02/07/2018 Overview: Alaska's Federal Issues

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Alaska Department of Law

List of Federal Issues and Conflicts

Dated: January 15, 2018

Issue and Case Name, if any	Alignment with Feds	Brief Description	Status
NAVIGABLE WATERWAYS			
Navigable Waterways - *Sturgeon v. Masica (and Dept. of Interior)* (Alaska intervened in support of plaintiff; after State's case dismissed, filed amicus) (9th Cir., 13-36165; 13-36166) AAGs R. Botstein, J. Hafner	Not aligned.	State intervened to challenge the U.S. Department of Interior's (DOI) application of National Park Service (NPS) regulations to state navigable waterways. The Ninth Circuit originally ruled in favor of the DOI and dismissed the State's independent challenge for lack of standing. State filed an amicus brief supporting Sturgeon's challenge at the U.S. Supreme Court. The Supreme Court reversed the Ninth Circuit's decision and remanded for further proceedings.	On remand to the court of appeals, the Ninth Circuit again upheld the NPS regulations. The State is not a party to the case but will continue to participate as an amicus. The plaintiff has filed a petition for writ of certiorari with the U.S. Supreme Court. The State will file an amicus in support of plaintiff in early February.
Mosquito Fork - *State of Alaska v. U.S.* (9th Cir., 16-36088, 17-35025) AAGs J. Alloway, M. Schechter	Not aligned.	State sought to quiet title to submerged land underlying Mosquito Fork of the Fortymile River. Ultimately, the U.S. disclaimed its interest in the Mosquito Fork, but the court also found the U.S. had acted in bad faith.	The district court awarded the State $582,629 in attorney fees and $10,372.71 in costs, which the federal government has paid. The case is now closed.
Stikine River - *State v. U.S.* (3:15-cv-00226) AAG J. Alloway	Not aligned.	State sought to quiet title to submerged land underlying the Stikine River. The U.S. issued a disclaimer of interest in lieu of filing an answer.	The district court found that the State was the prevailing party for purposes of costs. The case is now closed.

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NAVIGABLE WATERWAYS CONT.			
Kuskokwim River/IBLA Appeal AAG J. Alloway	Not aligned.	The State requested a recordable disclaimer of interest on the Kuskokwim River to resolve a dispute over ownership of a portion of the riverbed. The Bureau of Land Management (BLM) denied the request, and the State appealed to Interior Board of Land Appeals.	Briefing is complete and we are awaiting a decision by the IBLA.
Knik River/Eklutna, Inc.'s Selection Application/IBLA Appeal - *State v. U.S.* (3:17-cv-00090) AAGs J. Alloway; A. Naylor	Not aligned.	In approving Eklutna, Inc.'s selection application, Interior Board of Land Appeals and BLM did not preserve ANCSA 17(b) easements and purported to convey portions of the bed of the Knik River, which the State asserts is a state navigable waterway.	The State settled the easement issue to preserve public access. On the navigability of the Knik River, the State filed a lawsuit in April 2017 challenging the navigability finding. BLM reversed its previous navigability determination and filed a formal disclaimer of interest. The State was awarded costs.
Navigable Waterways/ Togiak Public Use Management Plan (PUMP) AAG A. Nelson	Not aligned.	The PUMP asserts jurisdiction over, and directs USFWS to adopt regulations to limit unguided use on, state navigable waterways in the Togiak National Wildlife Refuge.	The USFWS has not proposed the regulations yet.
ACCESS AND LAND			
Roadless Rule - *State of Alaska v. U.S. Dept. of Agriculture* (D.C. Cir., 17-5260) AAG T. Lenhart	Not aligned.	State challenged the application of the roadless rule in Alaska. The roadless rule prohibits the building of roads in wilderness areas, which essentially shuts down resource development in many areas of the Tongass.	The district court upheld the roadless rule, and the State appealed. No briefing schedule has been set yet.

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ACCESS AND LAND CONT.			
King Cove Road - *Agdaagux Tribe of King Cove v. Jewell* (State intervened in support of plaintiff) (9th Cir., 15-35875) AAG T. Lenhart	Not aligned.	State originally intervened to challenge Secretary Jewell's decision under the prior administration to not allow the building of an emergency road out of King Cove. The State is also working on other options to get the road built.	King Cove moved for dismissal of its appeal, and the State joined in the motion. The appeal has been dismissed, which closes the court case. King Cove dismissed the case to pursue other alternatives.
R.S. 2477 Rights of Way - *State of Alaska v. U.S.* (4:13-cv-00008) AAGs J. Alloway, M. Schechter	Not aligned.	State sued the U.S. and others to quiet title to a number of R.S. 2477 rights-of-way near Chicken, Alaska.	At the district court where the State is seeking to condemn the rights-of-way across Native allotment lands. Once that is complete, the court will address the merits of the R.S. 2477 claims.
Big Thorne Timber Sale - *SEACC v. U.S. Forest Service* (Alaska intervened in support of defendant) (1:14-cv-00013) AAG T. Lenhart	Aligned.	Plaintiffs sought injunctions to prevent U.S. Forest Service's (USFS) Big Thorne Timber sale on Prince of Wales Island.	The court of appeals upheld the timber sale. This case is now closed.

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ACCESS AND LAND CONT.			
2016 Amendment to the Tongass Land Resources Management Plan (TLMP) AAGs T. Lenhart, S. Lynch	Not aligned.	The 2016 TLMP amendment fully incorporated both the Roadless Rule and the Secretary of Agriculture's directive to rapidly transition timber harvest from old growth to young growth. The result will effectively place millions of additional acres off-limits to timber harvest and other resource development. The timber industry is likely to be forced out of business while utilities, mining and other industries will be substantially harmed.	Senator Murkowski has introduced an amendment to the appropriations bill that would roll back the 2016 TLMP amendment to the 2008 plan and initiate a new rulemaking process to update the plan. The State continues to assess next steps, which could include the U.S. Congress rescinding the TLMP amendment under the Congressional Review Act, the Department of Agriculture directing the USFS to commence a new plan amendment process to undo the actions regarding the Roadless Rule and the transition to young timber, and the State and others filing a legal challenge to the TLMP amendment in federal court.
Shelter Cove Road - *State v. U.S. Forest Service* (1:16-cv-00018); *Greater Southeast Alaska Conservation Community v. Stewart* (State intervened in support of defendant) (1:16-cv-0009) AAG S. Lynch	Aligned on end result but not on justification.	The State intervened to defend the building of Shelter Cove Road in Ketchikan. Contrary to the federal government's position, the State asserts that it has a Section 4407 easement for the road. This would mean no environmental review is needed. Despite recent legislation shepherded by Senator Sullivan, the federal government still refuses to recognize the 4407 easement. To ensure the 4407 issue is addressed, State brought a separate lawsuit on that issue. The lawsuits have been consolidated.	Briefing on the lawsuit challenging the State's project has concluded. In State's suit against USFS, consolidated with the original lawsuit, the court denied the federal government's motion to dismiss. The opening brief in the State's lawsuit is due in February. Construction on the road continues while the case proceeds.

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ACCESS AND LAND CONT.			
Eastern Interior Resource Management Plan (BLM) AAG A. Nelson	Not aligned.	The EIRMP, adopted January 6, 2017, recommends unjustified mineral closures and conservation designations that are inconsistent with Alaska National Interest Lands Conservation Act (ANILCA) and Federal Land Policy Management Act's multiple use mandate. The EIRMP also fails to provide for lifting outdated ANCSA d-1 withdrawals unless new conservation withdrawals are implemented.	The Government Accountability Office determined in November that the EIRMP is a rule under the Congressional Review Act (CRA), which means Congress has a chance to repeal it. We are considering our options, including administrative action, litigation, or working with Congress to repeal it.
Lands into Trust AAG A. Cleghorn	Uncertain	After the district court in *Akiachak v. Dept. of Interior* found in favor of plaintiffs, DOI changed its regulations to permit lands in Alaska to be taken into trust. Moving forward, the Bureau of Indian Affairs must give the State an opportunity to comment on an application.	The State has commented on six applications to date--one from the Craig Tribal Association, three from the Central Council Tlingit and Haida Indians Tribes of Alaska, one from the Ninilchik Traditional Council, and one from the Native Village of Fort Yukon. BIA has granted the Craig application, but has not acted on the other applications yet.
ANWR Boundary IBLA Appeal AAGs M. Schechter; A. Brown	Not aligned.	BLM denied the State's request for conveyance of 20,000 acres, based on dispute over western boundary of Arctic National Wildlife Refuge (ANWR). The State also objected to a survey plat of the area directly south of the area requested for conveyance.	IBLA denied BLM's motion to dismiss and has consolidated the State's two appeals. Briefing is underway.

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ACCESS AND LAND CONT.			
ANWR Section 1002 AAG M. Schechter	Not aligned.	Section 1002 of ANILCA set aside the coastal plain of the ANWR for further investigation of its oil and gas potential. Any oil and gas production activities as well as exploratory drilling in the 1002 area cannot occur until authorized by an act of Congress.	The recent tax legislation that passed Congress and was signed by President Trump included a provision to open the 1002 area to oil and gas exploration and leasing.
ENDANGERED SPECIES ACT			
Bearded Seal - *State of Alaska v. National Marine Fisheries Service* (9th Cir., 14-35811) AAG B. Meyen	Not aligned.	The state filed a lawsuit challenging the listing of the bearded seal as threatened under the ESA based on climate model projections 100 years into the future.	The court of appeals reversed the district court's decision that found in favor of the state. Bearded seal listing was reinstated by NMFS in May 2017. The State along with other petitioners filed a cert. petition with the U.S. Supreme Court. We are awaiting the U.S. Supreme Court's decision on whether to hear the case.
Ringed Seal - *State of Alaska v. National Marine Fisheries Service* (9th Cir., 16-35380) AAG B. Meyen	Not aligned.	The state filed a lawsuit challenging the listing of the ringed seal as threatened under the ESA based on climate model projections 100 years into the future.	At the court of appeals after the district court found in favor of the State. Oral argument occurred on December 4, 2017, and the appellate court notified the parties on December 5 that it would defer its decision until the U.S. Supreme Court rules on the cert. petition.

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ENDANGERED SPECIES ACT CONT.			
Critcal Habitat - *Alabama v. NMFS* (AL Dist. Ct. 1:16-CV-00593) AAG B. Meyen	Not aligned.	The State joined 17 other states to challenge two new rules regarding the designation of critical habitat. The new rules greatly expand the types of areas that can be designated, without much, if any, connection to the presence of the protected species. The Attorney General also joined a letter with several other attorneys general asking the new federal administration to review and withdraw these rules.	At the district court level. An amended complaint has been filed, and the case has been stayed to February 8, 2018 to allow the new federal adminstration time to review.
Polar Bear Critical Habitat - *State of Alaska v. Jewell* (9th Cir., 13-35667) AAG B. Meyen	Not aligned.	State challenged the final designation of critical habitat for the polar bear.	The court of appeals reversed the district court's decision and upheld the designation of critical habitat. The U.S. Supreme Court denied the State and other plaintiffs' cert. petition. This case is now closed.
CLEAN AIR ACT			
Clean Power Plan (40 C.F.R. 60.5700-.5820) AAG E. Pokon	Uncertain.	The Clean Power Plan establishes mandatory "goals" for reducing carbon emissions from certain coal and natural gas fired power plants. EPA excluded Alaska and Hawaii from the final rule, but EPA indicated that they would likely include Alaska in the future after accruing more evidence.	Other states sued challenging the rule. President Trump signed an executive order calling on the EPA to review the Clean Power Plan and end the moratorium on coal mining on federal lands. The EPA proposed to repeal the Clean Power Plan in October and has not made a final decision.

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WATER			
"Waters of the U.S." Rule - *North Dakota v. EPA* (ND Dist. Ct. 3:15-cv-00059) AAG C. Peloso	Uncertain.	State joined a coalition of 12 states challenging the new "waters of the U.S." rule. Among other things, the new rule expands what falls under federal jurisdiction by automatically sweeping up "adjacent" or "neighboring" waters and wetlands within certain geographical limits to downstream waters already covered by federal law.	The district court action is currently stayed pending further decision by the U.S. Supreme Court on the proper venue for hearing the case. EPA proposed a rule to withdraw the current rule and reinstate the prior rule, while it works with states and stakeholders to develop a new proposal. EPA proposed another rule in November 2017 that would extend the effective date of the 2015 rule for two years, to ensure the status quo remains in place while the rulemaking process for a new rule is completed.
Stream Protection Rule - Targets Coal Mines AAG A. Brown	Not aligned.	DOI released the Stream Protection Rule, which was scheduled to go into effect January 19, 2017. The rule directly impacts coal mines. State submitted comments on the draft rule objecting to the "one size fits all" approach and the failure to consider Alaska's unique conditions. State joined a multi-state lawsuit challenging the rule on January 17, 2017. The Attorney General also joined several other attorneys general in a letter requesting Congress to overturn the rule under the Congressional Review Act (CRA).	In mid-February, President Trump signed a resolution passed by Congress under the CRA overturning the rule, and plaintiffs voluntarily dismissed the lawsuit. This case is now closed. However, the litigation filed in the U.S. Fish and Wildlife Service matter below could impact this case.

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FISH AND GAME			
NPS and USFWS Rules on Management of Fish and Game - *State v. Zinke* (3:17-cv-00013) AAGs C. Brooking, J. Alloway	Not aligned.	The State is challenging regulations adopted by the National Park Service affecting hunting on preserve lands throughout Alaska and regulations adopted by the U.S. Fish and Wildlife Service restricting hunting on the Kenai National Wildlife Refuge (NWR). Three cases were filed and consolidated. The NPS regulations preempted state management of wildlife, prohibit several means of take for predators, and change public participation procedures for hunting and fishing closures. The USFWS regulations prohibit certain activities within the Kenai NWR and the State is objecting to the prohibition on taking brown bears at black bear baiting stations, a practice that is allowed under state regulations.	At the district court level. The State moved to supplement the administrative record. Summary judgment briefing is scheduled to begin in mid-January 2018 but the State requested an extension to allow the records to be supplemented. Meanwhile, NPS and USFWS were directed by the Acting Assistant Secretary to initiate rulemaking procedures to reconsider their rules, but no substantive actions have yet been taken.
Congressional Review Act Resolution on USFWS Rules - *Center for Biological Diversity v. Zinke* (3:17-cv-00091) AAGs C. Brooking, J. Alloway	Generally aligned.	The Center for Biological Diversity filed a lawsuit to challenge Pub. L. 115-20 which was adopted under the rules established in the Congressional Review Act. Pub. L. 115-20 revoked a rule adopted by the USFWS that would have restricted hunting and affected refuge closure procedures on all refuges throughout Alaska. The State and other groups intervened on behalf of the federal defendants.	At the district court level. The federal government and other intervenors filed motions to dismiss, which the State supported. Briefing was completed on the motions to dismiss in December 2017 and we await a decision from the federal district court.

Issue and Case Name, if any	Alignment with Feds	Brief Description	Status
FISH AND GAME CONT.			
Salmon Fishery Management Plan - *United Cook Inlet Drift Association v. National Marine Fisheries Service* (Alaska intervened in support of defendants) (3:13-cv-0104) AAG S. Beausang	Aligned.	UCIDA challenged Amendment 12 to the Salmon Fishery Management Plan in Alaska that ensured Alaska retained full authority over salmon management in three historical areas beyond the three-mile limit, as it has since statehood.	The court of appeals found in favor of the plaintiffs, reversing the district court's decision. The U.S. Supreme Court denied the State's request for review of the Ninth Circuit's decision. The district court has retained jurisdiction to oversee adoption of a new plan, and there continues to be litigation over attorneys' fees.
NPS Subsistence Collection Rule AAG C. Brooking	Not aligned.	NPS published a final rule on January 12, 2017 allowing the use of plants and nonedible fish and wildlife parts for handicrafts, barter, and customary trade. This rule was developed over the course of more than eight years, and the State was generally supportive. However, the final rule included two provisions unrelated to subsistence collections (restrictions on the type of bait and prohibiting the take of live raptors) that were absent from earlier discussions and were not included in the environmental analysis.	The State is evaluating all options.
Federal Subsistence Board/ Ninilchik AAG S. Beausang	Not aligned.	The Federal Subsistence Board is allowing the community of Ninilchik to use a gillnet to harvest salmon in the federal waters of the Kenai River. The State believes this will endanger the populations of king salmon and rainbow trout.	The State has filed a request for reconsideration with the board and is awaiting a decision.

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MINING			
2008 Mining Claim Rule - *Earthworks v. U.S. Dept. of Interior* (Alaska intervened in support of defendant) (D.C. Dist. Ct. 1:09-cv-01972) AAG A. Brown	Aligned.	Plaintiffs challenged the 2008 Mining Claim Rule. State intervened to support the federal rule, which eliminated some of the regulatory hurdles for miners.	At the district court level. Briefing has been completed and oral argument was held on October 27. 2017. We are awaiting the court's decision.
Wishbone Hill Mine - *Castle Mountain Coalition v. OSMRE* (State intervened in support of defendant) AAGs A. Brown, J. Hutchins	Not generally aligned.	The State intervened to defend the validity of the state-issued mine permits, which plaintiffs asserted had automatically terminated.	The district court found in favor of plaintiffs and remanded the decision back to the agency. The permits are currently still valid while the administrative process plays out. On remand, the federal agency ultimately found that the State had "good cause" to not take action because it needed additional time to come to a decision. The State is actively working on its decision, and there are no pending court cases or administrative proceedings at this point.

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OIL AND GAS			
Reversal of Ban on Offshore Development - *League of Conservation Voters v. Trump* (3:17-cv-00101) AAG J. Douglas	Generally aligned	Before leaving office, former President Obama issued an order pursuant to the 1953 Outer Continental Shelf Lands Act indefinitely banning all leases in certain off-shore areas, including large portions of the Chukchi and Beaufort Seas. President Trump issued an executive order rescinding the ban, and environmental groups have challenged the plan. BOEM is gathering comments on a new proposed five-year National Offshore Oil and Gas Leasing Program, for years 2019-2024. The State intervened in a lawsuit to support and defend the President's executive order.	At the district court level. Defendants brought a motion to dismiss. Oral argument was held on November 8, 2017. We are awaiting the court's decision.

No. 17-949

In The Supreme Court of the United States

JOHN STURGEON,

Petitioner,

v.

BERT FROST, in his Official Capacity as Alaska Regional Director of the National Park Service, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF AMICUS CURIAE STATE OF ALASKA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

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

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INTEREST OF AMICUS CURIAE[1]

As the Court has recognized, this case "touch[es] on vital issues of state sovereignty." *Sturgeon v. Frost*, 136 S. Ct. 1061, 1072 (2016). This Court should hear the case again to safeguard Alaska's rights as a sovereign and to protect the State's uniquely significant need for control of state-owned lands and waters.

Alaska owns the riverbed and manages the waters of the Nation River and other lands and rivers falling within the boundaries of federal areas, called Conservation System Units (CSUs), that were created by the Alaska National Interest Lands Conservation Act (ANILCA). *See* 16 U.SC. § 3101 *et seq.*; 43 U.S.C. § 1311(a); Alaska Statehood Act, § 6(m), 72 Stat. 343 (1958). Alaska's "ownership of submerged lands and the accompanying power to control navigation, fishing, and other public uses of water is an essential attribute of sovereignty." *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614, 631 (2013) (internal quotes omitted); *Coyle v. Smith*, 221 U.S. 559, 573 (1911). ANILCA endorsed Alaska's sovereign right to manage its lands, waters, and resources by providing that state, Native, and private lands located inside CSU boundaries would not be managed as if they were federally owned. 16 U.S.C. § 3103(c). This distinction is essential to ANILCA's purpose of providing "adequate opportunity for satisfaction of the economic and social needs of the State of

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[1] In compliance with Supreme Court Rule 37.2(a), Alaska provided counsel of record with timely notice of its intent to file this amicus brief.

Alaska and its people." 16 U.S.C. § 3101(d). Alaska has a direct and profound interest in maintaining its authority to keep its waterways open, as Congress intended, without broad federal regulatory interference.

Despite the Court's direction to consider these "vital issues of state sovereignty," *Sturgeon*, 136 S. Ct. at 1072, on remand the Ninth Circuit gave the National Park Service expanded regulatory control over state-owned lands and waters. Pet. App. 12a-14a, 19a. The Ninth Circuit's decision treats the submerged lands that Alaska acquired at statehood as federally owned lands, reading the term "public lands" expansively and ignoring ANILCA's admonition not to treat state lands the same as federal ones. If left uncorrected, the decision has broad ramifications that extend well beyond its blow to Alaska's sovereignty. It ignores the needs and realities of rural Alaskans, who face unparalleled challenges in accessing the transportation thoroughfares they rely upon to provide for their families. Alaska has compelling interests in preserving its sovereign right to responsibly manage its lands and waters and in protecting its citizens' ability to use the state's waterways.

SUMMARY OF THE ARGUMENT

This case considers the extent to which ANILCA permits the exercise of federal jurisdiction over state waters. The right to regulate and manage state-owned resources is an essential component of Alaska's

sovereignty. And the freedom to use and access navigable waters is essential to many Alaskans' way of life. By granting the National Park Service regulatory jurisdiction over state waters, the Ninth Circuit's decision threatens that way of life. The decision contravenes ANILCA's text and Congress's intent in enacting the law, dramatically redefines this Court's federal reserved water rights jurisprudence to the detriment of state sovereignty, and ignores the clear statement doctrine. If left to stand, the decision invites federal agencies to wield plenary regulatory control over non-federal waters and submerged lands. The decision raises significant sovereignty issues and has broad practical and economic ramifications, warranting this Court's review.

REASONS THE PETITION SHOULD BE GRANTED

The Court acknowledged this case's importance when it granted review the first time, and the case has only gained significance since then. Preserving ANILCA's express limits on the federal government's regulatory authority in Alaska is an issue of exceptional importance to the State and its people, and Mr. Sturgeon's petition once more presents an appropriate and timely vehicle for the Court to address it. The Ninth Circuit's decision on remand again tramples Alaska's sovereignty by effectuating a federal takeover of Alaska's navigable waters. The court's new rationale fails to properly construe ANILCA and the balance it

struck between federal and state authority in Alaska, and it compounds that problem with an incorrect expansion of the federal reserved water rights doctrine – an important federal question of law that the Ninth Circuit got wrong and that has broad implications in all public land states.

To the extent that this case arises from ANILCA's Alaska-specific text, a circuit split on this issue cannot occur. Review on certiorari provides the only opportunity for Alaskans to retain their rights to their lands, waters, and resources, and to meaningfully assure Alaska's sovereignty over its waters.

I. Certiorari is warranted because the Ninth Circuit's decision contravenes ANILCA Section 103's assurances that Alaska would retain its sovereign right to manage its lands and waters and because it imposes exceptional hardships on Alaskans.

A. Rural Alaskans depend on Alaska's lands, waters, and resources for many of their transportation, economic, and social needs.

Alaska occupies an area equivalent to one-fifth of the continental United States's landmass, and over 60% of all land in Alaska is owned by the federal government. As the largest landowner in the state, the federal government already manages an area more than four times the size of Wyoming. By contrast, the federal government owns only 4% of lands in the

non-western states. Colossal and disproportionate federal land ownership in Alaska makes the State's freedom to manage its lands, waters, and resources crucial to Alaska's political independence and economic health.

Alaska is home to abundant natural resources, including over 12,000 rivers and three million lakes – the largest network of navigable waters in the country. The State also is home to myriad fish and wildlife, significant oil and natural gas reserves, and economically viable subsurface mineral deposits. Alaska's vast terrain and wild beauty captivate the national imagination and its bounty of resources fortifies both the state and national economies. But Alaska's massive size, widely dispersed population, lack of developed infrastructure, variable topography, and extreme climate also make it the nation's most remote state. Over three-quarters of Alaska's 300 communities and roughly 20% of its 735,000 residents live in regions unconnected to the road system. Half of these residents live in the State's most remote villages, communities with disproportionately higher levels of poverty and limited infrastructure, some lacking essential services like water and sanitation. These rural citizens are acutely reliant on Alaska's resources to provide for their families. The State's ability to manage these resources in accordance with unique realities, local needs, and historical customs is thus critical to its sovereign interests.

Roadless rural Alaskans primarily travel by all-terrain vehicles; airplanes – generally regional, small bush plane, or private air service; snowmachines; and

boats. Alaska's mountainous northern climate further shapes the unusual nature of the State's limited transportation options: severe storm patterns routinely disrupt air service and rivers seasonally evolve into ice roads.

Alaska's waters provide essential travel corridors year round. Many rural citizens, particularly in southwest Alaska, live in small, isolated villages stretched along rivers, and depend on these networks of water connections for their everyday needs. Major rivers like the Yukon and Kuskokwim serve as critical arteries for transporting commercial fuel and goods to much of western Alaska throughout the summer months. Especially in more remote areas, Alaskans rely on these waters to access health care, goods, and services; recreate; and travel to hunting and fishing grounds. In winter, Alaska's rivers freeze into highways for snowmachine, dogsled, and all-terrain vehicle traffic, remaining a vital part of the State's transportation infrastructure that allows Alaskans to access vital goods and services. Alaska's rivers have functioned in this way for hundreds of years.

Because Alaska's rural villages are so isolated, residents in these communities also face economic challenges. Rural residents confront a formidable combination of high costs of living, little or no local tax base, fewer job opportunities, and limited earnings. Localized resource-based activities – such as local tourism and recreation-related jobs or small-scale mining, sport fishing, wildlife guiding, or trapping – often

provide an essential part of families' incomes and contribute to the economic activity of the region.

Alaska has an acute interest in retaining its management authority over water-based access routes and in crafting management decisions to account for local needs – needs that might be ignored or eclipsed by federal land management agencies with singular conservationist priorities and a national constituency. State regulators understand the unusual realities of life in Alaska and use that knowledge to design rules that consider local conditions, practices, and needs. But federal regulators – who may never even visit Alaska, let alone develop a nuanced understanding of the unique aspects of rural Alaskan life – lack this knowledge or focus. As a result, the nationwide regulations they impose can be ill-fitting for Alaska.

For example, in permitting hovercraft to operate on state waters, Alaska has prioritized opening its waters to meet the access and transportation needs of residents like Mr. Sturgeon, whom the Park Service apprehended for taking his hovercraft to hunting grounds. The federal government's national prohibition on hovercraft use might be sensible in Lower 48 parks where waters are used only for tourism and wilderness activities, but it is overbearing and harmful in Alaska, where, even in remote wilderness areas, citizens must use rivers for everyday transportation and to access necessities like food, fuel, and health care.

What is at stake here for Alaska, therefore, is not just a disagreement with the National Park Service

about permissible weekend recreation or the best method of routing tourists through national parks. Because "Alaska is different," *Sturgeon*, 136 S. Ct. at 1070, the State's continued management of its waters and lands is essential to maintain unencumbered access and meaningful use of Alaska's natural resources by its citizens.

B. Alaska's sovereign right to regulate, use, and manage its lands and waters is instrumental to Alaska's statehood and ANILCA's purpose.

Management and control of Alaska's natural resources is not only vital to its residents, but also lies at the heart of the State's sovereign identity. As this Court emphasized in its prior decision, a central motivation for Alaskans seeking statehood in 1956 was to allow the resource-rich territory to manage its own lands and waters. *Sturgeon*, 136 S. Ct. at 1064-65.

Before statehood, Alaska benefitted little from the extraction of its minerals or from the fur trade and fishing industries. Congress, not Alaska's territorial government, owned nearly all the land and had most of the authority over land laws, natural resources management, and fiscal matters. Terrence M. Cole, *Blinded by Riches: The Permanent Funding Problem and the Prudhoe Bay Effect*, Inst. of Soc. and Econ. Research, Jan. 2004.[2] Mining taxes were low and thus contributed little, and "only a tiny fraction of the wealth from

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[2] Available at http://www.iser.uaa.alaska.edu/Publications/blindedbyriches.pdf, at 33.

the salmon industry ever directly touched Alaska's shores." *Id.* at 36; *see also id.* at 50-52.

When delegates gathered in 1955 to draft the Alaska Constitution, they expected an enormous grant of land and minerals from Congress at statehood to sustain the new state. The delegates "were uniform in their belief that Alaska's natural resources had been 'locked up' and devalued by the negligent actions of the federal government and absentee owners," and that the careful development of Alaska's resources "spelled the difference between a future of plenty or of poverty." Gerald A. McBeath, The Alaska State Constitution 159 (2011).

Members of the convention's resources committee also acknowledged the difficulty of reconciling the desire to develop Alaska's resources with the need to avoid the resource exploitation of the past. Victor Fischer, Alaska's Constitutional Convention 132-33 (1975). The delegates ultimately drafted an entire constitutional article directing the State to practice prudent resource development that would most benefit all Alaskans. Article VIII recognized the critical importance to the State of thoughtful, internal management of Alaska's resources, and commanded that Alaska's resources be reserved to the people "for maximum use consistent with the public interest" and providing for free access to Alaska's navigable or public waters. Alaska Const. art. VIII, §§ 1, 14. Alaska's new constitution then served as the basis for subsequent statehood petitions to Congress.

Congress, concerned that Alaska would not otherwise be able to raise sufficient revenue to carry out the responsibilities of statehood, gave it 103 million acres of land and mineral rights to fund self-governance. Alaska Statehood Act, § 6(a), (b), (i), 72 Stat. 340, 342. "The primary purpose of the statehood land grants . . . was to ensure the economic and social well-being of the new state." *Trustees for Alaska v. State*, 736 P.2d 324, 335 (Alaska 1987). Through these land grants, Congress recognized that Alaska stood ready, willing, and able to manage its resources. It relinquished federal control of Alaska's resources to the people who best understood the State's needs – Alaskans.

As this Court recognized, under the terms of the Submerged Lands Act and the constitutional equal footing doctrine, at statehood Alaska "gained 'title to and ownership of the lands beneath navigable waters' within the State, in addition to 'the natural resources within such lands and waters,' including 'the right and power to manage, administer, lease, develop, and use the said lands and natural resources.'" *Sturgeon*, 136 S. Ct. at 1065 (quoting § 3(a), 67 Stat. 30, 43 U.S.C. § 1311(a); § 6(m), 72 Stat. 343)). Only once its ability to control and manage the Sate's lands and waters was assured could Alaska begin its journey toward self-sufficiency and prosperity.

C. ANILCA's requirement that state lands be treated differently from federal lands protects Alaska's sovereign rights.

Twenty-one years after statehood, Congress passed ANILCA, reserving over 100 million acres of federal land in Alaska – an area larger than California – for the primary purposes of conservation and protection. 16 U.S.C. § 3101 *et seq*. Vast swaths of Alaska's new and expanded national parks, wildlife refuges, wild and scenic rivers, national trails, wilderness preservation systems, and national forest monuments were organized into CSUs managed by different federal land management agencies. 16 U.S.C. § 3102(4). Roughly 40% of Alaska now falls within an ANILCA conservation system unit, and Alaska's National Parks now make up two-thirds of the entire National Park System.

While ANILCA reserved massive amounts of land – significantly limiting the possibility for Alaska's future economic development – it also included provisions meant to protect Alaska's authority. Congress's statement of purpose acknowledges ANILCA's twin goals: to protect the national interest in scenic, natural, cultural, and environmental values on public lands in Alaska, but also to continue to "provide[] adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people." 16 U.S.C. § 3101(d).

Congress protected Alaska's ability to direct the use of its own lands and waters by expressly stating

that non-federal "lands" – defined to include state waters as well as uplands – falling within newly expanded park boundaries would not be regulated as if they were federally owned. 16 U.S.C. §§ 3102(1), 3103(c) (providing non-federal lands are not "subject to the regulations applicable solely to [federal lands] within such units"). By the time ANILCA was passed, the State, private landowners, and Alaska Native Corporations had existing ownership interests in lands and waters across Alaska, so the federal areas ANILCA created encapsulated these non-federal areas into islands located within CSUs. Section 103(c) assures Alaska's sovereign authority to manage its waters and lands by excluding from CSUs those non-federal lands that happen to be located within unit boundaries. 16 U.S.C. §§ 3103(c), 3102(1), (3)(b)-(c), (11). This subsection further provides that, should the federal government wish to regulate non-public lands as part of a system unit, it must first acquire them; only then may the new lands become part of the unit and "be administered accordingly." 16 U.S.C. § 3103(c). By removing these non-federal lands and waters from the reach of the extensive regulatory regime applicable to federally owned parklands nationwide and drawing hard boundaries between how the different categories of lands should be treated, Section 103(c) limits federal jurisdiction and protects against abuse of federal regulatory power.

Now, for the second time, the Ninth Circuit nullified that guarantee, awarding the Park Service – and presumably other federal land management agencies

– broad authority to regulate state waters as federal lands. The Ninth Circuit's decision endorses further federalization of state-owned resources and subjects Alaskans to federal regulatory control in a manner that Congress neither authorized nor intended. Congress's careful balance between its dual goals of conservation and local control, and Alaska's longstanding sovereign right to manage its lands and resources, now lie in peril.

II. The Ninth Circuit's contortion of the federal reserved water rights doctrine threatens Alaska's political and economic sovereignty.

A. The Ninth Circuit's decision on remand disregards this Court's direction to construe ANILCA to protect Alaska's sovereignty and respect its uniqueness.

In 2016, this Court articulated governing principles for how to evaluate ANILCA and the Park Service's attempt to exercise management and control within CSUs. This Court reviewed Alaska's history, stressing that the Alaska Statehood Act, Alaska Native Claims Settlement Act, and ANILCA all reflect Congressional recognition that the proper state-federal balance was crucial to Alaska's economic health and prosperity. *Sturgeon*, 136 S. Ct. at 1064-66, 1070-71. The Court explained how ANILCA balanced the goals of conservation and local control. *Id.* at 1066 (quoting 16 U.S.C. § 3101(d)). And it discussed the "numerous Alaska-specific exceptions to the Park Service's

general authority over federally managed preservation areas" that are "woven throughout ANILCA," reflecting Congress's delicate balance. *Id.* at 1070-71. As this Court recognized, numerous aspects of ANILCA reinforce the importance of Alaska's difference and sovereignty – specifying, for example, that the Park Service cannot prohibit, even on federal lands, "certain activities of particular importance to Alaskans." *Sturgeon*, 136 S. Ct. at 1066 (citing 16 U.S.C. §§ 3170(a), 3201); *see also id.* at 1070-71 (citing 94 Stat. 2393, 16 U.S.C. §§ 3121(b), 3201).

Although the Court did not reach the question that the Ninth Circuit now has decided – whether the Nation River qualifies as "public lands" within the meaning of ANILCA, allowing broad federal management and regulation – its opinion stressed that "ANILCA repeatedly recognizes that Alaska is different" from other states, because of its majestic terrain and remoteness, the importance of Native Alaskan and subsistence values to the state, and its heightened need for state-managed resource development and use. *Id.* at 1070. ANILCA reflects "the simple truth that Alaska is often the exception, not the rule," and the law "contemplates the possibility that all the land within the boundaries of conservation system units in Alaska may be treated differently from federally managed preservation areas across the country, and that 'non-public' lands within the boundaries of those units may be treated differently from 'public' lands within the unit." *Id.* Applying these principles, this Court reversed the Ninth Circuit's initial reading of the

statute, calling it a "contorted and counterintuitive" reading of the statute because it was inconsistent with Congress's special solicitude for local control. *Id.* at 1071-72.

But on remand the Ninth Circuit again read ANILCA to erase distinctions between public and non-public lands and to eliminate state control in favor of national oversight. By holding that ANILCA transforms countless Alaskan navigable waters into federal lands, the Ninth Circuit once again endorsed a legal theory that subjects Alaska to plenary federal control. The Ninth Circuit's opinion lacks this Court's attention to principles of sovereignty and local control. It also contravenes this Court's legal precedents, ANILCA's text, and Congress's intent.

B. The Ninth Circuit's redefinition of the federal reserved water rights doctrine disregards this Court's precedents and tramples on state sovereignty.

Whether the Nation River qualifies as "public lands" in ANILCA is a legal issue that "touch[es] on vital issues of state sovereignty." *Id.* at 1072. ANILCA Section 103(c) imposes hard limits on the federal government's ability to regulate non-public lands, specifying that "[o]nly 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." 16 U.S.C. § 3103(c). The Ninth Circuit concluded that the Nation

River – a navigable waterway owned and traditionally regulated by the State – qualifies as "public lands" because Congress implicitly reserved an undefined and unquantified level of instream flow when it created the Yukon-Charley preserve. This stretches the federal reserved water rights doctrine beyond all recognition. It also ignores Congress's decision to craft ANILCA to protect Alaska's sovereignty. Neither Congress's direction nor this Court's cases support the Ninth Circuit's conclusion.

1. The Ninth Circuit's decision conflicts with this Court's water rights jurisprudence.

The Ninth Circuit held that the United States has an "implied reservation of water rights [in the Nation River], rendering the river public lands." Pet. App. 19a. The court determined that "non-public land is still subject to [regulations applicable only to public lands] if the United States retains an interest in it because the land is public to the extent of the interest." Pet. App. 8a. It acknowledged that the State holds title to the submerged lands at issue, but held that the United States retained a reserved interest in the waters flowing above the submerged lands, such that the waters are public lands under ANILCA. That holding profoundly distorts the reserved water rights doctrine and the equal footing doctrine.

To reach its conclusion, the Ninth Circuit relied on a muddled and distinguishable circuit precedent. The

Ninth Circuit's "*Katie John*" decisions concerned only subsistence activities under ANILCA's Title VIII, which are not now and have never been at issue in this case.[3] In *Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995) [*Katie John I*], the Ninth Circuit held that "public lands include some specific navigable waters as a result of reserved water rights" – but only for the sole purpose of administering ANILCA's rural subsistence priority under a unique statutory title. *Id.* at 704. Indeed, the court explicitly cautioned that its holding was limited to those portions of ANILCA "necessary to give meaning to [ANILCA's] purpose of providing an opportunity for a subsistence way of life." *Id.* at 702 n.9. The *Katie John I* court remained convinced that "ANILCA does not support [] a complete assertion of federal control" over Alaska's navigable waters. *Id.* at 704. In broadening *Katie John* well beyond the subsistence context, the Ninth Circuit now has embraced that federal takeover. It was wrong to do so.

Under this Court's jurisprudence, a federal reserved water right is a limited, non-ownership right to use or preserve a specific volume of water. When the federal government withdraws and reserves lands for a public purpose, such as creating a national park, it "by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the

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[3] Nor has any party to this case challenged the federal subsistence regulations that effectuate Title VIII's subsistence priority. Alaska supports the subsistence regulations – but this does not and need not require the State to cede control of its navigable waters to the federal government for all purposes.

purpose of the reservation." *Cappaert v. United States*, 426 U.S. 128, 138 (1976). This Court has strictly limited the scope of this doctrine: it applies only to "that *amount of water* necessary to fulfill the purpose of the reservation, no more." *Id.* (emphasis added).

Thus, in *Cappaert*, this Court examined the extent of the federal government's reserved water rights in the Devil's Hole National Monument, a deep limestone cavern in Nevada containing a subterranean pool home to a rare and endangered pupfish. In establishing the national monument, Congress's direction to give special protection to the pool and the fish living in it established a federal reserved water right – but the government's interest extended only to preserve the exact amount of water necessary to keep the fish alive. *Id.* at 141. To ensure that the doctrine remains limited to the amount of water absolutely necessary to fulfill the government's purposes – a crucial check on federal authority – courts applying the doctrine "carefully examine[] both the asserted water right and the specific purposes for which the land was reserved, and [must] conclude[] that without the water the purposes of the reservation would be entirely defeated." *United States v. New Mexico*, 438 U.S. 696, 700 (1978).

The Ninth Circuit did not adhere to this limiting principle. It made no attempt to constrain the National Park Service's reserved water rights interest to the minimum amount of water necessary to prevent the purposes of the Yukon-Charley reservation from being entirely defeated. Instead, the court decided that the Park Service's reserved water right extended to

prevent any water use that would merely *impact* the purposes of the reservation. Pet. App. 17a-18a. This novel redefinition of federal reserved water rights vastly expands the doctrine and completely defeats Alaska's rights in its waters just because there may be *some* federal interest in *some* use of the water. And the Ninth Circuit's analysis no longer treats the reserved water rights doctrine as concerning use of a particular amount of water, as this Court has required. Instead, the Ninth Circuit has invoked the doctrine to justify a wholesale grant of federal management authority over Alaska's navigable waters. This is a startling expansion of the doctrine, and one with no foundation in this Court's jurisprudence.

Even that holding would not have been enough, on its own, to entitle the federal government to regulate navigable waters that flow through CSUs. But the Ninth Circuit took another remarkable step and ruled that the United States has "title" to the water that is subject to reserved water rights. This was necessary in order to transform state waters into federal lands under ANILCA's definition section. ANILCA authorizes the federal government to regulate "public lands," which it defines as "[f]ederal lands." 16 U.S.C. § 3102(3). "Federal land" in turn is defined as "lands the *title* to which is in the United States." *Id.* § 3102(2) (emphasis added). And "land" includes "lands, waters, and interests therein." *Id.* § 3102(1). But the United States does not hold "title" to navigable waters as to which it has reserved water rights, let alone to the lands underlying Alaska's navigable waters. The Ninth

Circuit conceded that "reserved water rights are not a 'title' interest . . . in a narrow, technical sense," Pet. App. 16a (internal quotes omitted), but found "a vested interest in the water" to be good enough. *Id.* at 17a. It is not. If Congress intended that a non-title "interest" in water could make a river "public lands" that are fully subject to the power of federal regulation, it would have written the statute to say that.

Other provisions of ANILCA confirm that Congress did not intend that a federal usufructuary right – an interest far less than title – would transform entire lands and rivers into "public land," enabling broad federal regulation for all purposes. One example is that Section 103(c) limits the ability of the Secretary to regulate state, private, or other non-federal lands unless it purchases or otherwise acquires them. Yet the Ninth Circuit now gives the Park Service this right to regulate state waters without any purchase, compensation, or acquiescence from the State. *Cf.* 16 U.S.C. § 3192a.

The Ninth Circuit's ruling subverts not only ANILCA, but also the constitutional equal footing doctrine, the Submerged Lands Act, and the Alaska Statehood Act. At statehood, Alaska took title to its submerged lands as an "essential attribute" of state sovereignty, *Utah Div. of State Lands v. United States*, 482 U.S. 193, 195 (1987), which Congress formally recognized in the Submerged Lands Act and the Statehood Act, *see* 43 U.S.C. § 1311(a) (incorporated into the Alaska Statehood Act, 72 Stat. 343 § 6(m) (1958)). Along with title to the submerged lands, the State

received management power over the navigable waters themselves, 16 U.S.C. § 3210(b), and over the fish located in the waters. *See* 43 U.S.C. § 1311(a) (confirming and establishing state ownership and management of "the natural resources within such lands and waters"); 43 U.S.C. § 1301(e) (defining "natural resources" to include fish). Title to the lands underlying navigable waters is important to a state's sovereign authority and obligation to regulate waters in trust for the people for navigation, commerce, and fishing. *Illinois Cent. R. Co. v. Illinois*, 146 U.S. 387, 452 (1892). That is particularly true here given Alaska's unique history and the realities of life for many of its residents.

Although navigable waters themselves are not usually considered subject to traditional title ownership, they run together with the submerged lands they overlie; title to the bed of navigable waters "necessarily carries with it control over the waters above them." *Id.* Thus, the Submerged Lands Act recognized state assumption of both "submerged lands and waters." *United States v. California*, 436 U.S. 32, 37 (1978). Ever since statehood, then, Alaska has had sovereign control and management authority over its waters. *See also PPL Montana, LLC v. Montana*, 565 U.S. 576, 591 (2012) (explaining that under equal footing doctrine, "[u]pon statehood, the State gains title within its borders to the beds of waters then navigable" as a matter of constitutional grace, and may "allocate and govern those lands according to state law" as sovereign).

The Ninth Circuit did not and could not explain how a federal reserved water right eclipses the State's

sovereign interests in managing its waters. Had Congress meant to grant the Park Service broad regulatory power over Alaska's navigable waters superseding Alaska's sovereign ownership and control, it would have done so clearly and directly. Indeed, this Court's cases require that such interference with state control must be unambiguous and plain – another fundamental legal principle that the Ninth Circuit ignored.

2. The Ninth Circuit's decision conflicts with this Court's clear statement cases.

The Ninth Circuit not only distorted this Court's water rights jurisprudence, it also ignored the legal doctrine that functions as a crucial check on the precise power transfer that the Ninth Circuit endorsed: the clear statement doctrine.

"Congress does not exercise lightly" the "extraordinary power" to "legislate in areas traditionally regulated by the States." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). The clear statement doctrine effectuates this principle, serving as a necessary safeguard against unwarranted federal assumption of power. Under the doctrine, courts will not interpret a statute to "alter the usual constitutional balance between the States and the Federal Government" unless Congress has made "its intention to do so unmistakably clear in the language of the statute." Congressional intent to infringe on state sovereignty must be "plain to anyone reading [it]" through a "clear and manifest statement."

Gregory, 501 U.S. at 467; *Rapanos v. United States*, 547 U.S. 715, 738 (2006) (internal quotation marks omitted). This rule "acknowledge[s] that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory*, 501 U.S. at 461. In violation of these principles, the Ninth Circuit's reading of ANILCA significantly intrudes upon Alaska's sovereignty without clear Congressional intent to alter the traditional federal-state balance over management of navigable waters.

The clear statement doctrine applies wherever federal regulation "would result in a significant impingement of the States' traditional and primary power over land and water use." *Solid Waste Agency of N. Cook County v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 174 (2001) (*SWANCC*). This is unquestionably true here, for the expansive regulatory jurisdiction the Ninth Circuit appears to have created will be used to significantly impair Alaska's "traditional and primary power over land and water use" by forcibly removing Alaska's control of its submerged lands and navigable waters. *Rapanos*, 547 U.S. at 738; *see also SWANCC*, 531 U.S. at 172-73 (noting that clear statement requirement is especially crucial "where the administrative interpretation alters the federal-state framework by permitting federal encroachment upon a traditional state power"). But the Ninth Circuit made no effort to apply the doctrine.

Had the Ninth Circuit applied these principles, it could not have reached the result it did, for ANILCA

does not contain any statement, much less the required clear statement, of Congressional intent to force Alaska to cede control over its waters to the federal government. Indeed, the text of ANILCA, hundreds of pages long, does not mention navigable waters or reserved water rights at all. Nor does its definition of "public lands" as "lands, waters, and interests therein" the "title to which is in the United States," clearly and manifestly include navigable waters, because the government does not hold "title" either to a nonpossessory right to preserve instream flows or to the underlying submerged lands. In fact, Congress expressed the intent to *exclude* navigable waters from the definition of "public lands," by explicitly exempting all "lands . . . granted to the Territory of Alaska or the State under any other provision of Federal law." 16 U.S.C. § 3102(3)(A).

The Ninth Circuit's failures to correctly apply either the reserved water rights doctrine or the clear statement doctrine combine to create a particularly damaging legal landscape for states. In one blow, the Ninth Circuit has dramatically expanded the scope of federal regulatory authority and overridden local control of state waters, while simultaneously sweeping away the clear statement rule's protections against federal usurpation of state authority.

C. The Ninth Circuit's decision threatens states' authority under other federal statutes and in waters outside CSU boundaries.

Alaska is not the only sovereign whose control over its waters is threatened by the Ninth Circuit's decision. It also threatens other states and Native Tribes within the Circuit because ANILCA's definition of "public lands" appears verbatim in numerous other public lands statutes, and because the Ninth Circuit's decision appears to permit federal regulation of state-owned waters appurtenant to federal lands and waters.

When this Court last considered this case, it considered a statutory construction question applicable only to Alaska. But the Ninth Circuit's reserved water rights rationale is not limited to waters lying within the boundaries of ANILCA units in Alaska. The federal reserved water rights doctrine is judicially created and applies across the nation. And as Mr. Sturgeon points out, ANILCA's definition section – which the Ninth Circuit relied on to hold that Alaska's navigable waters are "public lands" – appears verbatim in numerous other public lands statutes across the west. Pet. 26-27 & n.1. The Ninth Circuit's rationale therefore invites the federal government to usurp control of navigable waters in parks and federal areas throughout the Circuit. This Court should not allow the Circuit's legal errors to compromise the sovereign interests of states across the west.

Making matters worse, the federal government's newly granted management authority also may extend well beyond the geographic scope of waters physically running through federal areas. Under the Ninth Circuit's "immensely broad" concept of appurtenance, the government's reserved water right gives it control of not just the portions of the navigable waterway that lie inside CSU boundaries, but also *other* waters appurtenant to the reserved federal land. *John v. United States*, 720 F.3d 1214, 1229-31 (9th Cir. 2013). The potential scope of the government management authority over what were previously clearly Alaska's waters now includes "all the bodies of water on which the United States' reserved rights could at some point be enforced – *i.e.*, those waters that are or may become necessary to fulfill the primary purposes of the federal reservation." *Id.* The scope of this holding is breathtaking, possibly including most or all of Alaska's waters – and without any clear congressional intent to deprive Alaska over those submerged lands and waters.

If allowed to stand, the Ninth Circuit's opinion could thus result in a federal takeover of state waters across the west – including waters that are not located inside the boundary of federal areas. This Court should not permit this to happen. It should grant Mr. Sturgeon's petition and ensure that state sovereignty is respected in the Ninth Circuit as this Court and Congress have directed.

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CONCLUSION

For all these reasons, this Court should grant the petition.

Respectfully submitted,

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