

No. 5, Original

Supreme Court, U. S.

FILED

DEC 2 1976

MICHAEL RODAN, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

**MOTION FOR ENTRY OF A SUPPLEMENTAL DECREE,
PROPOSED SUPPLEMENTAL DECREE (NO. 2),
and MEMORANDUM IN SUPPORT OF THE MOTION
OF THE UNITED STATES AND IN OPPOSITION
TO THE MOTION OF THE STATE OF CALIFORNIA**

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MOTION FOR ENTRY OF SUPPLEMENTAL DECREE

The Solicitor General, on behalf of the United States, requests the Court to enter a Supplemental Decree, in the form submitted *infra*, defining with greater particularity the rights of the United States and the State of California established by the Decrees of October 27, 1947, 332 U.S. 804, and January 31, 1966, 382 U.S. 448.

This motion is made on the following grounds:

1. By Proclamation of April 26, 1938, President Roosevelt established the Channel Islands National Monument. Proclamation No. 2281, 52 Stat. 1541. Except for several lighthouse reservations and the express exclusion of Cat Rock, the boundaries of the Channel Islands National Monument included Anacapa and Santa Barbara Islands.

2. The Decree of October 27, 1947, declares that the United States has paramount rights in, and full dominion 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.

3. By Proclamation of February 9, 1949, President Truman enlarged the Channel Islands National Monument to include the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands. Proclamation No. 2825, 63 Stat. 1258.

4. The Decree of January 31, 1966, modified the Decree of October 27, 1947, to declare that, with the exceptions provided in Section 5 of the Submerged Lands Act, 67 Stat. 32, 43 U.S.C. 1313, the State of California has interests superior to those of the United States in the tidelands along its coast¹ and the submerged lands, minerals, other natural resources, and improvements underlying the inland waters and the waters of the Pacific Ocean within three geographical miles seaward from the coastline.

5. The parties disagree about the extent (if any) of the interest of the United States in the tidelands, submerged lands and natural resources located within the boundaries of the Channel Islands National Monument.

6. Paragraph 13 of the Decree of January 31, 1966, provides that either party may apply to the Court at any time for entry of a further supplemental decree in order to identify with particularity any of the areas claimed to have been reserved under Section 5 of the Submerged Lands Act.

¹Defined as the shore between the line of mean high water and the line of mean lower low water.

7. Development and exploitation of valuable natural resources of the seas and submerged lands adjacent to Anacapa and Santa Barbara Islands make it necessary and appropriate now to identify with particularity the interests reserved to the United States under Section 5 of the Submerged Lands Act in and around those islands.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1976.

In the Supreme Court of the United States

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No. 5, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

PROPOSED SUPPLEMENTAL DECREE (NO. 2)

It is adjudged and decreed that:

1. As against the State of California and all persons claiming under it, the United States owns all of the islands, islets and rocks, including the tidelands (defined as the lands between the line of mean high water and the line of mean lower low water), of those islands and islets located within the Channel Islands National Monument established by Presidential Proclamation No. 2281, 52 Stat. 1541, and expanded by Presidential Proclamation No. 2825, 63 Stat. 1258. The State of California has no legal interest in these islands, islets, and rocks.

2. As against the State of California and all persons claiming under it, the United States owns the submerged lands and natural resources located within one geographical mile of the coastline of Anacapa and Santa Barbara Islands. The State of California has no legal interest in these lands and natural resources.

3. Subject to the powers reserved to the United States by Sections 3(d) and 6 of the Submerged Lands Act, 67 Stat. 31, 32, 43 U.S.C. 1311(d), 1314, the State of California has an interest superior to that of the United States in the submerged lands and natural resources underlying

the waters of the Pacific Ocean more than one nautical mile from the coastline of Anacapa and Santa Barbara Islands seaward, to a distance of three nautical miles from the coastline of those Islands.

4. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as may from time to time be necessary or advisable to interpret or give proper effect to this Decree.

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**MEMORANDUM IN SUPPORT OF MOTION OF
THE UNITED STATES AND IN OPPOSITION TO
THE MOTION OF THE STATE OF CALIFORNIA**

I

This suit was brought by the United States in 1945 to determine dominion over the submerged lands and mineral resources off the coast of California. In 1947 the Court concluded that the United States had an interest in these lands and resources superior to that of California (332 U.S. 19) and decreed (332 U.S. 804, 805):

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 * * *. The State of California has no title thereto or property interest therein.

The United States later sought to identify with greater particularity the lands awarded to it in areas that California claimed were inland waters. The Court appointed a Special Master, who filed a Report in 1952. Both the

United States and California filed exceptions to that Report.

Before the Court took further action, however, Congress enacted the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301 *et seq.* That Act granted to the States title to and ownership of the submerged lands within three miles of their coastlines. Because the Act vested in California all the interests that were then thought to be important, no further action was taken on the Special Master's Report.

Development of mineral resources continued to move seaward, however, and in 1963 the United States filed an amended complaint seeking a determination of the State's coastline, in order to ascertain the State's rights under the Act. The Court delivered its opinion in those proceedings on May 17, 1965 (381 U.S. 139) and entered its Supplemental Decree on January 31, 1966. That Decree recognized the rights of the State under the Submerged Lands Act to the submerged lands and natural resources within three geographical miles of the coastline of the State, subject to (1) the exceptions provided by Section 5 of the Submerged Lands Act, 67 Stat. 32, 43 U.S.C. 1313, and (2) the powers reserved to the United States by Sections 3(d) and 6 of that Act, 43 U.S.C. 1311(d) and 1314.

II

California has requested the Court to enter a supplemental decree defining its rights, and those of the United States, to the tidelands and submerged lands located within the boundaries of the Channel Islands National Monument. The State suggests that these rights can be defined on entirely legal grounds, without the aid of a Special Master. We disagree. Although the controversy created by California's motion and the cross-motion we have filed today involves many legal questions

that may be susceptible of resolution without the aid of a Special Master, we believe that the controversy also may present factual questions that would make the appointment of a Special Master desirable. That decision could, however, await clarification of the nature of the disagreement between the State and the United States and the legal theories upon which the parties will rely.

Although the decree proposed by the State declares the rights of the State generally in the tidelands and submerged lands located within the boundaries of the Channel Islands National Monument, the State appears to suggest that disagreement also exists about the location of the coastline from which the boundaries of the Monument are determined. Memorandum Relative to Proposed Supplemental Decree 9 (hereafter "Memorandum"). Controversies regarding the location of the coastline often involve questions both of fact and law. See, e.g., *United States v. California*, 382 U.S. 448; *United States v. Louisiana*, 394 U.S. 11. The State also suggests (Memorandum 8) that the federal government has taken no actions with respect to the one-mile belt surrounding Anacapa and Santa Barbara Islands that would support a claim by the United States to the submerged lands within the boundaries of the Monument under Section 5 of the Submerged Lands Act, which excepted from the operation of the general three-mile grant to the States any lands the United States then occupied under a claim of right. This argument raises a factual question, the resolution of which would seem to require the appointment of a Special Master.

It is possible that further clarification of the contentions of the parties will reveal that the controversy merely raises questions regarding the application of law to agreed-upon facts. In the absence of such clarification, however, the United States does not agree that it is

possible to resolve this controversy without the appointment of a Special Master.

III

The Channel Islands National Monument was established by Proclamation of President Roosevelt on April 26, 1938. Proclamation No. 2281, 52 Stat. 1541. The Proclamation reserved, against all forms of appropriation under the public land laws, "a group of three islets known as Anacapa Island" and "[a]ll of Santa Barbara Island". The Monument was enlarged on February 9, 1949, by Proclamation of President Truman to include "the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands." Proclamation No. 2825, 63 Stat. 1258. California seems to contend that Presidents Roosevelt and Truman did not, however, reserve the tidelands or submerged lands surrounding the islands.

The State apparently argues that the submerged lands belong to the State by virtue of the Submerged Lands Act, and that because they were not actually "occupied" by the United States under a claim of right they were not excepted from the operation of the Act by Section 5. The State's claim to the tidelands rests on a different ground, one that presents complex questions of law and fact that will require considerable research and discovery relating to the disposition of the lands in question prior to 1938 and 1949, possibly going back as far as the period of Mexican sovereignty over those areas.

A. The United States Reserved in Their Entirety the Islands and Islets Located Within the Monument

The 1938 Proclamation establishing the Channel Islands National Monument reserved "[a]ll of that part of the Anacapa Island Lighthouse Reservation, a group of three islets known as Anacapa Island * * * except the following described parcels of land," and "[a]ll of Santa

Barbara Island * * * excepting the following described parcels of land." The 1949 Proclamation expanding the Monument reserved "the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands." The Proclamation indicates that these areas are intended to include the islets and rocks located within those one-mile belts; the Proclamation stated that "certain islets and rocks situated near Anacapa and Santa Barbara Islands * * * are required for the proper care, management, and protection" of the Monument.

The Proclamations of 1938 and 1949 creating the Channel Islands National Monument reserved the entire islands and islets located within the boundary of the Monument, not merely the uplands of those islands and islets. Neither the Proclamation of 1938 nor the Proclamation of 1949 was limited to certain tracts located within the islands; each referred specifically to the islands and islets in their entirety. If the President had intended to set aside only the uplands of these islands and islets, he could have described the reservation in terms of the high-water line, as he did with respect to certain areas on Santa Barbara Island excepted from the 1938 reservation.

In order to determine whether the United States possesses title to the tidelands of the islands and islets within the Channel Islands National Monument, it is necessary to trace the title to these lands to the period before they were transferred to the United States from Mexico in 1848 by the Treaty of Guadalupe-Hidalgo, 9 Stat. 922. There is evidence to suggest that the Channel Islands, possibly including those reserved in the Channel Islands National Monument, were the subject of Mexican land grants. Notably, some Mexican land grants included tidelands. *Knight v. United States Land Assn.*, 142 U.S. 161; *Borax, Ltd. v. Los Angeles*, 296 U.S. 10, 15. The

United States may be able to establish title to the tidelands through these and other routes.²

B. The United States Reserved the Submerged Lands Within One Mile of the Monument

By reserving the "areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands," the Proclamation of 1949 reserved the submerged lands underlying the one-mile belts surrounding those islands. The waters within those one-mile belts are a part of the marginal or territorial sea of the United States.³ This Court held in 1947 "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 the belt" (332 U.S. at 38). That decision established that the lands underlying those seas were owned and controlled by the United States.

The United States did not convey to the States any right, title or interest in these lands until the enactment of the Submerged Lands Act in 1953, 67 Stat. 29, 43 U.S.C. 1301-1315. Consequently, when President Truman extended the Channel Islands National Monument in 1949 to include the "areas" within the one-mile belts surrounding Anacapa and Santa Barbara Islands, those "areas" included the submerged lands then indisputably owned by the United States. If the United States had intended to limit its reservation to islets and rocks it could have

²At least Anacapa Island was reserved by the United States for lighthouse purposes as early as 1854. Executive Order of September 11, 1854. Santa Barbara Island was reserved by the United States for such purposes in 1905. Executive Order of August 24, 1905.

³The Supplemental Decree of January 31, 1966, 382 U.S. 448, established that the waters around Santa Barbara and Anacapa Islands are part of the marginal belt and are not inland waters.

done so explicitly, as it did with the islands that originally comprised the Monument. Since it did not, it is clear that it intended to include within the reservation all of the lands that it controlled, including the submerged lands.

The purposes for which the Monument was expanded demonstrate that the Proclamation of 1949 reserved the submerged lands. In requesting the President to expand the Monument to include the one-mile belt, the Secretary of the Interior explained that the additional reservation would "afford proper protection to the seals, sea lions, and sea elephants. Some of these species are rare and need absolute protection if they are not to become extinct in American waters." Letter from J.A. Krug, Secretary of the Interior, July 2, 1948. The abundance of wildlife, such as seals and sea lions, was and still is one of the major attractions of the Channel Islands.⁴ These animals live in the waters as well as on land, and to preserve the animals the United States must preserve the surrounding waters. The kelp beds in these waters afford indispensable resting places for certain species

⁴See generally *Proceedings of the Symposium on the Biology of the California Islands* 363 (Santa Barbara Botanic Gardens, Inc., 1967). See also *id.* at 9, 11 (footnote omitted):

[T]he widespread interests of scientists in the Southern California Islands * * * cover a number of fields, including archaeology, geology, oceanology, as well as botany and zoology.

* * * * *

A number of government agencies have also been interested in the scientific potential of this area and in one way or another have indicated their interest. Two of the islands, Anacapa and Santa Barbara, constitute a national monument. Scientific research is encouraged on these islands; the Chief Scientist of the National Park Service reiterated this policy in a recent statement.

of marine birds and mammals. The belt of water surrounding each of the islands is an integral part of the Channel Islands National Monument and has not been conveyed by Congress to the State of California.

C. The Tidelands and the Submerged Land Located Within the Monument Were Excepted from the Grant to the State Under the Submerged Lands Act

In 1953 the United States relinquished to the State of California, except as otherwise reserved, the interests of the United States in the lands beneath navigable waters and the natural resources within such lands and waters within the boundary of the State of California (limited to a distance of three geographical miles from the coastline). Section 5, 43 U.S.C. 1313, excepted from the interests transferred by the Act "any rights the United States has in lands presently and actually occupied by the United States under claim of right." The establishment of the Channel Islands National Monument in 1938, and its expansion in 1949, constituted "actual occupancy" by the United States within the meaning of Section 5. The tidelands and submerged lands located within the Monument therefore were not conveyed to California in 1953.

The State seems to contend that the land was not "actually occupied," within the meaning of Section 5, unless the United States was physically present upon the land. The words "actually occupied" do not require physical presence, however; Congress intended an earmarking of the area (as by withdrawal or removal), in addition to a claim of right by the United States, to be enough. Senator Guy Cordon, a sponsor of the Act, pointed out (99 Cong. Rec. 2619 (1953)):

I should like to add that the last language quoted, namely, "any rights the United States has in lands

presently and actually occupied by the United States under claim of right,” came into the bill at the request of the Department of Justice. It was presented to the committee and explained by the Department of Justice as being for the purpose of reserving to the Federal Government the area of any installation, or part of an installation—and I use the term “installation” to distinguish a specific area, used for a specific purpose, from any vast area that might be claimed under the paramount right doctrine—actually occupied by the Government under a claim of right.

It was enough, as Senator Cordon had said earlier, that the government “claims some special right there different from a vast unoccupied area.” Hearings on S. 107 (Submerged Lands) before the Senate Committee on Interior and Insular Affairs, 83d Cong., 1st Sess. 1322 (1953).

In *United States v. Oregon*, 295 U.S. 1, 25, this Court observed in connection with the establishment of a bird reservation that claim of title and the setting aside of land by the United States through an Executive Order amounted to possession. Cf. *Hynes v. Grimes Packing Co.*, 337 U.S. 86, 110; *Moore v. United States*, 157 F. 2d 760, 763, 765 (C.A. 9). The reservations under Section 5 of the Submerged Lands Act should be treated in the same fashion. Thus, as Senator Long observed with regard to Section 5, “where the United States holds lands within the State *by law of the United States*, the United States retains that land.” Hearings, *supra*, at 1321-1322 (emphasis added).

Any other “construction would run counter to the established rule that land grants are construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it. *Caldwell v. United States*, 250 U.S. 14, 20-21.”

United States v. Union Pacific R.R., 353 U.S. 112, 116; *United States v. Michigan*, 190 U.S. 379, 401. Where Congress intended to transfer reserved lands to the States by the Submerged Lands Act, the Act specifically revoked the reservation. Section 10, 67 Stat. 33. No such revocation affects the Channel Islands National Monument.

CONCLUSION

A decree should be entered in the form we have proposed.

Respectfully submitted.

ROBERT H. BORK,
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