

Supreme Court, U. S.  
FILED

SEP 3 1976

THOMAS RODAK, JR., CLERK

IN THE  
**Supreme Court of the United States**

October Term, 1976

No. 5, Original

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UNITED STATES OF AMERICA, *Plaintiff,*

vs.

STATE OF CALIFORNIA, *Defendant.*

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PETITION FOR THE ENTRY OF A SUPPLEMENTAL DECREE; PROPOSED SUPPLEMENTAL DECREE; AND MEMORANDUM RELATIVE TO PROPOSED SUPPLEMENTAL DECREE.

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UNITED STATES OF AMERICA, *Plaintiff,*

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STATE OF CALIFORNIA, *Defendant.*

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PETITION FOR THE ENTRY OF A  
SUPPLEMENTAL DECREE

The State of California respectfully petitions this Court to enter in this cause a supplemental decree in the form submitted herewith.

DATED: August 31, 1976.

EVELLE J. YOUNGER,  
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IN THE  
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UNITED STATES OF AMERICA, *Plaintiff,*

*vs.*

STATE OF CALIFORNIA, *Defendant.*

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**PROPOSED SUPPLEMENTAL DECREE**

For the purpose of identifying with greater particularity the boundary line between the submerged lands of the United States and the submerged lands of the State of California as defined by this Court's decrees of October 27, 1947 (332 U.S. 804) and January 31, 1966 (382 U.S. 448), it is **ORDERED, ADJUDGED AND DECREED** that the decrees heretofore entered in this cause be modified to read as follows:

1. As against the United States, the State of California has title to and is the owner of all tidelands, submerged lands and natural resources (as defined in subsection (e) of 43 U.S.C. § 1301) between the mean high water line and the furthest extent of the territorial sea surrounding all islands, islets and rocks located within the Channel Islands National Monument, established by Presidential Proclamation No. 2281, 52 Stat. 1541 (April 26, 1938) and extended by Presidential Proclamation No. 2825, 63 Stat. 1258 (February 9, 1949). With respect to the foregoing lands and natural

resources, California's rights include the right and power to manage, administer, lease, develop and use these lands and natural resources all in accordance with applicable State law.

2. As against the State of California, the United States is not entitled to any right, title or interest in or to the lands and natural resources described in paragraph 1 above.

3. The land area of Anacapa and Santa Barbara Islands above the mean high water line and the land area of all islets and rocks above the mean high water line and within one nautical (geographical) mile of the coastline of Anacapa and Santa Barbara Island are adjudged to be federal lands within the Channel Islands National Monument as to which the State of California has no title or property interest.

4. Nothing in this supplemental decree is intended to diminish any rights and powers reserved to or retained by the United States under the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§ 1301-1315.

5. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as from time to time be deemed necessary or advisable to give proper force and effect to this decree and the prior decrees of this Court or to effectuate the rights of the parties in the premises.

IN THE  
**Supreme Court of the United States**

October Term, 1976

No. 5, Original

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UNITED STATES OF AMERICA, *Plaintiff*

vs.

STATE OF CALIFORNIA, *Defendant.*

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**MEMORANDUM RELATIVE TO PROPOSED  
SUPPLEMENTAL DECREE**

This action was originally instituted by the United States against the State of California under the authority of Article III, Section 2, Clause 2 of the Constitution of the United States. In a supplemental decree entered by this Court on January 31, 1966, the Court retained jurisdiction to entertain such further proceedings, to enter such orders, and to issue such writs as were deemed necessary or advisable to give proper force and effect to the 1966 decree or to effectuate the rights of the parties in the premises. *United States v. California*, 382 U.S. 448, 453 (1966) (paragraph 14). Referring to the boundary line between the submerged lands of the United States and the submerged lands of the State of California, paragraph 13 of the 1966 decree provided:

“ . . . As to any portion of such boundary line or of any areas claimed to have been reserved under § 5 of the Submerged Lands Act as to which the parties

may have been unable to agree, either party may apply to the Court at any time for the entry of a further supplemental decree.”

In urging the entry of the proposed supplemental decree submitted with this petition, the State of California invokes the jurisdiction reserved by this Court in the supplemental decree of January 31, 1966. The parties have been unable to agree as to the extent of each sovereign’s jurisdiction over and ownership rights in the areas covered by the proposed supplemental decree. The areas of disagreement involve not only a portion of the boundary line between state and federal submerged lands but also areas claimed by the United States to have been reserved under Section 5 of the Submerged Lands Act, 67 Stat. 32, 43 U.S.C. § 1313.

By virtue of its sovereignty and the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§ 1301-1315, the State of California claims title to and ownership of all tidelands, submerged lands and natural resources between the mean high water line and the furthest extent of the territorial sea surrounding the islands, islets, and rocks located within the Channel Islands National Monument. California further claims the rights to manage, administer, develop and use these lands and natural resources in accordance with state law. California’s rights are limited only by the rights reserved to and retained by the United States in the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§ 1301-1315.

The United States refuses to recognize California’s ownership rights and jurisdiction to the extent described in the preceding paragraph. The United States publicly asserts that it owns and has jurisdiction over all areas within one nautical (geographical) mile of the shorelines of Anacapa and Santa Barbara Islands, the two principal

islands of the Channel Islands National Monument. This claim appears to be based exclusively upon Section 5 of the Submerged Lands Act, 67 Stat. 32, 43 U.S.C. § 1313, which in subdivision (a) excepted from the operation of the Act "... any rights the United States has in lands presently and actually occupied by the United States under claim of right . . . ."

The claim of the United States must be evaluated in the context of the creation and subsequent enlargement of the Channel Islands National Monument. On April 26, 1938, President Franklin Delano Roosevelt established the Channel Islands National Monument by Proclamation No. 2281, 52 Stat. 1541 (1938).<sup>1</sup> Except for several lighthouse reservations and the express exclusion of Cat Rock, the original boundaries of the Channel Islands National Monument included only the land area of Anacapa (actually a group of three islets) and Santa Barbara Islands located off the mainland of southern California. Since California's admission to the Union, these two islands together with the islets and rocks surrounding them have been public lands of the United States located within the political boundaries of the United States.

On October 27, 1947, this Court entered its decree that the United States was possessed of "paramount rights in, and full dominion and power over, the lands, minerals and other things" underlying the Pacific Ocean seaward of the ordinary low-water mark on the coast of California to a distance of three nautical miles. *United States v. California*, 332 U.S. 804, 805 (1947). On February 9, 1949, President Harry S Truman enlarged the Channel Islands National Monument to include additional areas. Declaring that "certain islets and rocks situated near

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<sup>1</sup>Proclamation No. 2281 is reprinted as Appendix A to this petition.

Anacapa and Santa Barbara Islands” were required for the proper care, management, and protection of the objects of geological and scientific interest located on lands within the monument, President Truman proclaimed that “the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands” were added to and reserved as part of the Channel Islands National Monument. Proclamation No. 2825, 63 Stat. 1258 (1949).<sup>2</sup>

By virtue of the 1949 proclamation, the United States claims that it owns and has the right to exercise jurisdiction over “the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands” because the 1949 proclamation was somehow tantamount to an “actual occupation” of these areas excepting them from the operation of the Submerged Lands Act when it was enacted in 1953. The United States apparently interprets the phrase “the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands” to include both the submerged lands within the one-mile belt and the waters of the Pacific Ocean covering them. Current regulations of the National Park Service seem to presuppose federal ownership of and jurisdiction over both submerged lands and waters when they undertake to deal with such subjects as submerged features, wrecks, and fishing at the Channel Islands National Monument. See 36 C.F.R. § 7.84. If the term “shoreline” as used in the 1949 proclamation is defined as being higher than the line of mean lower low water around these two islands, then the United States may even be claiming all or a portion of California’s tidelands surrounding Anacapa and Santa Barbara Islands as part of the Channel Islands National Monument.

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<sup>2</sup>Proclamation No. 2825 is reprinted as Appendix B to this petition.

California contends that President Truman's 1949 proclamation did not add any tidelands, submerged lands or water areas to the Channel Islands National Monument. Properly interpreted, the 1949 proclamation merely added the uplands of all islets and rocks within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands to the original land areas reserved in the 1938 proclamation. As of the date of the 1949 proclamation, the uplands of these islets and rocks were the only "lands owned or controlled by the Government of the United States" within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands which could be reserved for national monument purposes. *See* 16 U.S.C. § 431. If the 1949 proclamation did not add a one-mile belt of submerged lands and water areas to the Channel Islands National Monument, it follows that no such belt could have been "actually occupied" by the United States so as to except it from the operation of the Submerged Lands Act.

During the period from February 9, 1949, through May 23, 1953, the United States did not perform any acts within the one-mile belt of water area surrounding Anacapa and Santa Barbara Islands that would qualify as acts of "actual occupancy" so as to except this one-mile belt from the operation of the Submerged Lands Act. Even if there were acts of actual occupation during the relevant period, actual occupation without more is insufficient to satisfy the exception set forth in Section 5 of the Submerged Lands Act. The lands must have been actually occupied by the United States "under claim of right." The legislative history of the Submerged Lands Act makes it clear that a claim of right does not include "any claim resting solely upon the doctrine of 'paramount rights' enunciated by the Supreme Court with respect to the Federal Government's status in the areas beyond inland waters and mean low tide." S. Rep. No. 133, 83d Cong., 1st Sess. 20 (1953). Since the submerged lands

underlying the one-mile belt where susceptible of reservation as part of a national monument only if the "paramount rights doctrine" had made them "land owned or controlled by the United States" prior to the 1949 proclamation, it should follow as a matter of law that the submerged lands within the one-mile belt were not occupied under a "claim of right" sufficient to satisfy the Section 5 exception to the Submerged Lands Act.

By claiming title to and jurisdiction over the lands and natural resources within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands, the United States interferes with California's management and administration of a valuable recreational resource. The clear waters of this one-mile belt lie over a rocky shelf which is one of California's most beautiful areas for scuba diving and sport fishing. The federal government's claims of ownership of the one-mile belt are a source of continual interference with California's enforcement of its fish and game laws in the territorial sea surrounding the Channel Islands National Monument. By pressing its claims, the United States also interferes with California's program of leases for the harvesting of kelp in the one-mile belt. The United States' assertion of the right to regulate commercial and sport fishing within the one-mile belt is in derogation of California's rights under the Submerged Lands Act to manage, administer, develop and use the natural resources of this area. Unless the rights of the State of California are established and declared by this Court, the State of California will continue to suffer irreparable injury for which there is no adequate remedy other than this petition for supplemental decree.

In addition to seeking a resolution of the status of the one-mile belt around the Channel Islands National Monument, the proposed supplemental decree also seeks to establish the three-mile boundary between the submerged lands of California underlying the territorial sea and the sub-

merged lands of the United States on the Outer Continental Shelf. This boundary has not been previously fixed, and the maps accompanying the call for nominations in Outer Continental Shelf Lease Sale No. 48 indicate that there are tracts abutting this boundary line which may be involved in this lease sale. California contends that the territorial sea extends three miles from the coastline of each island, islet, rock and low tide elevation located within three geographical miles of Anacapa and Santa Barbara Islands. The territorial sea is not simply a three-mile belt measured from the coastline of Anacapa and Santa Barbara Islands.

This petition has been filed to initiate proceedings in this Court to resolve the conflicting claims of the parties as to their rights in the ocean areas immediately adjacent to the Channel Islands National Monument. Since this petition is in the nature of an initial pleading, it sets forth only a general outline of the controversy between the parties and is not intended to be a full exposition of California's position. California reserves such fuller exposition for later briefing after the United States has answered this petition.

California respectfully requests that, if necessary, this Court issue an order directing the United States to answer this petition. Since California believes that it may be possible to avoid any factual issues requiring the appointment of a special master in connection with this petition for a supplemental decree, it may be that this Court, either prior or subsequent to the filing of an answer by the United States, will desire a conference with counsel for the respective parties to consider the procedure for resolving conflicting claims of the State of California and the United States as regards the proposed supplemental decree. It is suggested that one or more members of the Court be designated to hold such a conference with counsel prior to the appointment of a special master.

Respectfully submitted,

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August 31, 1976



CHANNEL ISLANDS NATIONAL MONUMENT—CALIFORNIA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

April 26, 1938  
[No. 2281]

A PROCLAMATION

WHEREAS certain public islands lying off the coast of Southern California contain fossils of Pleistocene elephants and ancient trees, and furnish noteworthy examples of ancient volcanism, deposition, and active sea erosion, and have situated thereon various other objects of geological and scientific interest; and

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument, to be known as the Channel Islands National Monument:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the authority vested in me by section 2 of the act of June 8, 1906, ch. 3060, 34 Stat. 225 (U. S. C., title 16, sec. 431), do proclaim that, subject to all valid existing rights, the following-described lands in California are hereby reserved from all forms of appropriation under the public-land laws and set apart as the Channel Islands National Monument:

All of that part of the Anacapa Island Lighthouse Reservation, a group of three islets known as Anacapa Island, approximate area 700 acres, reserved by Executive Order of September 11, 1854, except the following described parcels of land:

- |             |  |
|-------------|--|
| Parcel I.   | All of the land comprising the east islet of the group lying eastward of West Longitude 119° 22' 38" (North American Datum 1927) comprising 106.88 acres more or less.             |
| Parcel II.  | All of the land comprising the middle islet lying between West Longitude 119° 23' 21" and 119° 23' 30" and south of Latitude 34° 00' 14" North comprising 7.68 acres more or less. |
| Parcel III. | All of the land comprising the west islet lying westward of West Longitude 119° 26' 10" comprising 46.72 acres more or less.   |
| Parcel IV.  | The entire area of Cat Rock, which lies off the southern extremity of the west islet comprising .5 acre more or less.  |

The area reserved for the national monument on Anacapa Island contains 538.22 acres more or less.

All of Santa Barbara Island, area 638.72 acres, reserved for lighthouse purposes by Executive Order of August 24, 1905, excepting the following-described parcels of land:

- |           |  |
|-----------|--|
| Parcel I. | Beginning at a point in the high water line at the northwesterly side of the island which bears 258° 50' true azimuth from north, a distance of 525 feet more or less from the center of Santa Barbara Island North End Light tower; thence 110° true azimuth from north a distance of 1000 feet more or less to the intersection with the high water line |
|-----------|--|

Channel Islands  
National Monument,  
Calif.  
Preamble.

Establishment.

34 Stat. 225.  
16 U. S. C. § 431.

Description.

Parcel II.

at the northeasterly side of the island; thence along the high water line around the northerly point of the island to the point of beginning comprising 16 acres more or less.

Beginning at a point in the high water line at the southwesterly side of the island which bears 223° true azimuth from north a distance of 300 feet more or less from the center of Santa Barbara Island South End Light tower; thence 90° true azimuth from north a distance of 800 feet to a point; thence 330° 30' true azimuth from north a distance of 2150 feet to a point; thence 270° true azimuth from north a distance of 800 feet more or less to the intersection with the high water line at the westerly side of the island; thence southerly along the high water line to the point of beginning comprising 40.96 acres more or less.

The area reserved for the national monument on Santa Barbara Island contains 581.76 acres more or less.

The reservation made by this proclamation supersedes as to any of the above-described lands affected thereby the withdrawal made by Executive Orders of September 11, 1854, January 26, 1867, and August 24, 1905. However, the lands excepted in the above descriptions shall remain under the jurisdiction of the Bureau of Lighthouses of the Department of Commerce, as provided by the Executive orders referred to. The Bureau of Lighthouses of the Department of Commerce shall have the right of ingress and egress as to any part of Santa Barbara Island for the purpose of transporting all necessary equipment for servicing the established lights.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument, and not to locate or settle upon any of the lands thereof.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this monument as provided in the act of Congress entitled "An act to establish a National Park Service, and for other purposes," approved August 25, 1916, 39 Stat. 535 (U. S. C., title 16, secs. 1 and 2), and acts supplementary thereto or amendatory thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 26 day of April in the year of our Lord nineteen hundred and thirty-eight, and of the [SEAL] Independence of the United States of America the one hundred and sixty-second.

FRANKLIN D ROOSEVELT

By the President:  
SUMNER WELLES  
*Acting Secretary of State.*

Former reservations superseded.

Jurisdiction over lands.

Bureau of Lighthouses, right of ingress and egress.

Reservation from settlement, etc.

Supervision.

39 Stat. 535.  
16 U. S. C. §§ 1, 2.

ENLARGING THE CHANNEL ISLANDS NATIONAL MONUMENT, CALIFORNIA

February 9, 1949  
[No. 2825]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS it appears that certain islets and rocks situated near Anacapa and Santa Barbara Islands, which for the most part form the Channel Islands National Monument, established by Proclamation No. 2281 of April 26, 1938 (52 Stat. 1541), are required for the proper care, management, and protection of the objects of geological and scientific interest located on lands within the said monument; and

WHEREAS it appears that it would be in the public interest to extend the boundaries of the said monument to include the herein-after-described areas adjacent to the said islands:

Channel Islands National Monument, addition of areas.

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, under and by virtue of the authority vested in me by section 2 of the act of June 8, 1906, 34 Stat. 225 (16 U. S. C. 431), do proclaim that, subject to valid existing rights, the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands, as indicated on the diagram hereto attached and forming a part hereof, are withdrawn from all forms of appropriation under the public-land laws and added to and reserved as a part of the Channel Islands National Monument.

The reservation made by this proclamation shall not affect the lands included in existing reservations for lighthouse purposes, or the rights of ingress and egress appertaining thereto, as particularly described in the said Proclamation No. 2281.

52 Stat. 1541.

Warning.

Warning is hereby expressly given to any unauthorized persons not to appropriate, injure, destroy, deface, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

Supervision, management, etc.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this monument as provided in the act of Congress entitled "An act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U. S. C. 1 and 2), and acts supplementary thereto or amendatory thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 9th day of February in the year of our Lord nineteen hundred and forty-nine, and  
[SEAL] of the Independence of the United States of America the one hundred and seventy-third.

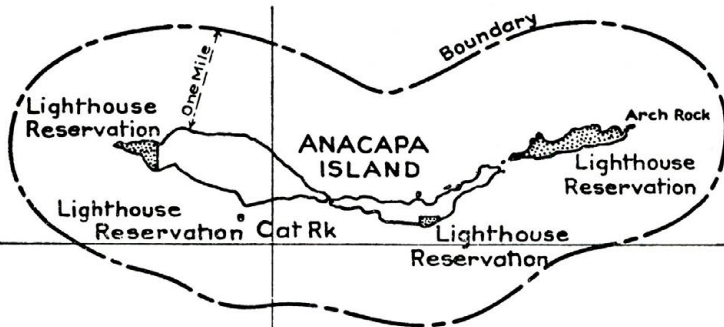
HARRY S TRUMAN

By the President

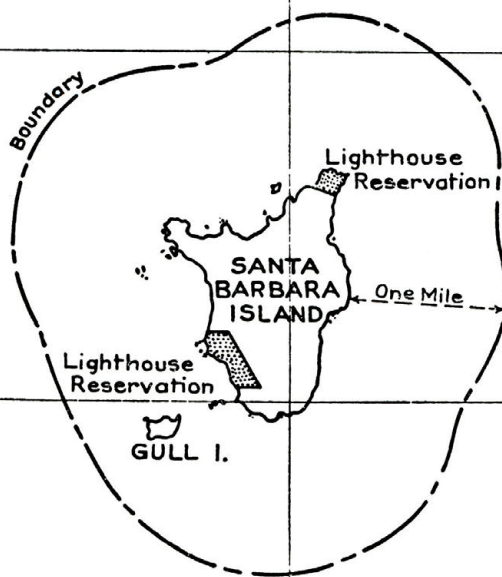
DEAN ACHESON  
*Secretary of State.*



# CHANNEL ISLANDS NATIONAL MONUMENT CALIFORNIA



Approx. 9203 Ac.



Approx. 17835 Ac.







Service of the within and receipt of a copy  
thereof is hereby admitted this ..... day  
of September, A.D. 1976.

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