NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SOUTH DAKOTA *v.* BOURLAND, INDIVIDUALLY AND AS CHAIRMAN OF THE CHEYENNE RIVER SIOUX TRIBE, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 91–2051. Argued March 2, 1993—Decided June 14, 1993

In 1868, the Fort Laramie Treaty established the Great Sioux Reservation and provided that it be held for the ``absolute and undisturbed use and occupation'' of Sioux Tribes. The Flood Control Act of 1944 authorized the establishment of a comprehensive flood control plan along the eastern border of the Cheyenne River Reservation, which is part of what was once the Great Sioux Reservation, and mandated that all water project lands be open for the general public's use and recreational enjoyment. Subsequently, in the Cheyenne River Act, the Cheyenne River Sioux Tribe conveyed all interests in 104,420 acres of former trust lands to the United States for the Oahe Dam and Reservoir Project. The United States also acquired an additional 18,000 acres of reservation land previously owned in fee by non-Indians pursuant to the Flood Control Act. Among the rights the Cheyenne River Act reserved to the Tribe or tribal members was a ``right of free access [to the taken lands] including the right to hunt and fish, subject . . . to regulations governing the corresponding use by other [United States] citizens,'' §10. Until 1988, the Tribe enforced its game and fish regulations against all violators, while petitioner South Dakota limited its enforcement to non-Indians. However, when the Tribe announced that it would no longer recognize state hunting licenses, the State filed this action against tribal officials, seeking to enjoin the Tribe from excluding non-Indians from hunting on nontrust lands within the reservation and, in the alternative, a declaration that the federal takings of tribal lands for the Oahe Dam and Reservoir had reduced the Tribe's authority by withdrawing the lands from the reservation. The District Court ruled, *inter alia,* that §10 of the Cheyenne River Act clearly abrogated the Tribe's right to exclusive use and

possession of the former trust lands and that Congress had not expressly delegated to the Tribe hunting and fishing jurisdiction over nonmembers on the taken lands. It therefore permanently enjoined the Tribe from exerting such authority. The Court of Appeals affirmed in part, reversed in part, and remanded. It ruled that the Tribe had authority to regulate non-Indian hunting and fishing on the 104,420 acres because the Cheyenne River Act did not clearly reveal Congress' intent to divest the Tribe of its treaty right to do so. As for the 18,000 acres of former fee lands, the court held that *Montana* v. *United States,* 450 U. S. 544, and *Brendale* v. *Confederated Tribes and Bands of Yakima Nation,* 492 U. S. 408, controlled, and therefore that the Tribe's regulatory authority was divested unless one of the *Montana* exceptions was met.

SOUTH DAKOTA *v.* BOURLAND

Syllabus

Held: Congress, in the Flood Control and Cheyenne River Acts, abrogated the Tribe's rights under the Fort Laramie Treaty to regulate non-Indian hunting and fishing on lands taken by the United States for construction of the Oahe Dam and Reservoir. Pp. 7–18.

(a) Congress has the power to abrogate Indians' treaty rights, provided that its intent is clearly expressed. The Tribe's original treaty right to exclude non-Indians from reservation lands (implicit in its right of ``absolute and undisturbed use and occupation''), and its incidental right to regulate non-Indian use of these lands were eliminated when Congress, pursuant to the Cheyenne River and Flood Control Acts, took the lands and opened them for the use of the general public. See *Montana* v. *United States, supra; Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation, supra.* Section 4 of the Flood Control Act opened the water project lands for ``recreational purposes,'' which includes hunting and fishing. The Cheyenne River Act declared that the sum paid by the Government to the Tribe for the 104,420 acres ``shall be in final and complete settlement of all [of the Tribe's] claims, rights, and demands.'' Had Congress intended to grant the Tribe the right to regulate non-Indian hunting and fishing, it would have done so by an explicit statutory command, as it did with other rights in §10 of the Cheyenne River Act. And since Congress gave the Army Corps of Engineers regulatory control over the area, it is irrelevant whether respondents claim the right to *exclude* nonmembers or only the right to *prevent* nonmembers from hunting or fishing without tribal licenses. *Montana* cannot be distinguished from this case on the ground that the purpose of the transfers in the two cases differ, because it is a transfer's effect on pre-existing tribal rights, not congressional purpose, that is the relevant factor. Moreover, Congress' explicit reservation of certain rights in the taken area does not operate as an implicit reservation of all former rights. See *United States* v. *Dion,* 476 U. S. 734. Pp. 7–14.

(b) The alternative arguments—that the money appropriated in the Cheyenne River Act did not include compensation for the Tribe's loss of licensing revenue, that general principles of ``inherent sovereignty'' enable the Tribe to regulate non-Indian hunting and fishing in the area, and that Army Corps regulations permit the Tribe to regulate non-Indian hunting and fishing—do not undercut this statutory analysis. Pp. 14–17.

949 F. 2d 984, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, O'CONNOR, SCALIA, and KENNEDY, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in

Syllabus

which SOUTER, J., joined.