No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM, 1971

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

REPLY OF THE UNITED STATES TO THE OBJECTION, RESPONSE, MOTIONS, AND MEMORANDUM IN OPPOSITION OF THE STATE OF LOUISIANA RELATING TO THE MOTION BY THE UNITED STATES FOR ENTRY OF SUPPLEMENTAL DECREE AS TO THE STATE OF LOUISIANA (NO. 3)

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STATEMENT

In April 1971, the United States filed a motion for the entry of a third supplemental decree as to the State of Louisiana, together with a proposed decree and supporting memorandum. In response to that motion, Louisiana has filed three documents. The first (the "Objection" [1]) argues that the United States

[1] The full title of this document is "Objection of the State of Louisiana to the Right of the United States at this time to file a Motion for Entry of Supplemental Decree as to the State of Louisiana (No. 3) and Memorandum in Support of Objection."

has no right at this time to seek the entry of a third supplemental decree. The second (the "Alternative Motion"[2]) seeks to defer this Court's consideration of our motion and asks for oral argument. The third document (the "Response"[3]), in addition to repeating the contentions made in the first two papers, responds directly to our motion and seeks to have the matter referred to the Special Master.

In this memorandum, the United States replies to the motions and arguments put forward by Louisiana in the documents identified above. In summary, we urge that our motion filed in April 1971, should be granted by the Court at this time and that Louisiana's motions to defer consideration of our motion or to refer it to the Special Master should be denied. Our position is based on Louisiana's admis-

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[2] The full title of the second document is "Supplemental Alternative Motion of the State of Louisiana for Leave to File Response to the United States' Motion for Entry of Supplemental Decree as to the State of Louisiana (No. 3) One Hundred Twenty Days after the Report of the Special Master and for Oral Argument."

[3] The full title of the third document is "Response of the State of Louisiana to the Motion by the United States for Entry of Supplemental Decree (No. 3); Motion of the State of Louisiana to Defer This Matter or Alternatively to Refer It to the Special Master under an Amended Reference and Alternative Supplemental Motion for Oral Argument on the Motion of the United States—Memorandum in Opposition to the Motion by the United States for Entry of Supplemental Decree No. 3 and in Support of the State of Louisiana's Motion to Defer this Matter or Alternatively to Refer it to the Special Master under Amended Reference and in Support of the Alternative Supplemental Motion for Oral Argument on the Motion of the United States."

sion that it has no claim, consistent with the previous opinions of this Court in this case, to the resources that are the subject of this motion.

ARGUMENT

I

The State of Louisiana Has Admitted That It Has No Claim, Consistent With the Previous Opinions In This Case, To the Resources That Are the Subject of This Motion

In our Proposed Supplemental Decree No. 3, an area of the continental shelf seaward of a line off the coast of Louisiana was described. We stated in paragraph four of our motion for the entry of that decree that:

> In the proceedings before the Special Master, Louisiana has admitted that no determination consistent with the Court's opinion could give Louisiana any rights in the described area, that Louisiana asserts no claim to the described area under the order of reference, and that no issue as to that area is pending before the Special Master.

It is clear from Louisiana's discussion of this contention (Response, pp. 3, 6) that the State admits that it was required to and did confess, through answers to interrogatories before the Special Master, that it could make no claim consistent with the previous opinions of this Court to the area that is the subject of the instant United States' motion. The State merely points out that by answering these interrogatories it was not waiving any claim it may be

able to make, not consistent with the Court's opinions, to the resources that are the subject of our motion.

Accordingly, all that is left for Louisiana to argue in opposition to our motion is either that an adjudication of the area sought by the United States in this motion should be deferred to a more convenient date or that this Court should reconsider some of its previous decisions in this case.

II

The Court Should Not Reconsider Its Previous Decisions In This Dispute

In 1969, this Court issued its most recent opinion in this ongoing controversy between the United States and the State of Louisiana.[4] At that time, the Court held that the State was entitled to the resources of the seabed within three nautical miles of its coastline, that coastline to be determined by methods described in the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606. *United States* v. *Louisiana*, 394 U. S. 11, 35. By that opinion and by earlier opinions, all aspects of the claim of the State to areas outside of the three mile limit have been thoroughly analyzed by this Court and rejected.

A. *This Court's opinion at 339 U.S. 699 should not be reconsidered.*

The State has, in essence, asked this Court to reconsider its first decision directly involving Louisiana

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[4] Earlier opinions and orders are reported at 339 U.S. 699; 340 U.S. 856; 340 U.S. 899; 340 U.S. 907; 340 U.S. 939; 363 U.S. 1; 364 U.S. 502; 364 U.S. 856; 394 U.S. 994; and 395 U.S. 901.

(339 U. S. 699) and resultant final decree (340 U. S. 899). Objection, pp. 3, 8; Response, pp. 9-15. In that decision, the Court held that Louisiana had no rights to the resources of the ocean seaward of the low water line along the coast and the limit of inland waters. 339 U. S. at 704-705; 340 U. S. 899. While, of course, the specific holding of that decision was legislatively modified by the enactment of the Submerged Lands Act, 67 Stat. 29, the decision still limits any rights Louisiana might have to the resources seaward of the coastline to those specifically granted by the Act. On this proposition, the decision at 339 U. S. 699 is *res judicata* between the parties here.

Louisiana contends that the pendency of *United States* v. *Maine, et al.*, No. 35, Original, entitles it to reopen issues previously adjudicated against it.[5] That case involves a dispute between the United States and the States with coastlines on the Atlantic Ocean that is similar to the dispute in this case. Except for the State of Florida, none of the states bordering on the Atlantic Ocean has been a party to any previous litigation with the United States relating to the resources of the continental shelf. Accordingly, they have sought their day in court to challenge the opinions in *United States* v. *California,*

[5] Louisiana mistakenly asserts that a motion of the United States in the *Maine* case for summary judgment was denied (Objection, p 8; Response, p. 14). In fact, our motion for a judgment that, as a matter of law, the Atlantic coast states do not have rights in the resources of the ocean more than three miles seaward of the coastline was not denied but was referred to a special master along with the rest of that case. *United States* v. *Maine, et al.*, 398 U.S. 947.

332 U. S. 19, and *United States* v. *Louisiana*, 339 U. S. 699, as they might apply to their rights in the resources of the Atlantic Ocean. In contrast, Louisiana has had its day in court. Thus, we do not believe that the pendency of that litigation presents sufficient grounds for reconsideration of issues already adjudicated, or for a delay in the consideration of our motion for a third supplemental decree in this case.[6]

B. *The Decision in this case at 363 U.S. 1, as it applies to the State of Louisiana, should not be reconsidered.*

As an alternative to this Court's overturning the entire line of precedents relating to the federal continental shelf litigation, the State seeks reconsideration of the 1960 decision in this case, 363 U. S. 1, and the resulting decree, 364 U. S. 502, as applied to Louisiana. In that decision the Court held that Louisiana does not qualify for the nine mile grant of rights to the resources of the continental shelf provided for in Section 2 of the Submerged Lands Act, 67 Stat. 29. *United States* v. *Louisiana*, 363 U. S. at 79, 364 U. S. at 503. The State argues that it has newly discovered evidence[7] that will prove that its

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[6] If Louisiana's contentions were accepted, there could be no final resolution of any coastal state's claim to the resources of the outer continental shelf until all other pending cases had reached their ultimate stages. And any decision reached might be subject to further reconsideration at the instance of any losing party, thus leading to repetitious and, indeed, endless litigation.

[7] The "newly discovered evidence" is contained in Appendix A to the State's Objection. It consists of House Document

southwestern boundary is coterminous with that of the State of Texas. The Court has recognized that Texas qualified for the nine mile grant under the Submerged Lands Act and, therefor, had a boundary nine miles offshore in the Gulf of Mexico for those purposes. 363 U. S. at 64. Louisiana argues from this that it too has to have a nine mile boundary.[8] This Court has fully reviewed and rejected this contention. 363 U. S. at 77-78. We find nothing in the proferred "new evidence"—which consists of an 1828 communication from the Secretary of State to Congress reporting that no agreement had been reached with Mexico with respect to the territorial boundary between Louisiana and Texas (then part of Mexico) —which would warrant a reexamination of this Court's ruling.

C. *Neither should the 1965 California Decision nor the 1969 Louisiana Decision be reconsidered.*

The last substantive argument made by the State is that the 1969 decision in this case, 394 U. S. 11, and the 1965 opinion in the *California* case, 381 U. S.

Number 61, 20th Cong., 1st Sess., which is also published in Volume 171 of the Congressional Document Series.

[8] The State refers to the case of *Texas* v. *Louisiana,* No. 36, Original, in this connection. The issue in that case is the location of the boundary between Texas and Louisiana. The respective seaward limits of either State's territory as against the United States is not in issue and the United States is not a party to that action. See *Texas* v. *Louisiana,* No. 36, Original, October Term 1969, Texas' Motion for Leave to File Complaint, Complaint and Brief in Support of Motion; and Motions and Answer of the State of Louisiana to Complaint by the State of Texas. Leave to file the complaint was granted, 397 U.S. 931, and the case was referred to a special master. 398 U.S. 394.

139, should be reconsidered (Response, pp. 10-14). In those opinions the Court held that the coastline from which the three mile grant under the Submerged Lands Act is to be measured is the baseline described in the Convention on the Territorial Sea and Contiguous Zone, 15 U.S.T. (Pt. 2) 1606. 381 U. S. at 161-167; 394 U. S. at 35. Consequently, the baseline used by the United States to measure its territorial sea for international purposes and the baseline for measurement of the Submerged Lands Act grant are identical. 381 U. S. at 165; 394 U. S. at 34. Louisiana argues that this consequence is inconsistent with the observations in the 1960 Louisiana opinion that Congress' division of the rights to the resources of the continental shelf is a domestic question that has no effect on the conduct of United States foreign relations. See 363 U.S. 1, 33.

There is no inconsistency in these decisions and no reason for reconsideration. In the 1960 decision, the foreign relations issue was raised in an entirely different context. The question then was whether under the Submerged Lands Act, a State on the Gulf of Mexico could have rights in the resources of the seabed more than three miles from its coast based on a boundary description which incorporated a maritime belt of greater than three miles width.

The United States argued that, since it never recognized a territorial sea beyond the three mile limit, none of the States could have boundaries further seaward. See 363 U.S. at 30-33. In rejecting this contention, the Court stated that the only issue before the Court was the division of rights in the resources of the

continental shelf. It held that, since the United States admitted that the nation has the right to exploit the resources of the seabed seaward to the edge of the continental shelf, the division of the rights to these resources between the United States and the States would be a purely domestic question and that Congress could divide these resources as it wishes. 363 U.S. at 33.

The decisions in 1965 and 1969 that the use of the international coastline is appropriate under the Submerged Lands Act are not inconsistent with the holding in 1960. While Congress could have used any basis for drawing the dividing line between the continental shelf rights of the States and those of the federal government, it chose to use the coastline as defined in Section 2(c) of the Submerged Lands Act, 67 Stat. 29, for the purposes of measuring the grant found in Section 3(b) of that Act. In the 1965 and 1969 opinions the Court merely interpreted this statutory definition of the term "coastline" as the "coastline" used by the United States for international purposes. It is solely the result of the fact that the domestic division of rights in the continental shelf is by statute based on a line that is also used for international relations purposes that the location of the limit of the grant under the Submerged Lands Act has international ramifications. As a result, the courts must take into account the position of the United States in the conduct of its foreign relations in adjudicating this statutory domestic division of rights, which of course was not involved in the 1960 *Louisiana* decision.

III

There Is No Reason For Delaying A Decision on the United States' Motion

Even assuming that the United States is entitled to the more than one billion dollars that is being held in an escrow account, Louisiana argues that the United States should continue to be denied the use of these monies and the ability freely to administer the resources of vast areas of the continental shelf off the coast of Louisiana until this litigation reaches later stages.

A. *The Report of the Special Master and the record of the proceedings before him will have no relevance to the issues present in the United States' Motion.*

The State urges that the decision of our motion should be deferred until the Special Master submits his report in this case and the complete record of the proceedings before him is available (Objection, pp. 4-7, 12; Response, pp. 2, 21). Since the briefing and agument of legal contentions before the Special Master still have not been scheduled, it is likely that his report will not be completed for at least one and a half years from now. Louisiana contends that, in spite of the time factor involved, our motion should be deferred since the report of the Special Master and evidence submitted at the hearings may cast new light on the contentions of the State. We cannot foresee this result since the reference to the Master was limited to findings consistent with the previous decisions in this case, 394 U. S. 11, 78; 395 U. S. 901, and the Master has repeatedly indicated his full un-

derstanding of this limitation. See, for example, the statement of the Master quoted at page 8 of the State's Response. In addition, since the proceedings before the Master are limited, the United States would not attempt to introduce evidence to rebut evidence that the State might introduce in support of theories that are inconsistent with previous decisions in this case. Accordingly, there is no reason for decision of our instant motion to await the Special Master's report or the complete record of the proceedings before him.

B. ***Experience subsequent to two previous decrees in this dispute shows that the technical problems suggested by the State need not arise.***

The State also contends that certain technical problems require denial of our motion at this time. It argues that there are numerous technical problems of dividing the impounded monies and identifying the leases that are to be decreed to the United States. In fact, such disputes are not reasonably foreseeable.[9] There have been two prior decrees in this dispute in which areas of active leasing have been adjudicated to the parties. See 340 U. S. 899 and 382 U. S. 288. Any technical problem that might arise through the execution of this decree was also a poten-

[9] Louisiana suggests, for example (Response, pp. 22-23), that the split lease problem (*i.e.*, leases which span the line described in our proposed third supplemental decree) and the problem of determining the precise location of wells will present "unimaginably grave difficulties." But we specifically excluded split leases from our proposed decree (see proposed decree, p. 4 and supporting memorandum, p. 23). In view of this exclusion, it is unlikely that problems of exact well location will arise at this time.

tial issue when those decrees were issued. Despite the risk, no technical problems arose that could not be worked out by the parties. There is no reason to expect a different result at this time. Thus, there is no reason to refer the execution of this order to the Special Master.

C. *The Court should decide this motion at this time.*

Beginning with the referral of this case to Mr. Walter P. Armstrong, Jr., as Special Master, each party has devoted considerable effort and expense to prove its contentions within the legal framework set down by this Court. This effort is continuing. If the Court were to reverse any of its previous decisions, as they relate to the State of Louisiana, much, if not all, of this effort would be wasted. In addition, other litigation is going forward in reliance on these precedents. *E.g.*, *United States* v. *Alaska*, D. Alaska, Civil No. A-45-67, and *United States* v. *Florida*, No. 52, Original. Thus, if new rules are to be used for the division of the resources of the seabed off the coast of Louisiana, the parties to this and related litigation should be apprised of them as soon as possible so that their efforts can be directed toward the issues that arise under those new rules.

If the Court accepts our contention that, under settled principles of the law of judgments, Louisiana is bound by the earlier decisions in this ongoing dispute, the right of the United States to the resources that are the subject of our motion is indisputable. Further delay of the entry of a decree would unwarrantably deprive the United States of the beneficial

use of more than one billion dollars and the resources in more than two million acres of seabed and subsoil off the coast of Louisiana.

CONCLUSION

For the foregoing reasons, the United States' Motion for the Entry of the Supplemental Decree (No. 3) as to the State of Louisiana should be granted at this time. The State of Louisiana's Motions to defer this matter or alternatively to refer it to the Special Master under an amended reference should be denied.

Respectfully submitted.

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