IN THE

Supreme Court of the United States

October Term, 1964
No. 5, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

CARL WHITSON, a Long Beach, California, Taxpayer,

Amicus Curiae.

REPLY OR SUPPLEMENTAL BRIEF OF AMICUS CURIAE

JOHN B. OGDEN
Attorney for Amicus Curiae
1408-9 Liberty Bank Bldg.
Oklahoma City 2, Oklahoma

LONG BEACH REPORTER

TOPICAL INDEX

TABLE OF AUTHORITIES CITED

Cases

TABLE OF AUTHORITIES CITED

(Continued)

Codes

Acts

Texts

California Statutes

Miscellaneous

IN THE

Supreme Court of the United States

October Term, 1964
No. 5, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

CARL WHITSON, a Long Beach, California, Taxpayer,

Amicus Curiae.

REPLY OR SUPPLEMENTAL BRIEF OF AMICUS CURIAE

REASON FOR REPLY OR SUPPLEMENTAL BRIEF OF AMICUS CURIAE

I

The first brief was prepared and printed prior to the time the writer was furnished any documents or briefs by either the Attorney General of California, or the Solicitor General of the United States. Now some have been received, which consist of some two

hundred pages for each party, so the short brief filed by amicus curiae is not adequate for a full discussion of the issues.

II

On June 25, 1964, the United States Court of Appeal for the Ninth Circuit declined to pass upon the constitutionality of Cal. Stats., Chapter 29, 1956; or Cal. S.B. 60, Extra Session 1964. Also it declined to decide what kind of title and ownership Long Beach, California, received or has to offshore submerged lands within the city limits, but did hold and decide that the Submerged Lands Act "confirmed whatever conveyance of title the State had already made," and affirmed a Federal District Court order dismissing the case of *Lewis W. Twombley v. City of Long Beach*, et al. (not yet reported but attached hereto as Appendix "A")

III

The State of California has passed a new statute, Senate Bill No. 60, 1964, which was signed by the Governor and became law after the first brief was at the printers; this may affect the claims of the State.

PRELIMINARY STATEMENT

This supplemental brief is intended as both a clarification and reply to the claims of the State of California, as they affect Long Beach.

SUMMARY OF ARGUMENTS

It will be argued as follows:

First: That this Court has already established in the instant case in 1947 the legal boundary line as the "coast line" or the ordinary low tide line as the bound-

ary line, and lands shoreward of such line as inland waters. That the criterion or formula for measuring such line and lands should be the one shown by the first U. S. Coast Survey Map; and that after the boundary line is once established it should not be allowed to change at all for any reason.

Second: That Long Beach owns all tidelands, submerged lands, and lands under inland waters within the city limits and extending seaward three miles from high tide line, including bays, inlets, harbors and rivers.

Third: That whether the City received its title from the State under state law or from the United States under the Submerged Lands Act, the title is a fee title in a special trust so that all of the people can have access to and use of the waters for commerce, navigation and fishing.

Fourth: That the grant from the State to the City in 1911 was for valuable consideration paid by the City and taxpayers thereof, and a continuing valuable consideration to the State.

Fifth: That the State is powerless to revoke or change the terms of the grant or trust.

Sixth: That the City of Long Beach is entitled to any income from such lands to be used for any public purposes as provided by City Charter, before 1953.

Seventh: That any surplus funds received by the City from such lands, not needed or required for harbor, commerce and navigation, reverts to and can be used for any public purpose by the city.

Eighth: That any state law or laws which attempt to take any funds or income from the city,

or place any restrictions or trusts on the use of the said funds are unconstitutional and void, or ineffective for such purposes.

ARGUMENTS

I

BOUNDARY LINES IN LONG BEACH

This question or issue seems to be in two parts, and has been complicated by unfounded claims with no facts to rely upon.

First: What was intended as the "ordinary low water mark," low tide line, or coast line, as used by the Supreme Court of the United States in *United States v. California*, 332 U. S. 19; and what was intended by the Court in the same decision as "inland waters."

The Court had before it the question of title to the three mile marginal belt underlying the Pacific Ocean laying seaward of the ordinary low-water mark on the coast of California. In other words it was the very same three mile marginal belt that the State of California now claims is inland waters. It should be remembered the Court did not agree then, and granted the injunction. *United States v. California*, 332 U. S. 804-805. The decree was very plain and specific that the State of California had no title to or property interests in the very same land the State now claims it has at all times owned. The Court in effect established the "ordinary low-water mark" as the boundary line at that time. It is hard to see just why the matter was not settled once and for all at that time, and why there are still

claims that the Court did not mean what it said or that there is any doubt what it did mean. All that should have been required at that time was for all parties to accept the decision as the settled law and the guide line to be applied to the maps or surveys, and thereby establish the physical boundary line dividing tidelands from offshore submerged lands.

It is well to take note that the Court rejected all dividing lines or stipulated lines by the State of California and the Attorney General of the United States, and used plain and specific language stating that such dividing lines are not binding on the Court. In other words the Court in effect established the boundary lines and did not permit the agents of the State or United States to change such lines.

U. S. v. California, 332 U. S. 804-6.

INLAND WATERS

It seems clear that when the Court used the phrase "and outside of inland waters" in *United States v. California,* 332 U. S. 19, it was referring to such waters as were before the Court in *Pollard v. Hagan,* 3 How. 212, which were lands washed by the daily ebb and flow of the tide on the banks of the Mobile River, or such lands as were involved in the land-locked bay at San Francisco in *United States v. Mission Rock Co.*, 189 U. S. 391. Here again it should be noticed that the Court rejected as not binding the first known attempt to extend the so-called San Pedro Bay over into Long Beach by the above mentioned stipulated lines and thereby circumvent the effect of the decree in *U. S. v. California.* It did not work then and should not now.

After the Court had definitely and specifically rejected the stipulated lines and the efforts to extend San Pedro Bay over into Long Beach, *U. S. v. California,* 332 U. S. 804-6, just why the Special Master should disregard the decree and still recommend that any part of offshore lands within Long Beach are to be considered as San Pedro Bay or inland waters (Report of Special Master, May 22, 1951, pp. 41-42), is hard to understand. We think it is error as will hereinafter be explained.

THE COURT IS NOT BOUND BY AGENTS OR STATEMENTS BY OTHERS

This Court is not bound by agents of the Government or the State of California, *U. S. v. California,* 332 U. S. 19, at 40. It is likewise not bound by what some member of Congress says when he is trying to get a law passed to override a decision by this Court. At most such statements are a slight showing of the intent of Congress.

Since Congress refused to name or define bays, and failed and refused to define "inland waters" and left it up to the Courts to define, it is now up to this Court to do so. It is hoped this brief will be of some help to the Court.

HISTORY OF BAYS

Historically, before California was admitted to the Union, and for many years thereafter, as a matter of fact, there were no bays within the present city limits of Long Beach. (Exhibit "C", Appendix to first A. C. brief) The closest place where ships or barges were unloaded was at the old "Anaheim Landing" which

is east of and outside of Long Beach; and was destroyed by floods in late 1860. Bancroft's Works, Vol. XXIII, History of California, Vol. VI, p. 522.

The only river outlet shown on the U. S. Coast Survey Map of 1859, was the mouth of the San Gabriel River where it met the Pacific Ocean just east of "Rattle Snake Island." (Exhibit "A", Appendix to first A. C. brief)

The area now known as the San Pedro Bay (Los Angeles Harbor) is west of and outside of Long Beach. It was shown on the U. S. Coast Survey Map as "San Pedro Creek." (Exhibit "A", Appendix to first A. C. brief) It was not until about 1870 that any dredging or other work was started in San Pedro Creek to start what later became the great harbor of Los Angeles, Willard, The Free Harbor Contest at Los Angeles, p. 35. (Los Angeles, 1899). We in Long Beach are not concerned with the Los Angeles Harbor or the San Pedro Bay, except the belated attempt to extend the San Pedro Bay over into Long Beach.

It may be noticed that the United States Army had established Ft. McArthur near "Old San Pedro" on the Palos Verdes Peninsula, and in about 1900 the United States built or allowed the first breakwater to extend into the Pacific Ocean. This breakwater was about two miles long, extending from the southeasterly part of Point Fermin into the Pacific Ocean. (Map opposite page 104 of California Vol. II, Appendix of brief) This first breakwater did not extend to the present boundary line of Long Beach, but later breakwaters built by the United States after oil and gas were discovered did extend into the Pacific Ocean in front of Long Beach, some six or eight miles.

The standard definition of a bay is, "a body of water bounded on three sides by land," Webster. The legal definition is "An opening into the land, or arm of the sea, where the water is shut in on *all* sides except at the entrance. *U. S. v. Morel,* 13 Amer. Jur. 286 Fed. Cas. No. 15,807; *Ocean Industries v. Superior Court of California,* in and for Santa Cruz County, 200 Cal. App. 235, 252 P. 722, at 724.

There was no body of water in what is now the city limits of Long Beach, when California was admitted to the Union that will meet the above description of a "bay."

It is urged that there are no lands under inland waters outside of the ordinary low-water mark, low tide line, or bluff line within Long Beach, California; that the San Pedro Bay extends at most to the mouth of "San Pedro Creek" as shown by the U. S. Coast Survey Map of 1859; and that the San Pedro Bay does not extend into or include Long Beach.

The criteria or formula suggested by the United States in determining a bay is, as we understand it, the so-called Boggs rule: when a straight line of not more than ten miles is measured from headland to a land point at low tide line, a semicircle placed along that line would not reach beyond the land or coast line. Such a criteria if followed would disqualify the Pacific Ocean area in front of Long Beach as any part of the San Pedro Bay.

The State of California has gone to great lengths to claim that San Pedro Bay is inland waters of the state, and extends all the way from the southwest point of Pt. Fermin to Newport Beach, a distance

of 19.3 miles, and that the semicircle criteria should be rejected. It would seem just as logical, if the State can extend the closing line 19.3 miles to Newport Beach, that it could, if it chooses, extend the line all the way to San Diego a distance of about 100 miles and claim all of the lands along the south Pacific Ocean as inland waters. It is urged the extending of such lines to take more land from the United States is error.

HISTORIC USE OF THE AREA

It is claimed by the State of California that use of Anaheim Landing and San Pedro Bay (actually it was shown as San Pedro Creek) by the Spanish and Mexican vessels prior to admission of California to the Union was sufficient use to convert some 19.3 miles of the Pacific Ocean into a bay of inland water. This, in our view, is error.

It is not claimed that the State of California built one pier, dock, wharf or railroad in the area; or that the State sailed one vessel into any bay, landing or dock from the day of admission (1850) to 1911 when it conveyed all of its tide and submerged lands to Long Beach and Los Angeles. There was just no building, improvement or control whatever by the State.

Likewise, it is doubtful that the Spanish and Mexican nations built one fort, dock, landing or pier in the whole area; and even if they had, such uses and controls would not be binding on this Court.

There were reports, proposals and Executive Orders, in regard to dredging San Pedro Creek and making a deep-water harbor at San Pedro, California,

as early as 1871, House Executive Doc. 1, Part 2, 42 Cong. 2d Sess. (1871), mostly by the United States Army Engineers. There was not much actual work or building before about 1900, Rivers and Harbors Act, 29 Stats., Chap. 158, pp. 88, 95-96. Senate Document No. 18, 55th Cong., 1st Sess. (1897).

LEGAL RECOGNITION

The main case found on the subject is a criminal case, *United States v. Carrillo*, 13 Fed. Supp. 121 (S. D. Cal. 1935). It is submitted that a criminal case involving the division of police powers of a State and the United States is not binding in property rights division lines of the same parties or a City.

Moreover, even if we agree with the State that the area is San Pedro Bay, and is in fact inland waters, the City of Long Beach owns the lands just the same, since in 1911 the State granted the City all tide and submerged lands, whether filled or unfilled, situated below the high tide of the *Pacific Ocean, or any harbor, estuary, bay or inlet* within said boundaries. (Emphasis added)

CALIFORNIA LEGISLATIVE HISTORY OF LANDS IN LONG BEACH

In 1911 the State of California granted to the City of Long Beach, all tide and submerged lands within the city limits.

This conveyance Stats. 1911, p. 1034 used the words:

> There is hereby granted to the City of Long Beach, a municipal corporation of the State of

> California, and its successors, *all* the right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all tide lands and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the *Pacific Ocean* or any harbor, estuary, bay or inlet within said boundaries * * *. (Emphasis added) (Appendix A-1 of first A. C. brief)

This statute of the State of California called the area the "Pacific Ocean" not San Pedro Bay. The same words "Pacific Ocean" were used in two later statutes by the State, Stats. 1925, p. 35; Stats. 1935, p. 793. (Appendix A-2 and A-3, p. 3a and p. 5a of first A. C. brief)

By charter provision of the City of Long Beach, which was approved by the State Legislature of California, the boundary lines of the City were extended into the "Pacific Ocean" three miles. (Appendix C)

It was not until oil and gas was discovered in Long Beach, and after *City of Long Beach v. Marshall*, (1938) 11 Cal. 2d 609, 82 Pac. 2d 362 held that the State intended to and did grant all of its rights to tide and submerged lands to Long Beach, and that the grant was in fee simple; that the State started calling the Pacific Ocean the San Pedro Bay. This was, it appears, an afterthought by the State after the United States had started asserting its claim to the marginal sea along the coast of California. Of course there was a San Pedro Bay in existence for many years but it was located at San Pedro, California, west of the City of Long Beach and did not extend over into Long Beach.

LONG BEACH HARBOR

Prior to 1911 when the State of California made the first grant of tide and submerged lands to Long Beach (Appendix A-1 of first A. C. brief, p. 1a) there was little commercial shipping in Long Beach. Soon after the first grant, public bonds were voted by the citizens of Long Beach to start to build a public harbor as provided by the grant from the State. The harbor was built by the City at no cost to the State as provided by the grant (Appendix A-1, p. 2a, (b) of the first A. C. brief); and the State can and does use the wharves, docks, piers, slips, quays or other improvements without cost to the state, as provided in the same section of the grant.

The City started dredging the San Gabriel River to make and build two deep-water channels, a turning basin, and inner harbor connecting channel, as well as piers, wharves, docks, and other building for a commercial shipping harbor. All were located inside of the mainland. (Exhibit "A", Appendix of first A. C. brief) It should be noted there were no wharves, docks or other shipping facilities built or constructed outside of the mainland (except a Navy landing for personnel) in Long Beach until after 1938, and the *Marshall* case, supra.

Since 1938 a large and modern outer harbor has been built and is still being constructed with large modern docks, wharves, piers, sheds and other buildings seaward or outside of the mainland in the Harbor District of Long Beach. (Map of the State opposite page 104 Vol. II, State Appendix A) The piers and works of this outer harbor or port now extend almost to the outer city limits of three miles. Oil

money and funds were used and are still being used for such buildings and works by the City of Long Beach.

The Special Master concluded that the outermost limits of the Long Beach Harbor Works should be considered inland waters of the State; or the line from which to measure the three mile marginal belt to the dividing line between the lands of the State and the United States. Report of the Special Master, October 14, 1952, pp. 44-48.

It is respectfully urged such conclusion by the Special Master is error.

The net effect of such a rule of law would be to give to the State of California a three mile wide strip of offshore land which the Congress and the terms of the Submerged Lands Act did not intend it to have. Said in a different way, such a rule would take a strip of land three miles wide from the United States, which Congress intended it to keep. Such a rule of law would not hurt Long Beach as it owns the first three miles in any event, and does not claim more.

SUBMERGED LANDS ACT

It is contended herein that Long Beach was granted the first three miles of offshore submerged lands, as the person entitled thereto under state law, by the terms of the Submerged Lands Act (Title II, Sec. 3 [a] 67 Stats. 1953), to be measured from the coast line. If the Special Master is correct in his conclusion and the State of California should get an extra three-mile strip, this, of course, would move the shoreward boundary line of the United States out six miles from low tide line. It is urged such was not the intent

or terms of the Submerged Lands Act.

It is conceded by all, we think, that the Congress has constitutional powers to set and establish property rights dividing lines between the states and the United States in offshore submerged lands. And has the right to establish a line from which to measure the lands.

United States v. Louisiana, (1960) 363 U. S. 1, at page 35.

The Submerged Lands Act granted lands, extending not more than three geographical miles from the "coast line," which the Act defined as "the line of ordinary low water," Section 2, 43 U.S.C. 1301.

EFFECT OF ARTIFICIAL STRUCTURES AND FILL ON LONG BEACH PROPRIETARY RIGHTS

We are not concerned with, and need not be confused by the common law rule of law in regard to riparian owners' titles since all such lines stop at the high tide line in Long Beach. We are here concerned with the dividing line of inland waters owned by the City and offshore submerged lands owned by the United States (prior to the Submerged Lands Act). The Federal law that created the boundary must determine its character, and the State has no authority to diminish rights of the United States.

United States v. State of Washington, 294 F. 2d 830 (C. A. 9) certiorari denied, 369 U. S. 817.

California adheres to the common law view that artificial changes in the shore line do not affect property rights.

People v. Hecker, 179 Cal. App. 2d 823.

Since under the terms of the Submerged Lands Act (Title I, Sec. 2 [a] 43 U.S.C. 1301) (3) "all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined," were granted to Long Beach; it is plain to see that Congress intended the State or the person (Long Beach) to get title to all filled in or reclaimed lands. This does not indicate or show that Congress intended to establish the base line from which to measure the three miles at the outermost limits of such lands. In fact the Act, Title II, Sec. 3 (b) (43 U.S.C. 1311) says:

(1) "The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources;" * * *

showing that Congress did not intend the base line to be further seaward than the "coast line," but did intend to make sure that the City received title to all physical properties within the three miles.

The above provisions of the Act are logical as they do not add to the lands granted to Long Beach under the Act, and they do not subtract from the lands retained by the United States. Any other interpretation placed upon the Act would take valuable oil and gas lands from the United States, but would not help Long Beach in the least.

It is conceded, we assume, that the present seaward boundary line of the City is three miles from the high tide line as it existed when the Charter provision was approved in 1923. The building of piers,

slips, fills, buildings or breakwaters did not and do not extend the City limits three miles from the outer limits of such works.

If the rule of law suggested by the Special Master is adopted by the Court, the City or State could build a jetty, pier or even a pipeline into the Pacific Ocean and thereby claim the lands as inland waters, plus a three mile strip of marginal sea. Such actions would have the undesirable effect of moving the "coast line" seaward at any time, would divest the United States of valuable submerged lands, and constantly keep the coast line in a non-stable position. It is urged this should not be approved by the Court.

It is urged on behalf of the taxpayers and citizens of Long Beach, California, that this Court decide as a matter of law that the coast line in Long Beach is the low tide line as shown by the U. S. Survey Map of 1859, or as it existed in 1911 when the first grant was made by the State (in fact they are about the same); that the coast line has not changed and cannot be changed to move the dividing line between the lands owned by the City and the United States. Such a rule of law, to apply only to the dividing line of offshore submerged lands, would have the advantage of being a permanent line instead of a constantly changing line based upon rules of law of accretion as applied to private riparian owners.

LONG BEACH TITLE TO SUBMERGED LANDS

It is conceded, though not mentioned in the other briefs, that Long Beach has some kind of title to all such lands within its boundaries, whether "in-

land waters," "tidelands," or "submerged lands." The real and actual question is what kind.

I

It was pointed out in the first Amicus Curiae brief heretofore filed, that by Cal. Stats. 1911, p. 1034, 1925, p. 35, 1935 p. 793. (Appendix A-1, A-2, A-3 of first A. C. brief) California granted *all of its rights, title and interest* to Long Beach. And that in 1938 the Supreme Court of California held the grant to be a title in fee simple, including the oil rights. *City of Long Beach v. Marshall,* 11 Cal. 2d 609, 82 P. 2d 362, at p. 364. This was a unanimous decision by the full Court, and would seem final and binding as settled law. However, in a later case, in a friendly suit by the City Auditor decided after United States v. California was decided the California Supreme Court in a 4-3 divided opinion held, for the first time, that income from "tidelands" had to be used by the City for harbor, commerce, navigation and fisheries; but that no part of the funds reverted to the State of California. *City of Long Beach v. Morse,* (1947) 31 Ca. 2d 254, 188 P. 2d 17. It should be noticed that in this case the Court pointed out that it was not passing upon "submerged lands" at page 19, 188 P. 2d. This decision was based upon the general law of private trust, that in the *absence of specific authority,* trust income cannot be used for other than trust purposes. (188 Pac. 2d 17 at 20) One of the justices pointed out in a well reasoned dissenting opinion that the State itself owned tidelands (the only lands passed upon) in a special kind of trust for all the people, 188 P. 2d 17 at 25, and hinted that the State itself should use the income from such lands for commerce, harbors,

navigation and fishing. It would seem logical that if the State can use the income for any purposes, as it does, then the City has the same right to use its income for any purposes.

Subsequent to the *Morse case*, supra, and after *United States v. Louisiana*, 339 U. S. 699, (1950) but prior to the Submerged Lands Act (1953) the City of Long Beach amended its charter, by Section 260.8 which was approved by the State, Section 8 Stats. 1953, p. 3826. Also the State of California passed and put into law Calif. Stats. 1951, p. 2443-2445 which provided in Section 2, that 50% of the oil revenue and all dry gas revenue received by the City of Long Beach could and should be used *by the City* for upland uses within the City. This State Statute did not provide that any funds whatever were to revert to or become State funds. (Appendix B hereto) Since the City owns all lands within its borders in the very same trust capacity as the State owns lands outside of cities and towns, it would seem that the city has the same rights, no more, and no less, to use the income for general purposes the same as the State does. It is clear this 1951 Act by California intended to and did release 50% of oil funds and all dry gas funds for upland uses by the City. It is likewise clear that this 1951 statute was in effect when the Submerged Lands Act was passed.

That Congress intended to approve the State law, then in effect by the Submerged Lands Act, and that Congress intended Long Beach to receive and use the lands and funds under such arrangements cannot be denied. In fact, the State of California claims the same, except the State claims that the law in effect

in 1947, prior to U. S. v. California, should prevail. If we agree with the State and take the law in effect prior to 1947 or U. S. v. California as the prevailing date, then we find the City of Long Beach entitled to use all of the income for any purposes under its fee title.

City of Long Beach v. Marshall, (1938) 11 Cal. 2d 609, 82 P. 2d 362, at 364.

A further fact showing that Congress definitely intended that Long Beach have the lands and funds under the Submerged Lands Act is found in Section 3 (1)(T) of the Act which released and turned over to the City of Long Beach all impounded funds. The Act did not release the impounded funds to the State of California, but did release them to the City, which shows a clear intent that Congress intended Long Beach to have the funds and lands to be used as provided by State law then in effect.

It is conceded, as said by Judge Merrill in the *Twombley case* (Appendix "A", p. 4 hereto) that Congress did not intend to "undo or override arrangements *theretofore* made by the several states," but it is urged that Congress did not intend to make it possible for the State in the future to recant on written grants and take the lands or funds from the City. (Emphasis added)

II

No word has been found in any majority report by any Senator or other public official that it was the intent of Congress to make it possible for the State to take the lands and funds from any grantee of the states. In fact if such a suggestion had been made

or considered it would have been a "shock" to any fair mind.

Surely it cannot be said that under the terms of the Submerged Lands Act, the State could recant on written leases or grants made to private firms and take the income from such private grantees and use it for its own uses. Such is unthinkable under the settled law. The same is true of the City.

It was not until 1955, long after the Submerged Lands Act, that *Mallon v. City of Long Beach*, 44 Cal. 2d 199, 282 P. 2d. 481, decided that the State could take the income from the lands in Long Beach (even this case limited its decision to "tidelands" and not to lands granted under the Submerged Lands Act. This case was started by a taxpayer against the City, and the State of California was not even a party to the action.

Congress could not have considered this 1955 case as the law of the State as it was not decided until after the Submerged Lands Act. The 1951 Statute was the latest Statute by the State and was what Congress had to rely upon as the law. As pointed out above there is not one word or act which would show that Congress intended to make it possible for the State to take the lands or income from the City by later decisions or Statutes.

Congress made very sure that grantees and lessees did not receive more rights than they had under State grants prior to the Act. Section 1301 (d) 43 U.S.C., provides:

> "* * * provided, however, that nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests

> other than are described herein and in their respective grants from the states, or its predecessor sovereign."

We must assume that Congress did not intend to grant less rights or interests than held prior to the Act, and did not intend to take any rights away from the City. The City is not trying to get or take more rights than it had, or all parties thought it had, under state law prior to U. S. v. California (1947), plus whatever rights were granted to it under the Submerged Lands Act. The Supreme Court of California had held, and all parties thought, the City had a fee simple title, including the oil and gas.

> *City of Long Beach v. Marshall*, 82 P. 2d 362.

The taxpayers are trying to protect and preserve all of the rights they had prior to the Submerged Lands Act, plus whatever rights they received under it, no more, and no less.

NATURE OF TRUST OR TITLE

It has been said that before this Nation was formed the tidelands and lands under inland waters were owned by the Crown in trust for all the people to use for commerce, navigation and fishing, that the original colonies did not own such lands, and that after the formation of the Union the original states became the owner of such lands in the same trust as held by the Crown. Later states admitted to the Union upon equal footing became the owners of such lands by reason of their sovereignty and held them in the same trust manner, and the United States became the owner of the three-mile marginal belt below low tide and

outside of inland waters along the Coast of California.

United States v. California, 332 U. S. 19.

No reported case has been found from England or any State which defined in clear and exact terms just what kind of a trust the lands were held under; or decided or explained what the income from such lands could be used for. The closest case found is *Illinois Central Ry. Co. v. Illinois*, 146 U. S. 387, in which case the funds or income was used by the City of Chicago for park purposes, not commerce, navigation or fisheries, but it was a public use by the City. The Court made no direct decision on that point at all, so we are not much enlightened by the case.

After 1947 and after United States v. California was decided, it was held in *City of Long Beach v. Morse*, (1947) 31 Cal. 2d 254; 188 P. 2d 17, that in the absence of legislative provisions to the contrary, the city has no right to use the income for other than commerce, navigation and fisheries. (at p. 20 of 188 P. 2d)

It is certain that the State itself was a trustee of the lands, not a trustor or settlor under the trust, and all of the people of the United States are the beneficiaries.

Mallon v. City of Long Beach, 44 Cal. 2d 199 at 215.

As a trustee itself of the lands the State of California does not have legal authority to revoke the trust or any part thereof, call itself the settlor, and take the income for State uses.

Thereafter, on June 6, 1951, the State declared that Long Beach was receiving and would continue to re-

ceive many million dollars of surplus income from the lands, which income was not needed for commerce, navigation and fisheries on the lands. The state undertook to release this vast sum of surplus income from the trust and assign it to Long Beach to be used by the City, 50% of oil funds and all dry gas income to be for upland city uses, and the other 50% of oil income to be used by the city for harbor, commerce, navigation and fisheries on the lands. (Appendix B) In 1955 the Supreme Court of California misconstrued the trust relation of the lands, and held that the Statute worked a reversion of the surplus funds to the State.

Mallon v. City of Long Beach, (1955) 44 Cal. 2d 199; 282 P. 2d 481.

On June 25, 1964, the United States Court of Appeals for the Ninth Circuit held, by a three judge division that the Mallon rule applied to offshore submerged lands which were confirmed to Long Beach under the Submerged Lands Act. (Appendix A, p. 4) We felt this case to be error so filed a motion or suggestion that the case be re-decided en banc; or that the points be certified to this Court for final decision. (Appendix D) This was denied.

INCOME FROM AND CONTROL OVER THE LANDS

This important topic is divided into the following questions.

1. Does the trust use of the lands require any trust use of the income?

It would be conceded, we assume, that the State could not grant more rights to the City than the State

owned itself. It is also clear the State intended to and did grant whatever rights it had to the City in 1911, *City of Long Beach v. Marshall*, 82 P. 2d 362, including the oil and gas rights.

The latest case is *Twombley v. City of Long Beach*, et al., decided on June 25, 1964 by the United States Court of Appeal for the Ninth Circuit (not yet reported but attached hereto as Appendix "A") which extended the trust rule and authority of the State to take income from the City of offshore submerged lands. This latest decision did not decide the direct question of whether or not a state has legal authority to take lands and income from a city and the taxpayers, but it did approve the trust theory. (Appendix "A", p. 5) It is respectfully urged this case is error because it did not consider the correct nature of the trust under which the lands are held by Long Beach.

LONG BEACH OWNS ALL LANDS WITHIN ITS BOUNDARIES REGARDLESS OF KIND OR FROM WHOM IT RECEIVED TITLE

Lands under inland waters, including bays, harbors, estuaries or inlets, were granted to Long Beach by the State in 1911. (Stats. 1911, p. 1034)

Tidelands and submerged lands within the City were also granted to Long Beach by the same Statute at the same time. It was later found that neither the State nor the City owned the offshore submerged lands, *U. S. v. California.* However, under the terms of the Submerged Lands Act title was granted to the City to all submerged lands; and the title to tidelands were confirmed in the City.

Even if we use the term, "restore" as the State does, or the word "confirm" as the Judge did in the *Twombley case*, or the word "quitclaim" as used by the Court in *People v. Hecker*, 179 Cal. App. 2d 23; or the word "grant" as used by this Court, *United States v. Louisiana*, 363 U. S. 1, p. 6, we have the same end result and Long Beach owns all lands within its borders. This is especially true since the Supreme Court of California had held the City has a title in fee simple including the oil rights, and the right to produce and take the oil.

City of Long Beach v. Marshall, 11 Cal. 2d 609, 82 P. 2d 362 (1938).

KIND OF TITLE HELD BY THE CITY TO TIDELANDS AND LANDS UNDER INLAND WATERS

Lands washed by the daily ebb and flow of tidewaters on the bank of Mobile River in Alabama were held to belong to the State by reason of its sovereignty in early times. *Pollard v. Hagan*, 3 How. 212, 11 L. Ed. 565. These lands are held in trust by the states so that all people can have access to the waters for commerce, navigation and fishing. *Illinois Central Ry. Co. v. Illinois*, 146 U. S. 387, 13 S. Ct. 110, 36 L. Ed. 1018. The exact kind of a "trust" has never been clearly defined by the Supreme Court of the United States. Some Courts have called it a "special trust," others have treated it the same as a private trust. This Court has held that a State is powerless to dispose of all such lands in a manner to deprive the people of all access to the waters. *Illinois Central Ry. Co. v. Illinois*, supra. This Court has said:

> "* * * California has a qualified ownership of lands under inland waters such as rivers, harbors, and even tidelands down to the low water mark."
>
> *United States v. California*, 332 U. S. 19 at p. 30.

There was no further clarification of what "qualified ownership" means; and no mention or holding in any case by this Court for what purposes the income from such lands can be used. A direct decision explaining the nature of the trust and for what purposes, and by whom, the income could be used seems not to have been determined by this Court before.

It is respectfully urged that such a decision is now overdue; and in this case, here and now, is the proper time and place for such a decision. This Court is well aware of the importance of such a decision to the United States, many states, and all cities and private firms holding grants or leases on such lands of either kind. The law is very unsettled and confusing now, and will get no better until and unless this Court speaks.

The State claims to hold the ungranted lands in its sovereign ownership in trust for all the people for commerce, navigation and fisheries, yet the State claims the right to use the income for any purpose.

It is conceded on behalf of the taxpayers of Long Beach that the State of California is correct in such claims, and the trust relationship of the lands as such do not furnish any basis for trust restrictions on the income from oil and gas produced therefrom. All other states receiving land or rights under the Submerged Lands Act, or tidelands or lands under inland waters in trust seem to agree and so far as is known use

the funds for any purposes. All cities and others holding such lands as grantees or lessees, except Long Beach alone seem to use the income from such land for any public purpose.

It is urged that even though the lands granted to the City by the State had special trust restrictions on the lands, the same as existed for the State, no trust restrictions were placed upon the income by the 1911 Statute so none should or do exist on the income.

The 1911 state statute (1911 Stats. p. 1034) did not refer to Long Beach as a "trustee" or agent of the State. It was a grant of land to be forever held in trust for certain purposes — to build a harbor on for commerce, navigation and fisheries (the same as the State owned the lands).

Second: The Courts have treated the 1911 grant by the State to Long Beach as a free gift of land without consideration to the State. This, it is urged is error. The 1911 Statute provides:

> "Section 1. There is hereby granted to the City of Long Beach, a municipal corporation of the State of California, and to its successors, all right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all the tidelands and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific Ocean, or any of any harbor, estuary, bay or inlet within said boundaries, to be *forever* held by said city and by its successors, in trust for the uses and purposes, and upon the express conditions following to wit:
>
> (a) That said lands shall be *used* by said city and by its successors, solely for the *establishment*,

improvement and *conduct of a harbor* and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce, navigation, and said city, or its successors, shall not, at any time, grant, convey, give, or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatever; *provided,* that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof for limited periods, for purposes consistent with the trusts upon which said lands are held by the State of California and with the requirements of commerce or navigation at said harbor;

(b) That said harbor *shall* be improved by said *city without expense to the State,* and shall always remain a public harbor for all purposes of commerce and navigation, and the State of California shall have, at all times, the right to use, *without charge,* all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the State of California.

(c) * * * No discrimination in rates * * *.

Reserving, however, in the people of the State of California the absolute right to fish in the waters of said harbor, with the right of convenient access to said waters over said lands for said purpose. (Emphasis added)

We see from a close reading of the above statute of 1911 the important, and we contend, controlling facts to be:

(a) That the lands are to be held in trust "forever."

(b) There was no definite trust placed on the income.

(c) The City was not named or designated as "trustee."

(d) There was consideration for the grant of land.

(e) The grant provided for a continuing valuable consideration to the State.

(f) The State was not named or designated as "trustor."

(g) The grant provided the lands shall be *used* * * * for a harbor, navigation and commerce. It *did not* provide for the lands shall be *devoted* to a harbor.

THE COURTS HAVE TREATED THE CITY AS PRIVATE TRUSTEE

The Courts have treated the trust relationship the same as a private trust, which, we submit, was error. In an ordinary private trust there is generally a named "trustor," a named or designated "trustee" and a named or designated beneficiary, with the duties of the trustee specified in detail; and directions as to whom shall receive the income, if any. None of these facts are set out in detail in the 1911 grant from the State.

It is urged that the grants to the City should not be treated the same as private trusts; that Long Beach received a title in fee subject to the trust duties that it not unduly hinder the people from access and use of the waters for commerce, navigation and fishing, and that income from such lands can be used for

any public purposes as provided by City Charter.

City of Long Beach v. Marshall, (1938) 11 Cal. 2d 609, 82 P. 2d 362.

(a)

There has been no claim that the City has not complied with the terms of the grant, or that it has used the lands in such a manner to work a forfeiture. Yet the Supreme Court of California has treated the trust as expiring, or as being incapable of further performance. *Mallon v. City of Long Beach,* (1955) 44 Cal. 2d 199, 282 P. 2d 481, p. 486. The term of the 1911 grant was "forever," hence had not and cannot expire, and the authorities cited in *Mallon,* supra, do not apply and are not binding. This is true even as to offshore submerged lands which the State did not own at the time, because the Submerged Lands Act granted a new title or confirmed the old title to the City as good from the beginning. *Superior Oil Company v. Fontenot,* 213 P. 2d 565 (cert. denied 348 U. S. 837). The Submerged Lands Act (1953) was prior to Mallon (1955).

(b)

CONSIDERATION FOR THE GRANT

It was said in *Mallon v. City of Long Beach,* 44 Cal. 2d 199, 282 P. 2d 481, at 490, that when the State embarked upon the plan of granting lands to the cities for them to build harbors on, the lands were, in most cases, of little value to the State. Long Beach accepted the grant with the written provision that the city would build a harbor at *no cost* to the State. Long Beach did build such a harbor at no cost to the

State, using bond money in the sum of $8,245,000.00 which the taxpayers had to and did repay. Hence this valuable consideration was paid by the taxpayers who are in reality the trustors of any resulting trust under the law, Scott-Trusts, Vol. 3, Sec. 434. There was not only a valuable consideration paid by the City and taxpayers, but it would seem to have been adequate, or at that time, a high consideration.

(c)

CONTINUING VALUABLE CONSIDERATION TO THE STATE

The above 1911 statute provided that the State has the right at all times to use the harbors, wharves, docks, piers, at *no cost* to the State. The State has used in the past, still does, and will in the future use the harbor and facilities at no cost to the State. This right is of considerable benefit to the State, and a cost to Long Beach. It is a continuing valuable consideration for the written contract; and it is urged, cannot be broken by the State.

County of Los Angeles v. Southern California Telephone Co., 32 Cal. 2d 378, 196 P. 2d 773, at 778;

Board, et al v. Lucas, 93 U. S. 108, 23 L. Ed. 822, p. 824.

PRIVATE TRUSTS

Even if we agree that Long Beach holds the lands in the same capacity as a private trustee, still the City, and in equity, the taxpayers, are entitled to surplus funds accumulating from the lands. This is

true because of the consideration for the grant.

Scott-Trusts, Vol. 3, Section 434.

In 1953 the City decided and declared by Charter amendment Section 206.8 that surplus revenues were being received and in the future would be received which were not needed for harbor, commerce and navigation, and assigned 50% of oil revenues and all dry gas revenues to upland uses by the City. The State by concurrent resolution of the Legislature, Sec. 8, Stats. 1953, p. 3826, approved the Charter provision by the City. Prior to the above Charter amendment the State of California passed and put into law Chapter 915, Stats. 1951, pp. 2443-2445, which found and declared that surplus revenues and funds were being received and in the future would be received which were no longer required or needed for any trust purposes and released 50% of oil and all dry gas income. (Appendix B, p. 3b)

This 1951 statute did not provide that any funds would revert to the State, or provide or indicate that it was the intent of the State to "thus take to itself" as said in *Twombley v. City of Long Beach.* (Appendix "A", p. 3)

Where transferee pays consideration for the trust he is in fact the settlor.

Scott-Trusts, Vol. 3, Sec. 433.

Where trusts can be fully performed without exhausting the trust, the resulting funds can be used by the trustees.

Scott-Trusts, Vol. 3, Section 434.

Thus, it is clear that both the City and the State decided and declared there were surplus funds not

needed for the public trust which should be released to the City to be used by it for upland public use. In any event, the City would be entitled to surplus funds under the above sections of trust law, without the 1951 State statute.

In *Mallon v. City of Long Beach*, (1955) 44 Cal. 2d 199-208 (282 P. 2d 481) the Court placed its decision squarely upon Section 2280, Civil Code of California, as authority that a trustor can revoke a trust. This we see is error. As originally drawn in 1872, Sec. 2280, provides:

> "A trust *cannot* be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all of the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued." (Emphasis added)

In 1931 the original statute was changed and now Section 2280 provides:

> "Unless expressly made irrevocable by the instrument creating the trust, every *voluntary* trust shall be revocable by the trustor by writing filed with the trustee. When a *voluntary* trust is revoked by the trustor, the trustee shall transfer to the trustor its full title to the trust estate. Trusts created *prior* to the date when this act shall become a law *shall not* be affected thereby (As amended Stats. 1931, c. 950 p. 1955, Sec. 1)" (Emphasis added)

This section applies to voluntary trusts created without valuable consideration passing to the trustor. *Touli v. Santa Cruz County Title Co.*, 67 P. 2d 404. Thus we see that if value passed, as in the case at bar,

even under the new Section 2280 the trustor cannot revoke a trust.

Even if we agree that the State of California is a trustor (which we do not) under the old Section 2280, which was in effect in 1911 when the grant was made, it cannot be revoked under the statute. *Roberts v. Taylor*, (C.C.P. 1924), 300 F. 257 (Certiorari denied 226 U. S. 629).

Under the original Section 2280, a voluntary trust cannot be revoked.

> *Gray v. Union Trust Co.*, 171 Cal. 637, 154 Pac. 306.

Section 2280 provided specifically that trusts made before 1931 were not affected by the act. Since the grant to the city was in 1911, it was not affected by the act.

Surely the Court was not informed of the above cases and statute provisions, because otherwise, it simply could not have made such an error in *Mallon v. City of Long Beach*, 44 Cal. 2d 199-208, 282 P. 2d 481.

The interpretation of Federal Laws; or the title to and extent of lands granted under or controlled by Federal Laws, or by the United States Constitution, are within the jurisdiction of this Court, *Borax Consolidated Co. v. Los Angeles* 296 U. S. 10, and this Court is not bound by the reasoning of State Courts in relation thereto.

If we assume that the State has authority to revoke the trust or any part thereof (which we do not agree it has), and assuming further that the Statutes, 1951 - 1956 - 1964 did work a partial revocation of the trust,

this would work a reversion of the funds to the City and taxpayers under the law of trusts, Scott-Trusts Vol 3, Sec. 433, this is true because the State received consideration.

If the State Statutes, Chapter 29, Extra Session 1956, and Senate Bill No. 60, 1964, which attempts to revoke the trust and take the funds from Long Beach are unconstitutional, as we urge they are now, they would be void and of no effect. They would not revoke the trust or any part of it and as a result the State would have to repay or pay back all funds and money given to it by the City of Long Beach.

THE 1911 GRANT DID NOT CONTAIN PROVISIONS THAT TRUST COULD BE REVOKED OR MODIFIED

When there is no provision in the trust instrument reserving power of the settlor to revoke the trust, the trust is not revocable by the settlor, although he received no consideration for the trust, Restatement of Trusts, Sec. 330 (b).

A settlor has no power to modify a trust, if he did not reserve such powers in the trust instrument.

Bogart-Trusts Sec. 992, Restatement of Trusts Sec. 331;

La Rocoa (1963) 192 A. 2d 409, 411 Pa. 633.

No implied power exists in a settlor to revoke a gift of legal interests.

Sec. 998 Bogart-Trusts;

Prince v. Burger, (1962) 176 A. 2d 870, 227 Md. 351;

Sec. 535 Scott-Trusts.

This was the settled law in California when the grant was made in 1911, and until 1931 when Section 2280 Civil Code was changed.

LATER EFFORTS TO TAKE OIL AND GAS INCOME FROM LONG BEACH

After the unexpected windfall to the State as a result of the Mallon decision (which was not appealed to or approved by this Court), the State passed Chapter 29, Stats. 1956, which took all of the impounded funds that had been paid to the City by the United States, in amounts exceeding One Hundred Twenty Million Dollars ($120,000,000.00); plus 50% of oil income, and all dry gas revenues to be applied to State general uses. This 1956 statute has been in effect since 1956, and the State has been paid over Two Hundred Million Dollars ($200,000,000.00) by the City of Long Beach, without value received. Also the State took supervision and control of the funds, and lands, and requires that the City use its funds for harbor, commerce and navigation, under State control. (Appendix E, p. 8e)

In 1964, at the Extra Session of the State Legislature, the State passed and put into law Senate Bill 60, which takes up to 85% of oil money and all dry gas income from the City; also takes more control and supervision of the lands and income, and restricts further the uses which the City can use oil income for. (Appendix F, p. 5f)

Senate Bill No. 60 does not name or require any other city within California which holds similar lands to pay any part of the income from such lands to the State. There are several other cities in California hold-

ing similar lands under grant from the State: Los Angeles, San Diego, Oakland, and others. (The pertinent part of S. B. 60 is attached hereto as Appendix F)

Senate Bill No. 60 was signed into law prior to, and was in effect approved by the *Twombley* decision which was announced on June 25, 1964. (Appendix "A", p. 1)

It is urged that both Chapter 29, Stats. 1956, and Senate Bill No. 60, are unconstitutional and void; or ineffective to take the lands and income from the City and taxpayers of Long Beach, for the following reasons:

(a) Both statutes take funds and income from lands granted to Long Beach, either by the State of California under a written grant for value, or by the United States under the Submerged Lands Act. In either event it is taking funds and property rights without due process of law as is guaranteed under due process of law provisions of the United States Constitution. More fidelity should be required of a State when dealing with a city or the taxpayers thereof than is required of private dealing between private parties. A State should not be allowed to recant on its written agreements for value, and to rely upon the so-called trust theory to take the income.

States do not have unlimited authority over cities and towns.

Lightfoot v. Alabama, (1960) 364 U. W. 339 at p. 345.

(b) Each statute names and affects only Long Beach, no other city or firm is named or affected and

no funds are taken from any other city, though many other cities in the State hold lands under the same kind or similar grants by the State. This, it is urged, is unequal treatment or protection of the taxpayers of Long Beach under the law in violation of the 14th Amendment to the Constitution of the United States.

(c) Each of the statutes attempted to decide and compromise legal actions then pending in the Courts. (Appendix E, p. 4e) (Appendix F, p. 8f)

Under our form of government where each of the three branches is limited to its own authority, nothing is better settled than the Legislature cannot decide Court actions, or exercise judicial functions, 11 Cal. Jur. 2d, page 476, Sec. 118.

(d) In addition to the above mentioned points (a) (b) and (c), Senate Bill No. 60, Extra Session 1964, attempts to set, determine, and define the tide line along the Coast of Long Beach, in total disregard of this action now pending before this Court. (Appendix F, p. 8f)

(e) Section 9 of Chapter 29 First Extra Sessions Laws 1956 provides: (Appendix E, p. 10e)

> "* * * Any decree of judgment entered into on stipulation provided for in this act shall be final as to any and all matters."

Hence, this act attempts to prevent any civil action by any party, taxpayer or otherwise. It seems to violate the due process of law clause of the Constitution of the United States, in that it attempts to deprive taxpayers of their right to start legal actions to protect property rights and redress wrongs. A vested right of action is property in the same sense

in which tangible things are property, and is equally protected against arbitrary interference.

Anderson v. Ott, 127 Cal. App. 122, 15 P. 2d 526;
11 *Cal. Jur.* 2d Sec. 228, page 648.

CONCLUSION

It is respectfully urged as follows:

1. That Long Beach, California, the citizens and taxpayers thereof, own all lands under inland water, tidelands, and offshore submerged lands within its boundaries; that said lands are held in a special trust forever so that all people can have access to and use the waters for commerce, navigation and fishing.

2. That Long Beach has the exclusive right to use any and all income from such lands for public uses.

3. That the State of California has no legal right to take and use any of such income from above described lands; has no legal control over the operations of the lands or harbor, and no right to require the City to use the lands or funds in any manner; except that the State has use of the harbor or any of its facilities free of cost forever; and except for police powers of the State under the law.

Respectfully submitted,

Attorney for Amicus Curiae
JOHN B. OGDEN

APPENDICES

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18,574

LEWIS W. TWOMBLEY,

Appellant,

vs.

CITY OF LONG BEACH, a California Municipal Corporation; MURRAY T. COURSON, City Auditor, of the City of Long Beach, California; STATE OF CALIFORNIA; and THE STATE LANDS COMMISSION OF THE STATE OF CALIFORNIA,

Appellees.

[June 25, 1964]

Upon Appeal From the United States District Court for the Southern District of California, Central Division.

Before: BARNES, JERTBERG and MERRILL, Circuit Judges.

MERRILL, Circuit Judge:

The question presented by this appeal is whether the City of Long Beach, California, holds fee title to the submerged lands (lands covered by navigable nontidal waters) within its boundaries, free from any right in the State of California.

Appellant, as a citizen, resident and taxpayer of the City of Long Beach, has brought this action against Long Beach and the State of California, asserting that Long Beach has such fee title, but is wrongfully paying to the State a portion of its revenue from such lands under the erroneous assumption that it is legally obligated to do so. The complaint sought an injunction against further payments to the State and a declaration of Long Beach's title. Appellant asserts that the City's title was derived from the United States by the provisions of the Submerged Lands Act, 67 Stats. 29 (1953), chapter 31, 43 U.S.C. §§ 1301-1343. He invokes Federal jurisdiction under 28 U.S.C. §1331, upon the ground that the interpretation of an Act of Congress is essential to his claim.

The action was dismissed by the District Court of the Southern District of California, Central Division, for failure of the complaint to state a claim. This appeal followed.

Prior to *United States v. California,* (1947) 332 U. S. 19, it had generally been regarded as the law that title to submerged lands lay in the several states. By that decision title was held to be in the United States. The rights and investments under innumerable grants and leases from the states were placed in peril.

Congress dealt with the situation by the Submerged Lands Act, *supra,* Section 1311(a) states that "title to and ownership of the land beneath the navigable waters within the boundaries of the respective States, and the natural resources within such land and waters * * * is recognized, confirmed, established and vested in and assigned to the respective States or the persons who were, on June 5, 1950, entitled thereto under the

law of the respective States in which the land is located * * *."

Appellant's contention here is that by virtue of a grant from the State of California, Long Beach was, on June 5, 1950, the person entitled to the submerged lands within its boundaries.

By Act of the State Legislature, May 1, 1911, Long Beach was granted "all the right, title and interest of the State of California held by said State by virtue of its sovereignty in and to all the tidelands and submerged lands, whether filled or unfilled, within the present boundaries of said City * * *." The grant provided, however, that it was "in trust for the uses and purposes and upon the express conditions following." It was then specified that the lands so granted "shall be used by said City * * * solely for the establishment, improvement and conduct of a harbor" including facilities for the promotion and accommodation of commerce and navigation.

By later enactments the nature of the trust and the limitations upon use that it constituted were somewhat modified. In *City of Long Beach v. Morse*, (1947) 31 Cal. 2d 254, 188 P. 2d 17, it was held that revenues derived from the lands were also subject to the trusts imposed.

By Act of June 6, 1951, the State declared "free from the public trust," and thus took to itself, one-half of the oil revenues and all "dry gas" revenue derived by Long Beach from the lands so granted. That Act found and determined as fact that Long Beach, since 1939, had produced large quantities of oil, gas and other hydrocarbon substances from the lands conveyed and had derived substantial revenue

therefrom; that the expenditure of more than the sums left remaining subject to the trust "would be economically impracticable, unwise and unnecessary."

Subsequently, in *Mallon v. City of Long Beach,* (1955) 44 Cal. 2d 199, 282 P. 2d 481, the Supreme Court of California held that this statutory enactment had the effect of creating a resulting trust in favor of the State of California, and that the State and not Long Beach was entitled to the revenues freed from the statutory trusts.

Finally, by chapter 29 of the Statutes of 1956, the California State Legislature approved and directed a settlement between Long Beach and the State, and directed that subject to certain costs the City should pay over monthly to the State of California one-half of the oil revenue and all dry gas revenue derived from submerged lands.

Appellant contends that California had no right to impose conditions or trusts in its grant to Long Beach since it had at that time no title to the submerged lands. He contends that the City's title came not from California but directly from the United States; that California's only function in all of this was to point the finger at the person entitled, and only the United States, which has not done so, could impose restrictions.

Furthermore, appellant contends, California law does not establish the State's right to enforce the conditions imposed. As we understand appellant's position, he asserts that the law of California (as it existed prior to *United States v. California, supra*) respecting its right and title under the grant to Long Beach, is laid down in *City of Long Beach v. Marshall,* (1938)

11 Cal. 2d 609 82 P. 2d 362. There, in confirming Long Beach's title to the land, says appellant, the decision established California law to the effect that upon California's admission to the Union it had acquired title to submerged lands by virtue of its sovereignty, subject to certain public trusts; that by its grant to Long Beach it had parted with all proprietary ownership, retaining only that title which it had felt it held in trust for the public. By *United States v. California*, argues appellant, it was established that California had neither proprietary nor trust ownership. By the Submerged Lands Act, appellant argues, the United States granted proprietary ownership to California but imposed no public trust duties upon the State. Appellant reasons that the "trust" ownership which the State had retained was, under *United States v. California, supra*, in fact retained for the benefit of the United States which had not imposed trust conditions when it "granted" the land to Long Beach. Thus the trust conditions imposed by the State were terminated.

We cannot agree with appellant's position. It is clear from the Act itself and from legislative history that Congress, by the Submerged Lands Act, wished to confirm and not to undo or override arrangements theretofore made by the several states.

The majority report upon the bill, which became the Submerged Lands Act, Volume 2, U. S. Code Congressional and Administrative News, 83rd Congress, 1st Session, 1953, page 1385, 1423, states in part:

> "We are certain that until the Congress enacts a law consonant with what the states and the Supreme Court believed for more than a century

> was the law, confusion and uncertainty will continue to exist. Titles will remain clouded and years of vexatious and complicated litigation will result."

Therefore, the report states at page 1422, "the Congress should now remove all doubt about the title by ratifying and confirming the titles long asserted by the various states."

The Act itself, in defining "grantees" and "lessees," §1301(d), states: "Provided, however, that nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein, and in their respective grants from the State or its predecessor sovereign."

In dismissing the action the district court states:

> "Plaintiff's technical argument fails to answer the point repeatedly made by defendants that Congress intended by the Submerged Lands Act to 'confirm' whatever conveyance of title the states had already made. Plaintiff cannot rely on the statutory conveyances made to Long Beach, while at the same time insisting that the conditions of trust contained in the conveyances be deleted."

We agree.

Appellant argues that even if the Submerged Lands Act is construed to confirm the pre-existing status of the City of Long Beach's ownership, subsequent California legislation appropriating part of the revenue produced is ineffective. This is so, appellant contends, because the statute (Cal. Stats. 1951, ch. 915) was enacted after *United States v. California* but before the Submerged Lands Act, a period during which California lacked ownership of the land.

It is true that California's decision to free certain revenues from the public trust was made subsequent to June 5, 1950. However, it is clear from *Mallon v. City of Long Beach, supra,* and *City of Long Beach v. Morse, supra,* that the right of the State to lay claim to surplus trust revenue arose out of the original grant to Long Beach in 1911, and that the Act of 1951 amounted to no more than a varying of the terms of the original trust as to the manner in which trust property was to be put to public use. The Act of 1951, then, did not impinge upon rights of Long Beach as of June 5, 1950. It dealt with trust property as to which Long Beach then was and had always been accountable to the State in accordance with such directions as the State from time to time should make.

Finally, appellant contends that even assuming California had the general power to impose trusts and conditions, it could not do so in the area of commerce and navigation, since the United States in the Submerged Lands Act itself, §1314, has expressly retained its powers of regulation and control of such lands and navigable waters "for the constitutional purposes of commerce, navigation * * *."

Even assuming merit in this contention (which we doubt) it cannot aid appellant. If the trust were illegally created, or the carrying out of the trust purposes become illegal after creation, Long Beach would have lost its sole claim to right as the State's grantee and would hold all revenues for the State on a resulting trust. See 3 Scott, Trusts, §§335, 345.3 (2d Ed.); 4 Scott, *supra,* §422.

Judgment affirmed.

APPENDIX "B"

STATUTE OF CALIFORNIA

Stats. 1925, p. 235; Stats. 1935, p. 793

by an act entitled "an act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions," approved April 28, 1925, as amended by an act entitled "An act to amend Section 1 of an act entitled 'An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions,' approved April 28, 1925, relating to the use of such tidelands and submerged lands," approved May 7, 1935, to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by said acts.

[Approved by Governor June 6, 1951. Filed with Secretary of State June 6, 1951.]

In effect September 22, 1951

Finding and Determination

The people of the State of California do enact as follows:

Section 1. It is hereby found and determined: That the City of Long Beach since 1939 has produced and is now producing large quantities of oil, gas and other hydrocarbon substances from lands conveyed to said city by an act entitled "An act granting to the City of Long Beach the tidelands and submerged lands of the State of California within the boundaries of the

said city," approved May 1, 1911, and by an act entitled "An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions," approved April 28, 1925, as amended by an act entitled "An act to amend Section 1 of an act entitled 'An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions,' approved April 28, 1925, relating to the use of such tidelands and submerged lands," approved May 7, 1935. That from the revenue derived therefrom, said city has constructed upon said lands, wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, at a cost of approximately thirty-five million dollars ($35,000,000). That said city has available and unexpended approximately seventy-five million dollars ($75,000,000), also derived from said source, for the uses and purposes required by said acts, and is now receiving and will continue to receive for many years approximately twenty-four million dollars ($24,000,000) per annum from said source. That, in addition thereto, said city obtains large quantities of "dry gas" derived from natural gas produced from said lands, which is sold by said city to domestic and other consumers. That by reason of the already large expenditure on such lands for the uses and purposes required by said act, the large additional sums available and to become available throughout the years for such purposes, the expenditure of more than a total of fifty per centum (50%) of such revenue, received and

unexpended and hereafter to become available for such uses and purposes, would be economically impracticable, unwise and unnecessary. That fifty per centum (50%) of all revenue heretofore derived and unexpended, and to be derived, by the City of Long Beach from oil, gas and other hydrocarbon substances, other than "dry gas," produced from lands conveyed by said acts, is no longer required for navigation, commerce and fisheries, nor for such uses, trusts, conditions and restrictions as are imposed by said acts. That none of the revenue heretofore derived, and to be derived, by said city from "dry gas" obtained from said lands is any longer required for navigation, commerce and fisheries, nor for such uses, trusts, conditions and restrictions as are imposed by said acts.

"Dry Gas"

For the purposes of this act, "dry gas" is defined to mean the gas directly produced from wells, which contains one-half of a gallon or less of recoverable gasoline per 1,000 cubic feet, or from which gasoline has been removed by processing.

Declaration of Freedom From Public Trust, etc.

Sec. 2. That fifty per centum (50%) of all revenue heretofore derived and unexpended, and to be derived, by the City of Long Beach from oil, gas and other hydrocarbon substances, other than "dry gas," produced from lands conveyed by said above-entitled acts is hereby declared to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by any of said above-entitled acts. That all of

the revenue heretofore derived, and to be derived, by said city from "dry gas," obtained from said lands is hereby declared to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by any of said above-entitled acts.

APPENDIX "C"

ARTICLE II
CHARTER OF THE CITY OF LONG BEACH
ADOPTED IN 1923

Description of the boundary lines of the City of Long Beach.

* * * * (pertinent part only)

* * * thence southwest along said northwest line of Lot 10 and prolongation thereof to a point three miles distant from the line of ordinary high tide of the Pacific Ocean; thence westerly and parallel to said line of ordinary high tide and three miles distant therefrom to the prolongation southerly of the westerly line of Block 10. * * *

APPENDIX "D"

No. 18574

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LEWIS W. TWOMBLEY,

Appellant,

vs.

CITY OF LONG BEACH, et al,

Appellees,

CARL WHITSON, a Taxpayer,

Amicus Curiae

MOTION OR SUGGESTION THAT FULL COURT REHEAR AND DECIDE ALL ISSUES OF CASE OR THAT IMPORTANT QUESTIONS OF LAW BE CERTIFIED TO SUPREME COURT OF THE UNITED STATES FOR DECISION OR INSTRUCTION

To the Honorable Presiding Judge and Associate Judges of the United States Court of Appeals for the Ninth Circuit:

The Movant, CARL WHITSON, respectfully moves the Court, or suggests, that a rehearing be granted and the important questions of law be fully decided by the full membership of the Court, or that im-

portant questions of law be certified to the Supreme Court of the United States for decision, guidance, or other appropriate actions by that Court, for the following reasons, to wit:

On June 25, 1964, this Court by a three-judge division, filed a decision affirming the Trial Judge in dismissing the action.

Some important questions of law were not decided, passed upon or mentioned.

The amount involved is so great, over FIVE BILLION DOLLARS ($5,000,000,000.00) and such public questions are involved, and property rights of so many states, cities, taxpayers and citizens are involved, that a rehearing and further decision are necessary and proper.

1. The question of whether or not the State is a proper "trustor" or settler of the lands involved; or whether the State itself is only a "trustee" of tide and submerged lands, was not decided.

2. The question of whether or not the State has legal authority to take lands or funds granted to or released to Long Beach by the United States under the Submerged Lands Act; and whether or not the State can impose a trust use on the lands and funds, was not decided.

3. The question of whether or not the State can legally use income from tide and submerged lands for general purpose, use, but at the same time require that the City use its income from such lands for harbors, commerce, navigation and fishing only.

4. The question of whether or not Congress in-

tended to "confirm" State law in effect prior to 1947 only, or did Congress intend to approve and confirm any future state laws and court decisions, by the passage of the Submerged Lands Act of 1953.

5. Can the State, if it is a trustor, revoke a grant of land in trust to a city where the State received valuable consideration and is receiving free use of the harbor as a valuable consideration for the grant in 1911?

6. Can the State, as trustor, revoke a grant in trust made to the city in 1911 when Section 2280 Civil Code of California forbid trustors from revoking trusts? (In 1931 Section 2280 C. C. was changed to permit "voluntary" trusts to be revoked by the trustor.)

7. Can the State revoke a grant in trust to a city of tidelands and lands under inland waters and retake the lands or income, or any part thereof, where the city has not violated the terms of the trust, and notwithstanding a state statute, Section 2280 C. C., which prohibits revoking trusts?

It is respectfully urged the above questions should be either decided by the full Court, or Certified to the Supreme Court of the United States for decision, advice, or disposition by it.

Respectfully submitted,

CARL WHITSON, *pro se*,
Amicus Curiae

APPENDIX "E"

CHAPTER 29

An act relating to the tide and submerged lands conveyed in trust to the City of Long Beach and the revenues derived therefrom and in connection therewith providing for fixing and determining the respective rights and interests of the State of California and the City of Long Beach in and to revenue from hydrocarbon substances extracted or derived from tide and submerged lands conveyed in trust to the City of Long Beach as affected by Chapter 915 of the Statutes of 1951; authorizing the Attorney General and the City of Long Beach to enter into stipulations with respect thereto; clarifying the uses of such tideland hydrocarbon revenues as were unaffected by said act of 1951; providing for State Lands Commission action in connection with said lands; and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 13, 1956. Filed with Secretary of State April 13, 1956.]

In effect immediately

The people of the State of California do enact as follows:

Section 1. As used in this act:

(a) "Long Beach tidelands" means those certain tide and submerged lands heretofore conveyed to the City of Long Beach upon certain trusts and conditions by Chapter 676, Statutes of 1911, Chapter 102, Statutes of 1925 and Chapter 158, Statutes of 1935.

(b) "Oil revenue" means the net proceeds received

by the City of Long Beach from the sale of oil, gas and other hydrocarbon substances (other than dry gas) derived from the Long Beach tidelands, after deducting moneys expended for the extraction and sale thereof and for the satisfaction of obligations attributable to such extraction or sale; "oil revenue" also includes the net receipts from the sale of property used in such extraction or sale, the cost of which has been or may be defrayed from proceeds from such hydrocarbon substances.

(c) "Dry gas" means the gas directly produced from wells, which contains one-half (½) of a gallon or less of recoverable gasoline per 1,000 cubic feet, or from which gasoline has been removed by processing.

(d) "Dry gas revenue" means the reasonable wholesale market value of dry gas derived from, or attributable to production from, said Long Beach tidelands and received into the system of the municipal gas department of said City of Long Beach, and the net receipts to the City of Long Beach from the sale of tideland dry gas as such and which is not received into said system.

(e) "Tideland trust funds" means the Public Improvement Fund, Harbor Revenue Fund, Tideland Oil Fund and Harbor Reserve Fund in the City Treasury of the City of Long Beach, as said funds are presently established by the charter of said city.

(f) "Subsidence costs" means costs expended by the City of Long Beach with the prior approval of the State Lands Commission to remedy and protect against the effects of subsidence of the land surface

within the boundaries of the Long Beach Harbor District (as such boundaries are defined on April 1, 1956) and within the boundaries of the Long Beach tidelands situated outside of said harbor district. "Subsidence costs" shall not include moneys expended for the construction or reconstruction of bridges, nor any subsidence expense directly incurred for continued hydrocarbon production and deductible under subdivision (b) of this section.

Sec. 2. It is hereby found and determined:

(a) In that certain act entitled "An act declaring portions of revenue derived from lands conveyed to the City of Long Beach by an act entitled 'An act granting to the City of Long Beach the tidelands and submerged lands of the State of California within the boundary of the said city,' approved May 1, 1911, and by an act entitled 'An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions,' approved April 28, 1925, as amended by an act entitled 'An act to amend Section 1 of an act entitled "An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions," approved April 28, 1925, relating to the use of such tidelands and submerged lands,' approved May 7, 1935, to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by said acts," approved June 6, 1951, the Legislature declared fifty per centum (50%) of all revenue theretofore derived and unexpended, and thereafter to be derived, by the City of Long Beach from oil, gas

and other hydrocarbon substances other than dry gas produced from the Long Beach tidelands, and all of the revenue theretofore and thereafter derived from dry gas from said tidelands, to be free from the public trust for navigation, commerce and fisheries and from such uses, trusts, conditions and restrictions as were imposed by said acts of 1911, 1925 and 1935. On April 5, 1955, in the case of Mallon v. City of Long Beach, 44 Cal. 2d 199, the Supreme Court of California held that said act of 1951 effected a partial revocation of the trust created by said acts of 1911, 1925 and 1935 and resulted in a reversion to the State of California of the sums thus released from the trust, the City of Long Beach therefore holding said sums upon a resulting trust in favor of the State. Said Mallon case was thereafter remanded to the superior court for further proceedings and is now pending in said court awaiting trial on the merits or other disposition. Following said Mallon decision, the State instituted litigation against said city with the objective of recovering those moneys and assets declared by the Supreme Court to be held in resulting trust, to recover judgment for the amount of such moneys and assets as had been theretofore spent by said city and to enjoin the expenditure of other Long Beach tideland hydrocarbon revenues for purposes not authorized by said acts of 1911, 1925 and 1935. As a result of stipulations between the Attorney General and the City of Long Beach, there have been impounded in the hands of said city securities at par and cash aggregating approximately one hundred eleven million dollars ($111,000,000), subject to the additional impoundment of certain future

income from oil and dry gas, all of said impounded assets to be held intact by said city pending the final determination of said litigation. The City of Long Beach asserts and, in the absence of a compromise settlement and adjustment of the claims of the State against said city, intends to maintain and to litigate various defenses against said claims. In addition, said city claims certain credits or offsets against the claims of the State by reason of the expenditure of tideland hydrocarbon revenues for protective and remedial works occasioned by land subsidence and by reason of general tax revenues expended by said city upon the Long Beach tidelands. Under existing circumstances, disposition of said impounded funds and determination of the respective rights of the State and the city in the premises cannot be made except by extensive, complicated and time-consuming litigation, possibly including a lengthy court-supervised accounting, while the impounded funds will remain in a condition of enforced idleness. The continuance of the existing controversies between the State and the City of Long Beach, as well as the enforced idleness of the impounded funds, is contrary to the best interests of the people of this State, including the inhabitants of the City of Long Beach. A purpose of state-wide interest and benefit will be served by the determination of the respective rights and interests of the city and the State in and to past and future hydrocarbon revenues derived from the Long Beach tidelands. Such determination will so fix and clarify the respective entitlement of the State and the city as to permit the early termination of the pending litigation by means of stipulations between the State

and city and, so far as necessary or appropriate, through the entry of court orders, decrees and judgments. Such a disposition of the litigation will permit early liberation and utilization of the impounded sums for urgently needed public purposes and will avoid the public detriment incident to protracted litigation between the State and one of its major municipalities.

(b) As a result of said Mallon decision, other questions have arisen as to legally permissible purposes for the expenditure of hydrocarbon revenues from the Long Beach tidelands other than those specified in said act of 1951 as being freed from the tidelands trust. Under existing circumstances such questions must await determination in the litigation now pending between the State and the city. Until that time, the City of Long Beach is prevented from initiating and continuing numerous worth-while projects in and about the Long Beach tidelands which are or may be reasonably related to, and connected with, the purposes of the trusts upon which said lands were conveyed to said city. The trust purposes set forth in said acts of 1911, 1025 and 1935 were prescribed prior to the discovery of hydrocarbon deposits in the granted lands and were therefore conceived primarily as land use purposes. These purposes require restatement in view of the subsequent yield of substantial monetary revenues therefrom. It is to the public interest that the Legislature, to the extent permitted by the State Constitution, set forth the purposes of said trust in greater detail than heretofore, to the end that said purposes may be fulfilled without the delays incident to protracted litigation. To the extent that the Constitution may prevent the expenditure of

revenues (other than those payable to the State of California hereunder) for public purposes desired by the City of Long Beach, it is the belief of the Legislature that the Attorney General and said city should seek judicial determinations further defining said city's rights and duties in the premises.

(c) Some uncertainty exists as to the exact location of the boundaries of the Long Beach tidelands. Some uncertainty also exists as to whether certain wells in the Long Beach Harbor District have been and are producing oil, gas, and other hydrocarbon substances or dry gas from Long Beach tidelands or have been and are producing such substances from other land owned by the City of Long Beach. To settle these uncertainties will require the collection of a considerable amount of information and data, the conduct of surveys, and possible litigation.

(d) It is in the interest of the people of this State, including the inhabitants of the City of Long Beach, to declare by this act the amount of oil and dry gas revenue received or held by said city on and before January 31, 1956, for the use and benefit of the State of California free from the public trust for navigation, commerce and fisheries and from such uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935 heretofore referred to, irrespective of these uncertainties, but such declaration should not preclude appropriate resolution, by judicial determination or otherwise, of these uncertainties for the purpose of determining revenues to be accounted for by said city after January 31, 1956.

The total amount of oil revenue and dry gas revenue received or held by the City of Long Beach for the use and benefit of the State of California free from the public trust for navigation, commerce and fisheries and from such uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935 heretofore referred to, to and including January 31, 1956, is hereby found to be and fixed at the sum of one hundred twenty million dollars ($120,000,000).

Sec. 3. The Attorney General and the City of Long Beach are hereby authorized to enter into an appropriate stipulation or stipulations as may be necessary to finally determine any and all claims, demands, or causes of action as between the City of Long Beach and the State of California and arising out of, in connection with, or seeking to enforce any obligation of the City of Long Beach to account for or to pay oil revenue and dry gas revenue to or for the benefit of the State of California under this act or the acts of 1911, 1925 and 1935 as modified by the act of 1951 and by this act and for such other purposes as may be authorized or required by this act. In addition to the provisions required by this act, the stipulation may provide for other matters necessary to determine such claims, demands, or causes of action. The stipulation shall provide that the City of Long Beach shall pay the amount agreed upon in the stipulation, which shall in no case be less than one hundred twenty million dollars ($120,000,000), to the State Controller, together with interest and other increment from investments and deposits thereof received by said city between February

1, 1956, and the date of payment. Said payment shall be made in the form and manner and at the time hereinafter prescribed. Said payment shall be deposited in the State Treasury.

Sec. 4. (a) The stipulation shall provide that the payment prescribed by Section 3 of this act shall be accomplished by the transfer of United States securities and cash from the tideland trust funds * * *.

(d) The construction, reconstruction, repair and maintenance of that certain small-boat harbor project known as the Marina located adjacent to Alamitos Bay, together with structures and other facilities incidental thereto;

(e) The acquisition of property or the rendition of services reasonably necessary to the carrying out of the foregoing uses and purposes.

Sec. 8. (a) On or before October 1st of each year, the City of Long Beach shall cause to be made and filed with the State Lands Commission a detailed statement of all expenditures of oil revenue other than that required in the stipulation provided for in this act to be paid to the State, including obligations incurred but not yet paid. Said statements shall cover the fiscal year preceding its submission and shall show the project or operation for which each such expenditure or obligation is made or incurred.

(b) In addition to the other powers and duties specifically delegated to it by this act, the State Lands Commission shall have general responsibility in connection with the interests of the State under this act and the acts cited in subdivision (a) of Section 2 hereof, including authority to examine financial and operating records relating to the production and sale

of hydrocarbon products from the Long Beach tidelands and to conduct such other investigations and studies as it may deem necessary in connection therewith.

Sec. 9. Any decree or judgment entered on the stipulation provided for in this act shall be final as to any and all claims, demands or causes of action as between the City of Long Beach and the State of California and arising out of, in connection with, or seeking to enforce any obligation of the City of Long Beach to account for or to pay oil revenue and dry gas revenue to or for the benefit of the State of California under this act or any of the aforesaid acts, which claims, demands or causes of action accrued on or before January 31, 1956; otherwise the powers of the State of California over the Long Beach tidelands and over the grants evidenced by the acts of 1911, 1925 and 1935, as modified by the act of 1951 and by this act, including oil revenue and dry gas revenue received before or after January 31, 1956, and unexpended for trust purposes, and still subject to the public trust for navigation, commerce and fisheries and to the uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935, are hereby expressly reserved. Notwithstanding the foregoing provisions of this section, any net proceeds payable to said city prior to February 1, 1956 on account of extraction, production or sale of hydrocarbon substances derived from the Long Beach tidelands, and not received by said city prior to said date, shall, when and if ascertained and received, be accounted for and distributed in accordance with the provisions of Section 5 of this act.

APPENDIX "F"

(SENATE BILL #60, AS PASSED BY THE STATE AND APPROVED BY THE GOVERNOR)

CHAPTER 1964

An act relating to the tidelands and submerged lands granted by the State to the City of Long Beach and the revenues therefrom.

The people of the State of California do enact as follows:

Section 1. As used in this act:

(a) "Long Beach tidelands" means those certain tide and submerged lands, whether filled or unfilled, heretofore conveyed to the City of Long Beach upon certain trusts and conditions by Chapter 676, Statutes of 1911, Chapter 102, Statutes of 1925, and Chapter 158, Statutes of 1935.

(b) "Oil revenue" means the net proceeds received by the City of Long Beach from the sale or disposition of oil, gas and other hydrocarbon substances (other than dry gas) derived from, or allocated or assigned to, the Long Beach tidelands, including advance payments, after deducting moneys expended for the extraction and sale or disposition thereof and conducting repressuring operations and for the satisfaction of obligations attributable to such extraction or sale or disposition. "Oil revenue" also includes the net receipts from the sale of property used in such extraction or sale or disposition, the cost of which has been or may be defrayed from proceeds from such

hydrocarbon substances. "Oil revenue" shall not include the net proceeds from the sale or disposition of oil, gas and other hydrocarbon substances derived from, or allocated or assigned to, the Alamitos Beach Park Lands.

(c) "Dry gas" means the gas directly produced from wells, which contains one-half (½) of a gallon or less of recoverable gasoline per 1,000 cubic feet, or from which gasoline has been removed by processing.

(d) "Dry gas revenue" means the reasonable wholesale market value of dry gas derived from, or allocated or assigned to, or attributable to production from, or allocated or assigned to, said Long Beach tidelands and received into the system of the municipal gas department of said City of Long Beach, and the net receipts to the City of Long Beach from the sale of tideland dry gas as such and which is not received into said system.

(e) "Subsidence costs" means costs expended by the City of Long Beach with the prior approval of the State Lands Commission to remedy or protect against (1) the effects of subsidence of the land surface, heretofore or hereafter occurring, within the boundaries of the Long Beach Harbor District (as such boundaries were defined on April 1, 1956) and within the boundaries of the Long Beach tidelands situated outside of said Long Beach Harbor District, and (2) the effect of subsidence of the land surface, hereafter occurring, within any other portion of the city, which may be attributable, in whole or in part, as determined by the State Lands Commission, to production from the Long Beach tidelands. The cost

of repressuring operations shall not be considered a "subsidence cost," but shall be considered a cost of production, which shall be a deductible expense for the purpose of determining "oil revenue" under subdivision (b) of this section. "Subsidence costs" shall not include any costs deductible for the purpose of determining "oil revenue" under subdivision (b) of this section.

(f) The "undeveloped portion of the Long Beach tidelands" means the following described lands:

Beginning at the intersection of the northwesterly line of Block 50 of Alamitos Bay Tract as per map recorded in Book 5, page 137 of maps in Official Records of Los Angeles County, with the mean high tide line of San Pedro Bay thence S. 32° 03′ 00″ W. 18,228.31 feet more or less along the southwesterly prolongation of said northwesterly line of Block 50 to the seaward boundary of the City of Long Beach (as such boundary was defined as of March 1, 1964); thence in a northwesterly direction along said seaward boundary of the City of Long Beach to its intersection with the easterly boundary of the Long Beach Harbor District (as such boundary was defined on April 1, 1956); thence along said easterly boundary N. 17° W. 14,794 feet more or less, thence N. 52° 36′ 17″ west 170 feet more or less to the easterly line of the land described as Parcel "A" under that certain contract executed by the City of Long Beach and the Board of Harbor Commissioners of the City of Long Beach, dated March 12, 1947; thence northerly along said easterly line 4,123 feet to the northerly line of said Parcel "A"; thence westerly along said northerly line to the southerly prolongation of the

centerline of Pine Avenue 80 feet wide as per map of the Townsite of Long Beach recorded in Book 19, page 91 et seq. Miscellaneous Records of said County; thence northerly along said southerly prolongation to said mean high tide line thence in a southeasterly direction along said mean high tide line to the point of beginning, containing 6,100 acres more or less.

(g) "Person" means and includes any firm, corporation, association, partnership, or natural person.

(h) "Contractors' agreement" means and includes any contract, royalty arrangement or other agreement between the City of Long Beach (or any department, board or agency thereof) and any person or persons relating to the drilling for, developing, extracting, processing, taking or removing of oil, gas, and other hydrocarbons derived from, or allocated or assigned to, the undeveloped portion of the Long Beach tidelands or the estimated productive portion thereof (other than unit agreements, unit operating agreements and cooperative agreements authorized by Sections 6879 or 7058 of the Public Resources Code).

(i) "Alamitos Beach Park Lands" means those tidelands and submerged lands, whether filled or unfilled, described in that certain Judgment After Remittitur in The People of the State of California v. City of Long Beach, Case No. 683824 in the Superior Court of the State of California for the County of Los Angeles, dated May 8, 1962, and entered on May 15, 1962 in Judgment Book 4481, at Page 76, of the Official Records of the above entitled court.

Sec. 2. It is hereby found and determined:

(a) Since the enactment of Chapter 29, Statutes of 1956, First Extraordinary Session, exploration has

disclosed the existence of additional deposits of oil, gas and other hydrocarbons in and under the Long Beach tidelands which should be developed for the benefit and profit of the State of California.

(b) Such development will result in very substantial augmentations of the oil revenue currently received from the Long Beach tidelands. By reason of such augmentations, as well as previous expenditures of trust revenues for the construction of improvements within the City of Long Beach both within and without the Harbor District of said city, the continued expenditure in the future by the city of oil revenues in the percentage heretofore provided, for the uses and purposes required by law would be economically impracticable, unwise and unnecessary. Economically practicable, wise and necessary expenditures of oil revenue by the City of Long Beach are limited to the purposes hereinafter provided, and to the amounts hereinafter provided to be retained by the City of Long Beach. By reason of the increased amount of oil revenue hereinafter provided to be paid over to the State free from the public trust for navigation, commerce, and fisheries and from such uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935, it is necessary and desirable that the State have increased control over oil and gas production operations and standards as hereinafter provided.

(c) It is likewise imperative that such oil, gas and other hydrocarbons be produced with all measures necessary or proper in the interest of preventing, arresting or ameliorating any subsidence of the surface of any lands in the vicinity, which may be attributable

to such production; provided, however, that nothing in this act shall be construed as an admission by the State of California or the City of Long Beach that any such subsidence was in fact caused by such production, nor shall anything in this act be admissible in any proceeding as evidence of such causation.

(d) By Chapter 2000, Statutes of 1957, the Legislature authorized the State Lands Commission to bring any actions necessary to determine the boundaries of the Long Beach tidelands. In response to this legislation, the State of California in 1960 instituted an action against the city in the Superior Court of the State of California, County of Los Angeles, Action No. 747562, for the purpose of determining said boundaries. The State also concurrently filed a supplementary petition in a pending action between the State of California and the city, Action No. 649466, for the same purpose. In addition to the boundary line claim, the State asserts in each of said actions that certain lands, property, interests in property, and other things of value (which, together with the tidelands claimed are referred to as "litigated lands") held by the City of Long Beach are subject to the tideland trust and owned by the city in a trust capacity. Said actions have been consolidated for trial and are now pending in the Superior Court of the State of California, County of Los Angeles. The City of Long Beach is vigorously defending said actions and asserts various defenses against said claims of the State. The city also claims that the boundary line claim of the State is erroneous and improper and that it acquired and holds all of said litigated lands in its proprietary capacity and that it developed said liti-

gated lands in its municipal capacity including the use of general tax revenues. Under existing circumstances, disposition of said litigation and determination of the respective rights of the State and of the city in the premises cannot be made except through the continuation of extensive, complicated, expensive, and time-consuming litigation, including possibly a lengthy court-supervised accounting. Certain proceeds from oil and gas production have been impounded and said impounded funds will remain in a condition of enforced idleness in the absence of a compromise. The continuation of the existing controversies between the State and the city is contrary to the best interests of the people of the State, including the inhabitants of the city. A purpose of statewide interest and benefit will be served by a compromise determination of the bounary line and a compromise determination of the respective rights and interests of the State and city in, and the status of, said litigated lands, together with the oil and gas production from, and the use of, said litigated lands. Such determination will so fix and clarify the respective entitlement of the State and the city as to permit the early termination of the pending litigation by means of stipulations between the city and the State or dismissals, and so far as necessary or appropriate through the entry of court orders, decrees and judgments. Such a disposition of the litigation will bring about a closer cooperation between the people of the State of California and the City of Long Beach so that the time, efforts and money can be spent for urgently needed public purposes and avoid the public detriment incident to protracted litigation between the State and one of its major municipalities. Com-

promise of the litigation will also avoid the continuation of the collection of the considerable amount of the information, data, and surveys, which does not promote the best interests of the people of the State of California. It is essential to the public interest to resolve the uncertainty which exists as to the true location of the mean high tide line and as to the exact boundary line between the tide and submerged lands and lands owned by the city in its municipal capacity. It is not the purpose of the compromise hereby authorized to transfer any title but rather, by stipulation, to fix and establish a boundary which is presently uncertain and in doubt. For these, among other reasons, the Legislature finds and declares that the litigation should be compromised as provided in this act and that said compromise is fair, legal and equitable to both the State of California and the City of Long Beach.

Sec. 3. It is hereby ordered that the City of Long Beach and the State Lands Commission are to proceed to prepare a contractors' agreement and any other necessary contracts or agreements for the production of oil, gas and other hydrocarbons from the undeveloped portion of the Long Beach tidelands (or the estimated productive portion thereof), in accordance with good oilfield practice and prevention of land surface subsidence incident thereto.

Sec. 12. The first eleven million dollars ($11,000,000) of oil revenue and dry gas revenue payable to the State of California under this act each year shall be deposited in the California Water Fund.

* * * There are 26 more pages of the Act which we consider unimportant to the case at bar.