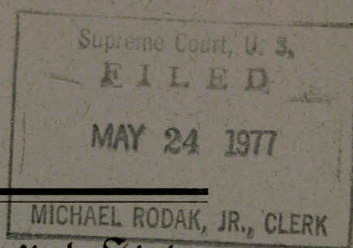


No. 5, ORIGINAL



In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

*JOINT MOTION FOR ENTRY OF A SECOND
SUPPLEMENTAL DECREE, PROPOSED SECOND
SUPPLEMENTAL DECREE, AND MEMORANDUM
IN SUPPORT OF MOTION*

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v.

STATE OF CALIFORNIA

**MOTION FOR ENTRY OF A SECOND
SUPPLEMENTAL DECREE**

The United States of America and the State of California jointly move that the Court enter a Second Supplemental Decree, in the form submitted *infra*, identifying with greater particularity parts of the boundary line, as defined by the Supplemental Decree of January 31, 1966, 382 U.S. 448, between the submerged lands of the United States and the submerged lands of the State of California.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

EVELLE J. YOUNGER,
*Attorney General of the State of
California,*
N. GREGORY TAYLOR,
Assistant Attorney General,

BY: RUSSELL IUNGERICH,
Deputy Attorney General.

MAY 1977.

In the Supreme Court of the United States

OCTOBER TERM, 1976

NO. 5, ORIGINAL

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PROPOSED SECOND SUPPLEMENTAL DECREE

For the purpose of identifying with greater particularity parts of the boundary line, as defined by the Supplemental Decree of January 31, 1966, 382 U.S. 448, between the submerged lands of the United States and the submerged lands of the State of California, it is ORDERED, ADJUDGED AND DECREED that this Court's Supplemental Decree of January 31, 1966, be, and the same is hereby, further supplemented as follows:

1. *Closing Lines Across Entrances to Bodies of Inland Waters*

a. The inland waters of the following bodies of water are enclosed by straight lines between the mean lower low-water lines at the seaward ends of the jetties located at their mouths:

1. Humboldt Bay
2. Port Hueneme
3. Santa Ana River
4. Agua Hedionda Lagoon

b. The inland waters of San Francisco Bay are those enclosed by a series of straight lines from the southwestern head of Point Bonita ($37^{\circ}48'56''\text{N}$, $122^{\circ}31'44''\text{W}$); thence to the western edge of an unnamed island immediately to the south ($37^{\circ}48'55''\text{N}$, $122^{\circ}31'44.2''\text{W}$); thence southward to the western edge of a second unnamed island ($37^{\circ}48'53''\text{N}$, $122^{\circ}31'44''\text{W}$); thence southward to the western edge of a third unnamed island ($37^{\circ}46'57''\text{N}$, $122^{\circ}30'52''\text{W}$); thence to a western head of Point Lobos ($37^{\circ}46'53''\text{N}$, $122^{\circ}30'49''\text{W}$). The length of this closing line is 2.18 nautical miles.

c. The inland waters of Bodega-Tomales Bay are those enclosed by a straight line drawn from Bodega Head ($38^{\circ}17'53.8''\text{N}$, $123^{\circ}03'25.3''\text{W}$); thence to the western edge of an unnamed island northwest of Tomales Point ($38^{\circ}14'28.4''\text{N}$, $122^{\circ}59'41.5''\text{W}$); thence southward to Tomales Point ($38^{\circ}14'26.5''\text{N}$, $122^{\circ}59'39''\text{W}$).

d. The closing lines delineated in the foregoing paragraph are part of the coastline of California. The foregoing is without prejudice to the right of either party to assert or deny that other closing lines are part of the coastline of California for purposes of establishing the Federal-State boundary line under the Submerged Lands Act, 67 Stat. 29, as amended.

2. *Artificial Extensions of the Coastline*

The mean lower low-water line along each of the following structures is part of the coastline of California for purposes of establishing the Federal-State boundary line under the Submerged Lands Act:

- a. The Morro Bay breakwater
- b. The Port San Luis breakwater
- c. The Santa Barbara breakwater

- d. The Ventura Marina breakwater
- e. The Channel Islands Harbor breakwater
- f. Three rubble groins at Point Mugu
- g. The Santa Monica breakwater
- h. The Venice Beach groin
- i. The Marina del Rey breakwater
- j. Three rubble groins along Dockweiler Beach
- k. The Redondo Beach breakwater
- l. Two harbor jetties at Newport Bay
- m. The Dana Point breakwater
- n. The Oceanside breakwater
- o. Two harbor jetties at entrance to Mission Bay
- p. The Zuniga jetty at San Diego (including the southern seaward end of this entire structure)

The foregoing is without prejudice to the right of either party to assert or deny that other artificial structures are part of the coastline of California for purposes of establishing the Federal-State boundary line under the Submerged Lands Act.

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

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**MEMORANDUM IN SUPPORT OF JOINT MOTION
FOR ENTRY OF A SECOND SUPPLEMENTAL DECREE**

In the Supplemental Decree in this case of January 31, 1966, 382 U.S. 448, the Court directed (382 U.S. at 453):

The parties shall submit to the Court for its approval any stipulation or stipulations that they may enter into, identifying with greater particularity all or any part of the boundary line, as defined by this decree, between the submerged lands of the United States and the submerged lands of the State of California * * *.

Pursuant to that directive, the parties submit for the Court's approval the agreement embodied in the accompanying proposed Second Supplemental Decree.

1. The 1966 Supplemental Decree defined the term "coast line" to include the "line marking the seaward limit of inland waters" (382 U.S. at 449). Paragraph 1 of the proposed decree sets forth the parties' agreement regarding the location of the closing lines across the

entrances to six bodies of inland waters along the California coast. Those lines have been positioned in accordance with the applicable criteria set forth in *United States v. California*, 381 U.S. 139, and in the 1966 Supplemental Decree. Under the terms of the latter, this Court's recognition of these six lines as part of the California coastline will vest in the State of California (subject to the exceptions and reservations set forth in paragraph 12 of the 1966 Supplemental Decree, 381 U.S. at 452) title to and ownership of the submerged lands, minerals, other natural resources and improvements underlying the waters of the Pacific Ocean within three geographical miles seaward from those lines. The last sub-paragraph of Paragraph 1 of the proposed decree indicates that the list of closing lines contained therein is not exhaustive and reserves to each party the right to assert or deny the existence of other closing lines not covered by this proposed decree.

2. Paragraph 2 sets forth a list of artificial structures that the parties agree constitute part of the coastline of California for purposes of establishing the Federal-State boundary line under the Submerged Lands Act. It is now well established that jetties and breakwaters such as those mentioned therein are part of the coastline for purposes of delineating the Federal-State boundary (*United States v. Louisiana*, 394 U.S. 11, 48-49 n. 64). This paragraph does not contain a complete list of all the artificial structures that affect the Federal-State boundary seaward of the California coast, and accordingly expressly preserves the right of either party to assert or deny that other similar structures are part of the coastline of California.

3. Specific portions of the coastline not fixed by the proposed decree remain to be identified. Paragraph 3 accordingly provides for retention of jurisdiction by the Court.

It is therefore respectfully submitted that a Second Supplemental Decree should be entered in the form herein proposed.

WADE H. McCREE, JR.,
Solicitor General.

EVELLE J. YOUNGER,
*Attorney General of the State of
California.*

N. GREGORY TAYLOR,
Assistant Attorney General,

RUSSELL IUNGERICH,
Deputy Attorney General.

MAY 1977.

