

No. 25-320

IN THE
Supreme Court of the United States

ALASKA, *et al.*,

Petitioners,

v.

UNITED STATES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF AMICUS CURIAE
ASSOCIATION OF FISH AND
WILDLIFE AGENCIES IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

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QUESTION PRESENTED

Whether the United States can regulate fishing on Alaska's navigable waters under the Alaska National Interest Lands Conservation Act, when its statutory authority is limited to "public lands" and that term is defined as "lands, waters, and interests therein...the title to which is in the United States."

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INTEREST OF AMICUS CURIAE¹

The Association of Fish and Wildlife Agencies (“Association”) files the brief herein as *amicus curiae* in support of the State of Alaska, the Alaska Department of Fish and Game (ADFG), and granting of Alaska’s petition for certiorari, and reversal of the U.S. Court of Appeals for the Ninth Circuit’s judgment affirming the district court in proceedings below.

The Association serves as the collective voice of North America’s State, provincial, and territorial fish and wildlife agencies, and files this brief to identify widely-shared State-based concerns over the Ninth Circuit’s judgment with regard to State management authority in Alaska as well as many of the 48 contiguous States that could follow from expansion of the Federal reserved water rights doctrine.

State fish and wildlife agencies are tasked with conserving wildlife resources on public and private lands within their borders. The Association, which includes the fish and wildlife agencies of all 50 States, the District of Columbia, Guam, and the U.S. Virgin Islands, as well as numerous individual and organizational members in the academic, conservation, and outdoor-industry sectors,

1. The filing of this brief was authorized by vote of the Executive Committee of the Association on September 22, 2025. In compliance with Supreme Court Rule 37.2(a), the Association provided counsel of record with timely notice of its intent to file this amicus brief on October 6. No counsel for any party authored this brief in whole or in part. No person or entity other than the Association made any monetary contribution to the preparation or submission of this brief.

advances science-based management and conservation policy. In service of these goals, the Association has worked for more than a century with Federal, State, Native American, and private partners to address wildlife management challenges, as well as safeguard agency interests in maintaining the public trust in fish and wildlife resources for all future generations.

From time to time the Association and its State members have filed briefs as *amicus curiae* before Federal courts to brief issues of statutory interpretation that, as in this case, may have spillover effects in many States in contexts distinct from the ones in which they originated.

SUMMARY OF THE ARGUMENT

Courts and Congress agree: “Alaska is different[.]”² But not so different: Alaska, like all other States, is the primary manager of fish and wildlife resources on all lands and waters within its borders, including navigable waters. Even against the legislative backdrop of the Alaska National Interest Lands Conservation Act (ANILCA) and its objective of protecting the interlocking values of rural subsistence and “Native physical, economic, traditional, and social existence[.]”³ Alaska’s historic police powers are not superseded without a statement of clear and manifest purpose by Congress, and no such statement appeared in ANILCA at enactment or in the decades since.⁴

2. *Sturgeon v. Frost* (*Sturgeon I*), 577 U.S. 424, 438 (2016).

3. 16 U.S.C. § 3111(1).

4. *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (holding that preemptive power in areas traditionally regulated by States is

Alaska and the arid Western States most frequently experience reserved water rights disputes, but the Association and all member States all have a pressing interest in review by this Court. The Ninth Circuit’s decision continues to extend the reserved water rights doctrine beyond mere water allocation to augment Federal authority in fish and wildlife management, at the States’ expense, on Federal lands and waters within their borders and with substantial effects on resources managed by the States in and around navigable waters.

Without review and reversal, that result will not remain confined to Alaska or the Ninth Circuit. Federal agencies manage lands and waters nationwide, and the Ninth Circuit’s judgment, by continuing the unfounded and improvisational approach of the *Katie John* line of cases, threatens to bring that approach and its attendant harms to every jurisdiction. That result would erode States’ core sovereign authority to manage fish and wildlife—a responsibility Alaska retains along with all other States.

Denying review therefore harms every State by unsettling the constitutional balance between State and Federal authority.

REASONS ALASKA’S PETITION SHOULD BE GRANTED

The question presented in Alaska’s petition is of signal importance to maintaining jurisdictional certainty in fish and wildlife management.

“extraordinary...in a federalist system” but must be “exercise[d] lightly.”).

This Court has long recognized that States retain primary authority over fish and wildlife within their borders unless Congress clearly and expressly provides otherwise. States have accordingly amassed the great majority of professional and scientific capacity that is used by State and Federal agencies alike to conserve wildlife and regulate harvest for sustainable use by current and future generations. The Ninth Circuit's decision erodes that foundation by expanding the reach of the Federal reserved water rights doctrine in a way that Congress never authorized. If allowed to stand, the decision below would invite further encroachments on State authority and alter the balance of federalism that underlies wildlife management in the United States.

This risk is not confined to the unique context of ANILCA. Jurisdictional fragmentation and overlapping orders are a perennial concern of State managers throughout the Lower 48, including within the National Wildlife Refuge System, where harmonizing Federal hunting and fishing rules with State rules is a general policy that furthers the objectives of properly managing fish and wildlife resources and protecting other Refuge values.⁵

If Federal reserved water rights are allowed to become a vehicle for broader Federal intervention into fish and wildlife management, State fish and wildlife agencies

5. *See, e.g.*, U.S. Fish & Wildlife Serv., National Wildlife Refuge System; 2025-2026 Station-Specific Hunting and Sport Fishing Regulations, 90 Fed. Reg. 41,900 (Aug. 28, 2025), *available at* <https://www.federalregister.gov/documents/2025/08/28/2025-16440/national-wildlife-refuge-system-2025-2026-station-specific-hunting-and-sport-fishing-regulations>.

face profound uncertainty in a domain that is historically and constitutionally reserved to them. Certiorari is therefore warranted to reaffirm the limits this Court has previously placed on Federal reserved water rights and to guarantee States' enduring role as primary stewards of fish and wildlife within their borders.

I. CERTIORARI IS WARRANTED BECAUSE THE NINTH CIRCUIT'S DECISION UNDERMINES THE STATES' CORE SOVEREIGNTY INTEREST IN MANAGEMENT OF FISH AND WILDLIFE WITHIN THEIR BORDERS.

Since the Alaska Supreme Court declared a State-enacted rural subsistence priority unconstitutional in *McDowell v. State*, 785 P.2d 1 (Alaska 1989), Federal implementation of ANILCA's rural subsistence priority via the *Katie John* trilogy⁶ has led to a dysfunctional equilibrium. The Ninth Circuit's decision below compounds this instability in light of this court's judgment in *Sturgeon v. Frost*, 587 U.S. 28, 2019 (*Sturgeon II*), and denies Alaska the authorities enjoyed by all other States under the Equal Footing Doctrine of the U.S. Constitution. Denying certiorari would leave open "vital issues of state sovereignty"⁷ not just for Alaska, but also for the remaining States, as they execute their shared and individual missions of managing fish and wildlife pursuant to State laws.

6. *Alaska v. Babbitt* (*Katie John I*), 72 F.3d 698 (9th Cir. 1995), *adhered to sub nom. John v. U.S.* (*Katie John II*), 247 F.3d 1032 (9th Cir. 2001) (en banc) (per curiam), *John v. U.S.*, 720 F.3d 1214 (9th Cir. 2013) (*Katie John III*).

7. *Sturgeon I*, 577 U.S. at 441.

- a. **All states maintain primary authority to manage fish and wildlife within their borders absent clear and express displacement by Congress.**

The thirty years from *Katie John I* to Alaska’s petition give life to this Court’s observation that “[n]avigable waters uniquely implicate sovereign interests.” *Idaho v. Coeur d’Alene Tribe*, 521 U.S. 261, 284 (1997). The process through which sovereign title to all lands underlying navigable waters passed to the original States upon independence, enshrined in the Equal Footing Doctrine, endows all States with “the right to control and regulate” navigable waters. *Coyle v. Smith*, 221 U.S. 559, 573 (1911). This right is entwined with another: State authority to manage fish and wildlife for the public trust, likewise as successors-in-title to the English crown. *Martin v. Waddell’s Lessee*, 41 U.S. 367, 406 (1842).

The State of Alaska retains ownership of the submerged lands underneath the Kuskokwim River, and primary regulatory authority over the River, including the “power to control navigation, fishing, and other public uses of water.” *U.S. v. Alaska*, 521 U.S. 1, 5 (1997). See also *PPL Montana, LLC v. Montana*, 565 U.S. 576 (2012). Navigation, fish and wildlife management, and public use of navigable waters are all core “aspect[s] of sovereignty” retained by the States. *Ohio v. EPA*, 98 F.4th 288, 311 (D.C. Cir.), *cert. denied*, 145 S.Ct. 994 (2024). Leaving the Ninth Circuit’s judgment in place would cut deeply into Alaska’s reserved authorities by ignoring the ways in which these authorities, as shaped by ANILCA, are thoroughly intertwined with the circumstances of

Alaska’s admission as a State⁸ and only with recourse to the judicially-created reserved water rights doctrine and no interstate commerce facts at play.

Just as Alaska’s ownership of these riverbeds and primary authority to regulate fishing in the waters running over them is now unsettled by the Ninth Circuit’s holding, so too are all States’ equivalent authorities to manage fish and wildlife for the benefit of their residents. These are broad and rooted in historic police powers, subject only to “clear and manifest” supersession by Congress. *Utah Native Plant Soc’y v. U.S. Forest Serv.*, 923 F.3d 860, 866-67 (10th Cir. 2019); *Mountain States Legal Found. v. Hodel*, 799 F.2d 1423, 1426 (10th Cir. 1986) (citing *Geer v. Connecticut*, 161 U.S. 519, 528-29 (1896)).

This unsettled situation now ensnares this Court’s jurisprudence on field preemption and historic police powers, specifically the established principle that “historic police powers of the States [are] not to be superseded... unless [it is] the clear and manifest purpose of Congress.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). When a coalition of States observed in their *amicus* brief in support of the petition for *Sturgeon II* that the Ninth

8. See *Katie John III*, 720 F.3d at 1235 (“Among the major reasons why Alaskans sought statehood was that federal regulation of territorial waters allowed non-Alaskan commercial firms to take salmon in ‘fish traps,’ which starved local Alaskans of the catch and threatened the salmon runs.”). Depletion of salmon stocks generated support for State management. *Metlakatla Indian Community v. Egan*, 362 P.2d 901, 915 (Alaska 1961), *vacated on other grounds*, 369 U.S. 45, *aff’d sub nom. Organized Village of Kake v. Egan*, 369 U.S. 60 (1962), *Metlakatla Indian Community v. Egan*, 369 U.S. 45, 47 (1962).

Circuit’s ongoing “failure to apply the clear statement doctrine” would be untenable⁹, they foresaw that the “divest[ment]” of one State’s historic authority could all too easily lead to the divestment of many.

Though this Court came to regard the “State ownership” of wildlife originally identified in *Geer v. Connecticut* as a “legal fiction[,]” *Hughes v. Oklahoma*, 441 U.S. 322, 335-36 (1979), it continued to recognize “the importance to [a State’s] people that a State have power to preserve and regulate the exploitation of an important resource.” *Sporhase v. Nebraska, ex rel. Douglas*, 458 U.S. 941, 950-51 (1982). In the intervening decades this Court has had little further occasion to appraise the health and vitality of States’ authority to manage fish and wildlife. But it has held that Congress’s “power over the public lands...is without limitations.” *California Coastal Comm’n v. Granite Rock Co.*, 480 U.S. 572, 580 (1987).

As a result, leaving in place the Ninth Circuit’s judgment that “public lands” may include title to reserved water rights in navigable waters under Title VIII (but not Title I) of ANILCA would upset the State-Federal balance by leaving the door ajar to significant preemptions with no “assur[ance] that [Congress] has in fact faced”¹⁰ or resolved through enactment a critical matter such as the reservation of water rights as a basis to assume Federal regulatory authority over fish and wildlife.

9. Br. of Amici Curiae Arizona, Arkansas, Idaho, Indiana, Nebraska, Nevada, South Carolina, Wisconsin, and Wyoming in Support of Pet’r 1 (Aug. 9, 2018), *Sturgeon II*.

10. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 65 (1989).

- b. Allowing the applicability of Federal reserved water rights to expand without clear and express displacement sets a troubling precedent for future encroachments on State authority over fish and wildlife.**

The Ninth Circuit’s protracted experiment in reading Federal reserved water rights into the definition of “public lands” only for Title VIII of ANILCA to implement the rural subsistence priority has generated only waves of litigation and no satisfactory result; the Ninth Circuit itself pans *Katie John I* as a “problematic solution... sanction[ing] the use of a doctrine ill-fitted” for the needs of the day, *Katie John III*, 720 F.3d at 1245, one that is “inadequate to achieve the express congressional purpose of protecting and preserving traditional subsistence fishing.” *Katie John II*, 247 F.3d at 1034 (Tallman, J., concurring).

Not only is the *Katie John* lineage ill-suited for Alaska’s unique circumstances, but it is also ill-fitted as a rule with potential to influence fish and wildlife management across the continental United States. Just as clear congressional intent is essential to perfecting Federal preemption in matters concerning fish and wildlife management, so too is the presumption of deference to State water law guarded by the need for “clear[] and specific[] exercise” of congressional power, “construed narrowly.”¹¹

11. John Shurts, *FLPMA, Fish and Wildlife, and Federal Water Rights*, 15 ENVTL. L. 115, 119 (1984) (citing Office of Legal Counsel, U.S. Dep’t of Justice, Legal Memorandum: Federal ‘Non-Reserved’ Water Rights, at 76 (June 16, 1982)).

Preserving the Ninth Circuit’s misguided conclusion that the geographic locations identified in *Katie John III* are public lands—based not on any finding that a specific quantity of water was necessary to implement the Federal rural subsistence priority, but only on the basis that implementing the priority could involve enforcing the rights “at some point[,]” 720 F.3d at 1231—imposes on other States a new source of jurisdictional risk and uncertainty.

As Alaska observes in its petition, these harms are not just theoretical. All States will operate in an ever-present state of uncertainty if the Ninth Circuit’s judgment is allowed to sustain a landscape in which an individual State manages navigable waters, fisheries, or whichever related resource may be at issue, only until a Federal agency asserts regulatory authority over a some or all of the resource by citing any number of statutory triggers that may be given new force by a lower court empowered to take cues from the Ninth Circuit (and, if certiorari is denied, this Court as well). After *Sturgeon II*, it cannot be this Court’s intended state of affairs for such lands, waters, and resources to “become subject to new regulation by...happenstance.” 587 U.S. at 58.

Indeed, by arising within the Yukon Delta National Wildlife Refuge, this case represents what Alaska shares with its sister States: reserved authorities. ANILCA’s statement on Federal limits with respect to management of resources used for subsistence within a national wildlife refuge is clear: “Nothing in this title shall be construed as...modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge System

Administration Act [NWRSA] of 1966[.]”¹² Though the NWRSA has been amended since 1980¹³, even at the time of ANILCA’s enactment, NWRSA section 4(c) stated plainly:

The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations. The provisions of this Act shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System.¹⁴

12. ANILCA section 815, codified at 16 U.S.C. § 3125.

13. National Wildlife Refuge System Improvement Act, Pub. L. No. 105-57, 111 Stat. 1252 (1997) (codified at 16 U.S.C. §§ 668dd-ee). The Improvement Act added the following new subsections (m) and (n):

(m) Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.

(n)(1) Nothing in this Act shall—(A) create a reserved water right, express or implied, in the United States for any purpose[.]

14. § 4(c), National Wildlife Refuge System Administration Act, Pub. L. No. 89-669, 80 Stat. 926 (1966).

The tight link between Congress’s intended maintenance of the State-Federal balance in ANILCA and the same balance in the Refuge System reflects this Court’s recognition that when Congress declines to dislodge a core State interest such as the conservation of fish and wildlife, *Hughes*, 441 U.S. at 337, it must not be left up to a district or appellate court to take on that job by disregarding a definition already codified in statute (e.g., “public lands” in ANILCA) and applied by this Court (e.g., *Sturgeon II*) to offer a new one of its own making.

Indeed Alaska’s petition offers this Court its best opportunity in decades to reinforce the integrity of savings clauses contained in many Federal statutes governing fish, wildlife, and land management in cooperation with States as primary managers—not just ANILCA.

The Association’s urgency in filing this brief owes in part to the 2002 case *Wyoming v. United States*, in which the Tenth Circuit affirmed that Congress may only preempt State authority to manage fish and wildlife in the Refuge System by stating its “clear and manifest” purpose to do so, but simultaneously concluded that the savings clause that Congress included in the 1997 Refuge Improvement Act, 16 U.S.C. § 668dd(m), *see* note 13 *supra*, could not “nullify” the Act and did not preclude the U.S. Fish and Wildlife Service from blocking State vaccination of resident elk within a refuge. 279 F.3d 1214, 1231, 1234-35 (10th Cir. 2002). While the Tenth Circuit relied extensively on legislative history to arrive at its preemptive conclusions in *Wyoming*, *id.* at 1230-37, and the Ninth Circuit has done the same from *Katie John I*, 72 F.3d at 702 to its latest judgment, No. 24-2251, 2025 WL 2406531, at *15 (9th Cir. 2025), this Court holds firmly that

“Congress’s authoritative statement is the statutory text, not the legislative history.” *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 599 (2011) (internal quotations omitted).

Allowing the Ninth Circuit’s judgment to stand could lead courts further astray than they have already wandered, by encouraging them to add the reserved water rights doctrine to the toolbox of savings-clause effacement. When the Ninth Circuit in *Katie John I* washed its hands by declaring that “[o]nly legislative action by Alaska or Congress [would] truly resolve the problem” that its own inadequate solution perpetuated, 72 F.3d at 704, it failed to appreciate that these inadequacies cannot be contained to Alaska or to any single body of law.¹⁵

15. See *Geier v. American Honda Motor Co., Inc.*, 529 U.S. 861, 911 (2000) (Stevens, J., dissenting):

[W]hen snippets from [legislative and regulatory history] are combined with the Court’s broad conception of a doctrine of frustration-of-purposes pre-emption untempered by the presumption [against preemption], a vast, undefined area of state law becomes vulnerable to pre-emption by any related federal law or regulation. In my view, however, “preemption analysis is, or at least should be, a matter of precise statutory [or regulatory] construction rather than an exercise in free-form judicial policymaking.” 1 L. TRIBE, AMERICAN CONSTITUTIONAL LAW §6–28, p. 1177 (3d ed. 2000).

II. DENYING REVIEW AND LEAVING THE NINTH CIRCUIT’S JUDGMENT IN PLACE TRANSFORMS RESERVED WATER RIGHTS INTO A MECHANISM FOR FEDERAL INCURSION INTO STATE FISH AND WILDLIFE MANAGEMENT.

Six years after this Court’s ruling in *Sturgeon II* that the definition of “public lands” within ANILCA excludes navigable waters, the Ninth Circuit maintains that “public lands” can still include title to a mere reserved water right. It is no longer tenable for States to abide this Court’s deferral of confrontation with the *Katie John* trilogy. 587 U.S. at 45 n.2 (“[W]e...do not disturb the Ninth Circuit’s holdings” because subsistence-fishing provisions “are not at issue in this case[.]”).

Beyond devaluing savings clauses and the coordinate role of States in frameworks ranging from ANILCA to the Refuge System, as the Ninth Circuit has done in its rulings, denying certiorari would convert the Federal reserved water rights doctrine into a multipurpose tool to accrue Federal authority to manage fish and wildlife at States’ expense across a variety of land management regimes, wherever navigable waters may flow.

a. The Ninth Circuit’s decision challenges the sideboards on Federal reserved water rights previously identified by this Court.

Over a decade ago, in *Katie John III*, the Ninth Circuit acknowledged its “fail[ure] to recognize the difficulties in applying the federal reserved water rights doctrine in [a] novel way.” 720 F.3d at 1226. That court was well aware

of its “strong role in defining the contours” of judicially-created doctrines, *id.* at 1229, but saw little reason to change course, perhaps because it was unaware of where its course could lead them: away from the fundamental limits of the doctrine—that Federal reserved rights do not extend to secondary or incidental uses beyond a reservation’s primary purposes, *United States v. New Mexico*, 438 U.S. 696, 701-02 (1978), and only the minimum amount necessary for the primary purpose is reserved. *Cappaert v. United States*, 426 U.S. 128, 138-39 (1976).

Reservations offer future courts a broad canvas to paint on: they are found anywhere the Federal government withdraws land from the public domain and reserves it for a Federal purpose. *Cappaert*, 426 U.S. at 138; *Winters v. United States*, 207 U.S. 564 (1908). Where a statute like the Federal Power Act may specify “reservations” to include “national forests, tribal lands embraced within Indian reservations, military reservations, and other land and interests in lands owned by the United States” (amended in 1921 to exclude monuments and parks), 16 U.S.C. § 796(2), other statutes may not take the step of defining the term “artificially” for statutory purposes. *See Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99, 111 (1960).

Alaska’s petition arrives before a Court that views implied reserved rights as narrow and only in play if, “without the water the purposes of the reservation would be entirely defeated.” *U.S. v. New Mexico*, 438 U.S. at 700, 705, 713 (finding “no support for [the] claim” that Congress intended to reserve “minimum instream flows for aesthetic, recreational, and fish-preservation purposes” as opposed to the “principal[.]” purpose of

“enhancing the quantity of water that would be available to the settlers of the arid West”).

The Ninth Circuit insists on a much wider view of implied reserved rights, so wide as to put the rural subsistence priority, at 16 U.S.C. § 3114, on a level pedestal with the disposition of Alaska lands and designation of conservation system units, at § 3101. Such a wide and flattened reading of ANILCA’s purposes inverts its intended functions by ignoring that rural subsistence must be “in accordance with recognized scientific principles and the purposes for which each conservation system unit is established,” § 3101(c), instead foregrounding the rural subsistence priority which only applies “[w]henver it is necessary to restrict the taking of populations of fish and wildlife...in order to protect the continued viability of such populations. § 3114.

If this Court leaves the Ninth Circuit’s judgment in place, it will permit agencies implementing other Federal statutes to make similar inversions, claiming implied reserved water rights despite the bright line distinguishing primary and secondary purposes of Federal reservations.¹⁶

16. See U.S. Dep’t of Justice, Office of Legal Counsel, *Federal “Non-Reserved” Water Rights*, 6 U.S. Op. Off. Legal Counsel 328 (O.L.C.), 1982 WL 170701 at *4 (June 16, 1982):

The *New Mexico* decision leaves virtually no room for arguing...that federal agencies can appropriate water without regard to state law if that water is necessary only to carry out a “secondary use” of federal lands, in the terminology of the Court in *New Mexico*—i.e., an incidental or ancillary use that is permitted by Congress, but not within the primary

b. Denying review would encourage Federal agencies to apply the reserved water rights doctrine in novel ways not confined to the specific circumstances of Alaska or ANILCA.

The limits this Court has set forth from *Winters* to *Cappaert* to *New Mexico* must be reinforced in light of the Ninth Circuit’s judgment—not just for Alaska and the rest of the States bound by its precedent, but for any State in which Federal lands are withdrawn from the public domain for designated purposes. Extending the reach of *Katie John* post-*Sturgeon II* transforms reserved water rights into a jurisdictional hook for fish and wildlife regulation in novel circumstances, including within but not limited to States outside the arid West.

In particular, courts that are asked to apply and quantify reserved water rights under statutes such as the Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528-531, may have an “incredibly difficult” time doing so when the premise of the statute in question is managing lands for many potentially conflicting purposes. Rhett B. Larson, *Quantifying Winters Rights*, 48 WM. & MARY ENVTL. L. & POL’Y REV. 659, 666 (2024).

Similar troubles lurk within the Federal Land Policy and Management Act of 1976 (FLPMA), which provides for the balanced management, protection, and development of public lands, 43 U.S.C. § 1701 *et seq.*, but which is historically implemented in accordance with the principle of “strong deference...to state water laws” in

purposes mandated by Congress for the federal lands in question.

support of “preservation of fish and wildlife in each state as a primary purpose...under FLMPA [sic] § 102(a)[.]” *Trout Unlimited v. U.S. Dep’t of Agriculture*, 944 F.Supp. 13, 20 n.22 (D.D.C. 1996).¹⁷

For another case of clear distinction between primary and secondary purposes that may break down if this Court denies certiorari we can look to the Wilderness Act of 1964, whose purposes are “declared to be within and supplemental to the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered[.]” 16 U.S.C. § 1133(a). Forty years ago, in *Sierra v. Block*, a single district court held that wilderness areas are reservations made upon pre-existing reservations (forests, parks, refuges), such that Wilderness Act purposes are primary. 622 F.Supp. 852 (D. Colo. 1985). This interpretive adventure has not advanced as far as *Katie John* has with ANILCA, but denying certiorari could change that.

The principle this Court affirmed in *Sturgeon II*—that the mere “happenstance” of a navigable water flowing within a reserved land should not give rise to Federal regulatory jurisdiction, 587 U.S. at 58—necessitates granting Alaska’s petition. Restoring clarity to ANILCA, and maintaining clarity with respect to a variety of other Federal land management statutes, can only be

17. See also FLPMA § 302(b): “[N]othing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife.” Codified at 43 U.S.C. § 1732(b).

accomplished by ending the Ninth Circuit’s three-decade exercise in doctrinal improvisation.

c. To the extent that States rely on State constitutions and statutes for fish and wildlife management authority, the Ninth Circuit’s decision threatens these authorities.

An “overwhelming majority” of States exercise sovereign management authority over fish and wildlife, both through constitutional and statutory provisions.¹⁸ It takes a clear statement for Congress to exercise Federal authority under the Supremacy Clause to preempt State laws. *Gregory v. Ashcroft*, 501 U.S. at 460. The Ninth Circuit’s insistence that Congress intended “public lands” to include navigable waters in Title VIII when Congress enacted a definition of “public lands” for the whole of ANILCA, save Titles IX and XIV, 16 U.S.C. § 3102, that contains no reference to navigable waters, calls for this Court to ensure that State fish and wildlife management authorities remain safeguarded by the clear statement requirement that has been submerged beneath the ill-fit extension of reserved water rights.

In the proximate origins of this matter—the Alaska Supreme Court’s declaration of a State-enacted rural subsistence priority as unconstitutional in *McDowell*—lies the core of our concern: that allowing Federal agencies to assert title in a navigable water via Federal reserved rights would eviscerate State authorities to advance a vast multitude of public interests, including conservation of

18. See DALE D. GOBLE & ERIC T. FREYFOGLE, *WILDLIFE LAW: CASES AND MATERIALS* 382 (2d ed. 2010).

fish, wildlife, and habitat as codified in constitutions and statutes nationwide. Making surplusage, for example, of the Refuge Improvement Act's clear requirement that water rights for refuge purposes must be acquired "under State law," 16 U.S.C. § 668dd(a)(4)(G), threatens to make surplusage of much more than that.

Just as Alaska observes that Federal management of subsistence solely within conservation system units end-runs Alaska's significant capabilities and expertise only to result in "regulatory narrowness" and overfishing on navigable waters as a whole, Pet'n at 22-23, leaving the Ninth Circuit's ruling in place will undermine other States' management of their own ecosystems and their settled expectations about State-Federal cooperation, which were affirmed by Congress in the Refuge Improvement Act and which are codified in Federal regulation. *See* 43 C.F.R. § 24.3(a): "In general the States possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State."); § 24.2 ("This policy is intended to reaffirm the basic role of the States in fish and resident wildlife management, especially where States have primary authority and responsibility, and to foster improved conservation of fish and wildlife.").

CONCLUSION

Alaska may be unique but its primary authorities to manage fish and wildlife within its borders are not. Absent a clear statement from Congress to the contrary, neither Alaska nor any other State may be precluded by means of Federal reserved water rights from exercising these authorities. Granting Alaska's petition provides this Court

a timely opportunity to maintain the jurisdictional balance that all States share an interest in preserving. Denying Alaska's petition will allow the confusion wrought by the Ninth Circuit's approach in *Katie John* to spread far and wide, to State fish and wildlife agencies' great and lasting detriment.

Respectfully submitted,

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