

No. 9, Original

Supreme Court, U. S.  
FILED

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MICHAEL RODAK, JR., CLERK

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

OCTOBER TERM, 1974

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF LOUISIANA, ET AL.,

Defendants.

**PETITION FOR REHEARING**

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PETITION FOR REHEARING

Now comes the State of Louisiana, through its Attorney General, and respectfully prays for:

A rehearing of this case for the following reasons:

(1) There remains a substantial question of constitutional law which was decided neither by the Special Master nor by this Court, to-wit:

Can the United States by the adoption of a treaty deprive Louisiana of inland waters already vested in Louisiana?

This issue was not fully briefed before this Court since the issue developed only after the filing of briefs and the rendering of the opinion by this Court on March 17, 1975.

(2) This case is affected by circumstances of substantial and foreseeably controlling impact, in that there is presently pending before this Court, on a writ of certiorari, the case of *United States of America v. State of Alaska*, bearing No. 73-1888.

(3) The Special Master found that Caillou Bay was a juridical bay, but felt that the language of this Court in the *Louisiana Boundary Case*, 394 U.S. 11 (1969) precluded his so holding. This issue should be reconsidered by this Court to avoid depriving the United States of waters clearly recognized as inland waters by the Master.

(4) The granting of a rehearing will not delay development of the continental shelf offshore Louisiana.

# I

The Special Master found that the United States conceded that East Bay was a juridical bay until 1918 [Report, p. 27]; and this Court, by adopting the Special Master's Report, has approved Closing Line A for East Bay as a juridical bay.<sup>1</sup> According to the United States' concession, East Bay was a juridical bay to Line A until 1956,<sup>2</sup> which was after the passage of the Submerged Lands Act in 1953.

The United States conceded that Caillou Bay was

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<sup>1</sup> "If this were not the case, [failure to meet water area measurement] either due to the adoption of a more liberal method of water area measurement or due to subsequent erosion in the area established by competent evidence in the record, either of these closing lines [A and B] might be accepted, as the area which each of them encloses has all of the other characteristics of a true juridical bay." Report, p. 31.

<sup>2</sup> "There remain for consideration several other lines which apparently satisfy the semicircle test: (1) the variants of Closing Line A up to 1956 (La. Brief, pp. 71-72, Figures 2 and 3, 77, 92-93). . . ." Reply Memorandum for the United States, p. 33.

inland waters until 1968,<sup>3</sup> which was after the passage of the Submerged Lands Act in 1953.

The United States, by the adoption of the Convention on the Territorial Sea and the Contiguous Zone, could not deprive Louisiana of these inland waters already vested in Louisiana. This issue of law was not decided by the Special Master at the insistence of the United States and was not passed on by this Court.

In the joint pretrial statement before the Special Master, it was agreed, in paragraph C, as follows:

With one exception, the parties agree that all issues should be presented to the Special Master for decision, even though his conclusions as to some may eliminate others. This will enable the Supreme Court to have the benefit of his views on every point that may become material to its disposition of the case.

The United States makes an exception with respect to the issue stated as question (c) under area 1 and as issue (j) under area 11—that is, whether changes in the law have divested Louisiana of title to any submerged lands in those areas. Specifically, this is intended to raise the question of whether the United States can diminish a State's submerged lands by entering into an international agreement that defines inland waters in such a way as to exclude areas formerly recognized

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<sup>3</sup> "It [Caillou Bay] is a special case only because, until 1968, the United States did not challenge the State's assertion that the 'bay' was inland—for *juridical*, not historical reasons. That fact, however, cannot establish historic title." Reply Memorandum for the United States, p. 18.

as inland waters. The United States does not believe that this question arises on the *facts of this case*, because it does not believe that any waters not within the definition of inland waters under the Convention on the Territorial Sea and the Contiguous Zone were previously recognized as inland waters. Whether a treaty could have the effect that Louisiana attributes to the Convention on the Territorial Sea and the Contiguous Zone is a constitutional question of great importance, which the Supreme Court has heretofore avoided considering. See *United States v. California*, 381 U. S. 139 at 168 (1965). Adequate consideration of the question would require an extended study of constitutional law and history. It is a general question of constitutional law, decision of which will not depend in any way on the peculiar facts or legal issues of this case. Accordingly, the United States sees no reason to suppose that the Supreme Court would find it necessary to remand the case to the Special Master for advice on this point, if he should have found it unnecessary to reach the question, and the Supreme Court should conclude otherwise. For these reasons, the United States urges that this question not be briefed or argued here unless the Special Master himself concludes that he cannot decide the case without reaching this question, in which event he should then call for supplemental briefing and argument by both parties on this point. Louisiana contends that the United States has recognized preserves or reserved areas as inland waters and that neither subsequent treaties nor subsequent abandonment of these areas can deprive Louisiana of these areas except as the same may extend beyond the limits



set in Act 33 of 1954. Louisiana's position is that the treaty could not constitutionally divest Louisiana of property and if the Special Master finds the effect of this treaty purports to work such a divestiture, the constitutional question must be considered. [Emphasis added.]

The United States, in its Post Trial Brief before the Special Master, argued:

In our view, this question is not presented here since there are no waters along the Louisiana coast which were previously recognized as inland waters but are not within the definition of inland waters under the Convention. Post Trial Brief for the United States, p. 92.

This position of the United States prevented the Special Master from considering whether Louisiana was deprived of any waters which were once inland waters, thus leaving the matter open for this Court to decide.

It has now been conceded by the United States before this Court that East Bay was a juridical bay containing inland waters to Line A until at least 1956, and that Caillou Bay contained inland waters until at least 1968.<sup>4</sup> In both of these areas Louisiana is being divested of title to areas which were admittedly,

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<sup>4</sup> These issues only became fully developed after the United States filed its reply memorandum and the Court rendered its opinion. This was after all of the briefs had been filed and this case was ready for oral argument. Louisiana mentioned these issues in its oral argument before the Court. Transcript of oral argument, p. 9. The Court, in adopting the Special Master's Report, approved the headlands for Line A.

at one time, inland waters of Louisiana, by theories advanced by the United States under the Convention on the Territorial Sea and the Contiguous Zone.

When the Convention on the Territorial Sea and the Contiguous Zone was ratified by the Senate, it was made clear by Mr. Dean, representing the State Department, in answer to Senator Long, that the adoption of the Convention would not deprive any of the States of their territory. Louisiana Exhibit 283, Tab 16, page 19.<sup>5</sup>

This is an important constitutional issue which Louisiana, as a sovereign State, is entitled to have the Court decide since it was not considered by the Special Master at the insistence of the United States. It was not adequately briefed in this Court by the United States and Louisiana for the reason that the issue only developed after the briefs were filed and the rendering of the opinion by this Court.

As an alternate to having the Court pass on this constitutional issue at this time, we suggest that this issue be referred back to the Special Master for his opinion after it has been briefed by the parties, as was done by the Court in the case of *United States v. Florida*, No. 52 Original, 42 U.S.L.W. 4364 (U.S. Mar. 17, 1975).

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<sup>5</sup> In the case of *Jean Louis Prevost v. Charles E. Grenaux*, Treasurer of the State of Louisiana, 60 U.S. (19 How.) 1, at 7, Mr. Chief Justice Taney, speaking for the Court, held that a treaty subsequently made between the United States and France could not divest rights of property already vested in the State. See *Louisiana v. Mississippi* 202 U. S. 1 (1906), and U.S. CONST. art. 4, § 3.

## II

There is presently pending before this Court, on a writ of certiorari, the case of *United States of America v. State of Alaska*, No. 73-1888, *cert. granted* 43 U.S.L.W. 3330 (Dec. 9, 1974), involving the issue as to whether or not Cook Inlet is an historic inland water bay, the closing line of which establishes the coastline of Alaska for the purpose of measuring Alaska's rights under the Submerged Lands Act. The Alaskan case was decided in favor of Alaska by a United States District Court, 352 F. Supp. 815, and was sustained by the United States Court of Appeals for the Ninth Circuit, 497 F. 2d 1155. The findings of fact by the Special Master in this case, as reflected in Appendix B of his report (pp. 67-69), made after he rejected Louisiana's historic bay claims, are basically similar to the facts relied on by the Court in the Alaskan case, 352 F. Supp. 815.<sup>6</sup> In the Alaskan case the Court drew different conclusions from these facts based on the

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<sup>6</sup> The Special Master rendered a preliminary report in which he rejected Louisiana's historic bay claims. This report was served on all interested parties. Louisiana then filed a motion asking the Special Master to find from the uncontradicted evidence facts and conclusions of law to be considered by the Court in passing on the Special Master's report. This resulted in the findings of fact and conclusions of law appearing in Appendix B to the Special Master's report. The Special Master did not change his opinion, although these latter findings of fact conflict with those on which he originally based his opinion. The Special Master held that there was no dispute over Louisiana's evidence on historic title and, therefore, the findings of fact in Appendix B must be accepted as true. These undisputed findings of fact involved the same legal issues presented to the Court in the Alaskan case.

law applied by it. A rehearing should be granted in this case so that the Court can again consider Louisiana's historic inland bay claims on these undisputed facts after it decides the Alaskan case. Louisiana should not be precluded from establishing its historic inland bay claims based on the legal principles announced in the Alaskan case if the opinion in the Alaskan case is sustained by this Court. The Alaskan case, if sustained by this Court, would justify this Court's recognizing Louisiana's historic inland bay claims on the facts found by the Special Master in Appendix B to his report. All States should be treated equally and the United States' foreign policy should be consistent.

### III

The Special Master, in this case, determined "that based upon their size, proximity, configuration, orientation and nature these islands would constitute an extension of the mainland and [he] would therefore hold that Caillou Bay is a juridical bay with a closing line between points at coordinates  $X = 2,117,317$ ,  $Y = 143,491$  and  $X = 2,076,201$ ,  $Y = 189,799$ ." Report, p. 51.

The Special Master, while recognizing Caillou Bay was a juridical bay, felt language of this Court, in its 1969 decree, made without an evidentiary hearing on a misunderstanding of Louisiana's contentions, and on incomplete evidence, precluded him from holding Caillou Bay is a juridical bay.<sup>7</sup> This holding

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<sup>7</sup> "Louisiana does not contend that any of the islands in question is so closely aligned with the mainland as to be

not only deprives Louisiana, but also the United States, of inland waters clearly recognized as inland waters by the Special Master on the evidence developed in the trial of the case. This issue, as a matter of equity, should be reconsidered by the Court. This would not require an additional hearing. As we have pointed out, the Special Master has already determined that Caillou Bay is a juridical bay under criteria established by this Court and has fixed the closing line of the bay.

#### IV

The granting of a rehearing in this case will not delay offshore drilling in the Gulf of Mexico off the coast of Louisiana since the United States and Louisiana entered into an Interim Agreement in 1956 to develop the disputed areas in the Gulf of Mexico. This agreement has resulted in extensive drilling and pro-

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deemed a part of it, and we agree that none of the islands would fit that description." 394 U.S. 11, at 67 n. 88.

The contention was not needed in light of the agreement by the United States that the areas behind these islands were inland waters.

Mr. J. Lee Rankin, Solicitor General, said on page 177 of the Brief for the United States dated May 15, 1958:

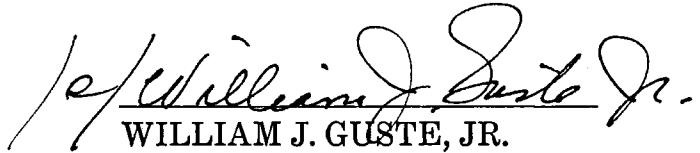
While the United States denies that the phrase "including all islands within three leagues of the coast," described any submerged land, we do agree that Louisiana is entitled, though for a different reason, to the submerged lands between its islands and mainland. It happens that all the islands on the coast of Louisiana are so situated that the waters between them and the mainland are sufficiently enclosed to constitute inland waters; consequently the lands underlying those waters necessarily passed to the State upon its entry into the Union. *Pollard v. Hagan*, 3 How. 212.

duction of oil and gas in the disputed areas to the benefit of the United States, Louisiana and many other States in the Union. Thus, in no manner is the nation's need for oil and gas production adversely affected by the Court's giving consideration to this petition.

WHEREFORE, the State of Louisiana prays that a rehearing be granted in this case.

FURTHER PRAYS for all orders and decrees necessary in the premises; for all general and equitable relief.

Respectfully submitted,

A handwritten signature in dark ink, reading "William J. Guste, Jr.", written over a horizontal line.

WILLIAM J. GUSTE, JR.

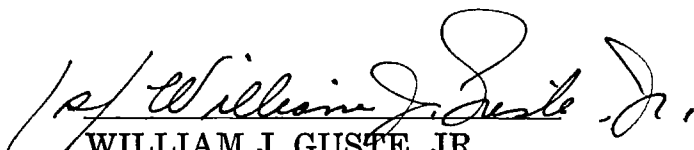
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**CERTIFICATE**

I, William J. Guste, Jr., Attorney General of the State of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that the foregoing motion for rehearing is filed in good faith and not for the purpose of delay, and that copies have been properly served on the 7<sup>th</sup> day of April, 1975, by mailing copies, sufficient air mail postage prepaid, to the Solicitor General and to the Attorney General of the United States, Department of Justice, Washington, D.C., 20530.

  
WILLIAM J. GUSTE, JR.,  
Attorney General,  
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