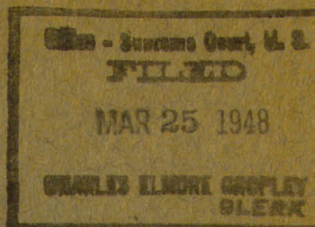


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No. 12, Original

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1947**

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UNITED STATES OF AMERICA,

*Plaintiff*

*v.*

STATE OF CALIFORNIA

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**MEMORANDUM IN REGARD TO ANSWER BY STATE  
OF CALIFORNIA TO PETITION FOR THE ENTRY  
OF A SUPPLEMENTAL DECREE**

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### MEMORANDUM IN REGARD TO ANSWER BY STATE OF CALIFORNIA TO PETITION FOR THE ENTRY OF A SUPPLEMENTAL DECREE

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On January 29, 1948, the United States filed with this Court a petition for the entry of a supplemental decree with respect to submerged lands along three specified segments of the California coast.

The State of California has filed an answer to this petition and a memorandum accompanying its answer. It requests that "a master in chancery be appointed to hold hearings and take evidence and make findings of fact and conclusions of law (subject to review by this Court)" not only with respect to the three areas involved in the Government's petition but also with respect to the "entire coast of California" (Pp. 3-4).

The Government is opposed to the reference of this case to a master at this time. Such a reference would result in protracted delays and endless hearings, many of which might be wholly unnecessary.

The Government suggests rather that an effort be made to narrow the issues that require adjudication now, and to determine further which, if any, of those issues depend upon facts not susceptible of judicial notice. If there are any issues which call for adjudication at this time and which turn upon facts requiring proof, then, and only then, should those issues be referred to a master under appropriate instructions which would bring within manageable compass the matters thus referred to him. Otherwise, the Government fears that there will be endless confusion that would serve only as a delaying tactic.

In the Government's memorandum accompanying the petition for entry of the supplemental decree it was suggested (pp. 10-11) that a conference be held with counsel for the parties, similar to the "pre-trial" conference in this case on May 14, 1946, for the purpose of considering and expediting the procedure to be followed at this stage of the proceedings. The Government renews that suggestion now. The sweeping request of the State for the reference of the entire matter to a master makes it all the more imperative that some such effort be made to keep the controversy within appropriate limits.

As indicated above, the master's hearings requested by California would relate not only to the three areas covered by the Government's petition but would require particularized study of every foot of the California coast. But the three segments along the coast are the only submerged areas adjacent to California, according to our information, from which oil is being taken, and it is therefore important

to resolve the dispute between the parties as to the status of these areas. Conceivably, there may be other areas that may require further proceedings at some time. But it is wholly unlikely that issues will arise, at least in the immediate future, that will require an adjudication with respect to every foot along the coast. Indeed, it seems likely that there will never be any problems with respect to large segments of the coast that will call for proceedings herein.

Moreover, even as to the three areas involved in the Government's petition, it is highly doubtful whether a master is presently needed, if indeed one ever will be needed. Thus, the first of the three areas is the so-called Santa Barbara Channel. The United States contends that this area, along the open coast, constitutes open sea rather than "inland waters" and that the status of the area as open sea is not altered by the fact that there are some islands a substantial distance from the mainland. The question whether Santa Barbara Channel is to be treated as open sea seems to be a pure question of law. We know of no present dispute between the parties as to any of the physical facts in this area. If there are any indentations in the coast along the "channel" that are inland waters (such as rivers entering the Pacific in this area), the United States does not claim them, as is made clear by paragraph 1(a) of the proposed supplemental decree. It is our view that the legal status of Santa Barbara Channel can be determined on the basis of facts susceptible of judicial notice. If there are critical facts with respect to Santa Barbara Channel or the other two areas, which are not susceptible of judicial notice, then it may be appropriate to refer such matters to a master. But a preliminary effort should be made to isolate those matters which may be disposed of by the Court

itself, thereby limiting the scope of the issues, if any, which may be referred to a master.

Respectfully submitted.

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PHILIP B. PERLMAN,  
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March, 1948.