reserves like Yukon Charley. According to the appeals court, the Nation River therefore is “public land,” so the Park Service could prohibit the use of hovercraft on the Nation River.

The Supreme Court flatly rejected this analysis, and found that the United States does not own the Nation River. “As the Park Service acknowledges, running waters cannot be owned—whether by a government or by a private party.” “Reserved water rights are not the type of property interests to which title can be held”; rather, water rights are “usufructuary,” meaning that they are rights to use the water, not to own it.

The court added that, even if a reserved water right were the type of “interest” included within ANILCA’s definition of “land,” such a right would not give the Park Service “plenary authority over the waterway to which it attaches.” Instead, the Park Service would have the right to a specific quantity of water as needed to “fulfill the purpose of [its land] reservation.” The Park Service would be able to regulate the “depletion or diversion” of water in the river, “but the hovercraft rule does nothing of that kind.”

The court was careful to point out that the Park Service has “multiple tools to ‘protect’ rivers in Alaskan national parks.” The Park Service, “at minimum,” could regulate activities on the public lands alongside the rivers. Other options include “cooperative agreements” with the State of Alaska to preserve the rivers. The Park Service could also urge other agencies, such as the Coast Guard and the EPA, to undertake regulatory measures to protect the rivers. The concurring opinion filed by Justice Sonia Sotomayor, joined by Justice Ruth Bader Ginsburg, also emphasized that NPS has other regulatory tools to protect park resources.

In sum, under ANILCA, even when nonpublic lands (and waters) in Alaska are geographically within a park’s boundaries, they may not be regulated as part of the park. “And that means the Park Service’s hovercraft regulation cannot apply there.” Importantly, at the end of the day, as the court explicitly stated, “If Sturgeon lived in any other State, his suit would not have a prayer of success.”

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Past case linked to in this post:

Sturgeon v. Frost, 136 S. Ct. 1061 (2016)
Sturgeon v. Frost, 872 F.3d 927 (9th Cir. 2017)

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