

US Supreme Court

Sturgeon I & II



September 2007 to March 2019

Stopped by NPS enforcement agents September 2007 while on State owned Navigable waters for operating a hovercraft.



Yukon River near Eagle, Alaska

- While repairing my hovercraft I was approached by 3 uniformed and armed NPS employees
- They informed me my hovercraft was not allowed in NP preserves and demanded I remove it immediately without starting it.
- I explained to them I was on Navigable waters owned by State of Alaska land. They didn't care. I was not cited
- I have hunted this same area consecutively since 1971
- I had used my hovercraft there since 1991



What are Navigable Water?

- The origin of **Navigable Waters** goes back to kings of England
- Navigable waters were the super 'highways' of old
- They were all put into a Public Trust – no one actually owns Navigable waters. They are set aside for the peoples use, it called the **Public Trust Doctrine**
- The original 13 colonies reserved the Navigable waters to each state and not the Federal government
- When Alaska became a state it was given title to all Navigable water under the **Equal Protection Clause**
- Alaska owns all the subsurface land from ordinary high water to ordinary high water on Navigable Waters
- The State also owns from ordinary high tide to ordinary low tide on salt water.



In September 2011, I filed a “public interest”
lawsuit in Federal Court



To the US Supreme court and back again!

- Confronted by NPS – 2007 (no citation)
- District Court – 2011 lost!
- 9th Circuit – 2014 lost!
- US Supreme Court – 2016 won 9-0
- 9th Circuit – 2nd time - 2017 lost!
- **US Supreme Court* – March 2019 won 9-0**

*Over 8,000 appeals they took 41, they only take a civil case a second time once every 7 years

Core of the case:

Section 103 (c) of ANILCA says Fed regs don't apply on inholdings including the States Navigable waters.



What does Section 103 (c) of ANILCA say?

The first sentence says
inholdings are not part of the park.

The second sentence
clearly says these lands won't be regulated as though they were part of a park

The third sentence
makes clear that if the Federal government wants to regulate these lands they have to go out and acquire them.

**QUESTION PRESENTED at
District, 9th Circuit & the US Supreme Court:**

Whether Section 103(c) of the Alaska National Interest Lands Conservation Act of 1980 prohibits the National Park Service from exercising regulatory control over State, Native Corporation, and private Alaska land physically located within the boundaries of the National Park System.

What does Section 103 (c) of ANILCA say?

The first sentence says
inholdings are not part of the park.

The US Supreme Court held that all inholding be they State (including Navigable waters), Private or Native are not part of the park

What does Section 103 (c) of ANILCA say?

The second sentence

clearly says these lands won't be regulated as though they were part of a park

Since State (including Navigable waters), Native and private inholdings are not part of the park therefore their regulations do not apply. These inholdings should be treated the same as they would be prior to ANILCA

What does Section 103 (c) of ANILCA say?

The third sentence

makes clear that if the Federal government wants to regulate these lands they have to go out and acquire them.

If the NPS wants to regulate inholding they need to purchase them from the landowners

SC hearing

- The attorney's that argued the case did an outstanding job.
- They were extremely well prepared and it showed. They never missed a beat when the questions came flying at them like a machine gun
- Can't say the same for the Fed attorney
- Matt Findley & Ruth Botstein



Justice Roberts

When the Federal attorney described hovercrafts as ‘noisy and unsightly” Justice Roberts quick response was-

“And while - while you may think a hovercraft is unsightly, I mean, if you're trying to get from point A to point B, it's pretty beautiful.”



Justice Kagan

“And rivers function as the roads of Alaska, to an extent unknown anyplace else in the country. Over three-quarters of Alaska’s 300 communities live in regions unconnected to the State’s road system. Residents of those areas include many of Alaska’s poorest citizens, who rely on rivers for access to necessities like food and water”

“That means Sturgeon can again rev up his hovercraft in search of moose.”



The Court went to great lengths to explain the legal history of Alaska

- ***“We offer here a few highlights because they are the backdrop against which Congress enacted ANILCA. As we do so, you might catch a glimpse of some former-day John Sturgeons—who (for better or worse) sought greater independence from federal control and, in the process, helped to shape the current law.”***

Justice Kagan

In other words, the US Supreme Court recognized that Alaskans have always valued their independence from the Federal government

The Court went to great lengths to explain the legal history of Alaska

- **1867** Alaska purchased from Russia
- **1905** “Cordova Coal Party”
- **1950** Statehood act – land for **economic development** – title to navigable waters
- **1971** ANCSA – 40 mm acres for **economic and social needs of Alaska Natives**
- **1979** Carter unilaterally designated 56 mm acres as National Monuments
- **1979** “Great Denali-McKinley trespass” 2,500 Alaskan’s participated. Ended with the “Feds are coming, the Feds are coming” on horseback

- **1980 - ANILCA passed - “The Grand Compromise”**

ANILCA had two stated goals (a quote):

“First, to provide “sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska.”

*“And second, to provide “**adequate opportunity for satisfaction of the economic and social needs** of the State of Alaska and its people.”*

US Supreme Court Quote on ANILCA:

“ANILCA repeatedly recognizes that Alaska is different , and ANILCA itself accordingly carves out numerous Alaska exceptions to the Park Service’s general authority over Federally managed preserve areas. The Alaska specific provisions reflect the simple truth that Alaska is often the exception, not the rule.... The Court concludes that whatever the reach of the Park Services authority under ANILCA, Section 103 (c) did not adopt such a “topsy-turvy” approach.”

In summary what did SCOTUS say with their Unanimous Decision?

1. The SC rejected every argument the Feds presented one by one
2. Repeatedly said Alaska is different by law and therefore the Feds must treat Alaska differently by law!!
3. Alaska is the exception not the rule!!
4. Over and over again the SC said ANILCA was a grand compromise between protecting environmental values **and** the development of Alaska's economic and the continuation of Alaska's lifestyle. It wasn't just about preservation of natural areas!!
5. The lower courts and the NPS interpretation of Sec. 103(c) is wrong and it is overturned, period!

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6 - All Navigable rivers in Alaska will be managed by the State of Alaska

7 - Alaska's rivers are our highways like no other State

8 - All inholding be they State, private or native are exempt from Federal management, if they want to manage them they need to buy them

9- Section 103(c) makes clear, Park Service administration does not replace local control. The Feds cannot enforce their regulations on inholdings within conservation units.

10 - To protect Alaskans' economic well-being Congress mitigated the consequences to non-federal owners whose land wound up in those new ANILCA units

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11- The US Supreme Court understood ANILCA and Alaska, unlike the lower courts, and really got it right!!

12- The NPS can't use the "General Purpose" statement in the introduction of ANILCA to justify doing whatever they wish.

13 - The Katie John opinion from the 9th Circuit is left untouched

14 – The Reserved Waters Rights law can be used by the Federal Government for the allocation of water but not for management control. ie: endangered species recovery

This was an all Alaskan effort!

- Hundreds of donations
- Dozens of fund raisers
- Many organizations helped
 - AK Outdoor Council
 - NRA
 - Wild Sheep Foundation
 - Safari Club International
 - Regional Corporations
- Special Thanks to Ed & Cathy Rasmuson
- Thanks to my legal team- Matt Findley, Ruth Botstein and Doug Pope

Total Cost of the Lawsuit

- Total cost to date –
\$1,156,574
- Still need to raise
\$123,631



“And John Sturgeon can once again drive his hovercraft up that river to ‘the’ Moose Meadows” Justice Kagan, Sturgeon II

