No. 13-562

In The Supreme Court of the United States

STATE OF ALASKA,

Petitioner,

v.

SALLY JEWELL, SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL.,

Respondents.

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

BRIEF OF THE STATES OF COLORADO, IDAHO, KANSAS, MONTANA, NEBRASKA, NEVADA, NEW MEXICO, NORTH DAKOTA, OKLAHOMA, OREGON, SOUTH DAKOTA, UTAH, AND WYOMING, AND THE ARIZONA DEPARTMENT OF WATER RESOURCES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTRODUCTION & INTEREST OF *AMICI CURIAE*[1]

"When the well's dry, we know the worth of water."

~ Benjamin Franklin 1746.[2]

The confluence between scarce water and abundant federal lands in the American West makes this case of acute concern for the western *amici* States. While in some parts of the country neither of these issues is of concern, in the West, it is a central fact of life. The decision below ignored these fundamental aspects of the *amici* States' existence in its quest to approve of broad federal government interference through a rule-making process within an area of traditional state power. This Court should not allow that dangerous precedent to stand.

So far as we know, Benjamin Franklin never visited the western United States. Yet, his adage holds true more than two centuries later. Wells frequently run dry in the states described by the great American explorer John Wesley Powell as the "Arid Lands." Without water, conserved and administered through appropriative water rights, life in the western states would not be possible. Development increasingly taxes the scarce water resources, putting a premium on water rights such as the reserved

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[1] Consistent with Sup. Ct. R. 37.2, the *amici* States provided notice to the parties more than 10 days before filing.

[2] RICHARD SAUNDERS (pseudonym), POOR RICHARD, 1746, January (Philadelphia, Benjamin Franklin 1746).

federal water rights claimed by the Secretaries of the Interior and Agriculture in this case.

The State *amici* have two primary interests in the Ninth Circuit decision in *John v. United States*, 720 F.3d 1214 (9th Cir. 2013). First, water in the west is scarce. Federal "reserved" land, however, is not. Alaska itself is 62% federal lands. Federal lands average approximately 47% of land within the eleven coterminous western states – many of the *amici* here. By contrast, the federal government owns an average of approximately 4% of the land in the other states.[3] Even more dramatically, "[m]ore than 60% of the average annual water yield in the eleven Western States is from federal reservations." *United States v. New Mexico*, 438 U.S. 696, 699 (1978). A map depicting the vast federal lands in the West located beyond the 100th prime meridian is reproduced in Appendix A to this brief.

At first blush the Ninth Circuit appears to have addressed a limited question, regarding interpretation of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3101 (1980), a statute specific to the state of Alaska. In reality, however, this case approved a novel application of the federal reserved water rights doctrine that threatens the longstanding deference to state law for governing

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[3] ROSS W. GORTE ET AL., CONG. RESEARCH SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA, summary (2012).

water throughout the West. Alaska, itself, is flush with water, giving the *amici* States a uniquely interested voice in this fight over the ease with which the federal government can assert a water right. Far from being an esoteric case about a statute governing rural Alaska, this case strikes at the core of what governs life in the "Arid Lands" beyond the 100th prime meridian.[4]

Second, the *amici* States have an important federalism interest in ensuring that federal agency preemption in areas of traditional state power is properly limited. As a threshold matter, the Ninth Circuit failed to heed the "clear statement" rule, and, thereby, undermined state sovereignty. The State *amici* maintain a strong interest in narrow application of federal preemption, particularly in the water law context.

To this end, the *amici* States are interested in assuring that federal reserved water rights are properly adjudicated through the courts and not by a rulemaking process like the one approved by the Ninth Circuit. The court below improperly applied *Chevron* deference to the rules adopted by the Secretaries. *See*, *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). There is nothing in ANILCA to indicate that Congress intended to preempt an area of traditional state sovereignty, and

[4] *See generally* WALLACE STEGNER, BEYOND THE HUNDREDTH MERIDIAN: JOHN WESLEY POWELL AND THE SECOND OPENING OF THE WEST, 218 (Penguin Books 1992) (1954).

the court below did not even require the federal government to establish that such an intent existed.

SUMMARY OF ARGUMENT

I. The prior appropriation system developed in the western states to manage scarce water resources. Congress has consistently and expressly deferred to state administration and adjudication of water rights pursuant to this system. The judicially-created reserved water rights doctrine operates as a narrow exception to that deference, an exception that requires a court to carefully examine the primary purposes of a federal reservation and whether Congress intended to reserve unappropriated waters to serve that reservation. The Secretaries, nevertheless, determined the existence of federal reserved water rights for Alaska's federal reservations through notice and comment rulemaking.

Not only did the Secretaries improperly apply the reserved water rights doctrine, the Ninth Circuit wrongly afforded the Secretaries' determination "some deference" and upheld the promulgated rules in their entirety, permitting the Secretaries to regulate much of Alaska's waters. *See John*, 720 F.3d at 1229. The Secretaries' determination was not, however, entitled to any deference, and the decision below threatens the sovereign authority of the western states to govern and administer waters within their respective boundaries.

II. This Court requires Congress to express a "clear statement" to preempt state law in areas that have traditionally been regulated by the states. The Ninth Circuit eschewed this longstanding rule and instead gave *Chevron* deference to an agency interpretation that effectively preempted an area of traditional state power (the fishing and hunting regulation of navigable waters). This misapplication of *Chevron* deference conflicts with this Court's precedents and undermines the *amici* States' sovereignty. The clear statement rule has traditionally been an important safeguard for state sovereignty. The preemption-by-deference methodology applied by the Ninth Circuit undermines this core-protection of federalism and could further erode state sovereignty in untold future circumstances.

In addition, the application of *Chevron* deference to recognize reserved water rights conflicts with the long-standing policy that any such federal water right be established through a court adjudication. The rulemaking at issue in this case calls into question the stability and certainty of water rights throughout the West.

ARGUMENT

I. The Ninth Circuit misapplied the federal reserved water rights doctrine, threatening the certainty provided by state water law.

The Ninth Circuit misapplied the federal reserved water rights doctrine by allowing the Secretaries to unilaterally establish the existence of federal reserved water rights through rulemaking rather than a court adjudication process, and without considering the purposes for which Congress intended the reservations to be made. In reaching its opinion, the Ninth Circuit undermined the assurances provided under the prior appropriation system, the adjudication of rights within that system, the long-standing deference of Congress to the individual state water allocation procedures, and the nature of the federal reserved right.

A. The prior appropriation system exists throughout the western states due to scarce water resources.

Unlike the eastern United States, the West was more difficult to settle, in large part because water was not readily available to serve agricultural pursuits on those lands. This was recognized by John Wesley Powell, director of the U.S. Geological Survey, in his seminal report to Congress in 1879, "Report on the Lands of the Arid Region of the United States" where he noted on the first page of his report:

> The eastern portion of the United States is supplied with abundant rainfall for

> agricultural purposes, receiving the necessary amount from the evaporation of the Atlantic ocean and Gulf of Mexico; but westward, the amount of aqueous precipitation diminishes in a general way until at last a region is reached where the climate is so arid that agriculture is not successful without irrigation. This Arid Region begins about mid-way in the Great Plains and extends across the Rocky Mountains to the Pacific Ocean.[5]

Water allocation in the eastern United States had developed according to the riparian water rights doctrine, which limits water use to landowners bordering a river or lake. *See* N. CORBRIDGE, JR. & TERESA A. RICE, VRANESH'S COLORADO WATER LAW 1 (rev. ed. 1999). Typically characteristic of wetter climates, riparianism mandates equal sharing of water during periods of shortage because there is no prioritization of use. A. DAN TARLOCK ET AL., WATER RESOURCE MANAGEMENT 3, 35 (4th ed. 1993). Because a riparian water right inheres in land ownership, it need not be exercised to be kept alive. 7 R. CLARK, WATERS AND WATER RIGHTS § 610, at 28 (1976). Because the American West has much less precipitation than the East, the riparian doctrine proved ill-suited to address the water supply problems confronting settlers.

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[5] J.W. POWELL, REPORT ON THE LANDS OF THE ARID REGION OF THE UNITED STATES, WITH A MORE DETAILED ACCOUNT OF THE LANDS OF UTAH, H. EXEC. DOC. NO. 45-73, at 1 (1878), *available at* http://pubs.usgs.gov/unnumbered/70039240/report.pdf.

Consequently, in the western territories, a new system of water allocation developed out of the practicalities of putting arid lands to use. This system was based on the date of appropriation of the water for a beneficial use. It encouraged western settlement by ensuring that those who first appropriated the water would have the best priority to use that water, even when their use may preclude other users from receiving water. JOSEPH L. SAX ET AL., LEGAL CONTROL OF WATER RESOURCES, 125-26 (4th ed. 2006).

Although each western state has developed its own nuances to the prior appropriation system, in general, a water right is established by diverting water from its natural course and applying it to a beneficial use. Similar to other property rights, a water right is actually a bundle of rights, which includes the right to divert a quantity of water for beneficial use. The water right also includes a priority date based on the date of the initial appropriation of water. *See*, *e.g.*, *Arizona v. California*, 373 U.S. 546, 553 (1963); *see generally, Empire Lodge Homeowners' Ass'n v. Moyer*, 39 P.3d 1139, 1146-48 (Colo. 2001).

In keeping with the prior appropriation system, a water right provides protection to an appropriator against those whose appropriations have a later, or "junior," priority date. When water is scarce, the holder of a valid earlier, or "senior," water right may "call out" upstream junior water rights, ensuring the senior right receives its legal entitlement to water. In that event, upstream junior water rights must cease using water until the calling senior water right

receives its water. *See* G. VRANESH, COLORADO WATER LAW, 684 (1987); *see also Santa Fe Trail Ranches Prop. Owners Ass'n v. Simpson*, 990 P.2d 46, 53-54 (Colo. 1999). Thus, in a prior appropriation regime, the priority date is a most fundamental stick in the bundle of rights that comprise a water right. *See Empire Lodge*, 39 P.3d at 1148-49. In this manner, "[t]he first-in-time, first-in-right ranking of water rights under the prior appropriation system helps guarantee certainty and stability in western water law." Judith V. Royster, *A Primer on Indian Water Rights: More Questions Than Answers*, 30 TULSA L.J. 61, 70 (1994).

Against this backdrop, this Court has recognized that Congress may impliedly reserve the minimum amount of water necessary to meet the primary purposes of a reservation of lands from the public domain. This is the federal reserved water rights doctrine. A federal reserved water right still receives a priority date relative to all other water rights in the state, and federal reserved rights are otherwise subject to Congress' longstanding deference to state adjudicatory and administrative systems.

B. Congress has expressed a clear intent to defer to and respect state sovereignty over water administration and adjudications.

For almost 150 years, Congress has recognized the authority of western states to establish the right to use unappropriated water under each state's own laws. *See* Mining Act of 1866, 43 U.S.C. § 661; Desert Land Act of March 3, 1877, 43 U.S.C. §§ 321-339. For example, with the passage of the Desert Land Act, Congress expressly confirmed its deference to state water law, intending that the waters within each state be subject to state law, and thus any settlers upon the public lands were required to rely "upon bona fide prior appropriation." 43 U.S.C. § 321; *see also Cal. Or. Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142, 162-64 (1935) (holding that the Desert Land Act expressed Congress' intent to defer to each states' chosen water law system). From that point forward, "water rights were to be acquired in the manner provided by the law of the State of location." *Fed. Power Comm'n v. Oregon*, 349 U.S. 435, 448 (1955). There is a "consistent thread of purposeful and continued deference to state water law by Congress." *California v. United States*, 438 U.S. 645, 653 (1978).

Congressional deference to state sovereignty over water administration also extends to state court adjudications of all water rights within the state's borders, including federal reserved water rights. Through the McCarran Amendment, Congress waived

the federal government's sovereign immunity and consented to the jurisdiction of state courts for the adjudication of federal rights to water. 43 U.S.C. § 666 (1952). The McCarran Amendment represents a "clear federal policy" against "the piecemeal adjudication of water rights in a river system" and in favor of "unified proceedings," with "comprehensive state systems for adjudication of water rights as the means for achieving these goals." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 819 (1976).

C. The federal reserved water rights doctrine is a narrow exception to Congress' longstanding deference to state sovereignty over water rights.

This Court has stated, and the *amici* States recognize, that the United States undoubtedly has the power to reserve unappropriated water for use on lands withdrawn and reserved from the public domain. *E.g.*, *Winters v. United States*, 207 U.S. 564, 577 (1908). This is so even given "Congress' explicit deference to state water law." *United States v. New Mexico*, 438 U.S. 696, 715 (1978). Thus, the judicially created federal reserved water rights doctrine acts as a narrow exception to the general policy that "federal entities must abide by state water law." *See New Mexico*, 438 U.S. at 702.

Although the reserved rights doctrine arose in the context of an Indian reservation in *Winters*, courts have applied the doctrine to other federal reservations

of land such as National Forests and National Monuments. *Id.*; *Cappaert v. United States*, 426 U.S. 128, 138-39 (1976). Because Congress "has almost invariably deferred to the state [water] law" in the "field of federal-state jurisdiction with respect to allocation of water," whether a reserved water right exists requires "careful examination" by the courts of "both the asserted water right and the specific purposes for which the land was reserved." *New Mexico*, 438 U.S. at 700-01. Courts will only imply a corresponding reservation of a "minimal need" of water, *Cappaert*, 426 U.S. at 141, where the "water is necessary to fulfill the very purposes for which a federal reservation was created," and without which "the purposes of the reservation would be entirely defeated." *New Mexico*, 438 U.S. at 700, 702.

When water is reserved for a primary purpose of the particular reservation, the United States acquires a vested water right effective as of the date of the creation of the reservation of land, superior to the rights of any subsequent appropriators. *Cappaert*, 426 U.S. at 138; *Arizona*, 373 U.S. at 600. Such rights "inescapably vie with other [water claims] for the limited quantities" of water existing in the arid West, providing yet another reason for careful application of the doctrine. *New Mexico*, 438 U.S. at 699; *see* John E. Thorson et al., *Dividing Western Waters: A Century of Adjudicating Rivers and Streams, Part II*, 9 U. DENV. WATER L. REV. 299, 306-12 (2006) (describing the vast sweep of the reserved rights doctrine in the West).

Moreover, "[t]his competition is compounded by the sheer quantity of reserved lands in the Western States," where "[s]ubstantial portions of the public domain have been withdrawn and reserved by the United States for use as Indian reservations, forest reserves, national parks, and national monuments." *New Mexico*, 438 U.S. at 699.[6] Because many federal reservations were created relatively early in the development of the western United States, any reserved water rights associated with these reservations possess a senior priority to most non-federal appropriations. *See Cappaert*, 426 U.S. at 138; *see generally* Thorson, 8 U. DENV. WATER L. REV. at 442-43 (noting the problem that federal reserved water rights pose to junior state appropriators).

The McCarran Amendment does not alter the substantive nature of any federal reserved water right, but demonstrates "congressional recognition of the primacy of western states' interests in regulating and administering water rights . . . including the determination and adjudication of the water rights claimed by the United States." *United States v. City*

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[6] *See also* Thorson, 9 U. DENV. WATER L. REV. at 310-11 (citing a 1980 report identifying over 187 million acres of federal reserves across 11 western states that might possess federal reserved water rights); John E. Thorson et al., *Dividing Western Waters: A Century of Adjudicating Rivers and Streams*, 8 U. DENV. WATER L. REV. 355, 359-60 (2005) (noting that federal land ownership exceeds 50% of the landmass in seven western states, and describing the potential reserved water rights claims as "enormous").

and County of Denver, 656 P.2d 1, 9 (Colo. 1982). The Ninth Circuit, however, ignored this long history of congressional deference to state water law and state court adjudication of water rights, and instead sanctioned the Secretaries' determination of water rights through their own notice and comment rulemaking and afforded the Secretaries "some [*Chevron*] deference" in making these determinations. *John*, 720 F.3d at 1221-1223.

D. The Ninth Circuit's decision conflicts with Supreme Court precedent and threatens the "certainty and stability" of water law in the West.

The Secretaries established the existence of federal reserved water rights via notice and comment rulemaking – referred to as the 1999 Rules by the Ninth Circuit – to justify asserting regulatory authority over Alaska's water resources. According to the Supreme Court, however, establishing a federal reserved water right requires scrutiny of Congress' intent to reserve water appurtenant to the reservation to avoid entirely defeating the primary purposes of the reservation. *New Mexico*, 438 U.S. at 700. Once established, federal reserved water is further limited to the minimal amount of water deemed necessary to "fulfill the very purposes for which a federal reservation was created." *Id.*; *Cappaert*, 426 U.S. at 141. In this case, both Congress' intent and the amount of

water necessary to fulfill that intent involve questions that are traditionally the province of state adjudication and are, therefore, wholly unsuited for determination by agency rulemaking. The Ninth Circuit avoided this Court's clearly-stated precedent, apparently through a misunderstanding of the federal reserved water rights doctrine. Indeed, the Ninth Circuit noted that no party claimed "that the water itself must be reserved to fulfill the purposes of the ANILCA reservations," *John*, 720 F.3d at 1238, in direct conflict with *New Mexico*, 438 U.S. at 700.

The Ninth Circuit's holding also ignores the overall policy of deference to state administration and state court adjudication of all water rights, and creates an enormous loophole to the "narrow exception" that the reserved water rights doctrine is supposed to represent. *See New Mexico*, 438 U.S. at 702. Specifically, the decision risks impermissibly expanding the federal reserved water rights doctrine by allowing federal agencies to create a senior water right in favor of the federal government via a rulemaking that is afforded deference, instead of through an adjudication of that right against competing water users. *John*, 720 F.3d at 1227; *see also* Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition to Include Waters Subject to Subsistence Priority, 64 Fed. Reg. 1276, 1276 (Jan. 8, 1999) (1999 Rules) (noting "this document identifies Federal land units in which reserved water rights exist.").

As a result, holders of state water rights may no longer rely on the state administrative and adjudicatory systems to confirm and protect their water rights. *See* Thorson II, 9 U. DENV. WATER L. REV. at 369 (noting that "[t]here are few western watersheds without inchoate federal or Indian rights" and without the adjudication of these rights, "rights from state decrees would be thin reeds"). By approving the process that is essentially an adjudication of federal reserved water rights by rulemaking, the Ninth Circuit's opinion threatens the very "certainty and stability" that the prior appropriation system was intended to provide to western states. *See* Royster, 30 TULSA L.J. at 70.

II. THE NINTH CIRCUIT FAILED TO FOLLOW THE "CLEAR STATEMENT" RULE FOR PREEMPTING AN AREA OF TRADITIONAL STATE POWER AND INSTEAD APPLIED THE INAPPLICABLE LEGAL DOCTRINE OF *CHEVRON* DEFERENCE.

The Ninth Circuit declined to apply the federalism-protecting rule requiring that Congress manifest a "clear statement" of its intention to displace state sovereignty in an area of traditional state power. Making matters worse, it reviewed the rules by which the federal government granted itself sovereignty over these waters with *Chevron* deference. *John*, 720 F.3d at 1229. The *amici* States have a strong interest in courts hewing to the "clear statement" rule, as is required by many of this Court's

decisions. The Ninth Circuit should have required the federal government to prove the statute plainly demonstrated Congress' clear and manifest intent to preempt an area of traditional state power.

A. The "clear statement" rule is a valuable safeguard of state sovereignty.

The clear statement rule requires Congress to manifest a clear purpose to preempt the historic police powers of the states when the area of legislation is a matter traditionally regulated by the states. *See*, *e.g.*, *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). This safeguard protects the balance of federal and state power. *United States v. Bass*, 331 U.S. 218, 230 (1947). The high bar for preempting state power is rooted in principles of federalism and respect for state sovereignty. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992). This Court has long and broadly recognized the importance of this rule to our Constitutional structure.[7]

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[7] *Bethlehem Steel Co. v. New York State Labor Relations Bd.*, 330 U.S. 767, 780 (1947) ("Congress can speak with drastic clarity whenever it chooses to assure full federal authority, completely displacing the States"); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 146-147 (1963) ("[W]e are not to conclude that Congress legislated the ouster of this [state] statute . . . in the absence of unambiguous congressional mandate to that effect"); *Garcia v. San Antonio Metro. Trans. Auth.*, 469 U.S. 528, 550-551 (1985) (discussing structure of U.S. Constitution as protection for state sovereignty); *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng's*, 531 U.S. 159, 174

(Continued on following page)

In this case the courts were asked to review a federal claim displacing Alaska's sovereign control over the regulation of hunting and fishing on its navigable waters. There can be no dispute that this area of law was traditionally regulated by the state, *United States v. Alaska*, 521 U.S. 1, 5 (1997), just as hunting and fishing has been by other states. As required by the clear statement rule, the Ninth Circuit should have determined whether Congress, in the text of ANILCA, clearly declared it intended to preempt this area of state law. But the Ninth Circuit did not. Doing so, however, would have clearly demonstrated that *Chevron* deference was not proper in this case, as the text of ANILCA falls far short of clearly demonstrating an intent to displace Alaska's sovereign power in this area.

Indeed, the Ninth Circuit, in the related case involving ANILCA known as *Katie John I*, went so far as to recognize that ANILCA "makes no reference to navigable waters" and did not give "clear direction" about which navigable waters are "public lands." *Alaska v. Babbitt*, 72 F.3d 698, 702 (9th Cir. 1995). The court even admitted that the word "title" in the statute favored the state's interpretation that the statute excluded navigable waters. *Id.* at 704. These holdings were correct; ANILCA does not express a clear intent to displace Alaska's sovereign power over

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(2001) (rejecting interpretation of statute that would impinge area of traditional state power over land and water use).

fishery regulation in navigable waters. This should have ended the matter.

B. Preemption cannot be inferred by applying *Chevron* deference to a federal agency rulemaking and without any Congressional statement of intent to preempt.

Failing to apply the clear statement rule, the Ninth Circuit compounded its error by giving deference to preemption-by-rulemaking. Courts defer to an agency interpretation of a statute it is charged with enforcing. *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984). This deference is only appropriate if the statute is ambiguous or silent regarding a matter in which the agency has expertise, and the agency interpretation is a reasonable reading of the statute. *Id.* The Secretaries determined, through notice-and-comment rulemaking, that their authority to regulate pursuant to ANILCA applied to navigable waters where the federal government "may" have a federal reserved water right. *John*, 720 F.3d at 1222. Deference to this determination was wholly inappropriate.

As an initial matter, given Congress' longstanding deference to state water administration and state court adjudication of federal reserved water rights, Congress could not have intended to grant the Secretaries the authority to determine the existence of reserved water rights through rulemaking. *See City of*

Arlington v. FCC, 133 S. Ct. 1863, 1874 (2013) (noting that "for *Chevron* deference to apply, the agency must have received congressional authority to determine the particular matter at issue in the particular manner adopted"). With Congress' acquiescence, it has been the western states that have developed significant expertise over the last 150 years at administering and adjudicating such rights, not the heads of federal agencies. The Secretaries possess no such special expertise in this area. Given the Secretaries' lack of expertise, Congress could not intend to grant them the "authority to determine the particular matter at issue in the particular manner adopted." *City of Arlington*, 133 S. Ct. at 1874.

The *Chevron* rule properly allocates the division of powers within a single sovereign: the federal government. The "clear statement" rule, however, recognizes that in cases like this, the interests of fifty other sovereigns are at stake. The "clear statement" rule ensures that such an imposition only occurs with the clear understanding and intent of all three branches of the federal government.

The Ninth Circuit's failure to apply the "clear statement" rule, and defer to the Secretaries' rulemaking nonetheless, gives the federal executive branch powers it has never had over the states. The temptation to expand federal water rights by rulemaking rather than by congressional action is not hard to imagine. This Court should review the decision below and reinforce the importance of applying

the "clear statement" rule in the context of claimed federal water rights.

CONCLUSION

The United States Supreme Court should grant Alaska's petition for certiorari.

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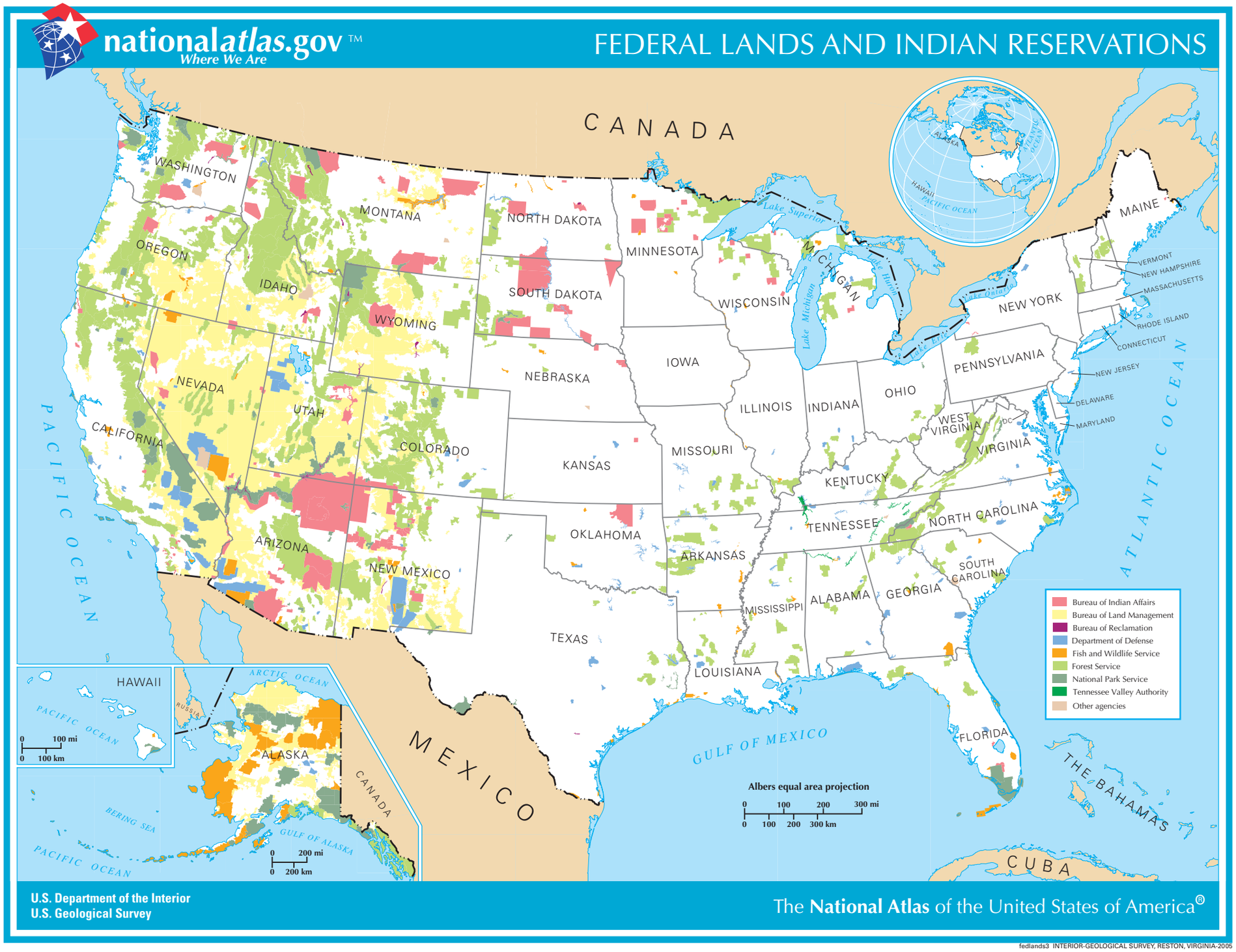
APPENDIX A

U.S. Geologic Survey: *Federal Lands and Indian Reservations* (2005)

NationalAtlas.gov, Federal Lands and Indian Reservations (2005), http://nationalatlas.gov/printable/images/pdf/fedlands/fedlands3.pdf.

App. 1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MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
WEST VIRGINIA
PENNSYLVANIA
NEW YORK
MAINE
VERMONT
NEW HAMPSHIRE
MASSACHUSETTS
RHODE ISLAND
CONNECTICUT
NEW JERSEY
DELAWARE
MARYLAND
DC
Lake Superior
Lake Michigan
Lake Huron
Lake Erie
Lake Ontario
ALASKA
HAWAII
PACIFIC OCEAN
ATLANTIC OCEAN
GULF OF MEXICO
MEXICO
CUBA
THE BAHAMAS
ARCTIC OCEAN
RUSSIA
BERING SEA
GULF OF ALASKA
Bureau of Indian Affairs
Bureau of Land Management
Bureau of Reclamation
Department of Defense
Fish and Wildlife Service
Forest Service
National Park Service
Tennessee Valley Authority
Other agencies
Albers equal area projection
0 100 200 300 mi
0 100 200 300 km
0 100 mi
0 100 km
0 200 mi
0 200 km
U.S. Department of the Interior
U.S. Geological Survey
The National Atlas of the United States of America®
fedlands3 INTERIOR-GEOLOGICAL SURVEY, RESTON, VIRGINIA-2005