

The Supreme Court Decides the United States Cannot Have Title to Running Waters



The Supreme Court determined in *Sturgeon v. Frost* that the Nation River, located near Alaska’s eastern border, is not public land for purposes of regulation by the National Park Service (NPS). This case arose due to a conflict over who governs lands subject to the Alaska National Interest Lands Conservation Act (ANILCA). This ruling provides for expanded uses of waterways within the millions of acres of ANILCA lands. While this decision construes ANILCA and applies directly within Alaska, its reasoning also may serve as a check on federal regulation of other non-federal inholdings within conservation areas delineated by natural features rather than federal land boundaries.

Background

Enacted in 1980, ANILCA set aside 104 million acres of federally owned land in Alaska for special environmental protections. The boundaries follow natural features throughout the state instead of enclosing only federally owned lands. As a result, the Act designated more than 18 million acres of state, Native, and private land as protected land. Congress subsequently added a provision to the law stating that NPS has broad authority to administer both lands and waters within the “public lands” set aside through ANILCA. Yet, section 103(c) of ANILCA states that “only” the “public lands” within a conservation system are under NPS’s authority.

The Nation River lies within the boundaries of the Yukon-Charley Preserve, a conservation system under ANILCA and administered by NPS. John Sturgeon traveled for decades up a stretch of the Nation River via hovercraft until rangers informed him that NPS prohibited

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operating a hovercraft on navigable waters located within a national park's boundaries. The State of Alaska, however, permits travel by hovercraft on the River.

This case previously reached the Supreme Court in 2016 on Sturgeon's request for an injunction allowing him to utilize his hovercraft. The Court remanded the case to consider whether the Nation River qualifies as a "public land" under ANILCA. On remand, the Ninth Circuit determined that the Nation River was a public land, and therefore NPS had authority to regulate hovercraft activity on the River under ANILCA. Sturgeon appealed the Ninth Circuit's decision and the Supreme Court granted certiorari.

This decision does not preclude NPS from exercising any regulatory authority over the Nation River.

Reserved Water Doctrine Does Not Qualify Nation River as Public Lands

The Supreme Court unanimously found that although public lands under ANILCA includes lands, waters, and interests to which the United States holds the title, running waters cannot be owned. Therefore, the United States does not have title to the Nation River. Although the Federal Government may retain rights to the specific amount of water needed to satisfy reservation of public land, the government would only have a specific interest in the reserved water, still not making the river a public land subject to NPS recreational use regulation.

Alaska Maintains Regulatory Authority of Hovercrafts on the Nation River

Given that the Nation River is not a public land for purposes of ANILCA, NPS's ban on the use of hovercrafts cannot apply. While no one owns the river, Alaska owns the submerged lands beneath the river. Therefore, the use of hovercrafts is governed by the authority of the State of Alaska, not NPS.

Importantly, the Court noted that this decision does not preclude NPS from exercising any regulatory authority over the Nation River. The holding only prevents NPS from regulating the Nation River as if it were within the National Park System. NPS may still regulate the public lands flanking rivers and enter into cooperative agreements with States, as owners of the submerged lands, to preserve the rivers themselves.

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