No. 14-1209

IN THE

Supreme Court of the United States

JOHN STURGEON,
Petitioner,

v.

SUE MASICA, in Her Official Capacity as Alaska Regional Director of the National Park Service, *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* STATE OF ALASKA IN SUPPORT OF PETITION OF CERTIORARI

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INTEREST OF *AMICUS CURIAE*

Alaska owns the riverbed of the Nation River as well as other lands and rivers falling within Alaska's National Park Service boundaries. *See* 43 U.S.C. § 1311(a); Alaska Statehood Act, Pub. Law No. 85-508, 72 Stat. 339, § 6(m) (1958); *Alaska v. United States*, 201 F.3d 1154, 1163-64 (9th Cir. 2000). Alaska's "ownership of [its] submerged lands, and the accompanying power to control navigation, fishing, and other public uses of water"—like its right to regulate its navigable waters—is an "essential attribute of sovereignty." *Tarrant Reg'l Water Dist. v. Herrmann*, 133 S. Ct. 2120, 2132 (2013) (internal quotation marks omitted); *Coyle v. Smith*, 221 U.S. 559, 573 (1911). Section 103 of the Alaska National Interest Lands Conservation Act (ANILCA) endorsed Alaska's sovereign right to manage its lands, waters, and resources by providing that state, Native, and private lands inside Alaska's park service boundaries would not be managed as if they were federally owned and by recognizing that this distinction was essential to providing "adequate opportunity for satisfaction of the economic and social needs of the State of 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 without federal regulatory interference, as Congress intended.[1]

The Ninth Circuit's decision in this case gives the National Park Service expanded regulatory control over state, Native, and privately owned lands and waters, contrary to Congress's intent. If left uncorrected,

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

the decision has broad ramifications that extend well beyond the damage to Alaska's sovereignty. The decision ignores the needs and realities of rural Alaskans, who face unparalleled access challenges and rely upon Alaska's unusual transportation thoroughfares to provide for their families. Alaska has a compelling interest in preserving its right to responsibly manage its lands and waters and in protecting Alaskans' rights to meaningfully and responsibly use state resources. The State also has an interest in preventing the decision's harmful economic consequences to the many Alaskans who depend on the state's waterways for their transportation, subsistence, and economic needs.

REASONS THE PETITION SHOULD BE GRANTED

I. Certiorari is Warranted Because the Ninth Circuit's Decision Contravenes ANILCA § 103's Assurances That Alaska Would Retain its Sovereign Right to Manage its Lands and Waters and Because it Imposes Exceptional Hardships on the People of Alaska.

This case considers the extent to which ANILCA—a federal statute of vital importance to Alaska, its residents, and its Native Corporations—permits the exercise of federal jurisdiction over nonfederal lands and waters in Alaska. The right to regulate and manage Alaska's abundant resources is an essential component of its sovereignty. The freedom to use and access those resources is also essential to many Alaskans' way of life. By granting the Park Service regulatory jurisdiction over state waters within the boundaries of Alaska's National Park Service lands, the Ninth Circuit's decision threatens that way of life.

If left to stand, the decision invites federal agencies to wield plenary regulatory control over all nonfederal waters and lands falling within any conservation system unit, in direct contravention of ANILCA. The decision raises significant federalism issues and has broad political, practical, and economic ramifications.

A. By Providing that Nonfederal Lands Inside Park Service Boundaries Will Not be Regulated as Federal Lands, ANILCA Protects the State's Sovereign Rights and Alaskans' Unique Needs.

Alaska occupies an area equivalent to one-fifth of the continental United States's landmass. 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 a mere 4% of lands in the continental non-western states. The federal government's colossal and disproportionate land ownership in Alaska makes the State's freedom to manage its own lands, waters, and resources crucial to Alaska's political independence and economic health.

ANILCA grew the National Park Service in Alaska and reserved over 100 million acres of federal land in the state—an area larger than California—for 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 conservation system units managed by different federal land management agencies. *Id.* § 3102(4). Roughly 40% of

Alaska now falls within an ANILCA conservation system unit. Alaska's National Parks now make up two-thirds of the entire National Park System.[2]

While ANILCA reserved massive amounts of land by placing it in a conservation status—significantly limiting the possibility for Alaska's future economic development—Congress also included certain provisions intended to safeguard Alaska's authority over nonfederal lands. *See id*. §§ 3103, 3111-14, 3117-19. Congress protected Alaska's ability to direct the use of its own lands and waters by expressly stating that nonfederal "lands"—defined to include state waters as well as lands—falling within the newly expanded park boundaries would not be treated as if they were federally owned and thus not be subject to the legion of federal regulations applied throughout the National Park System. *Id.* §§ 3102(1), 3103(c). The Ninth Circuit failed to realize that guarantee, giving the Park Service—and potentially other federal land management agencies—broad authority to regulate state lands and waters as if they were part of federal conservation system units. This decision overhauls ANILCA, to Alaska's detriment.

ANILCA's limitation on the scope of the federal government's regulatory control in Alaska presents an issue of exceptional importance to the State and its people, and this petition presents an appropriate and timely vehicle for the Court to address it. Because Alaska is the only state entitled to the benefits of

[2] In addition, approximately 86% of the total land area administered by the United States Fish and Wildlife Service and nearly one-third of the land area administered by the Bureau of Land Management is in Alaska. The appendix attached to the State's brief shows the extent of Alaska conservation system units.

ANILCA's § 103 guarantees and the only state whose sovereignty is imperiled by § 103's destruction, no circuit split on this issue will ever be possible. Review on certiorari provides the only opportunity for Alaskans to retain their rights to their lands, waters, and resources within the federal enclaves ANILCA created. And only if certiorari is granted will Alaska's sovereignty over its own land be meaningfully assured. Without prompt review, the Ninth Circuit's decision endorses further federalization of state resource management decisions and subjects Alaskans to federal regulatory control in a manner that Congress neither authorized nor intended.

B. Rural Alaskans Depend on Alaska's Lands, Waters, and Resources for Their Transportation, Economic, and Social Needs.

Alaska is home to bountiful natural resources, including over 12,000 rivers and three million lakes—the largest network of navigable waters anywhere in the country. The state also is home to abundant fish and wildlife, significant reserves of oil and natural gas, and economically viable subsurface mineral deposits. Alaska's vast terrain and rich resources are the heart of the state's cultural identity and the fountainhead of its political sovereignty. They capture the national imagination and have fortified the state's economy. But Alaska's massive size, widely dispersed population, lack of developed infrastructure, variable topography, and climactic extremes also make it the most remote state in America. Over three-quarters of Alaska's roughly 300 communities are unconnected by road. While many Alaskans live in urban or semi-urban areas, roughly twenty percent of the state's

736,732 residents live in regions unconnected to the road system. Half of these residents live in the state's most remote villages. These communities confront disproportionately higher levels of poverty and have limited infrastructure, some lacking essential services like water and sanitation. Residents in these areas are acutely reliant on Alaska's rich resources.

The primary means of transportation for rural Alaskans are 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. The state's sharply varied topography, limited service hubs, extreme seasonal variations, and high costs of construction challenge the state's ability to develop its transportation and resource infrastructure.

Alaska's waters provide essential travel corridors. Many rural Alaskans, particularly those in southwest Alaska, live in small 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 fuel and goods to much of western Alaska throughout the summer months. Rural Alaskans rely on these water links to access goods and services, recreate, and travel to hunting and fishing grounds. Even in winter, when temperatures drop and rivers evolve into frozen highways for snowmachine, dogsled, and all-terrain vehicle traffic, Alaska's waters continue to form a vital part of the state's transportation infrastructure.

Residents in Alaska's rural communities also face economic challenges. They confront a formidable combination of high costs of living, little if any local tax base, fewer job opportunities, and limited earnings. In Alaska's remote villages, localized resource-based activities—including 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 Natives in particular, who comprise nearly 80% of the population in Alaska's remote communities, rely on the State's waters and lands for their subsistence fishing and hunting needs.

What is at stake here for Alaska, therefore, is not just a differing view from the National Park Service about permissible weekend recreation or the best method of routing tourists through national parks. Because unencumbered access to Alaska's waters and meaningful use of Alaska's natural resources is necessary to sustain life in much of rural Alaska, the State's continued management of its waters and lands is essential.

C. Alaska's Sovereign Right to Regulate, Use, and Manage its Lands and Waters is Instrumental to Alaska's Statehood.

Perhaps more than in any other state, management and control of Alaska's natural resources lies at the heart of the State's federalist interests. A central motivation for Alaskans seeking statehood in 1956 was to allow the resource-rich territory to manage its own lands and waters. When the delegates gathered in 1955 to draft the Alaska Constitution, the territory

was blessed with a wealth of natural resources, and the delegates expected an enormous grant of land and minerals from Congress at statehood that would sustain the new State. But the territory's history was one of resource exploitation by outside interests.

Before statehood, Alaska had 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, Institute of Social and Economic Research, Univ. of Alaska Anchorage, *Blinded by Riches: The Permanent Funding Problem and the Prudhoe Bay Effect* 30-33 (2004).[3] Mining taxes were low and thus contributed little, and "only a tiny fraction of the wealth from the salmon industry ever directly touched Alaska's shores." *Id.* at 36, 51-52. Alaska was seen as a "feudal barony" where "[a]bsentee corporations took away millions in fish, gold, and furs and left behind nothing in the form of social or economic benefits." Richard L. Neuberger, *Gruening of Alaska*, 36 Survey Graphic 512 (1947).[4] Alaska's financial problems caused statehood opponents to claim that Alaska could not afford the costs of statehood and was too dependent on the federal government. Cole, *supra*, at 63-65, 69-70. Proponents of statehood, however, argued that it would provide Alaskans enough land and political autonomy to regulate the development of their natural

[3] *Available at* http://www.iser.uaa.alaska.edu/Publications/blindedbyriches.pdf.

[4] *Available at* http://www.archive.org/stream/surveygraphic36survrich#page512/mode/2up.

resources in the manner most beneficial in the long run to Alaskans. *Id.* at 70-72.

The delegates to Alaska's constitutional convention "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" for the new state. Gerald A. McBeath, The Alaska State Constitution 159 (2011). Article VIII to the constitution they drafted recognized the critical importance to the State of thoughtful, internal management of Alaska's resources, commanding that they 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.

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, Institute of Soc., Econ. and Gov't Research, Univ. of Alaska, Alaska's Constitutional Convention 132-33 (1975). The delegates ultimately drafted an entire article to direct the state to carry out prudent resource development that would most benefit all Alaskans. Alaska's new constitution served as the basis for subsequent statehood petitions to Congress. *State v. Lewis*, 559 P.2d 630, 636 (Alaska 1977).

Congress, concerned that Alaska would not be able to raise sufficient revenue to carry out the responsibilities of statehood, gave it the resources to fund self-governance in the form of 103 million acres

of land and mineral rights. Alaska Statehood Act, Pub. Law No. 85-508, 72 Stat. 339, §§ 6 (a), (b), (i) (1958); Cole, *supra*, at 77-78. "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). The grants were to be "an endowment which would yield the income that Alaska needed to meet the costs of statehood." *Id.* at 336. Through these land grants, Congress recognized that Alaska stood ready, willing, and able to manage its resources. It relinquished federal control to the people who best understood the State's needs and were most prepared to govern its abundant natural bounty—Alaskans.

The next major piece of federal legislation to address Alaska's lands was 1971's Alaska Native Claims Settlement Act (ANCSA). 43 U.S.C. § 1601 *et seq*. ANCSA implemented "a fair and just settlement" of aboriginal Native Alaskan land claims by creating twelve regional corporations and more than 200 village corporations owned by Alaska Natives and conveying to these new entities approximately 44 million acres of federal land in Alaska, together with its subsurface estate. The lands were intended largely for development to sustain and support Alaska's Native peoples. *See* 43 U.S.C. § 1601 *et seq*.; *City of Saint Paul, Alaska v. Evans*, 344 F.3d 1029, 1031 (9th Cir. 2003).

Twenty-one years after statehood, Congress passed ANILCA. While ANILCA's primary purpose was to create federal conservation areas, Congress also reinforced its commitment to preserving Alaska's right to manage its own resources. Section 103(c) assures Alaska's sovereign authority to do so by providing

that only federal lands and waters falling within conservation system unit boundaries are considered a part of the unit, thus excluding state and ANCSA Native Corporation lands. 16 U.S.C. § 3103(c); *see also id.* § 3102(1)-(3), (11). The Senate Report regarding the statutory predecessor to § 103 explained that "[t]hose private lands, and those public lands owned by the State of Alaska . . . are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to, or surrounds, the private or non-Federal public lands." S. Rep. No. 96-413, at 303 (1979). By contrast, the Senate explained that state, Native, or private lands and waters would not be exempt from federal laws and regulations applicable to private and public lands nationwide—like the Clean Air Act—commenting that such universally applicable laws would be "unaffected by the passage of this bill." *Id*. Section 103 then quarantines federal jurisdiction by removing those nonfederal lands and waters from the reach of the extensive regulatory regime applicable to federally owned parklands nationwide. 16 U.S.C. § 3103(c) (providing that nonfederal lands are not "subject to the regulations applicable solely to [federal lands] within such units"). The language of § 103(c) thus provides a check on the risk of abuse of federal regulatory power.

ANILCA also acknowledged, to a limited extent, that Alaskans confront unusual challenges. In particular, it did so by providing select access protections and authorizing the use of snowmachines, motorboats, and airplanes on federal conservation system unit lands in Alaska for traditional activities and travel to and from villages and homesites. 16 U.S.C. § 3170. Congress further recognized that Alaskans had unique economic and subsistence needs and that the states's

resources were the foundation of its economy. *Id.* §§ 3101(d), 3111-26. Congress's statement of purpose acknowledged that ANILCA protected the national interest in scenic, natural, cultural, and environmental values on public lands in Alaska but also "provided adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people." *Id.* § 3101(d); *see also City of Angoon v. Marsh*, 749 F.2d 1413, 1415-16 (9th Cir. 1984). In this way, ANILCA preserves a healthy balance of power and prevents federal usurpation of state land management decisions. That balance, and Alaska's longstanding sovereign right to manage its lands and resources, now lies in peril.

II. The Ninth Circuit's Endorsement of the Park Service's Unlimited Regulatory Jurisdiction Over State Waters—and by Necessary Implication, State, Native, and Private Lands—Curtails Alaska's Political and Economic Sovereignty and Raises Significant Federalism Issues.

The Ninth Circuit's decision in this case turns a blind eye to these historical and practical realities. It diminishes Alaska's sovereignty and thwarts its ability to address the needs of its citizens. This Court should grant certiorari and carry out Congress's intent to protect Alaska's authority over its own lands and waters.

On a superficial level, the Ninth Circuit's decision held that the National Park Service had regulatory jurisdiction to impose and enforce a type of access ban on the Nation River, a navigable tributary of Alaska's Yukon River. [Pet. App. B at 25a-28a; *see also*

43 U.S.C. § 1311(a)] It ostensibly tethered that determination, at least in part, to the 1976 Park Service Administration Improvement Act, which authorizes the Park Service to regulate "boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States." [Pet. App. B at 25a] But the Ninth Circuit went further, wielding ANILCA to sanitize the Park Service's amplification of its jurisdiction over Alaska's waters—and, by necessary implication, state, Native, and private lands. [Pet. App. B at 25a-26a]

The Ninth Circuit contorted the text of § 103 into an independent grant, rather than a restriction, of regulatory authority. It reasoned that because the hovercraft ban applies to all National Park Service lands and waters nationwide—even "navigable waters and areas within their ordinary reach . . . without regard to the ownership of submerged lands, tidelands, or lowlands"—the ban did not apply "solely" to Park Service lands in Alaska and thus did not violate ANILCA. [Pet. App. B at 25a-26a (citing 36 C.F.R. § 1.2(a)(1), (3))] In essence, the Ninth Circuit endorsed the Park Service's self-granted authority to regulate nonfederal lands in Alaska so long as the regulation it crafted was "specifically written to be applicable on such lands." 36 C.F.R. § 1.2(b). It approved a federal agency's jurisdictional leap because the agency's own regulation provided the springboard. As a result, although the Ninth Circuit purported to "limit [its] consideration to the regulation as applied to Sturgeon," its holding—that any Park Service regulation of general applicability may be enforced on nonfederal lands within Alaskan conservation system units—operates far beyond the facts of Sturgeon's

challenge. [Pet. App. B at 21a n.5, 26a] This decision triggers serious federalism concerns.

Federalism is the "genius . . . that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other." *Saenz v. Roe*, 526 U.S. 489, 504 n.17 (1999) (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring)). Federalism serves to "protect historic spheres of state sovereignty from excessive federal encroachment and thereby to maintain the distribution of power fundamental to our federalist system of government." *Gonzales v. Raich*, 545 U.S. 1, 42 (2005) (O'Connor, J., dissenting).

The Ninth Circuit's reasoning scorns Alaska's constitutional and statutory right to control its resources by ignoring the textual boundaries within § 103(c) that rightfully cabin the Park Service's jurisdiction. The Ninth Circuit apparently believes that the Park Service can assert control over state, Native, or private inholdings in Alaska simply by promulgating a nationwide regulation. This decision not only fails to honor ANILCA's framework, but it also violates § 103's intent, perversely transforming a provision designed to respect and promote Alaska's sovereignty into a tool for undermining it. The decision also contradicts the Ninth Circuit's previously expressed understanding that ANILCA's drafters "never intended the mere location of boundary lines on maps delineating the overall conservation system to indicate that private lands . . . were to be treated as public lands." *City of Angoon v. Marsh*, 749 F.2d 1413, 1417 (9th Cir. 1984). The combination of these errors led to an endorsement of federal regulatory control based on an executive agency's burgeoning jurisdictional interest, not an act of Congress.

It would make little sense for Congress to explicitly state that nonfederal lands are not to be considered a part of a conservation system unit under § 103 and simultaneously cede authority to subject those lands to federal regulation anytime a federal agency deemed it appropriate. But under the court's rationale, anytime the Park Service—and potentially any other federal land management agency—wants to impose restrictions on nonfederal lands falling within Alaska conservation system unit boundaries, it need only adopt a nationwide regulation. Section 103's limitations are now toothless; Congressional intent is subordinated to the Park Service's evolving regulatory whims.

The fallout from the court's decision will be immediately felt in Alaska. Because over 60% of all National Park Service-administered lands are in Alaska, the State will be disproportionately affected by any regulation of professed "general applicability." At the same time, however, by exempting state, Native, or private lands from Alaska-specific Park Service regulations, the Ninth Circuit has incentivized the Park Service to nationalize its land management strategy. After all, regulating with broad strokes is now the means by which the Park Service can exert federal control over nonfederal lands in Alaska. But the Park Service cannot sensibly manage the entire nation with one set of regulations: just as imposing a nationwide prohibition on all-terrain vehicle use in Alaska would unacceptably alter how many Alaskans travel to meet their everyday needs, for example, a national regulation allowing unrestricted all-terrain vehicle use in Yellowstone, Yosemite, or the Grand Canyon might be equally harmful to those areas and disrupt their peaceful wilderness character. Yet this is exactly

the type of one-size-fits-all regulation that the Ninth Circuit's decision encourages.

Accepting the court's view that the Park Service has unbridled authority to regulate private land within conservation system unit boundaries also leads to potentially absurd results. ANILCA places some limits on the Park Service's ability to limit Alaskans' transportation across federal conservation system units. On those federal lands, the Park Service cannot prohibit travel by plane or snowmachine "for traditional activities" or "travel to and from villages and homesites" without making findings that the access is damaging to the unit and providing notice and a hearing. 16 U.S.C. § 3170(a). But the Park Service now claims the authority to go much further: under the Ninth Circuit's view of 36 C.F.R. § 1.2, the Park Service could ban such travel on private, Native, and state lands within conservation system units through a self-granted regulatory authority—and without making those findings. Congress intended § 103 to preserve, not diminish, state and Native land ownership rights. Interpreting the statute to potentially allow the Park Service to provide less access, and less process, on nonfederal lands than on federal ones contravenes the provision's intent and further diminishes Alaska's sovereign rights to its land.

"The essence of federalism is that states must be free to develop a variety of solutions to problems and not be forced into a common, uniform mold." *Addington v. Texas*, 441 U.S. 418, 431 (1979). But the Ninth Circuit decision here does precisely that. By wresting control away from the State in favor of federal management, the court's decision undercuts Alaska's sovereign authority to manage its own lands and waters consistent with state and local conditions,

practicalities, and priorities. *See Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (recognizing that the federalist structure of joint sovereigns "assures a decentralized government will be more sensitive to the diverse needs of a heterogeneous society"). The Ninth Circuit approved of a regime in which Alaska may not access its own land and resources to implement state policy choices about how to best provide for Alaskans unless it first obtains permission from federal agency bureaucrats.

This case provides a salient example: recognizing the particular social needs and transportation challenges in its rural areas, Alaska permits hovercraft use on state waters. The National Park Service, guided by nationwide rather than local concerns, made a different choice. The Ninth Circuit's decision overrides Alaska's decision-making and forces Alaska into the same common mold as the other forty-nine states, notwithstanding its exceptional geography and challenges.

The facts of No. 13-36166, Alaska's companion case decided together with Sturgeon's in a consolidated opinion, similarly reflect how the Ninth Circuit's interpretation of § 103 operates in practice to undermine Alaska's sovereignty. Park Service regulations required Alaska state officials to obtain federal permission, in the form of a permit, to access state-owned land and conduct scientific research on salmon. By requiring the State to ask for advance permission before accessing its own lands to conduct beneficial scientific research, the federal government unduly interferes with Alaska's ability to make use of its resources. Although Alaska's case is not an ideal vehicle for this Court's review because it presents a threshold standing issue, its facts nevertheless illustrate how

nationwide Park Service regulations infringe on Alaska's sovereignty.

The Park Service has also required Alaska to ask permission from the federal government to conduct research on caribou migrations on state land, and then to provide the resulting data to the Park Service. The Park Service mandates that Alaska sacrifice its sovereign dignity and beg, hat in hand, to conduct scientific research on state land. The principles of federalism on which our nation is based—and upon which Alaska was granted its resource-rich lands at statehood—should bar these results. This Court should grant the petition to ensure that federal overreach does not swallow Alaska's right to self-determination.

III. The Need for Fidelity to ANILCA's Guarantees and Freedom from Regulatory Overreach is Particularly Compelling in Light of the Exceptional Nature of Rural Alaskans' Needs.

The damage to Alaska's federalism is not theoretical; there are real-world harms here. The court's unchecked deference to a federal agency's desire to define its own authority—in violation of a Congressional provision meant to curtail it—jeopardizes the transportation, social, and economic interests of Alaska's rural residents. This failure has far-reaching consequences that extend beyond this case.

National parklands across the country are broadly regulated by the federal government for conservation and environmental purposes. *See generally* 54 U.S.C. § 100101 (formerly 16 U.S.C. § 1); 36 C.F.R. §§ chap. 1. Alaska shares a longstanding commitment to protecting the value of its bountiful resources: the Alaska

Constitution explicitly provides for the conservation of the state's natural resources for the maximum benefit of its people. Alaska Const. art. VIII, § 2.[5] But unlike the Park Service, Alaska's obligations and its public trust responsibilities are necessarily balanced with the responsibility to grow its economy, satisfy evolving infrastructure demands, and provide for Alaskans.

Congress was cognizant of the state's need to balance those goals when it passed ANILCA. In acknowledging the integral role Alaska's resources play in driving the state's economy, Congress—like the framers of Alaska's constitution—endeavored to strike a balance between the economic and environmental interests in Alaska's resources. *See* 16 U.S.C. § 3101(d). Congress also recognized Alaska's infrastructure and service delivery challenges. ANILCA observes that Alaska's transportation and utility network is "largely undeveloped" and provides a single statutory authority for applications for transportation and utility systems through public lands. The statute implicitly recognizes that given the breadth of public lands across the state, Alaska requires access to those areas to grow its infrastructure. *See id.* § 3161. But the end result of the Ninth Circuit's decision is to ignore ANILCA's protections and shoehorn all states into a monolithic scheme of nationwide regulation.

Erosion of Alaska's sovereign right to manage its waters is an initial but impactful step toward unwarranted comprehensive federal land management

[5] The Alaska Constitution expresses a policy of promoting responsible resource development. *See Ninilchik Traditional Council v. Noah*, 928 P.2d 1206, 1212 n.11 (Alaska 1996) (discussing Article VIII of the Alaska Constitution).

regulation in Alaska. The Park Service impeded Mr. Sturgeon's right to freely access a state-owned navigable river, a right that he, like other Alaskans, historically exercised without federal interference. Yet the impact of the case goes well beyond one man. Alaska's Native Corporations, whose rights to develop their lands as contemplated under ANCSA are now in jeopardy, may feel the impact of the court's decision most immediately. But by shifting decision-making for state resource management to the federal government, the decision also imperils the everyday liberties of ordinary Alaskans. *See New York v. U.S.*, 505 U.S. 144, 181 (1992) ("[T]he Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." (internal quotation marks omitted)).

Because Alaskans routinely use the state's waters and lands in ways that are crucial yet uncommon in the rest of the country, the potential harm created by the Ninth Circuit's holdings is vastly magnified. Access bans or restrictions on the use of all-terrain vehicles, for example, may be prompted by reasonable agency concern for noise disruption or the safety of park visitors on busy mixed-use trials in the lower 48 states; but in Alaska, where ATVs are a common daily mode of transportation on summer trails and on Alaska's frozen winter ice highways, those same restrictions would threaten not thrill-seeking weekend tourists, but everyday travelers. *See* 36 C.F.R. §§ 1.4(a), 4.10. A ban on the use of helicopters might seem like a reasonable and even desirable limitation to preserve the wilderness character of most national parks and refuges; but applied in Alaska it would prohibit state officials from reaching remote

state, Native, or privately owned lands to conduct scientific studies on water quality. *See id.* § 2.17(a). Commercial activity regulations, already widely applied throughout the park system, might make sense in most parks; but in Alaska, applying the same commercial access or use restrictions on major state navigable waters like the Yukon or Kuskokwim rivers would cripple local industries like commercial fishing, hunting, or tourism in and around Native villages. *See id.* § 5.3.

In short, because of Alaska's differences, unthinking application of a nationwide regulatory scheme would harm rural Alaska. It would interfere with the ability of residents to meaningfully and responsibly harness state resources to supplement family income. It would impede the State's sovereign ability to carry out scientific research. And it would impede summer barge and winter ice road traffic along Alaska's waterways, threatening the flow of goods and services to remote communities stretched along the state's rivers, further exacerbating the high cost of living in bush Alaska. Even if enforcement of such regulations is not a Park Service priority, ordinary Alaskans should not need to fear criminal prosecution, civil fines, or other sanctions—as did Mr. Sturgeon—for simply going about their daily lives.

The court's decision to subject state, Native, and private lands and resources to the self-imposed regulatory jurisdiction of federal agencies—whose missions differ from and do not account for the Alaskan experience—could also impede Alaska's wider efforts to meet the needs of its residents. Dwindling state revenues have already hampered Alaska's ability to grow the state's infrastructure. For example, the Ambler Road, a high-profile state project intended to facilitate

Alaska's ability to responsibly develop its resources, is now on hold in light of a state budget shortfall. Yet projects like the road often provide important job opportunities, vital means of access, and facilitate the flow of more affordable goods and services to remote communities. And given Alaska's many logistical challenges, access to and use of state resources like gravel bars and minerals on the state's submerged lands and in the beds of Alaska's navigable rivers offers an affordable, often essential, building block for these projects. Alaska's right to responsibly harness its resources remains as crucial now as at statehood and only if the State retains that right can it meaningfully sustain its sovereignty.

* * *

Section 103 of ANILCA pledges that Alaska will retain its sovereign right to manage and regulate its lands and resources to help meet the unique needs of its people. The Ninth Circuit's decision revokes that pledge, leaving Alaska subject to increasing federal regulation in a manner that Congress neither intended nor authorized. This Court should grant the petition to protect the many Alaskans who rely on the state's resources for their daily needs, to preserve Alaska's sovereignty, and to reinstate ANILCA's carefully negotiated balance between state and federal regulatory control.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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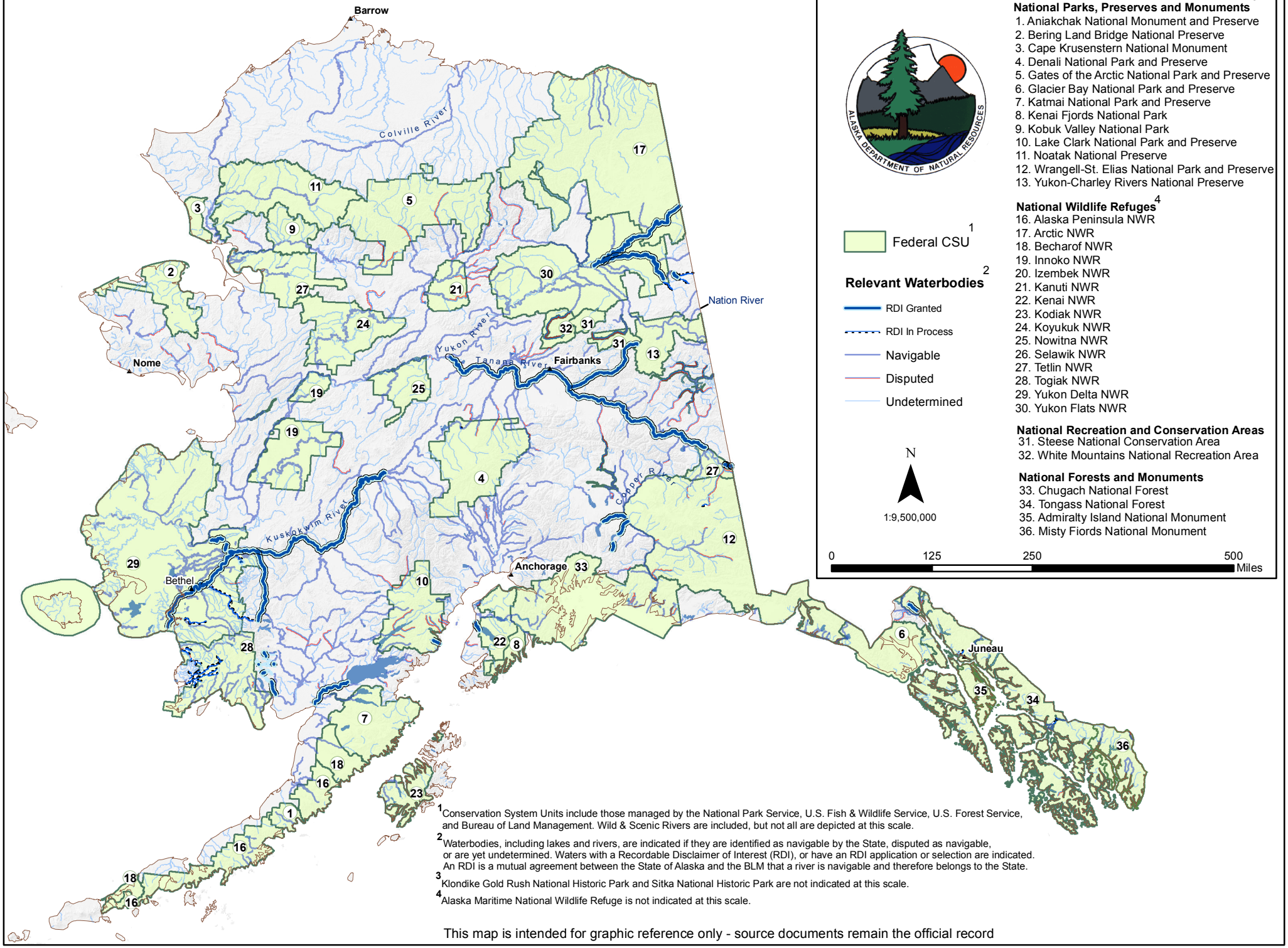
May 4, 2015

APPENDIX

APPENDIX

[Insert Fold-In]



[1] Conservation System Units include those managed by the National Park Service, U.S. Fish & Wildlife Service, U.S. Forest Service, and Bureau of Land Management. Wild & Scenic Rivers are included, but not all are depicted at this scale.

[2] Waterbodies, including lakes and rivers, are indicated if they are identified as navigable by the State, disputed as navigable, or are yet undetermined. Waters with a Recordable Disclaimer of Interest (RDI), or have an RDI application or selection are indicated. An RDI is a mutual agreement between the State of Alaska and the BLM that a river is navigable and therefore belongs to the State.

[3] Klondike Gold Rush National Historic Park and Sitka National Historic Park are not indicated at this scale.

[4] Alaska Maritime National Wildlife Refuge is not indicated at this scale.

This map is intended for graphic reference only - source documents remain the official record