No. 5, Original

# In the Supreme Court of the United States

OCTOBER TERM, 1964

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UNITED STATES OF AMERICA, *Plaintiff*

v.

STATE OF CALIFORNIA

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## CLOSING BRIEF FOR THE UNITED STATES IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER

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# INDEX

## CITATIONS

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### INTRODUCTORY STATEMENT

In the introductory statement to its Reply Brief,[1] California asserts (p. 2) that the United States' amended exceptions to the Special Master's Report "are predicated in large part" on the effect of the Submerged Lands Act and developments in international law since 1952, and (p. 3) that "the United States now invokes and relies heavily upon international law developments subsequent to the Special

[1] Reply Brief of the State of California to Brief of the United States in Support of Amended Exceptions to Report of the Special Master (filed June 15, 1964).

Master's Report.'"[2] California says (Reply Brief, p. 2) that this is "in sharp contrast" with the premise on which we sought and secured leave to file our supplemental complaint, that the Special Master's Report still provides a relevant basis for further proceedings to resolve the dispute between the parties. There is no basis for these assertions.

None of our exceptions is predicated in any degree on the Submerged Lands Act. The scope of several exceptions (Nos. 1, 2, 4, 9, and 10) is limited by that Act; but we do not perceive, nor does California explain, how the usefulness of the Special Master's Report could be diminished by the fact that the Submerged Lands Act has mitigated some of our former objections to the Report.[3]

None of our exceptions depends upon any change in international law since 1952. California points to our discussion of the 1958 Convention on the Territorial Sea and the Contiguous Zone (Reply Brief, p. 3); but that discussion concerned matters as to which the Convention codified the existing law. We included it partly for the light that it shed on the prior law and partly to show that our position would be no different, as to the matters discussed, even if the present law were to be considered relevant. This is perfectly consistent with our position that events since 1952 have not impaired the usefulness of the Special Master's Report.

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[2] As a basis for these assertions, California cites pp. 11-15, and 23, notes 16, 17 of the Amended Exceptions of the United States to the Report of the Special Master Filed November 10, 1952, and Brief in Support of Exceptions (filed June 15, 1964).

[3] See, *e.g.*, Amended Exceptions of the United States, pp. 17, 26.

## ARGUMENT

### I

### THE COURT SHOULD DECLARE THAT INLAND WATERS DO NOT INCLUDE OPEN ROADSTEADS

California's discussion of open roadsteads (Reply Brief, pp. 6-11) comes to nothing more than a concession that open roadsteads, as such, are not inland waters. Since this is exactly our position (Amended Exceptions of the United States, pp. 6-16), no further discussion would be necessary, were it not for California's conclusion (Reply Brief, p. 11) that "Since there is no dispute between the parties as to the status of California's open roadsteads, as such, this Court need not resolve their status in this proceeding." This overlooks the fact that the Special Master's Report now before the Court recommends (pp. 47-48) that—

> in front of harbors the outer limit of inland waters should embrace an anchorage reasonably related to the physical surroundings and the service requirements of the port, and, absent contrary evidence, may be assumed to be the line of the outermost harborworks.

This indicates that "contrary evidence" could establish an anchorage beyond the outermost harbor works as inland waters; or at least the recommendation is susceptible of that interpretation. The parties' agreement that this would be wrong does not remove the need for the Court to correct the Special Master's misstatement of the law when it rules on the Report.

## II

## ARTIFICIAL STRUCTURES AND CHANGES IN THE SHORELINE, MADE AFTER MAY 22, 1953, DO NOT ENLARGE CALIFORNIA'S RIGHTS IN SUBMERGED LANDS

### A. *Prior to the Submerged Lands Act, California's proprietary rights in submerged lands were not enlarged by artificial work done after the State entered the Union*

To support the Special Master's conclusion that all past and future artificial changes in the coast line should be recognized in delimiting the State's submerged lands, California asserts (Reply Brief, p. 14) that "it was assumed by all parties that the inland waters of California were to be delineated by reference to international law and United States foreign policy * * *." California then proceeds to show (Reply Brief, pp. 14-17) that under international law and the United States' foreign policy, artificial changes are taken into account in delimiting inland waters and the territorial sea, and concludes (Reply Brief, p. 17) that "under the principles deemed applicable by the parties before the Special Master" his conclusion was correct.

The fallacy of this argument is that the United States did not, and does not, join in the assumption thus imputed to it. Before the Special Master the United States contended that, in the case of artificial changes made in the coast line after statehood, international law and foreign policy did not provide the applicable principles for determining the State's proprietary rights in submerged lands. As to these rights, it was our position that the common law rules of property apply. Under these rules artificial changes do

not affect property rights in the underlying lands. Brief for the United States before the Special Master, pp. 100-103. The Special Master specifically noted and discussed that contention. Report, pp. 45-47. Of course California is free to argue that the Special Master applied the correct principles; but it is wrong in saying that the United States conceded that he did so.

California asserts (Reply Brief, p. 16) that "Irrespective of the Submerged Lands Act * * * the State of California has always owned artificially filled lands and lands underlying waters behind artificial harbor works." As to submerged lands within harbor works, this claim apparently rests on the theory that when the waters were enclosed they thereupon became inland waters and title to the submerged land passed to the State under the rule of *Pollard* v. *Hagan,* 3 How. 212. However, the *Pollard* rule is limited to inland navigable waters that were navigable when the State entered the Union, *United States* v. *Utah,* 283 U.S. 64, 75, and we think it must likewise be limited to waters that were inland waters at that time, except where Congress extends it to additional areas. This Court has pointed out that the inland waters to which the *Pollard* rule applies are limited by the State boundaries established by Congress. *United States* v. *Louisiana,* 363 U.S. 1, 35.

As to areas of artificial fill, the State's claim flies in the face of the well-settled rule of property law that artificial fill belongs to the owner of the submerged land on which it is deposited.[4] *Marine Ry. & Coal Co.*

[4] Where a State owns submerged lands it may, of course, choose to relinquish its title to filled areas, for example as part of a policy to encourage waterfront development or to protect riparian rights of access to the water. See Amended Exceptions of the United States, pp. 18-19.

v. *United States,* 257 U.S. 47, 65; *United States* v. *Mission Rock Co.,* 189 U.S. 391. Thus, the filled lands along the shore would not belong to the State unless the State had been the owner of the underlying submerged lands. It was in recognition of the fact that the States did not own the filled areas of the marginal sea that Congress put section 2(a)(3) in the Submerged Lands Act, including filled as well as submerged lands in the grant made to the States. 43 U.S.C. 1301(a)(3). See, *e.g.,* Hearings, Senate Committee on Interior and Insular Affairs, S.J. Res. 13, 83d Cong., 1st Sess., 73-76; 99 Cong. Rec. 2771-2772, 2929, 2968, 2970, 3442. Clearly Congress understood that the United States owned the areas that it had filled for its own use, when it provided in section 5(a) that such areas were excepted from the grant to the States. 43 U.S.C. 1313(a). There is no basis in reason or authority for supposing that the act of creating artificial fill on federal submerged land would automatically divest the United States of its title (or, even assuming such divestiture, for supposing that the title would thereupon vest in the State rather than in some third person, such as the maker of the fill or the owner of the adjacent littoral land).

B. *The legislative history of the Submerged Lands Act does not show a congressional intent to give the States the benefit of subsequent artificial changes in the coast line.*

To rebut our contention that subsequent artificial changes in the coast line should not be used as part of the base line from which to measure the area granted to the States by the Submerged Lands Act (Amended Exceptions of the United States, pp. 16-26), California

refers to certain legislative history which it claims shows a congressional intent that subsequent artificial changes should be used in that way. Reply Brief, pp. 17-21. We find nothing in the material cited to support that view.

California quotes (Reply Brief, p. 19) a statement by Senator Cordon, the floor manager of the bill, that the boundaries established by the Submerged Lands Act "may vary because of a change in coastline in 150 years," and refers to an episode in the Senate Committee hearings as showing that he was referring to artificial as well as natural future variations. Reply Brief, p. 19, citing Hearings, Senate Committee on Interior and Insular Affairs, S. J. Res. 13, 83d Cong., 1st Sess., Pt. 2, Executive Sessions, pp. 1344-1345, 1353-1358, 1374. We think that Senator Cordon was speaking only of variations due to gradual, natural changes in the coast line, and that the committee hearings show nothing to the contrary.

At page 1344 of the Hearings, cited by California, Senator Long offered an amendment to section 4 of the Submerged Lands Act, to let a State other than one of the original States extend its boundary to three miles from its coast line "as herein defined or at the time the State was admitted to the Union." He explained that his purpose was to let a State measure three miles from the original location of its coast line, in places where there had been subsequent erosion. On the next day he offered another amendment, apparently as a substitute for the first one, to let any State extend its boundary to three miles from its coast line "existing at the time each such State became a member of the Union or where said coastline has been or is

hereafter altered by natural accretions, then from such present or future coastline." *Id.*, 1353.

California says (Reply Brief, p. 19) that "Senator Long was informed that his amendment would cause a state to lose the advantage of adding artificial changes"; but we find no such passage, either in the cited pages or elsewhere. Actually, Senator Cordon objected to the proposal to establish new boundaries measured from former coast lines, because of the practical difficulties involved. Hearings, pp. 1354-1355. He pointed out that the bill allowed States, if they chose, to retain their original boundaries, which the bill left as it found them, neither creating nor removing any difficulties. Alternatively, the bill would let a State establish a new three-mile limit; but if a State elected to do so, the new boundary must be measured from the present coast line, not from the coast line as it was when the State entered the Union. He said (*id.*, 1355) that "if we attempt now to determine a coastline as of then, it would seem to me that we increase our difficulties beyond what, as I understand the bill, we envisioned in the first place, but which we left where they were." Explaining the choice given to a State by the bill, he said (*id.*, 1355) that a State "may rest upon its original line if it so desires, or under the authority on page 10 in section 4, it may extend its line under the authority of that section to a point 3 miles from its coastline as of now."[5]

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[5] Other statements of Senator Cordon emphasize that Congress intended that the grant be measured from the coastline existing on the effective date of the Act where a State chose to take advantage of the provisions in section 4. Thus, immediately following the statement quoted above in the text, Senator Cordon stated (Hearings, p. 1355):

> [The State] has both rights. One right is granted here. It may rest upon it or, if it desires not to rest upon it and take

The only reference to artificial changes, in this connection, was made by Senator Long himself, and he was clearly speaking of artificial changes already made, not those to be made in the future. He said (*id.*, 1357; emphasis added):

> The bill spells out two things: One, that where the States *have reclaimed* land, they are entitled to take that reclaimed land and they can measure their *present* coastline out 3 miles from where, by action of man, they *have reclaimed* land. We are not arguing for Louisiana our right to measure from manmade reclaimed land, but we do feel that where there has been a recession of the shoreline, the theory of the bill being that the States own within 3 miles of their historic boundaries, the historic boundary was the boundary at the time they came into the Union. Where there *have been* accretions, both manmade and natural, it is agreed under the terms of this bill that the coastline would be measured from the outward limit of those accretions.
>
> We do not care to extend our boundary line from man-made accretions, because our accretions have been natural accretions. * * *

Further on, he said (*ibid.*), "* * * I would feel that our natural accretions should be treated just as favor-

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advantage of the provisions in section 4, it may extend its line. But then, in that extension, it is in the position of adopting a line from a known and presently existing coastline.

Later in the course of the Committee's consideration of Senator Long's amendment, Senator Cordon reaffirmed his understanding of the bill (*id.*, 1374):

> The first approach is that of the boundaries of the States when they came into the Union; second, an election to any State that has not done so to extend its boundary 3 geographical miles from its present coastline, as that term is described in the present tense in the bill.

ably as the man-made accretions that exist off Florida, for example," to which Senator Cordon replied, "They are favorably treated for the option." This statement, that natural accretions were treated as favorably as artificial ones, of course does not mean that the converse must be true. In any event, Senator Cordon's statement was limited to treatment "for the option," which he had clearly said referred to the coast line as of the date of the Act. At page 1374, also cited by California, Senator Cordon repeated his views, and Senator Long withdrew his amendment as unnecessary.[6]

We are wholly unable to see how this episode could indicate that Senator Cordon's subsequent reference to future changes in the coast line (99 Cong. Rec. 2697; Calif. Reply Brief, p. 19) was intended to include artificial as well as natural changes, as California asserts. Because of the difference in our interpretations of what was said at the hearings, the cited pages are reproduced for the convenience of the Court, Appendix, *infra,* pp. 14-28.

C. *Artificial changes in the shore do not affect a State's ownership of submerged lands under the rule of* Pollard *v.* Hagan, *either as applied to inland waters or as extended to the marginal sea by the Submerged Lands Act*

California is quite correct in saying (Reply Brief, p. 24) that we must look to the intent of Congress to determine whether the submerged lands granted to the

[6] If the objection to Senator Long's amendment had actually been, as California asserts, that it failed to give a State the benefit of future artificial changes in the coast line, the obvious remedy would have been to substitute "natural or artificial accretions" for "natural accretions."

States by the Submerged Lands Act will be extended or retracted by subsequent artificial changes in the coast line. This was recognized in our brief in support of our amended exceptions, at pages 22-26. For the reasons there stated, we believe that Congress intended the line established by the Act to have the usual characteristics of a maritime property line; that is, that it should be ambulatory where there were subsequent gradual, natural changes in the coast line, but that it should not be affected by subsequent artificial changes.

California argues (Reply Brief, p. 23) that we are inconsistent in denying effect to future artificial changes, in view of our "concession that artificial changes prior to May 22, 1953 did extend the State's seaward boundaries." However, we have not made such a concession. What we have conceded is that Congress adopted the coast line as it was on May 22, 1953, as the base line from which to measure the area granted to the States by the Submerged Lands Act. Amended Exceptions of the United States, pp. 22-23. However, the effect thus given to prior artificial changes resulted from congressional action, not from the changes as such. We have always denied that artificial changes could operate *ex proprio vigore* to enlarge the area of State proprietorship.

California argues (Reply Brief, pp. 22-23) that the Submerged Lands Act was intended to give the States whatever they believed they were entitled to prior to the decision of June 23, 1947, in this case; that California believed it was entitled to the submerged lands measured from the coast line as modified at any time by natural or artificial means; and that consequently this is what California received under the Act. However, it is quite clear that the Act constituted no such

*carte blanche* endorsement of every State's every expectation. The general purpose of the Act was to extend to the marginal sea the rule of *Pollard* v. *Hagan,* 3 How. 212, that the States own the lands under their inland navigable waters. *United States* v. *Louisiana,* 363 U.S. 1, 35; but it was only in this sense that the Act was designed to fulfill the States' expectations. The meaning and effect of the *Pollard* rule, and the details of its application to the marginal sea under the Act, are to be determined by ordinary objective legal principles, not by mere inquiry into what the States expected. This is perfectly apparent from the *Louisiana* case, *supra,* which denied to Louisiana, Mississippi, and Alabama the three-league grants to which they thought they were entitled.

It has always been recognized that the limits of a State's title to land under navigable inland waters, under the *Pollard* rule, are at the natural water line, and are not affected by artificial changes. *United States* v. *Mission Rock Co.,* 189 U.S. 391; *Barney* v. *Keokuk,* 94 U.S. 324, 337; *United States* v. *Turner,* 175 F. 2d 644, 648, 650 (C.A. 5), certiorari denied, 338 U.S. 851. The Submerged Lands Act, extending the *Pollard* rule to the marginal sea, must be understood as having the same effect in that offshore area. We know of no support for California's contention that in this respect Congress intended to adopt for the marginal sea a rule entirely different from the *Pollard* rule applicable to inland waters .

## CONCLUSION

For the foregoing reasons, the amended exceptions of the United States to the Report of the Special Master should be sustained.

Respectfully,

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STEPHEN J. POLLAK,
*Assistant to the Solicitor General.*

GEORGE S. SWARTH,
*Attorney.*

JULY 1964

## APPENDIX

HEARINGS, SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, S. J. RES. 13, 83d CONG., 1st SESS., PT. 2, EXECUTIVE SESSIONS, PAGES 1344-1345, 1353-1358, 1374.

[1344]

* * *

Senator Cordon. Any other amendments?

Senator Long. Mr. Chairman, I want to state an amendment that I think carries out the purpose of title 2. On page 10, line 1, after "coastline" I would like to offer the language:

> as herein defined or as existed at the time the State was admitted to the Union.

Senator Cordon. Will you state that again, please?

Senator Long. Let me just explain what I had in mind. It is where the language refers to the coastline.

Senator Daniel. Is that section 4?

Senator Long. Section 4, yes.

Senator Daniel. It would be line 10, page 10.

Senator Long. It is where it says:

> Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line 3 geographical miles distant from its coastline—

that I would like to insert the words—

> as herein defined or at the time the State was admitted to the Union.

The purpose in doing that was to carry out the intention of restoring lands within the State's historic boundaries. In some cases we will find that the coastline has eroded. For example, in my State we can show where lands were patented by the Federal Government that have since been washed away, in some instances more than a mile or perhaps even as far as 2 miles. The land was there and it was patented by the Federal Government after the time the State came

into the Union. Subsequent to that the shoreline has eroded. So we would like, as far as Louisiana is concerned, to take our coastline as of the time we came into the Union rather than the line as it is now.

Inasmuch as the State's boundary is regarded as being its historic boundary, I believe that would be in keeping with the purpose of the section, and I will offer that.

Senator Cordon. Was the language as herein defined or as it existed at the time it was admitted?

Senator Long. The State was admitted to the Union.

[1345]

Senator Anderson. Does Louisiana have boundaries which extend out into the Gulf of Mexico? That is, did it at the time it was admitted into the Union?

Senator Long. This relates to the right of a State to extend its boundary 3 miles from its coastline. Of course, we would contend that our boundaries did go out into the sea at the time we came into the union.

Here is the Organic Act that brought our State into the Union. It says, in describing the boundaries—

> thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast.

That is a description that will undoubtedly give some trouble in the final settlement of Louisiana's boundary. Nevertheless, with regard to the coast, we do not want to regard our coastline as being the present coastline but as the coastline that existed when we came into the Union. That is the reason we would prefer to have that definition that refers to the coastline as it existed at the time that the State came into the Union.

Senator Butler. Is there any way to determine that?

Senator Long. Yes, sir. I believe that, by and large, we can determine that. It will be somewhat expensive in some cases, but we believe that we can do it by the old records that existed in 1812 or thereabouts, and by Federal patents, and things of that sort, that were issued on this land.

We have one instance, for example, where the State had issued a lease on some land that is presently submerged. The attorney advised his oil company to bid on that lease, and he showed me where a Federal patent had been issued on that same land at about, I think, 1840, or thereabouts. Relying upon that Federal patent, he was confident that that was land belonging to the State of Louisiana as upland and had since eroded into the sea.

The oceanographers agree that the sea is moving northward in the Gulf of Mexico, and, generally speaking, the whole trend is for the sea to be moving inland or toward the land for the past many years.

Senator Butler. I am surprised. I thought it was moving gulfward at the expense of Nebraska and some of the other areas.

Senator Long. What seems to be happening, of course, Senator Butler, is that we are increasing a little bit at the mouth of the Mississippi River, with the silt that is carried downstream in the Mississippi. The sea being shallow in that area causes the silt to be spread over a larger area. So the two facts tend to counterbalance one another.

Seantor Cordon. Let me check this again, Senator Long. On page 10, line 10, insert after "coastline" the words "as herein defined or as it existed at the time the State was admitted to the Union."

Senator Long. Yes.

Senator Butler. Did the Senator from California have an amendment?

Senator Kuchel. Yes, sir, I have two amendments. The first is quite simple and technical and results from a communication which I received from the Comptroller General at my request.

The language change would be on page 7. First, on line 3, after "Secretary" simply add "of the Interior." You previously cut out a * * *.

* * *

[1353]

# SUBMERGED LANDS

EXECUTIVE SESSION

Wednesday, March 25, 1953

UNITED STATES SENATE,

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

*Washington, D. C.*

The committee met, pursuant to recess, at 10 a. m., in the committee room, 224 Senate Office Building, Washington, D. C., Senator Guy Cordon presiding.

Present: Senators Hugh Butler, Nebraska (chairman); Guy Cordon, Oregon (presiding); George W. Malone, Nevada; Arthur V. Watkins, Utah; Henry C. Dworshak, Idaho; Thomas H. Kuchel, California; Frank A. Barrett, Wyoming; James E. Murray, Montana; Clinton P. Anderson, New Mexica; Russell B. Long, Louisiana; Henry M. Jackson, Washington; and Price Daniel, Texas.

Also present: Kirkley S. Coulter, chief clerk; Stewart French, staff counsel; and N. D. McSherry, assistant chief clerk.

Also present: Willard W. Gatchell, Assistant General Counsel, Federal Power Commission.

Senator Cordon. The session is now open, and if you will make your explanation, Senator Long, we will have it in the record.

Senator Long. I think the amendment that I have in mind, in line with Senator Daniel's suggestion, as a matter of draftsmanship could be put in section 4 rather than in the definition of "coastline," by leaving the statement, "The seaward boundary of each original coastal State is hereby approved and confirmed as a line 3 geographical miles distant from its coastline." Then where it says "Any State" if we will strike the words "admitted subsequent to the formation of the Union" so it would make clear that this

applies to any State, including the original States, "which has not already done so may extend its seaward boundaries to a line 3 geographical miles distant from its coastline"—if we would insert at that point the words "existing at the time each such State became a member of the Union or where said coastline has been or is hereafter altered by natural accretions, then from such present or future coastline" that would take care of what I had in mind in regard to a State's right to extend its coastline 3 geographical miles.

Senator Anderson. How far have accretions extended the coastline of Louisiana?

Senator Long. I do not know. There have been some extensions of the land mass at the mouth of the Mississippi River. So far as I know, Senator Anderson, that is the only place where accretions have extended the boundary of Louisiana.

[1354]

Senator Anderson. Would you give us an approximate figure as to how far that is from the mouth of the Mississippi River? Is it 1 mile or 5 miles?

Senator Long. I would say, since——

Senator Anderson. Since Statehood, not since the beginning of time.

Senator Long. Since the State came into the Union, I would say it is at least 5 or 6 miles.

Senator Anderson. The Bible says, "The Lord giveth and the Lord taketh a way; blessed be the name of the Lord." Does not one offset the other?

Senator Watkins. I say, has the Lord anything to do with this at all?

Senator Malone. If He has, He is no doubt rather irritated at the moment.

Senator Long. There is this statement back in title I, to the effect "all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined" belong to the State, which I take it is primarily with regard to the Florida situation. We do not claim the right to extend our boundary

beyond a man-made island out there, but where the mouth of the river is building up the land mass of the State, we do believe that in that instance it should be increased; in other words, that the State, as it builds up, it naturally becomes a part of the State and the boundary would extend from that.

Senator Cordon. I am very sorry, but I cannot go along with the amendment. It seems to be a general change in the philosophy of the bill, and intended to correct now what was done when the State came into the Union in a way that, for instance, would do violence to all the original coastal States. The language in section 4 as it is now was requested by the original States; and it is the philosophy of the law that was built up with respect to those States, and their political history, that in my mind justify this bill. The language here with reference to those original coastal States is:

> The seaward boundary of each original coastal State is hereby approved and confirmed as a line 3 geographical miles distant from its coast line.

If we are going to set that line today in the law and if the law requires some degree of certainty, we have to have something to measure from now. Those who prepared the bill over the years took the view—and that is the way the bill is before us—that "coastline" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters. That is in the present tense. It is the coastline as of now. We have confirmed here 3 miles from the coastline as of now. We have endeavored here to protect the equities of each State as they were when it became a State. Under the philosophy of this bill that time should be the time of the creation of rights and equities—and I distinguish between the two. It is the equities we are now attempting to preserve; and we provide, in order to do that, that we shall

either measure from the coastline of today or take the original line.

If we attempt now to discuss a coastline of 1783, or whenever the Revolutionary War was concluded and the treaty was signed—and

[1355]

I do not just now recall the date—if we attempt now to determine a coastline as of then, it would seem to me that we increase our difficulties beyond what, as I understand the bill, we envisioned in the first place, but which we left where they were.

There are difficulties with respect to the boundary lines that are defined by statute, but at least we have them. If we attempt now by an arbitrary 3-mile limit to permit the extension of lines, and if we attempt to go back to those days to do it, we have created a regular Pandora's box of troubles around the line of the United States wherever there was not a clear seaward statutory line made in the Act of Admission or in the Constitution which was the basis for the Act of Admission.

It seems to me—and I am discussing now just the case of Louisiana—that the philosophy of the law down through the years until reversed, first in the California case and thereafter in the Texas and Louisiana cases, was that each State had a right to come in with territorial sovereignty over the areas 3 miles from its coastline. That is the philosophy.

On the basis of that, we have drawn a bill in which we permit each State, by action approved in this bill, to extend its boundary of record, so there can be no jurisdictional question with reference to the application of all the laws of the State to a given and certain point. If we now attempt to define that term "coast line" in terms of its location at the time the State came into the Union, I do not know how there could be certainty with reference to the line until there is a judicial decision, and of course that would mark it.

Senator Long. Here is what is going to happen, Senator Cordon, if you do not accept this amendment.

If we must rely upon the rights in this bill as far as our boundaries are concerned, if the State finds itself in position that the so-called 10-mile boundary does not apply, it would be argued under title I, section 2, under the definition of "lands beneath inland waters," that it possessed the land within 3 miles of its boundary as it existed when the State came into the Union.

On the other hand, if the theory should be advanced that inasmuch as nothing was said about a 3-mile limit when it came into the Union, that is the reason the original States had their lines fixed at 3 miles here, to clear up that doubt, then the State would be in the position of having someone argue against it that the 3-mile limit is established as of now. So in title I, section 2, we have our line fixed from the historic line; and in section 4 we would have our line fixed from the present line.

Senator Cordon. By this act you have granted to the State of Louisiana whatever it had when it came into the Union. Louisiana has, at its election and option, an additional right. It may rest upon its original line if it so desires, or under the authority on page 10 in section 4, it may extend its line under the authority of that section to a point 3 miles from its coastline as of now. It has both rights. One right is granted here. It may rest upon it or, if it desires not to rest upon it and take advantage of the provisions in section 4, it may extend its line. But then, in that extension, it is in the position of adopting a line from a known and presently existing coastline. It has both rights under the law.

[1356]

Senator Anderson. I think, Mr. Chairman, it is important to get that in the record, because there may be some legislative history being made here. When you have clearly stated that Louisiana has these two options, and then if the Senator from Louisiana does not offer his amendment or, if he does offer it, it is voted down, I believe under ordinary legislative history procedures Louisiana would have the protection

that you have outlined here, regardless of what some Government official might subsequently contend.

I am sitting here looking at a map showing where the leases have been granted in Texas and Louisiana, both prior to and subsequent to June 23, 1947; and if I am not mistaken, a good deal of the land that lies south and east of New Orleans is made land. If Louisiana wants to have the advantage of all that made land around which there has been a great deal of leasing activity, then naturally it has to be limited by whatever has happened to this other land. If it wants to take its original boundaries and include them, it has that right.

It seems to me that that is all it really needs, provided it is well understood that it does have both those options and can accept one or the other of them.

Senator Cordon. That substantially is the view of the chairman under the philosophy and theory upon which the whole bill rests. I do not believe that the position of Louisiana is in the slightest prejudiced under the language here, and I am equally—I will not say I am equally certain—I am very gravely doubtful if we would not cause a great deal of difficulty and a great deal of confusion if we attempt now to tie rights to a coastline with respect to which generally there might be a very difficult problem of proof but which would still be binding on the other States because it goes into a definition that is applicable around the coastline of the United States.

Senator Barrett. Mr. Chairman, I wonder if it would be in order now to authorize the chairman to put language in the report that it is the intent of the committee that the States shall have the option of taking the 3 miles from the coastline at the time it was admitted to the Union—

Senator Cordon. The Chair states that the report, so far as he is concerned, would of necessity have that because that is what is written in the resolution.

Senator Jackson. It seems to me the colloquy which has taken place here, and the language in the legislative report, has laid a pretty good foundation for taking care of the situation that the Senator from Louisiana has in mind, perhaps more effectively than it would have if the language you offered were adopted.

Senator Anderson. I think also it is valuable because I know one time we were discussing legislative history on the bill and someone said, "That was just a casual remark by the chairman of the committee." In this case it is not a casual remark by the chairman of the committee. It is in response to a very serious question put by the Senator from Louisiana. There has been discussion by the Senator from Wyoming and the Senator from Washington and others. So enough Senators are familiar with the situation so there would be no question as to the applicability of this point from the standpoint of legislative history, I should think.

[1357]

Senator Long. The bill spells out two things: One, that where the States have reclaimed land, they are entitled to take that reclaimed land and they can measure their present coastline out 3 miles from where, by action of man, they have reclaimed land. We are not arguing for Louisiana our right to measure from manmade reclaimed land, but we do feel that where there has been a recession of the shoreline, the theory of the bill being that the States own within 3 miles of their historic boundaries. the historic boundary was the boundary at the time they came into the Union. Where there have been accretions, both manmade and natural, it is agreed under the terms of this bill that the coastline would be measured from the outward limit of those accretions.

We do not care to extend our boundary line from man-made accretions, because our accretions have been natural accretions. But we do feel that the entire theory of the bill is based on the idea that the States had 3 miles from their coastline when they came into

the Union, and for the most part we believe that we could establish the coastline of Louisiana by going back at least as far as 1839; in fact, within just a few years of the time that the State came into the Union.

In any event, the coastline of Louisiana is going to have to be fixed by settlement between the Federal officials and the State officials. They are going to have to take a map down and agree among themselves where they think they ought to settle, and I believe they ought to come in to the Congress and ask us to approve whatever line they agree upon, else they will have to go to court and adjudicate it.

I would hope that they would work out a line and then come in and propose that to the Congress as a line based on all the evidence and all the material where the line should be. Rather than argue this thing in 3 or 4 different kinds of alternatives, I would hope that it would be clearly established that the States could measure out 3 miles from the historic boundaries at the time they came into the Union; and I would feel that our natural accretions should be treated just as favorably as the man-made accretions that exist off Florida, for example.

Senator Cordon. They are favorably treated for the option.

Senator Long. Otherwise, I believe we would have the Federal officials and the State officials arguing several different concepts of law: One, that the coastline is measured from the point where you came into the Union; and the other, that it is measured from the point where it is now.

Senator Cordon. It measures from one point if the State of Louisiana desires to rest on it. It is measured from another for the purpose of electing, or failing to elect, option for extension from an existing coastline. Both are there.

Unless the Senator has something else to add, as far as the Chair is concerned he thinks he understands the position of the Senator. He believes the Senator is in

error in his understanding. The Senator from Oregon has also been mistaken in his understanding many times.

Senator Long. The point I had in mind, Senator Cordon, is that legislative history is made here generally to indicate that the theory of the committee has been that when a State such as Louisiana came into the Union, it had a boundary 3 miles from its then existing coastline, and if nothing was said about the boundary, at least they had that 3 mile limit.

[1358]

I would have hoped that we could clear up that there is no doubt that they did have that 3-mile limit, rather than leave any doubt with regard to the fact that they had the 3-mile limit at the time they came into the Union.

Senator Cordon. The chairman does not have anything more that he can offer on it.

May we turn to another item. Is Mr. Gatchell here?

Mr. French. Yes, sir.

Senator Cordon. Senator Anderson yesterday raised some question with reference to—

Senator Long. Are you going to vote on that amendment, or just leave it for the time being?

Senator Cordon. Let us leave it where it is now. We will not vote on it now, if that is satisfactory. I would like to get as many of the disputed questions in front of the committee as possible, and then I would hope that we could take a very little time to determine our action.

On page 4, paragraph (e)—incidentally, I suggested to the Senator from New Mexico that the language which he raised question about yesterday is in his bill.

Senator Anderson. I am sorry. I checked it very carefully. It is not in my bill. That is what I want to point out to you. I want to point out what the language was in this bill and how they have changed it. The only thing I can conclude from the change is that it is for another purpose. I am talking about

S. 107. This is the language, and I wish whoever is going to testify would watch this for a second.

Senator Butler. From what bill are you reading?

Senator Anderson. From S. 107, which is the bill I introduced.

> This Act shall not apply to waterpower, or to the use of water for the production of power, or to any right to develop waterpower which has been or may be expressly reserved by the United States for its own benefit or for the benefit of its licensees or permittees under any law of the United States.

Senator Cordon. Now, I call the Senator's attention to page 5 of his bill, where we find this language:

> Nothing contained in this Act shall be construed to affect the use, development, improvement, or control by or the constitutional authority of the United States of lands or waters for the purposes of navigation or flood control or the production of power at any site where the United States now owns or may hereafter acquire the waterpower, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation or to provide for flood control or the production of power at any site where the United States now owns the waterpower.

Senator Anderson. I call the attention of the Senator from Oregon that he knows exactly that that is not in my principal bill, but is in the other bill, S. 1252. I carefully explained I had taken the language from the Holland bill and the Daniel bill and everything else we could lay our hands on, to see if they were really willing to quitclaim to the States.

Senator Cordon. I do not know anything about it, except the Senator introduced it. It is in his bill.

Senator Anderson. Certainly. What I am trying to say is that this language, and a great deal of the rest of the language in this bill * * *.

* * *

[1374]

Senator Cordon. We will have to take No. 4-A, which is print No. 4 as we adopted the language yesterday, but all in roman instead of in three different types.

Senator Anderson. No; it is changed.

Mr. French. There are no changes in substance whatever. The only change was to say "act" in place of "joint resolution." In one place we put in "Secretary of the Interior" instead of "Secretary."

Senator Cordon. I believe, other than adding the definition of the Secretary of the Interior, which we found necessary, and the minor change in language so that section 8 would refer to "lands beneath navigable waters as defined in section 2 hereof," and the same reference in section 9 to "lands beneath navigable waters as defined in this section," there were no other authorized changes in committee print No. 4-A.

We can work from committee print 4 if the committee prefers. For my purpose it is much easier for me to refer back to Senate Joint Resolution 13 in case of any question so I can read the language as it would appear in an act. However, it is immaterial. I am simply trying to be helpful to the committee in its consideration.

My memory is that yesterday, when the committee recessed, it had before it the motion of the Senator from Louisiana, Mr. Long.

Senator Long. Mr. Chairman, there appeared to be some objection to that amendment being offered. I felt it clarified what was the purpose of the bill. If the chairman still objects to that amendment, I will not offer it. I think, by and large, the bill accomplishes what I sought to accomplish by the amendment, anyway.

Senator Cordon. The chairman feels that the addition of the language would effect a further change than the clarification that Senator Long has suggested, and certainly expects to make clear in the report the application of the language that is here to the situation which the Senator set up. In other words, it is expected to be shown in the report that this bill has two approaches to a determination of the area of its application. The first approach is that of the boundaries of the States when they came into the Union; second, an election to any State that has not done so to extend its boundary 3 geographical miles from its present coastline, as that term is described in the present tense in the bill.

The chairman reiterated that so it would be perfectly clear that that is the philosophy of the bill and its legal effect.

Senator Long. Mr. Chairman, in view of that, I doubt that my amendment is needed, and I will not offer it.

Senator Cordon. The Chair appreciates the Senator's position, and believes he is not prejudiced by it.

Senator Long. I would like to move that certain parts of the language stricken on page 3 in definitions of "coastline" be restored. I have carefully studied the presentation made by the State Department, which is the only objection I have found to the language that was stricken. I did feel that the case was made that a strait which adjoins two bodies of high seas is not inland waters. Inasmuch as a channel might be subject to the same objection, I would not argue that a channel should be included. However, so far as I can see, there was * * *.

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