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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

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**No. 11, Original**

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UNITED STATES OF AMERICA,

*vs.*

STATE OF CALIFORNIA

*Plaintiff,*

ORIGINAL

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**PETITION**

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HAROLD L. ICKES,  
*Member of the Bar of the  
Supreme Court of the United States.*



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UNITED STATES OF AMERICA,	} ORIGINAL
<i>vs.</i>	
STATE OF CALIFORNIA	

**PETITION**

Now comes Harold L. Ickes, a member of the Bar of the Supreme Court of the United States and asks leave of this Honorable Court to file a Suggestion, a copy of which is hereto attached and made a part hereof.

Respectfully submitted,

HAROLD L. ICKES,  
*Member of the Bar of the  
Supreme Court of the United States.*



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

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## No. 11, Original

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UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

ORIGINAL

STATE OF CALIFORNIA

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## SUGGESTION

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1. On June 23, 1947 (332 U. S. 19), this Court rendered its decision in the above entitled case in which it said, *inter alia*:

“that California is not the owner of the three-mile marginal belt along its coast, and that the Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil.”

2. As of the date of July 26, 1947 a stipulation signed by Tom C. Clark, Attorney General of the United States, and Fred N. Howser, Attorney General of California, and “recommended” by J. A. Krug, Secretary of the Interior of the United States, was filed with your Honorable Court. This stipulation purported to exclude from the effect of

the opinion in the above-entitled cause certain specified areas lying along the shore line of the State of California.

3. As of the same date, a second stipulation signed by Tom C. Clark, Attorney General of the United States, Fred N. Howser, Attorney General of California, and "recommended" by J. A. Krug, Secretary of the Interior of the United States, was filed with your Honorable Court.

This stipulation purported to provide, in Paragraph 1 that:

"all operations within or upon the tide and submerged lands lying along the coast of California, carried on under the terms of any lease issued by the State of California prior to June 23, 1947 and now in force, may continue without interruption."

This stipulation further purported to provide in Paragraph 3 thereof:

"With the advance approval of the Secretary of the Interior, the state shall, during the period fixed by paragraph 9 of this stipulation, call for bids for, and, to the extent permissible under state law, enter into, new leases in cases where it is necessary to do so in order to prevent drainage of oil or gas from tide or submerged lands by wells drilled in other lands, or to protect the respective interests of the parties hereto. During such time, the state may require any of its lessees to drill new wells or approve their drilling for the purposes, described in this paragraph, provided that it gives the Secretary of the Interior notice of its action at least fifteen days before drilling is to commence."

And in Paragraph 9 thereof:

"This stipulation shall remain in effect until pertinent legislation is enacted by the Congress; provided, however, that if no such legislation is enacted prior to July 31, 1948, this stipulation shall terminate as of

sixty days subsequent to that date, and the parties hereto shall meet within 30 days after July 31, 1948, to reconsider the terms of this stipulation and to determine whether this stipulation or a revision thereof should be continued for a further period \* \* \*."

Also in Paragraph 10 that:

"This stipulation shall be deposited with the Clerk of the Court, with the request that it be brought to the attention of the Court at the opening of the October Term, 1947. Nothing herein shall be deemed in any way to abridge the power or jurisdiction of the Supreme Court with respect to the subject matter of this action."

4. On October 13, 1947, (332 U. S., 787), this Court denied a rehearing in the above-entitled cause, thereby affirming its decision of June 23, 1947.

5. As of October 27, 1947, this Honorable Court filed and entered its decree herein to the following effect:

"1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles and bounded on the north and south respectively, by the northern and southern boundaries of the State of California. The State of California has no title thereto or property interest therein.

"2. The United States is entitled to the injunctive relief prayed for in the complaint."

6. Also under date of October 27, 1947, this Court entered the following order and decree, which appears in 332 U. S. 804:

"Since our opinion, which was announced in this case June 23, 1947, (332 U. S. 19) two stipulations (the

purport of both of which has been quoted hereinabove) have been filed in this Court, signed by the Attorney General and Secretary of the Interior of the United States on the one hand and by the Attorney General of the State of California on the other hand. In these stipulations the Attorney General and the Secretary of the Interior purport to renounce and disclaim for the United States Government paramount governmental power over certain particularly described submerged lands in the California coastal area. In such stipulations the United States Attorney General and Secretary of the Interior furthermore purport to bind the United States to agreements which purport to authorize State lessees of California coastal submerged lands to continue to occupy and exploit those lands, and which agreements also purport to authorize California under conditions set out to execute leases for other submerged coastal land. . . .

“It is further ordered that the stipulations between the United States Attorney General and the Secretary of the Interior on the one hand and the Attorney General of California on the other, which stipulations purport to bind the United States, be stricken as irrelevant to any issues now before us.”

7. As of the date of July 28, 1948, a stipulation signed by Tom C. Clark, Attorney General of the United States and Fred N. Howser, Attorney General of California, and “recommended” by J. A. Krug, Secretary of the Interior of the United States, was filed.

This stipulation purported to provide that:

“1. The stipulation entered into by the parties to this cause on July 26, 1947, providing for a continuation of operations within or upon tide and submerged lands lying along the coast of California, be and the same is hereby extended and continued in effect until the expiration of sixty days subsequent to July 31, 1949. The provisions of this paragraph are not intended to preclude other arrangements adopted prior to July



31, 1949, by reason of an order of the Supreme Court or an Act of Congress.”

8. As of the date of August 2, 1949, a further stipulation, by and between the same parties, was filed in the above entitled cause. This stipulation purported to provide that:

“1. The stipulation entered into by the parties to this cause on July 26, 1947, as extended by the stipulation of July 28, 1948, providing for a continuation of operations within or upon tide and submerged lands lying along the coast of California, be and the same is hereby extended and continued in effect until the expiration of sixty days subsequent to July 31, 1950. The provisions of this paragraph are not intended to preclude other arrangements adopted prior to July 31, 1950, by reason of an order of the Supreme Court or an Act of Congress.”

And also that:

“2. The parties hereto shall meet within thirty days after July 31, 1950, to consider the said stipulation, as herein extended, and the effect thereon of any further proceedings or determinations in this cause, and to determine whether the said stipulation as extended, or a revision thereof, should be continued for a further period.”

9. The stipulations of July 28, 1948 and August 2, 1949 merely attempted to extend for further stated periods the stipulation dated July 26, 1947, which said stipulation provided that, “with the advance approval of the Secretary of the Interior, the State shall, during the period fixed by paragraph 9 of this stipulation, call for bids for, and, to the extent permissible under state law, enter into, new leases in cases where it appeared to be necessary to do so in order to prevent drainage of oil or gas from tide or submerged lands by wells drilled in other lands, or to protect

the respective interests of the parties hereto. During such time, the State might require any of its lessees to drill new wells or approve their drilling for the purposes described in this paragraph, provided that it gave the Secretary of the Interior notice of its action at least 15 days before drilling was to commence."

The said stipulation further provided in paragraph 1 that "During the period fixed by paragraph 9 of this stipulation all operations within or upon the tide and submerged lands lying along the coast of California, carried on under the terms of any lease issued by the State of California prior to June 23, 1947 and now in force, may continue without interruption."

10. The stipulations hereinabove referred to provided that the State of California should "segregate and hold in a special fund all rentals, royalties, and other payments received from said lessees or under said leases \* \* \*."

They further provided that:

"\* \* \* the monies segregated and held in the special fund \* \* \* shall be distributed and paid over pursuant to the agreement of the parties, or in the absence of agreement pursuant to a final judicial order or decree. The above provisions of this paragraph are not intended to preclude any other proper disposition at an earlier time by reason of an order of the Supreme Court of the United States or of an Act of Congress."

11. On or about August 8, 1947, Mastin G. White, Solicitor of the Department of the Interior, addressed to the Secretary of the Interior a memorandum (M-34985) expressing the opinion that the Mineral Leasing Act of February 25, 1920, as amended (41 Stat. 437; 30 U.S.C. 181, *et seq.*), did not authorize the issuance of oil and gas leases affecting the submerged lands below low tide off of the coasts of the United States and outside of the inland waters of

the States. Under date of August 29, 1947, the Attorney General stated in a letter to the Secretary of the Interior that he had reached the conclusion "that the Act imposed no \* \* \* requirement that the procedures set forth in that Act (Mineral Leasing) be followed with regard to the property which the Supreme Court held in that case (United States v. California) to be that of the United States." These opinions, in effect held that the United States Government possessed no power to operate, or permit the drilling or operation of, wells within or upon said lands so as to make available the oil or gas therefrom for its own purposes. Their practical effect was that the United States should not permit the exploitation of such oil or gas by others under concessions or contracts.

12. It is suggested that, to the extent that the stipulations referred to, or any of them, purport to be an exercise of, or delegation of authority, to exercise paramount rights of the United States in and power over the three-mile marginal belt along the coast of California, they and each of them, are null and void in that:

(a) They attempted to do, indirectly, what both the Attorney General and the Secretary of the Interior had protested that the Government lacked the power to do directly, and

(b) If the Solicitor of Interior was correct in his opinion, which was adopted by the Secretary of the Interior and which had the concurrence of the Attorney General, that the Mineral Leasing Act did not apply to these lands, then no legal authority was vested in any Federal official to grant leases, and

(c) Even if the Mineral Leasing Act had been held by the Secretary of the Interior (and the Attorney General) to be applicable to the three-mile marginal belt along the coast of California, these two officials, nor either of them, had the right or legal authority to

attempt to delegate to the State of California, even with the consent of that State, the power to advertise for or grant leases, in the event of suspected or known drainage of oil or gas from the marginal belt, or otherwise.

13. It is suggested, on information and belief, that in advertising for bids for leases to offshore oil lands in which the United States holds paramount rights, the Lands Commission of the State of California, purporting to exercise power delegated under the stipulations hereinabove referred to, provided that a bidder should make a deposit of \$25,000.00 with a condition of forfeiture in the event of non-performance. This forfeiture ran to the State of California and not to the United States of America despite the fact that this Honorable Court has held that the State of California did not own any of the offshore lands proposed to be leased. In effect, this was an attempt to strike down the opinion of this Honorable Court in the above-entitled case and cause it to be null and void.

14. It is suggested that, under the statutes of California, neither the State Lands Commission of that state, nor any other agency or official has the power to exercise any right with respect to any land to which the state itself has neither right, title nor legal interest. In this connection it should be noted (Paragraph 3 hereinabove) that the pretended power proposed to be granted to the State of California to grant new leases to its tide or submerged lands was only "to the extent permissible under state law."

15. It is suggested that the stipulations referred to are inconsistent with, and contrary to, the decision of this Honorable Court.

16. It is suggested, on information and belief, that the State Lands Commission of California has advertised for, and has agreed to enter into, leases with two oil companies

from whose adjoining lands there is alleged to be drainage of oil from offshore submerged lands, the paramount rights in and power over which are possessed by the Federal Government. This constitutes a grave trespass. The two companies whose bids for leases have been accepted are the Signal Oil Company and the Southwest Exploration Company, in the former of which the Standard Oil Company of California has a large, if not a controlling, interest. Moreover, the Signal Oil Company has stock control of the Southwest Exploration Company. It is further suggested that bids by companies of at least equal financial standing as the Signal Oil Company and the Southwest Exploration Company have been rejected, although these bids carried an offer of a royalty of some 50% in excess of the royalty proposed to be paid by the two companies mentioned.

17. It is suggested that, despite the order and decree of this Honorable Court entered under date of October 27, 1947, in the above-entitled cause, C. Girard Davidson, Assistant Secretary of Interior, sent a letter by air mail on October 19, 1949 to Rufus W. Putman of the State Lands Commission, Department of Finance, State of California, containing the following language:

“Reference is made to your three letters all dated September 2, requesting the approval of this Department for the offering, and the leasing pursuant thereto for oil and gas development, one tract of tide and submerged coastal land (W.O. 296) in the Guadalupe area, San Luis Obispo and Santa Barbara Counties, California, and two tracts of submerged coastal land (W.O. 404 and W.O. 405) in the Huntington Beach area, Orange County, California.

“The justifications for the leasing as stated in your requests are substantiated by the records of this Department. Accordingly, the offering and consequent leasing of the three tracts as proposed in your letters are hereby approved.”

18. It is suggested that, not only the Attorney General and the Secretary of the Interior of the United States but the Attorney General of California, are proceeding without statutory or other authority, and contrary to the decision of this Honorable Court, and that all actions taken pursuant to the stipulations above referred to, or in reliance there-upon are illegal, null and void.

19. As a member of the Bar of this Court and therefore an officer thereof, your petitioner has appreciated the fact that the Court could not have knowledge of the information contained in this Suggestion. Moreover, the stipulation under date of August 2, 1949, purported to continue the original stipulation "until the expiration of 60 days subsequent to July 31, 1950," which fact, in view of antecedent circumstances, suggests the probability that, prior to said "expiration," a further purported extending stipulation will be entered into by the above-mentioned officers. Accordingly, your petitioner has felt it to be his duty to bring to the attention of the Court the foregoing facts so that the Court may, if it deems it appropriate, in order to protect its jurisdiction, enter an order calling upon the parties to the above-mentioned stipulations, and others who may be involved, to show cause why such stipulations should not be set aside as inconsistent with and contrary to the decision of the Court and the provisions of the decree promptly carried out.

Respectfully submitted,

HAROLD L. ICKES,  
*Member of the Bar of the  
Supreme Court of the United States.*