

No. 5, Original

Supreme Court, U. S.

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MICHAEL RUDAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

***ON CROSS-MOTIONS FOR ENTRY OF A FOURTH
SUPPLEMENTAL DECREE***

**MOTION, PROPOSED DECREE AND MEMORANDUM
ON BEHALF OF THE UNITED STATES**

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STATE OF CALIFORNIA

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

The United States of America moves that the Court enter a Fourth Supplemental Decree, in the form submitted herewith, 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.

FEBRUARY 1978.

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PROPOSED FOURTH SUPPLEMENTAL DECREE

For the purpose of identifying with greater particularity parts of the boundary line between the submerged lands of California, as defined by the Supplemental Decree of ~~of California, as defined by the Supplemental Decree of~~ January 31, 1966, 382 U.S. 448, 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. The inland waters of the Port of San Pedro are enclosed by a straight line from the eastern end of the Long Beach breakwater ($33^{\circ}43'23.2''\text{N}$, $118^{\circ}08'10''\text{W}$) to the seaward end of the jetty at the mouth of Alamitos Bay ($33^{\circ}44'11''\text{N}$, $118^{\circ}07'10.2''\text{W}$).

2. The inland waters of San Diego Bay are those enclosed by a straight line from $32^{\circ}40'54.4''\text{N}$, $117^{\circ}13'38.8''\text{W}$, to $32^{\circ}41'49.9''\text{N}$, $117^{\circ}13'54.5''\text{W}$.

3. Artificial structures, such as piers and causeways, which do not have a continuous low-water line from the natural coastline do not form part of the coastline of California for purposes of establishing the federal-state boundary line under the Submerged Lands Act.

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 ON BEHALF OF
THE UNITED STATES

This is a further chapter in litigation between the United States and the State of California to define the boundary between federal and State submerged lands off the California coast. The controlling principles are long since settled and, in most areas, the boundary has been fixed. See *United States v. California*, 381 U.S. 139; 382 U.S. 448; 432 U.S. 40. However, as California asserts in its recently filed Petition for the Entry of a Fourth Supplemental Decree, certain portions of the boundary, not determined by any previous decree, remain in dispute and require the parties to invoke this Court's continuing jurisdiction. See 382 U.S. at 453 (paras. 13 and 14); 432 U.S. at 42 (para. 3).¹

¹We agree with California that the issues presented by the Cross-Motions for a Third Supplemental Decree, presently scheduled for argument before the Court in the week commencing February 27, are wholly unrelated to the questions involved in the present cross-motions.

The present controversy centers on the closing lines to be drawn across the Port of San Pedro and across San Diego Bay and the question whether certain artificial structures, including piers, a causeway and an artificial island, are to be considered a part of California's coastline.²

At the entrances of the Port of San Pedro and San Diego Bay, the United States would construct closing lines which do not affect the seaward limit of the territorial sea or the State's grant under the Submerged Lands Act.³ California proposes lines further seaward, which would extend the area of State submerged lands jurisdiction and the limits of the territorial sea. California also contends that the artificial structures (Cal. Memo. Figs. 3-19) should be considered part of the

²The United States has depicted the 3-mile limit of its territorial sea on official charts which represent the position of the United States government in its interpretation and application of the Convention of the Territorial Sea and the Contiguous Zone, T.I.A.S. No. 5639, 15 U.S.T. 1606. Since California's grant under the Submerged Lands Act extends 3 nautical miles from the same coastline, the charts represent the position of the United States on the seaward limit of that grant.

California has provided, in the Appendix to its Memorandum, graphic illustrations and acreage figures for the areas in dispute. The United States has not yet been able to verify each of these figures. We expect, however, that any differences will be due to measuring procedures and that the parties will be able to resolve them.

³The 3-mile limit is delimited by drawing a series of connecting arcs, with 3-mile radii, from points on the coastline. Along an irregular coastline, only the seaward-most points will affect the 3-mile limit. Arcs from more shoreward points will fall within the limit. The limit will, however, always be exactly 3 miles from the nearest point on the coast. It is the position of the United States that the seaward limits off the mouth of San Diego Bay and the Port of San Pedro (see Cal. Memo., Figs. 1, 1a and 2) are defined by 3-mile arcs swung from the lower low-water lines on harborworks and the natural coastline. Because the inland water closing lines in these areas have no effect on the seaward limits, they are not depicted on official federal charts.

State's coastline for purposes of measuring the Submerged Lands Act grant. The United States disagrees. The State's proposal would result in extensions of the territorial sea, thereby placing within the State's jurisdiction a substantial area of submerged lands which contain valuable oil and gas deposits and which the United States believes to be on the outer continental shelf.

We believe the State has sufficiently identified the areas in dispute. And we agree that it would be appropriate for these issues to be initially referred to a Special Master. Accordingly, we submit no argument in support of the decree proposed by the United States at this time.

In conclusion, we join the State of California in its request for the appointment of a Special Master and a reference to him of the issues now presented.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

FEBRUARY 1978.

