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In the Supreme Court of the United States

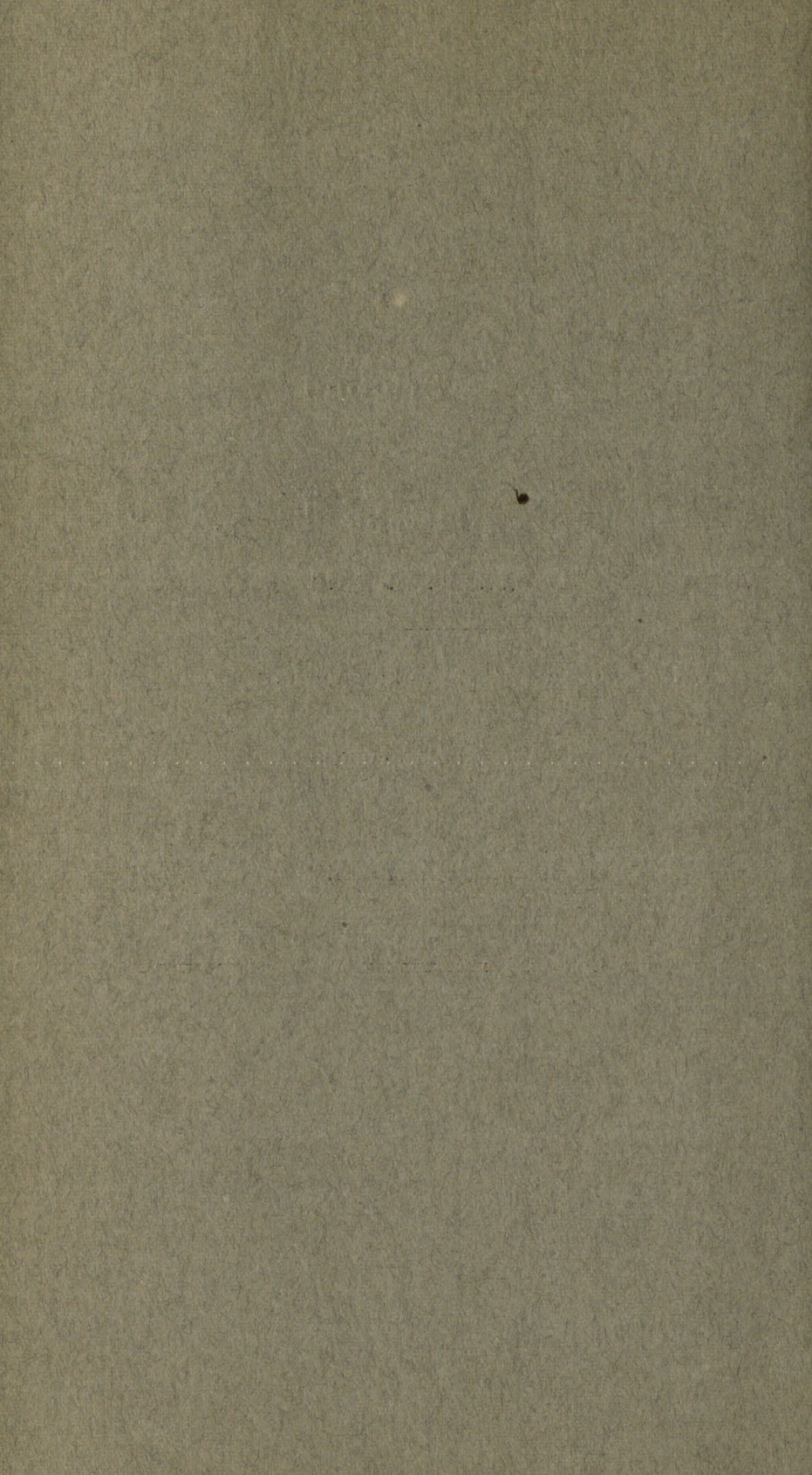
OCTOBER TERM, 1948

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MOTION FOR CLARIFICATION OF SCOPE OF INQUIRY
REFERRED TO SPECIAL MASTER AND MEMORANDUM
IN SUPPORT OF MOTION



In the Supreme Court of the United States

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MOTION FOR CLARIFICATION OF SCOPE OF INQUIRY REFERRED TO SPECIAL MASTER

The United States, by its Solicitor General, respectfully moves the Court for a clarification of the scope of the inquiry referred to the Special Master in this cause, as expressed in the order of June 21, 1948, for the following reason:

After a conference and extended correspondence with the Special Master, he has announced his intention to begin hearings in California in January 1949, and take testimony relative to questions which constitute part of the ultimate issue on the merits and are wholly unnecessary to the limited matters upon which the Court has sought his recommendations. It is believed that hearings of such scope as are contemplated will inevitably result in protracted delays and are contrary to the public interest.

PHILIP B. PERLMAN,
Solicitor General.

(1)

MEMORANDUM IN SUPPORT OF MOTION

1. *Background.* This suit was originally brought by the United States to establish its rights in the bed of the three-mile belt in the Pacific Ocean adjacent to the coast of California, extending seaward of the low-water mark, and outside of any bays, rivers, or other inland waters which join the ocean along the coast. The complaint alleged that the State had executed numerous oil leases in the disputed area, and that the lessees were extracting large quantities of petroleum in violation of the rights of the United States. The opinion of this Court, announced June 23, 1947 (332 U. S. 19), upheld the contentions of the United States, and was implemented by a decree entered October 27, 1947 (332 U. S. 804).

That decree was, of course, general in nature and did not undertake to spell out whether any particular areas were seaward or landward of the low-water mark, or whether certain submerged areas along the coast were to be treated as bays or inland waters and therefore not within the three-mile belt which was the subject of the decree. It was plain, however, that the status of certain important areas would have to be determined, although it was recognized by the parties that they might be able to agree on some of these areas. Indeed, shortly after the Court had announced its decision, and prior to the entry of the decree, counsel for both parties entered into a

stipulation which in substance undertook to fix a line across each of certain bays (San Francisco Bay, San Diego Bay, and San Pedro Bay), and which provided that the United States does not claim any portion of those bays landward of such lines. It was specifically provided, however, that the stipulation was to be without prejudice to the right of California to claim lines farther seaward in these areas.¹

2. *The Government's Petition For a Supplemental Decree and the Appointment of the Special Master.* So far as the United States has been able to ascertain, there are only three submerged areas along the California coast from which oil is being taken.² And since a dispute exists between the United States and California as to each of these areas, the Government filed, on January 29, 1948, a petition for the entry of a supplemental decree, adjudicating the status of each of these three areas. The State agrees that the status of these three areas should be adjudicated. But it has never, up to this very moment, filed any document

¹ That stipulation, together with another stipulation providing for temporary management of oil properties in the submerged areas, was filed with the Court. However, the Court felt that they were not relevant to any matter then pending before the Court, and therefore ordered them stricken (332 U. S. 804, 805). These stipulations are binding upon and are being observed by the parties, and may appropriately be taken into account at the proper time.

² These three areas are: (a) Santa Barbara Channel, (b), the area seaward of San Pedro Bay, and (c) the area south of San Pedro Bay.

(pleading, brief, memorandum, letter or other writing) in which it has identified or even suggested any other such area from which petroleum is being extracted, and which therefore calls for adjudication with equal urgency. It nevertheless urged an adjudication of the entire coast from Oregon to Mexico. The Court, in its order of June 21, 1948, denied California's request, but indicated doubt as to what particular segments of the coast presently require determination. It therefore authorized the Chief Justice to appoint a master to make recommendations to the Court on two matters: (a) as to what particular areas call for adjudication; and (b) as to an appropriate procedure to be followed in making such determination. 334 U. S. 855, 856.

In the Government's petition for a supplemental decree with respect to the three areas mentioned above, it was suggested (pp. 10-11) that the Court might desire a conference with counsel for the respective parties for the purpose of considering and expediting the procedure to be followed in determining the conflicting claims of the parties; and it was further suggested that one or more members of the Court be designated to hold such a conference, similar to that held by Mr. Justice Black in this case on May 14, 1946. The Government has regarded the Court's order for a master, with the limited functions entrusted to him, as the substantial equivalent of what it had suggested, and it understands that his functions

are to make recommendations to the Court as to what areas require adjudication and as to what procedure should be followed. However, from the very outset, the State has envisaged activities by the Special Master of a much more elaborate character and has persuaded him to hold hearings, and take testimony with respect to matters that may perhaps be relevant on the merits as to various areas but are wholly uncalled for by the limited scope of his functions.

3. *The Proposed Hearings.* After the appointment of the Special Master, and at his request, counsel for both parties outlined their respective views by letter to the Special Master (Attorney General of California, letter dated August 6, 1948; Solicitor General of the United States, August 11, 1948). These views were widely at variance with each other and, at the request of the Special Master, a conference was held with him on September 27, 1948, at which various matters were explored.

The State had not yet identified any specific areas as to which it desired adjudication, and on October 12, 1948, in a letter to counsel for both parties, the Special Master requested the State to designate such additional segments of the coast and to furnish appropriate maps. In his concluding paragraph, he stated:

When all of this is done, my thought is to notify counsel of a date of hearing in California, at which time the Master will

view the several segments mentioned above, including the three described in the order of the Court, *and thereafter hear witnesses explanatory of the factors which it is claimed take all such segments out of the rule of law announced in the main opinion.* [Italics supplied.]

The Solicitor General, by letter of October 28, 1948, stated the emphatic opposition of the United States to any such hearings. In the course of that letter the Solicitor General stated:

There is at this time no need and no sound reason for any proceedings before the Special Master involving testimony explanatory of the factors which may be claimed to take any particular segment "out of the rule of law announced in the main opinion". That is the issue on the merits, subsequently to be determined. The only matter before you is to make a recommendation to the Court as to what segments or areas require adjudication on the merits, and to suggest a procedure or technique for making such an adjudication. This involves merely a procedural recommendation, and not a determination of legal principles which are to be employed in deciding the issue on the merits. * * *

* * * In our opinion, the Court does not expect you to hold hearings on the merits, as to whether any particular area is within or without "the rule of law announced in the main opinion." Although

such hearings may conceivably be necessary at a later period, after it has been determined that a particular segment calls for adjudication, they could serve no useful purpose at this time, and would operate merely as a means of delay.

The State had meanwhile, by letter dated October 27, 1948, complied with the Special Master's request to designate additional segments calling for adjudication. It identified six additional areas, with maps and accompanying descriptions of the activities in such areas.³

³ These six additional areas are: Crescent City; Arcata-Humbolt Bays; Bodega-Tomales Bays; Monterey Bay; San Luis Obispo Bay; Santa Monica Bay. Although fairly detailed descriptions of the activities in each of these areas were submitted by the State, there was not the slightest suggestion that any petroleum was being extracted from any one of them.

Plainly, even upon the basis of the facts alleged by the State, these areas do not call for adjudication as urgently as the three designated by the United States. Moreover, the United States does not oppose the eventual adjudication of the status of the additional areas; its position is simply that the three areas originally designated call for adjudication more urgently and should be dealt with first. It is wholly possible that the principles employed in determining the status of the three segments will facilitate the disposition of the problem with respect to the others. On the other hand, if all the areas were lumped together in one group, to be considered along with the original three, the probabilities of delay and confusion would be considerably enhanced. Finally, the only circumstance alleged which might present a need for ultimate adjudication in any of the additional areas arises from the presence of piers, wharves, and similar structures; but the United States has taken no steps to prevent the continued operation of such structures, and indeed has sub-

On November 16, 1948, the Special Master wrote to counsel, stating his tentative plan to begin hearings in Los Angeles in January, and to "give as much time as is necessary to a 'view' of the 'segments' of the coast line." The Solicitor General, by letter of November 18, 1948, again promptly protested the holding of any such hearings, and requested the opportunity to appear before the Special Master for the purpose of explaining further in person why such hearings should not be held. The Special Master replied by letter of November 19, 1948, in which he reaffirmed his conclusion to go forward with the proposed hearings. And on November 29, 1948, he wrote to counsel, stating that he expected to arrive in Los Angeles on January 19, 1949, and suggested that they meet with him on that day.

. Although the Special Master is empowered by the order for his appointment to "hold hearings, if he finds it necessary," the hearings which are here proposed are, in our opinion, wholly foreign to the purpose for which he was appointed. His only duty is to report to the Court what areas require adjudication at this time and to suggest a procedure for such adjudication. These are matters which can be explored by conferences with counsel, similar to the pre-trial

mitted proposed legislation to confirm such State permits as may have been issued for operations of this character. See S. 2222, 80th Cong., 2d Sess.

conference which has become familiar in the district courts. The problem at the present stage of this proceeding is not a difficult one. The United States has identified three areas which call for adjudication; the State has not disagreed, but it has cited some six additional areas. It would be a relatively simple matter to determine, on the basis of undisputed facts as to the activities in each of the areas, which of them call for present adjudication. Certainly, the configuration of the coast at these areas is not a relevant matter at this time: it is relevant only with respect to the merits. What is relevant now is whether a dispute exists as to such areas which should be adjudicated now; and, to the extent that it might be presently helpful, the configuration of the coast can be adequately seen by examination of maps. It seems inconceivable that it is necessary to "hear witnesses explanatory of the factors which it is claimed take all such segments out of the rule of law announced in the main opinion."

The vague and sweeping character of such proposal lends itself to protracted delays that would plainly be contrary to the public interest. Large amounts of petroleum are meanwhile being extracted and drained from the three areas designated by the United States, and it is important that the rights in these areas be adjudicated. The United States has proposed a procedure for

making such adjudication (letter of August 11, 1948) to the Special Master, and it is in the public interest that the areas to be presently⁴ adjudicated be identified promptly and a procedure established. Such can be worked out in conjunction with counsel who are willing to cooperate, without the necessity of any such hearings as are in contemplation.

Therefore, it is respectfully requested that the Special Master be instructed:

That the scope of the inquiry referred to him does not embrace a consideration of the status of any particular area as inland waters or marginal sea, or of any evidence (historical, geographical, engineering, or otherwise) relative thereto, this being a matter for ultimate determination in respect to each segment for which adjudication is ordered; that the only problem before the Special Master in this regard is whether a dispute between the parties as to any particular area should be presently adjudicated and what procedure should be employed in making the adjudication; and that if there is no disagreement between the parties as to the activities in any particular area, the recommendation

⁴ As indicated in footnote 3, *supra*, p. 7, the Government has no present objection to the eventual determination of the status of any of the additional areas designated by the State, but it believes that the principles approved in the determination of the three critical areas will lead to agreements that will limit the extent of future controversy.

of the Special Master as to the need for adjudication of the status of that area may be appropriately made upon the basis of discussions with counsel and documents submitted by them.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

DECEMBER 1948.

