IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

[redacted]8

No. 14, Original

UNITED STATES OF AMERICA,

Plaintiff

v.

STATE OF TEXAS,

Defendant

SUPPLEMENTAL STATEMENT AND BRIEF FOR THE STATE OF TEXAS IN SUPPORT OF OBJECTIONS TO MOTION OF THE UNITED STATES FOR LEAVE TO FILE COMPLAINT

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PRELIMINARY STATEMENT

The State of Texas appears here only for the purpose of objecting to the motion of the United States for leave to file the Complaint. In so doing the State does not now tender any issue on the merits of the controversy.

However, in view of the Attorney General's statement that the basic issues raised by the Complaint can be determined "as they were in the comparable case of *United States v. California*,"[1] it must be pointed out immediately that in the event of trial the State of Texas will interpose special defenses not available to nor presented by California and therefore not decided in the case expressly relied upon by the United States

[1]Supplemental Memorandum in Support of Motion, p. 2; Brief in Support of Motion, p. 8.

as a precedent for this action.[2] That Texas has special defenses was responsibly and repeatedly acknowledged by the Attorney General of the United States in his testimony before congressional committees in 1948.[3] He then testified, moreover, that on the day on which he argued the *California* case in this Court, March 13, 1947, he handed to the press a written statement to the effect that Texas owned and retained all the lands within its boundaries, including the marginal sea area.[4]

Texas also rejects the suggestion made by the Government that the issues may be determined without "the taking of testimony or presentation of evidence."[5] The differences already indicated, together with others equally pertinent, would require the exercise of Texas' constitutional right to "present evidence"[6] and fully

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[2]United States v. California, 332 U.S. 19 (1947).

[3]Joint Hearings Before the Committees on the Judiciary, 80th Cong., 2d Sess., on S. 1988 and Similar House Bills, February-March, 1948, 616, 617, 635, 689, 690.

[4]Ibid., 689. The statement read: "Attorney General Clark today, in answer to inquiries regarding his Supreme Court appearance on behalf of the United States in the famous tidelands case emphasized the fact that the case involves only the area off the coast of California.

* * *

"Whatever the decision of the Court may be in the California case it would not be decisive as to the rights of any other State. . . . Other coastal States are on an entirely different footing.

"When asked regarding his native State of Texas, the Attorney General pointed out that Texas had been an independent nation, a republic, for 10 years before joining the Union. As a republic it owned all of the lands within the boundaries, including the marginal sea commonly called tidelands. This area similar to that involved in the California case extended into the Gulf of Mexico and was under the sovereignty of Texas during the Republic and was retained by it under the provisions of the Act of Admission."

[5]Loc. cit. note 1 supra.

[6]Cf. Baltimore & O. Ry. v. United States, 298 U.S. 349, 369 (1936); Oregon Ry. & Nav. Co. v. Fairchild, 224 U.S. 510, 525 (1912).

develop its case, as distinguished from the *California* case, where neither party suggested "any necessity for the introduction of evidence.'"[7]

Since this is a preliminary proceeding, we mention the existence of these defenses and the necessity of presenting evidence in their support only for the purpose of challenging the Government's attempt to prejudge the issues which may be presented on the merits and how they should be tried.

The United States points out that "the State of Texas does not suggest the absence of a case or controversy . . . , nor does it question the right of the United States to seek a resolution of this controversy through judicial proceedings. . . .'"[8] In this connection, the State of Texas wishes it clearly understood that in the event of trial it intends to urge both of these objections on grounds different from those presented in the *California* case. Their validity would more clearly appear after the issues have been joined and material facts developed. In refraining from raising them at this time, Texas does not waive these objections to the Court's jurisdiction.

The State of Louisiana has fully developed an objection based on immunity of the State from suit without its consent. While Texas has not asked the Court to re-examine its former decision in *United States v. Texas,* 143 U.S. 621 (1892), on this point, it agrees as an original proposition with the contention made by Louisiana. It does not consent to be sued and suggests the absence of such consent if the Court reconsiders this question in the *Louisiana* case.[9]

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[7]332 U.S. at 24.

[8]Brief in Support of Motion, p. 2.

[9]United States v. Louisiana, No. ——, Original, October Term, 1948.

FIRST OBJECTION

(Restated)

Since the Complaint presents questions of national policy now pending in Congress, heretofore undetermined by it and beyond the authority of the Attorney General to determine in the first instance, the Court should not grant leave to file at this time.

Scope of the Objection

Our original statement of "First Objection" was as follows:

> "The Attorney General of the United States seeks to invade the power of Congress and has no authority to bring this suit, because the Congress has not in the first instance asserted the rights herein alleged against the State of Texas."

The Attorney General and Solicitor General interpreted this as an objection questioning merely the authority of the Attorney General to bring the suit, a point which was "disposed of in *United States v. California,* 332 U.S. 19."[10] In addition, as shown by our Statement thereunder,[11] this objection was intended to and does suggest that the Complaint presents a question of national policy undecided by Congress and wholly beyond the power of the Attorney General to decide in the first instance.

In our Statement in support of this objection (p. 4) we said:

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[10]Brief in Support of Motion, p. 2.

[11]Objections to Motion for Leave to File Complaint, pp. 3-4.

> "Even if the Court should not fully agree with us on this point, it is urged that this objection would justify the Court in using its discretion by awaiting action of Congress in this political field before permitting the Attorney General to file this suit as an original action in this Court."

Because adequate development of the other matters relating to jurisdiction originally presented in this objection would involve certain phases of the merits not now before the Court, we have by restatement limited our first objection to the compelling reasons for the Court's abstention while Congress is exercising its jurisdiction over the subject matter. It is to this point, addressed solely to the Court's discretion, that we direct this additional statement.

The Complaint Presents a Question of National Policy

In examining the Complaint this Court is concerned with its substance and effect and not mere form. *Nashville, C. & St. L. Ry. v. Wallace,* 288 U.S. 249, 259 (1933); *Re Summers,* 325 U.S. 561, 567 (1945); *Indianapolis v. Chase National Bank,* 314 U.S. 63, 69 (1941); *Cuyahoga River Power Co. v. Northern Ohio T. & L. Co.,* 252 U.S. 388, 397 (1920). In looking to the substance the Court may and should consider not only the Complaint but the attached Statement in Support of Motion and admissions made there and in the plaintiff's brief, in so far as they relate to the question of jurisdiction.[12]

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[12]Cf. Gibbs v. Buck, 307 U.S. 66, 71, 72 (1939); Land v. Dollar, 330 U.S. 731, 735 (1947); KVOS, Inc. v. Associated Press, 299 U.S. 269, 278 (1936); Turmine v. West Jersey and Seashore Ry., 44 F. 2d 614 (E.D. Pa. 1930).

The Complaint,[13] attached Statement[14] and brief, show that the United States is relying solely upon the *California* case as defining the basis, nature, and extent of its claims in the present bill.[15] Therefore, by plaintiff's admission and at its own suggestion the *California* case may be looked to in construing the Complaint.

A bill in equity, it prays (Par. VII, p. 9) that:

> ". . . a decree be entered adjudging and declaring the rights of the United States as against the State of Texas in the area herein described, enjoining the State of Texas and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States, and requiring the State of Texas to account to the United States for all sums of money derived by it from the area herein described subsequent to June 23, 1947."

Although containing an allegation of fee simple title, it does not pray for the recovery of title. There is no real issue as to the existence of certain Federal paramount governmental powers over the area the same as over all other waters and lands within the nation. The real purpose of the Complaint is to obtain a declaration of superior rights in the Federal Government to determine in the first instance how and

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[13]The prayer of the Complaint (Motion for Leave to File Complaint, p. 9) shows that the rights claimed by the United States date from June 23, 1947, the date of the decision in United States v. California, 332 U.S. 19 (1947).

[14]Statement in Support of Motion, pp. 2-4.

[15]"The basic issue in this controversy is whether the rule announced by this Court in United States v. California, 332 U.S. 19, is applicable to the lands underlying the Gulf of Mexico adjacent to Texas. The question is essentially one of law and one which, it is believed, can be determined by this Court without the taking of testimony." Brief in Support of Motion, p. 8.

by whom the oil and gas resources of the area shall be leased and developed, and to exclude the State from further exercising such function without authority from Congress. The Court judicially knows that since the *California* decision Congress has not acted on the subject matter, either to authorize Federal leasing or development or to exclude State exercise of such functions.

That decision, its subsequent history, and resulting administrative action have demonstrated that the whole determination of whether Federal or State agencies should be allowed to lease and manage the resources under the navigable waters within their boundaries involves political questions for Congress to decide. Great expense, trouble, and loss of revenues would result from litigating claims which the Attorney General is asserting, but which Congress, in establishing a national policy, may never assert or exercise. Equally important, as hereinafter shown, the public interest would not be served by stopping State operations in the development of these important natural resources pending future action by Congress. This was acknowledged by the Attorney General after the *California* decision when he asked this Court, for the same reason that we are now requesting it to withhold jurisdiction, to hold in abeyance the only positive relief he seeks in the present case. The Attorney General said:

> ". . . As is apparent from the stipulation above referred to, the parties expect legislative action pertinent to the subject-matter of the litigation. This Court has, in the past, deemed it appropriate that injunctive relief be attuned to anticipated Congressional action. *Oregon & Cal. R. R. v. United States,* 238 U.S. 393, 438-439. In the present situation, we think it proper that injunctive relief be withheld until Congress has had a reason-

> able opportunity to enact legislation providing for the management, administration and control of those areas which this Court has ruled to be subject to the paramount rights of the United States. . . .'"[16]

It will be recalled that in the *California* case this Court said:

> "For Article IV, § 3, Cl. 2, of the Constitution vests in Congress 'Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . .' We have said that the constitutional power of Congress in this respect is without limitation. *United States v. San Francisco,* 310 U.S. 16, 29-30. Thus neither the courts nor the executive agencies could proceed contrary to an Act of Congress in this congressional area of national power."[17]

and again

> "But beyond all this we cannot and do not assume that Congress, which has constitutional control over Government property, will execute its powers in such a way as to bring about injustices to states, their subdivisions, or persons acting pursuant to their permission."[18]

Mr. Justice Frankfurter in his dissent likewise pointed out that

> "The disposition of the area, the rights to be

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[16]Memorandum in Support of Proposed Decree, United States v. California, No. 12, Original, October Term 1946, pp. 4-5.

[17]332 U.S. at 27. In United States v. San Francisco, here referred to, the Court added: "And it is not for the courts to say how that trust shall be administered. That is for Congress to determine."

[18]Ibid. at 40.

created in it, the rights heretofore claimed in it through usage that might be respected though it fall short of prescription, all raise appropriate questions of policy, questions of accommodation, for the determination of which Congress and not this Court is the appropriate agency.'"[19]

Shortly after this decision, the Secretary of the Interior, the Attorney General of the United States and the Attorney General of California entered into a stipulation under which lessees holding State leases in California's marginal sea were permitted to continue operations and the State was allowed to continue leasing and collection of revenues (impounding the latter in a special fund), pending congressional action or the entry of a final decree. This stipulation set out that in the view of the President "it will be necessary to have congressional action looking toward the future management of the resources of this area" and that he intended "to recommend to the Congress that legislation be enacted recognizing both prospectively and retrospectively, any equities of the State and those who have operated under it, to the fullest extent consistent with the national interest."[20] In transmitting this stipulation to the President the Attorney General wrote

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[19]Ibid. at 45-46.

[20]The stipulation provided in part:

"WHEREAS, the Attorney General in presenting the case of the Government herein to the Supreme Court of the United States made the following statement in oral argument:

> We will recommend to the Congress that legislation be enacted designed to relieve California and those who have operated under State authority, from the necessity of accounting to the United States for revenues derived in the past from the exploitation of any of the lands here involved. Such legislation, in the view of the President, should also establish equitable standards for the recognition of investments made by private interests and should offer a basis for the continued operation of private establishments wherever consistent with the na-

that such arrangement was necessary "to protect the public interest" and "to deal with such problems as could not await Congressional and further judicial action." He said further:

> "The opinion of the Supreme Court last June gave rise to a variety of unusually complex problems. The most pressing of these was the urgent need of assuring continued oil production in the

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tional interest, and on terms which would be fair and just under all circumstances.

"AND WHEREAS the supplemental brief for the United States contained the following representation at pages 5 to 6:

> In this connection it is pertinent to note, as stated by the Attorney General at oral argument, that the President had authorized him to say that there is no desire on the part of the President or of any federal official to destroy or confiscate any honest or bona fide investment, or to deprive the State or its subdivisions of any reasonable expectation of return from the areas that have been developed.
>
> The President recognizes that in the event the decision of this Court is favorable to the United States, it will be necessary to have Congressional action looking toward the future management of the resources of this area. And he also intends to recommend to the Congress that legislation be enacted recognizing both prospectively and retrospectively, any equities of the State and those who have operated under it, to the fullest extent consistent with the national interest.

"* * *

"7. It is understood that the policy of the executive branch of the Government of the United States with respect to proposals for future legislation regarding the subject matter of this litigation, as expressed in the recitals in this stipulation concerning the statements of the Attorney General at the oral argument before the Supreme Court and in the Supplemental Brief for the United States, has not changed, and in fact is intended to be confirmed by this stipulation.

" * * *

"9. This stipulation shall remain in effect until pertinent legislation is enacted by the Congress; . . ." Appendix B, Memorandum in Support of Proposed Decree, United States v. California, No. 12 Original, October Term, 1946, pp. 12-19.

As the Court judicially knows, operations are continuing under this stipulation and renewal thereof at the present time.

coastal waters off California. Continued oil production was necessary in the interest of the United States. . . .'"[21]

On August 8, 1947, the Solicitor of the Department of the Interior ruled that the Mineral Leasing Act of 1920 has no application to coastal submerged lands and that congressional action would be necessary before Federal leases could be granted in the area.[22] This opinion was concurred in by the Attorney General.[23]

After the *California* decision, Attorney General Clark recognized the propriety of deferring further suits against the other coastal States until Congress adopted a national policy: "When Congress decides the national policy we will proceed . . .'"[24]

As the Court judicially knows, the efforts of the States to have Congress confirm and establish the title claimed by them to the submerged lands within their respective boundaries increased in intensity.[24a] These

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[21]See Appendix A, p. 34.

[22]Opinion M-34985, August 8, 1947, from the Solicitor of the Department of the Interior to the Secretary of the Interior.

[23]Letter opinion from Attorney General Tom C. Clark to the Secretary of the Interior, August 29, 1947.

[24]Press release quoted in Joint Hearings before the Committees on the Judiciary, 80th Cong., 2d Sess., on S. 1988 and Similar House Bills, February-March, 1948, 29. See further statement by the Attorney General concerning this release. Ibid. 692-693.

[24a]Congress was petitioned for State ownership and control by such national groups as the Council of State Governments, the Conference of Governors, National Association of Attorneys General, American Bar Association, American Title Association, United States Conference of Mayors, American Association of Port Authorities, National Institute of Municipal Law Officers, National Water Conservation Conference, and the National Reclamation Association. Joint Hearings Before the Committees on the Judiciary, 80th Cong., 2d Sess., on S. 1988 and Similar House Bills, February-March, 1948, pp. 36, 35, 1046, 179, 483, 1467, 884, 1696, 1459 and 1460.

efforts culminated in hearings lasting 19 days in the Second Session of the 80th Congress on 32 bills establishing State titles (subject to the same character of paramount rights in the Federal Government as presently exist over other navigable waters) and on four Government-sponsored bills providing machinery for Federal management of the area.[25] As a result both House and Senate Judiciary Committees favorably reported bills confirming and establishing State title, use and control of the submerged lands within original State boundaries subject to the above mentioned Federal paramount rights,[26] and the House passed its bill by a vote of 257 to 29.[27] In the course of these committee hearings extensive consideration was properly given to the question of what disposition of the submerged lands within State boundaries would be in the public interest. This fact is clearly reflected in each of the final committee reports.[28]

When Congress adjourned without further action, these bills remained pending on the Senate calendar and were so pending when the present suit was filed. The controversy became an issue in the 1948 Presidential campaign.[29] Already bills identical with that

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[25]Joint Hearings Before the Committees on the Judiciary, 80th Cong., 2d Sess., on S. 1988 and Similar House Bills, February-March, 1948; Hearings Before a Subcommittee of the Committee on the Judiciary, U.S. Senate, 80th Cong., 2d Sess., on S. 1988 and Similar House Bills, May, 1948.

[26]S. 1988 reported favorably in the Senate, Sen. Rep. 1592, June 10, 1948, 94 Cong. Rec. 7682 (1948) and H. 5992 reported favorably in the House, H. Rep. 1778, April 21, 1948, 94 Cong. Rec. 4722 (1948).

[27]94 Cong. Rec. 5155 (1948).

[28]H. Rep. No. 1778, 80th Cong., 2d Sess., April 21, 1948, 12-23; S. Rep. No. 1592, 80th Cong., 2d Sess., June 10, 1948, 14-25.

[29]Only the Progressive Party advocated Federal control. 94 Cong. Rec. A5360 (August 9, 1948). A Federal control

passed by the House in the 80th Congress have been introduced in the 81st by 31 Senators and 23 Representatives.[30] On the other hand the President, in his annual message and his budget message, has called for action setting up Federal control.[31] The Attorney General and the Secretary of the Interior have recommended similar legislation.[32] Finally, a bill has been introduced in the Senate providing for study and determination of the necessity for laws defining the extent of the territorial waters of the United States.[33]

We are not here concerned with the merits or demerits of these two developing approaches to an equitable solution of the matter by Congress. That is a matter of policy within the legislative power. What is

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plank was defeated by the Democratic Party Platform and Resolutions Committee. See remarks of Senator McCarran, 95 Cong. Rec. 4234 (April 8, 1949). The Republican Party, 94 Cong. Rec. A4907 (July 28, 1948) and the States Rights Party, 94 Cong. Rec. A5055 (August 3, 1948) favored State ownership.

[30]S. 1545 by McCarran, Baldwin, Bricker, Butler, Byrd, Cain, Capehart, Connally, Cordon, Downey, Eastland, Ellender, Frear, Gurney, Hickenlooper, Holland, Jenner, Johnson of Texas, Johnston of South Carolina, Knowland, Long, Malone, Martin, Mundt, O'Conor, Reed, Robertson, Saltonstall, Schoeppel, Stennis, and Thye; S. 155 by Knowland; H. R. 71 by Hale; H. R. 180 by Gossett; H. R. 334 by Boggs; H. R. 860 by McDonough; H. R. 929 by Teague; H. R. 936 by Allen (La.); H. R. 1212 by Doyle; H. R. 1410 by Passman; H. R. 2137 by Bramblett; H. R. 2956 by Willis; H. R. 3206 by Phillips; H. R. 3243 by Holifield; H. R. 3387 by Anderson (Calif.); H. R. 3389 by Hinshaw; H. R. 3390 by Johnson (Calif.); H. R. 3398 by Sheppard; H. R. 3415 by Allen (Calif.); H. R. 3442 by Jackson (Calif.); H. R. 3484 by Scudder; H. R. 3560 by McKinnon; and H. R. 3591 by Werdel.

[31]Annual Message, 81st Cong., 1st Sess., 95 Cong. Rec. 66 (January 5, 1949); Budget Message, House Doc. 17, 81st Cong., 1st Sess., 95 Cong. Rec. 139 (January 10, 1949).

[32]95 Cong. Rec. 1131-1132 (February 10, 1949) recommending S. 923.

[33]S. Res. 88, 81st Cong., 1st Sess., introduced by Senator Tydings, 95 Cong. Rec. 2268 (March 11, 1949).

vital for this Court to consider is that the entire matter of the disposition of the coastal submerged lands within the boundaries of all of the States has been presented to Congress, and that both sides in the present controversy are presently urging Congress promptly to adopt a national policy concerning the whole matter.

The Court and the Attorney General having indicated both to the Federal Government and to the States that resort to Congress for the settlement of their differences over the future ownership and leasing of submerged lands was proper under the circumstances, and both sides having in fact heeded this admonition and being now in the process of pressing their respective views on that body, it may be presumed that Congress will act within a reasonable time.

In taking such action Congress is adequately equipped to make the necessary appraisal and accommodation of the competing demands of the State and National interests involved. It thus may balance the interests of all the States and of their grantees in the undisturbed possession of a title they have assumed they held for over a century against the interest of the Federal Government in the preservation and protection of natural resources for national defense. Whether State regulation will interfere materially with the conduct of the Nation's international relations may there be fully debated. The inconveniences, dislocations and delays that will result if Congress can constitutionally shift from established and efficiently operated State regulation[34] to untried, centralized Federal regulation

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[34]After the 1948 congressional hearings both House and Senate Judiciary Committees reported that "none of the Federal Government's representatives had any criticisms to offer concerning either the management by the States of their sub-

may be carefully weighed in the public interest.[35] The material loss to all of the States of an important source of revenue may be balanced against Federal needs. Likewise, the question of whether the States should pay to the United States the monies collected from the area since June 23, 1947, is political in nature, involving such elements as good faith, credit for managing an essential development of natural resources, expenses, and other equities.

If Congress does take action, as it may reasonably be presumed that it will, that action will affect the very subject matter which this Court is being called on by the Attorney General to consider. In such a situation any disposition that this Court may make of the case might well be promptly altered or displaced by Congressional action. Cf. *Railroad Commission of Texas v. Pullman Co.,* 312 U.S. 496, 500 (1941). If Congress does not act, thereby leaving Federal agencies without authority to lease or develop the lands, the public interest would not justify this Court in indefinitely prohibiting State action which has resulted and will continue to result in the discovery and development of the much needed resources in the area. Memorandum in Support of Proposed Decree, *United States v. California,* note 16 supra; Stipulation, note 20 supra; Letter from the Attorney General to the

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merged lands or the conservation regulations imposed upon the oil industry generally by the States." H. Rep. No. 1778, 80th Cong., 2d Sess., (April 21, 1948) 19; S. Rep. No. 1592, 80th Cong., 2d Sess. (June 10, 1948) 21.

Texas averages nearly $20.00 per acre on sealed bids for its undeveloped submerged lands as compared with 25 cents per acre on similar Federal leases. State rentals and royalties are also higher. Joint Hearings Before the Committees on the Judiciary, 80th Cong., 2d Sess., on S. 1988 and Similar House Bills, February-March, 1948, 1297.

[35]H. Rep. No. 1778 at 12-23; S. Rep. No. 1592 at 14-25.

President, Appendix A; *Oregon and Cal. Ry. v. United States,* 238 U.S. 393, 438-439 (1915).

Since this is true, it is proper for the Court to consider whether in the exercise of its discretion it should refuse to permit the filing of the Complaint at this time. Cf. *United States v. Morgan,* 307 U.S. 183, 194 (1939); *Virginian Ry. v. System Federation No. 40,* 300 U.S. 515, 552 (1937). "The resources of equity are equal to an adjustment that will avoid the waste of a tentative decision . . ."[36]

We think that a helpful analogy for such action is furnished by the cases where this Court has likewise refused to exercise its jurisdiction where there was another suitable forum available to the parties. *Massachusetts v. Missouri,* 308 U.S. 1, 19 (1939); *Rogers v. Guaranty Trust Co.,* 288 U.S. 123, 130, 131 (1933); *Canada Malting Co. v. Patterson Co.,* 285 U.S. 413, 422-423 (1932), and similar cases. While we recognize that the rule in these cases has been applied by this Court only in cases where it appeared that another *court* could more conveniently hear and determine the matter, we think that many of the same considerations which prompted the development of that doctrine are applicable in the situation now presented to this Court. Cf. *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 507-509 (1947).

Many times before in its history this Court has refused to determine matters within the realm of the political departments of our Government. *Georgia v. Stanton,* 6 Wall. 50 (U.S. 1867); *cf. Massachusetts v. Mellon,* 262 U.S. 447 (1923); *Coleman v. Miller,* 307

[36] *Railroad Commission of Texas v. Pullman Co.,* 312 U.S. 496, 500 (1941).

U.S. 433 (1939) (concurring opinion of Justices Black, Douglas and Frankfurter); *Chandler v. Wise,* 307 U.S. 474 (1939) (concurring opinion by the same justices); *Wilson v. Shaw,* 204 U.S. 24 (1907); *United States v. Standard Oil Co.,* 332 U.S. 301 (1947).

That the Court should here exercise its judicial self-restraint is indicated both by considerations of the effect of an assumption of jurisdiction at this time and of the inherent limitations to the effectiveness of the judicial process in controversies of this character.

As to the former it is obvious that the pendency of this and similar suits on the docket of this Court would interfere at least to some extent with Congress' freedom of action in the premises. In his veto of a State ownership and control bill in 1946, President Truman said:[37]

> "The jurisdiction of the Supreme Court should not be interfered with while it is arriving at its decision in the pending case."[38]

This "non-interference" policy should not be a one-way street in our constitutional system. The Court has decided the case which was then pending, and now the Congress has taken the subject matter under consideration. Its authority is not questioned by the *California* decision, and both sides are now presenting their claims in that forum for a determination that may forego the necessity of this litigation.

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[37]92 Cong. Rec. 10660 (1946).

[38]Attorney General Clark told the Joint Committees on the Judiciary at the 1948 hearings:

> "I agree with the President. Questions of title should be settled through the Courts, and the Congress should await a decision in those cases." (Hearings on S. 1988 and Similar House Bills, 80th Cong., 2d Sess., February-March, 1948, 704.)

The California litigation has demonstrated that no injury will be suffered by the Federal Government if additional suits are delayed until Congress acts. On the other hand, this very positive injury to the public interest would result if jurisdiction is assumed before Congress acts:

1. Whether it is sound or not, the suggestion that the Congress should not act while the matter is pending before this Court will, as on a previous occasion, result in an interference with congressional action relating to the subject matter.

2. Under Texas laws the primary term of all mineral leases heretofore executed is extended during the pendency of any lawsuit challenging their validity.[39] The President, the Attorney General, and the Secretary of the Interior are committed to validation of present State leases even if this and similar suits are won.[40] Therefore, irrespective of which Government is the future landlord, the public would stand to suffer considerable loss of development by the automatic ex-

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[39] *Texas Civil Statutes* (Vernon 1948) Article 5421i:
"The running of the primary term of any oil, gas, or mineral lease heretofore or hereafter issued by the Commissioner of the General Land Office, which lease has been, is, or which may hereafter become involved in litigation relating to the validity of such lease or to the authority of the Commissioner of the General Land Office to lease the land covered thereby, shall be suspended, and all obligations imposed by such leases shall be set at rest during the period of such litigation. After the rendition of final judgment in any such litigation the running of the primary term of such leases shall commence again and continue for the remainder of the period specified in such leases and all obligations and duties imposed thereby shall again be operative; provided such litigation has been instituted at least six (6) months prior to the expiration of the primary term of any such leases."

[40] Explanatory Statement, S. 923, Senate Committee Print for Interior and Insular Affairs, 81st Cong., 1st Sess. (February 10, 1949).

tension of leases during the unnecessary pendency of this suit for the period of time before Congress acts.

Furthermore there are, we believe, limitations inherent in the nature of the judicial process which dictate that leave to file should not be granted at this time. The history of boundary controversies between the states, though distinct in many respects from that sought to be brought in the Complaint, nevertheless demonstrates by analogy that this Court is not the most convenient and efficient forum for their settlement. It has been pointed out in a careful study of the subject that such disputes have remained pending in this Court for five to twenty years or more.[41] The considered judgment was that there are "serious limits to effective judicial action" in such cases. The problem of determining the low-water mark along the coast of California has already indicated to this Court the great length of time that will inevitably be consumed before that boundary is finally determined. See *United States v. California,* 334 U.S. 855 (1948). It is apparent that the location of this line by the master even along small segments of the coastline will be a long and tedious process. Should a precedent be set by granting leave to file the Complaint against Texas, the granting of leave in similar cases against the remaining nineteen coastal States and possibly the seven States bordering the Great Lakes[42] may result in a

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[41]Frankfurter and Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments,* 34 Yale Law Journal 685, 705-706 (1925), reprinted in 3 Selected Essays on Constitutional Law 1606, 1626-1627 (1938).

[42]Attorney General Clark testified at the 1948 Joint Hearings: "It is my present intention to file a suit against every State that I think is affected by the decision. . . . We have a group of boys working on all the States. . . . I rather think there is argument for saying it applies to all of the coastal

tremendous and unreasonable burden on the Court's time for many years. Every consideration of efficiency points to the desirability of the Court's deferring any action while Congress is attempting to resolve the conflicting interests in a manner which may be satisfactory to both the National and State Governments. In this way not only can the policy be established, but the means for implementing that policy may be provided.[43]

Because of its previously mentioned special defenses, Texas denies that Congress could constitutionally divest it of its title or of such control over the exploitation of its resources as does not interfere with the exercise of the delegated powers of the Federal Government. We recognize that Congress may attempt to resolve this controversy in a manner which would be unacceptable to the State and therefore require litigation. However, the Congress has not yet acted on the subject in any fashion, and the Attorney General does

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States of the United States."

Joint Hearings Before the Committees on the Judiciary, 80th Cong., 2d Sess., on S. 1988 and Similar House Bills, February-March, 1948, 616, 699, 703.

[43]Compare President Fillmore's views as expressed to Congress in his message concerning the Texas-New Mexico boundary controversy of 1850. There he said: "No government can be established for New Mexico, either State or Territorial, until it shall be first ascertained what New Mexico is, and what are her limits and boundaries. These can not be fixed or known till the line of division between her and Texas shall be ascertained and established; and numerous and weighty reasons conspire, in my judgment, to show that this divisional line should be established by Congress with the assent of the government of Texas. In the first place, this seems by far the most prompt mode of proceeding by which the end can be accomplished. If judicial proceedings were resorted to, such proceedings would necessarily be slow, and years would pass by, in all probability, before the controversy could be ended. So great a delay in this case is to be avoided if possible." 5 Richardson, J. D., A Compilation of the Messages and Papers of the Presidents, 1789-1907, 67, 72.

not know and this Court cannot anticipate that the Congress will ever attempt to exclude the State from its long recognized rights in the area. Under such circumstances, the State strongly urges that it should not be put to the expense, trouble and loss of revenues which will result from litigating claims or governmental powers which Congress may never attempt to assert or exercise.

The Court should not consider itself required to take jurisdiction of this and the possible 26 other cases affecting coastal and Great Lake States simply because it did so in the *California* case. Then the political nature of the real relief sought and the question of national policy involved were not as clear as now. The point was not raised as a reason for the Court's abstention. Not having been raised, it cannot be considered as having been decided. *Webster v. Fall,* 266 U.S. 507 (1925). Here the suggestion is timely made in the light of two years' evidence of its validity.

We therefore respectfully submit that, since action in Congress relating to the exact subject matter embraced in the Complaint is pending, leave to file the Complaint against Texas should be denied without prejudice.

SECOND OBJECTION

If any court should take jurisdiction, the interests of convenience, efficiency and justice will be better served by full development of the evidence in a federal district court, with customary appeal, than before a master in an original proceeding in this Court.

Statement in Support of Objection

When this Court permitted the filing of the complaint in *United States v. California,* now cited by the Government as a precedent, it had "*exclusive* jurisdiction of all controversies of a civil nature where a state is a party."[44] (Italics added.) It does not now have that exclusive jurisdiction and did not have when the United States filed its motion in this case. The 80th Congress, in revising Title 28 of the United States Code, relieved this Court of the burdensome duty of exercising exclusive jurisdiction in such cases. The pertinent portions of the revision are as follows:

> "§ 1251 Original jurisdiction
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> . . .
>
> (b) The Supreme Court shall have original but not exclusive jurisdiction of:
>
> . . .
>
> (2) All controversies between the United States and a State. . . ."
>
> "§ 1345 United States as plaintiff
>
> Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress."

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[44] 28 U.S.C. § 341 (Judicial Code § 233).

It is admitted by the United States that the effect of the above quoted sections is to vest this Court and the district courts with concurrent jurisdiction over suits between the United States and a State.[45]

The revision of Title 28 in this respect is constitutional, because Article III, Section 2, Clause 2 of the Constitution of the United States does not vest this Court with exclusive jurisdiction over controversies coming within its provisions. *Georgia v. Pennsylvania Ry.,* 324 U.S. 439, 464 (1945); *Ames v. Kansas,* 111 U.S. 449, 469 (1884); *Plaquemines Tropical Fruit Co. v. Henderson,* 170 U.S. 511, 521 (1898). Although as originally enacted Section 233 of the Judicial Code (28 U.S.C. § 341) vested this Court with such exclusive jurisdiction, specific statutes thereafter enacted conferring on the district courts jurisdiction over certain types of controversies between the United States and a State have been sustained. The specific statutes were held to have superseded the general provisions of Section 233.[46]

The exercise of original jurisdiction by this Court in cases covered by Article III, Section 2, Clause 2 of the Constitution of the United States "is not mandatory in every case."[47] This Court has repeatedly rec-

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[45]Brief in Support of Motion, p. 4.

[46]Case v. Bowles, 327 U.S. 92, 97 (1946); Ames v. Kansas, 111 U.S. 449 (1884); Georgia v. Pennsylvania Ry., 324 U.S. 439, 464 (1945); United States v. Louisiana, 123 U.S. 32 (1887); United States v. California, 297 U.S. 175, 188 (1936). In Case v. Bowles, supra at 97, the Court said: "But it is well settled that despite Article III, Congress can give the district courts jurisdiction to try controversies between a state and the United States. . . . To that extent § 205 (c) of the Price Control Act supersedes § 233 of the Judicial Code.

[47]Georgia v. Pennsylvania Ry., 324 U.S. 439, 464 (1945); North Dakota v. Chicago & N.W. Ry., 257 U.S. 485 (1922); Georgia v. Chattanooga, 264 U.S. 472, 483 (1924); Oklahoma v. Cook, 304 U.S. 387, 396 (1938); Massachusetts v. Missouri, 308 U.S. 1, 19 (1939).

ognized the right of a court, in its discretion, to withhold the exercise of the jurisdiction conferred upon it where there is no want of another suitable forum to which the cause may be remitted in the interests of convenience, efficiency and justice. *Georgia v. Pennsylvania Ry.,* 324 U.S. 439, 464 (1945); *Massachusetts v. Missouri,* 308 U.S. 1, 19 (1939); *Canada Malting Co. v. Paterson Co.,* 285 U.S. 413, 422-423 (1932); *Rogers v. Guaranty Trust Co.,* 288 U.S. 123, 130-131 (1933); *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 504 (1947); *Koster v. Lumbermens Mut. Casualty Co.,* 330 U.S. 518, 527 (1947); *Kansas City Southern Ry. v. United States,* 282 U.S. 760 (1931); *Langnes v. Green,* 282 U.S. 531, 544 (1931); *Georgia v. Chattanooga,* 264 U.S. 472, 483 (1924). See *Baltimore and O. Ry. v. Kepner,* 314 U.S. 44, 54 (1941) (dissenting opinion).

In *Massachusetts v. Missouri,* supra at 19, the Court said:

> "We have observed that the broad statement that a court having jurisdiction must exercise it (See *Cohens v. Virginia,* 6 Wheat. 264, 404) is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum. *Canada Malting Co. v. Paterson Co.,* 285 U.S. 413, 422; *Rogers v. Guaranty Trust Co.,* 288 U.S. 123, 130, 131. Grounds for justifying such a qualification have been found in 'considerations of convenience, efficiency and justice' applicable to particular classes of cases. *Rogers v. Guaranty Trust Co.,* supra. . . ."

The following was said in *Rogers v. Guaranty Trust Co. of New York,* supra at 131:

> ". . . it safely may be said that jurisdiction will be declined whenever considerations of convenience, efficiency and justice point to the courts of the state of the domicile as appropriate tribunals for the determination of the particular case. . . ."

In *Koster v. Lumbermens Mut. Casualty Co.,* supra at 527, it is said that ". . . the ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice."

The revision of Title 28 of the United States Code serves an important purpose in affording the opportunity for this Court, primarily an appellate tribunal and not well adapted to the exercise of original jurisdiction over suits of this nature, to relieve itself of the burdensome duty of trying as original suits these ever-increasing controversies between the United States and the States. There is nothing in the pertinent sections of Title 28[48] or in the hearings on this revision to indicate any intention on the part of Congress that only controversies of "very limited importance"[49] or "minor significance"[50] between the United States and a State be tried before a district court, as argued by the United States. The district courts have many times shown their ability to try "controversies of the first magnitude in importance,"[51] and we see nothing at all "inappropriate"[52] about proceeding before a district court in the present case.

An abstention of original jurisdiction will not preclude this Court from exercising its appellate juris-

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[48]28 U.S.C. §§ 1251, 1345.

[49]Supplemental Memorandum in Support of Motion, p. 2.

[50]Brief in Support of Motion, p. 8.

[51]Supplemental Memorandum in Support of Motion, p. 2.

[52]Ibid.

diction if either party should be dissatisfied with the decision of the district court or the circuit court of appeals. Thus it is not a case where the Court by refusing to exercise its original jurisdiction loses all opportunity to pass on the merits of the case, since this Court will still have such opportunity as the final appellate tribunal.

The United States suggests the rule that "the grant of concurrent jurisdiction implies that, in the first instance, the plaintiff shall have the choice of the court."[53] However, this does not mean "that the plaintiff's choice cannot be questioned" or "that the Court must respect the choice of the plaintiff." *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 506 (1947).

The prior suit against California and the present suits sought to be filed against Texas and Louisiana are only the first of many suits which the Attorney General has expressed his intention to file to determine the rights in the lands, minerals and other things underlying the marginal sea within the boundaries of the states littoral to the Atlantic and Pacific Oceans, the Gulf of Mexico, and possibly the Great Lakes.[54] As admitted by him, and as will no doubt be contended by all of these other states, the *California* case will "not be decisive as to the rights of any other State.[55] The United States may therefore file at least twenty and possibly twenty-seven similar suits.[56] If the Court

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[53]Brief in Support of Motion, p. 5.

[54]See note 42 supra.

[55]See notes 3 and 4 supra.

[56]These would include Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia and Washington; and possibly Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania and Wisconsin.

permits the United States to file this action as an original suit in this Court, it will thereby set a precedent for the filing of the many other suits in the same manner. It is possible that each of these suits if brought as an original action in this Court may pend for a period of from five to twenty years or more.[57] The enormous drain on the Court's time and energy involved in the trial of all of these intricate suits as original proceedings is obvious.[58] However, by denying leave to file in the present case without prejudice to the right of the United States to bring suit in the appropriate district court, the Court will set a precedent which will result in the distribution of this tremendous burden among numerous courts instead of concentrating it on one court. Of course it still may be necessary for this Court to hear some of these cases in its function as the final appellate tribunal, but the task of the Court in such cases would be the one for which it is best fitted.

If the Court takes this case as an original action, it certainly would be more efficient and expeditious to appoint a master to first hear the evidence rather than for the Court initially to do so. Contrary to the situation in a similar proceeding against the State of California in which neither party "suggested any ne-

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[57]See Frankfurter and Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments,* 34 Yale Law Journal 685, 705-706, n. 87 (1925), reprinted in 3 Selected Essays on Constitutional Law 1606, 1626-1627, n. 87 (1938).

[58]The difficulties encountered by the Court in exercising its jurisdiction over the controversy between Oklahoma and Texas involving the Red River boundary dispute are well known. The initial citation to this controversy is Oklahoma v. Texas, 252 U.S. 372 (1920). Filed on April 1, 1920, the case was concluded on May 18, 1931, during which time the Court wrote a total of 107 memoranda, opinions and orders. See 68 Fed. Dig. 413-414.

cessity for the introduction of evidence,'"[59] the State of Texas in this case will suggest the necessity and ask for the right to develop the evidence fully. Counsel for the United States have stated that they "know of no matters of relevant fact that call for the taking of testimony or presentation of evidence in this case any more than in the decision of the basic issues in the California case."[60] However, the United States already has admitted that Texas entered the Union under circumstances different from those under which California entered,[61] and while its Attorney General now attempts to minimize the relevancy of those differences, he has stated numerous times that Texas has "special defenses" and "special rights" that exist in favor of no other State.[62]

In the event of trial it is certain that the United States will need to offer evidence if it undertakes to discharge the burden of proving the allegations in its Complaint. Texas will demand strict proof of every allegation asserted adversely to it, because it does not believe that superior title or interference with paramount governmental powers can be proved against this State. In the event of trial Texas will offer a great amount of testimony and documentary evidence in the form of maps, diplomatic correspondence, personal papers of many men who had a part in the annexation of Texas, and other similar forms of documentary evidence. The majority of these documents are in the archives and records of various departments of the State of Texas and in personal papers located in Texas libraries. Evidence will be offered on many

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[59]332 U.S. at 24.

[60]Supplemental Memorandum in Support of Motion, pp. 2-3.

[61]Motion for Leave to File Complaint, p. 3.

[62]See notes 3 and 4 supra.

matters, a few of which are: the ownership and use of these lands and minerals by the independent Republic of Texas under Spanish and Mexican law; the defense and maintenance of the Gulfward boundaries of the Republic of Texas for nearly ten years by the Texas Navy; and the circumstances leading to the final agreement of annexation by which Texas retained all land and minerals within its boundaries not specifically conveyed to the United States. Texas will seek to develop the many instances in which this interpretation of the annexation agreement has been made by the United States, and also show that the filing of this suit is the first time since annexation in 1845 that any official of the United States has placed a different interpretation on the agreement with Texas. It would be impossible for the Court to decide the basic legal issues of the case without having this and other evidence before it.

The necessity for the appointment of a master in the event this action is brought as an original action in this Court presents a strong reason why the Court should deny leave to file the Complaint in order to permit the suit to be filed in the appropriate district court. The evidence, documentary and otherwise, can be brought more easily before a federal district court, such court being in proximity to the witnesses and documents and better adapted by reasons of its rules of procedure, available court rooms and other facilities for the hearing of such evidence.

Also, the general rule in our system of jurisprudence that title suits should be tried in Federal or State courts within the State where the land is located is particularly applicable in this case. If plaintiff should be successful in its suit it will necessitate a long and tedious process of locating the shore line and low-

water mark along the 370-mile Texas coast. The efforts at demarcation of this line along the coast of California have indicated already to this Court the great length of time and expense that inevitably will be consumed in the determination of the line by a master. Almost two years have passed since the California decision without the line having been fixed on any segment of that coast. These determinations could be made more expeditiously and conveniently and with far less expense by a district court permanently located near the property in question.

The above factors are important considerations in determining whether the Court should take jurisdiction of this case or remit the parties to the appropriate district court, since it is proper for the Court to consider "all other practical problems that make trial of a case easy, expeditious and inexpensive."[63]

For these and many other reasons better known to this Court, it is obvious that it will be more convenient and expeditious if the appropriate federal district courts exercise their original jurisdiction over controversies of this nature. This view is supported by the dissenting opinion (and the distinguishing reaction thereto by the majority) of Mr. Chief Justice Stone, in which he was joined by Mr. Justice Roberts, Mr. Justice Frankfurter and Mr. Justice Jackson, in *Georgia v. Pennsylvania Ry.*, 324 U.S. 439, 470 (1945). There it was said:

> ". . . In an original suit, even when the case is first referred to a master, this Court has the duty of making an independent examination of the evidence, a time-consuming process which seriously interferes with the discharge of our ever increas-

[63]Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947).

ing appellate duties. No reason appears why the present suit may not be as conveniently proceeded with in the district court of the proper venue as in this Court, or why the convenience of the parties and witnesses, as well as of the courts concerned, would be better served by a trial before a master appointed by this Court than by a trial in the appropriate district court with the customary appellate review. The case seems preeminently one where this Court may and should, in the exercise of its discretion and in the interest of a more efficient administration of justice, decline to exercise its jurisdiction, and remit the parties to the appropriate district court for a proper disposition of the case there."

The only apparent reason why the Court declined to remit the parties to a district court in that case is that it was not clear that all of the defendants could be found in one judicial district. But for this reason the majority of the Court in that case indicated that such procedure as is here requested "would be wholly appropriate." This reason does not exist in this case, for here the appropriate federal district court in Texas would have jurisdiction over all the parties as well as over all the lands in dispute.

As said by this Court in *Kennedy v. Silas Mason Co.*, 334 U. S. 249, 256 (1948):

> "The hearing of contentions as to disputed facts, the sorting of documents to select relevant provisions, ascertain their ultimate form and meaning in the case, the practical construction put on them by the parties and reduction of the mass of conflicting contentions as to fact and inference from facts, is a task primarily for a court of one judge, not for a court of nine."

No reason has been shown by the United States, and

none appears, why the present suit may not proceed conveniently in the federal district court of the proper venue, or why the convenience of the parties or the courts would be better served by a trial before a master appointed by this Court than by a trial in a district court with the customary appellate review. None of the cases cited by the United States in its brief[64] is in any way inconsistent with the procedure here requested. Instead, they support in principle such procedure.

Without waiving the first objection heretofore made, it is believed that if a suit is to be filed at all, the interests of convenience, efficiency and justice will be better served by this Court's denial of the motion of the United States for leave to file its Complaint against the State of Texas, without prejudice to the right to bring suit in the appropriate federal district court.

CONCLUSION

We respectfully submit that the motion for leave to file the Complaint should be denied without prejudice.

Respectfully submitted,

PRICE DANIEL
Attorney General of Texas

J. CHRYS DOUGHERTY
Assistant Attorney General

JESSE P. LUTON, JR.
Assistant Attorney General

April, 1949.

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[64]Brief in Support of Motion, p. 5.

APPENDIX A

October 30, 1947

The Honorable
The President of the United States
White House
Washington, D. C.

My dear Mr. President:

The Supreme Court on Monday, October 27, 1947, entered a decree declaring that the United States is possessed of paramount rights in, and full dominion over, the land, minerals and other things underlying the Pacific Ocean lying seaward of the low-water mark on the coast of California.

The signing of the decree brings to a successful termination the first phase of efforts being made to establish the rights of the United States in the areas which, up to this time, had been claimed by the State. The Supreme Court decided that the United States is entitled to injunctive relief, and that the State of California has no title to the submerged lands in the belt claimed by the United States. The decision, we believe, is of vital importance to all the people of the country.

In signing the decree, the Supreme Court denied various petitions of parties who have been attacking two stipulations entered into by the Government with the State of California; and also eliminated the stipulations from the proceedings as not being relevant to any issue now before the Court. This action does not, as the Court indicated, have any effect on the status of the stipulations.

The claim of the United States to rights in the

coastal submerged lands off the coast of California lying between the low-water line and the three-mile limit was one of the first matters to receive my active attention after I assumed the post of Attorney General of the United States on June 30, 1945. Within little more than three months of my taking office, in October, 1945, I filed, with your approval, the action which culminated on June 23, 1947, in the opinion of the Supreme Court of the United States recognizing the paramount rights of the United States in the marginal sea area off the coast of California.

The opinion of the Supreme Court last June gave rise to a variety of unusually complex problems. The most pressing of these was the urgent need of assuring continued oil production in the coastal waters off California. Continued oil production was necessary in the interest of the United States, inasmuch as the closing down of the wells would have resulted in seepage, loss of the oil and damage to wells and equipment. There was also a shortage of petroleum products, and oil producers generally were being urged by the Government to make every effort to increase production for military as well as civilian purposes. It was also not clear as to precisely which wells were covered by the Court's decision and were to be regarded as the property of the United States. It has not been specifically determined which of the submerged lands fall within the Court's general declaration that the United States has paramount rights in the marginal sea, as distinguished from the bays, harbors and inland waters to which the Government of the United States has consistently reiterated that it made no claim.

To protect the public interest, the Secretary of the Interior and I decided to deal with such problems as

could not await Congressional and further judicial action. We, as you know, entered into two stipulations with the State of California. Both recited that nothing therein should "be deemed in any way to abridge the power or jurisdiction of the Supreme Court." It was specifically stated in the so-called "operating stipulation" that it was a purely interim arrangement, that it should continue in effect only until pertinent legislation was enacted by Congress and, in any event, no later than September 30, 1948. The State of California agreed to place its revenues from all disputed wells in escrow, to await final settlement. To make sure that Congress would have a clean slate on which to legislate, the Secretary of the Interior and I insisted that the stipulation provide that nothing therein was to "be deemed to waive or abridge any right or claim which the United States now has or may hereafter have against any lessee or grantee of the State of California." Persons operating pursuant to the stipulation will, with respect to operations conducted after June 23, 1947, be permitted to retain such costs of operation as innocent trespassers are permitted to retain by the California statutes.

While the United States thus waived no rights in this stipulation, it did reaffirm previous statements which you had authorized me to make to the effect that there was no desire on the part of the administration "to destroy or confiscate any honest or bona fide investment" and that we would recommend to the Congress that legislation be enacted "designed to relieve California and those who have operated under State authority, from the necessity of accounting to the United States for revenues derived in the past from the exploitation of any of the lands here involved."

This policy was neither a new one nor a departure

from previous statements of the executive branch of the Government. In testifying before the Senate Judiciary Committee in February, 1946, the then Secretary of the Interior, Harold L. Ickes, said this with respect to what would happen if the Government prevailed in the suit against California:

"There will, in the first place, be appropriate occasion for relief legislation. In contrast with my friends from California, I do not pretend that the issue of ownership has ever been clear. Nor do I believe that anyone should be penalized for good faith reliance upon the State's claim of ownership. This involves at least two general principles.

"1. The States concerned and those who have operated under State law should be relieved from any liability for damage in trespass for any past development of the submerged land. Specifically neither should be required to account for oil or gas extracted before the date of the decision by the Supreme Court. Leases and contracts for operations on submerged lands outstanding when the present suit was filed in the Supreme Court should be continued in force and effect by the Federal Government, at least as to royalty rate and time limit.

"2. Structures, such as docks or piers, which may have been erected on the submerged lands and the surface ownership of filled-in areas should not be disturbed if they were erected or filled in accordance with the Federal or State law."

The statements made by Mr. Ickes went far beyond the stipulations of July 26, 1947. On July 22, 1947, four days before the stipulations were executed, copies of them were delivered to Senator Hugh Butler, chair-

man of the Senate Committee on Public Lands, and to Hon. Richard J. Welch, chairman of the House Committee on Public Lands. These copies were accompanied by letters signed by Secretary Krug and me, explaining the reasons for the stipulations, and asking for comments. Both chairmen showed keen interest in the matter, and no unfavorable comments were received.

In presenting its arguments to the Supreme Court, the Government had consistently asserted that it was making no claim to bays, harbors and inland waters. The three areas described in the so-called "bays and harbors" stipulation had been specifically named as not being within its claim.

For example, the Long Beach area, in San Pedro Bay, was stated to be not within the three-mile belt, and it was pointed out that a lower Federal court had already ruled that this area was to be regarded as inland waters. We concluded that the areas which were made the subject of this stipulation were not within the belt in which the United States had paramount rights, and the statement that they were not being claimed was deemed desirable as evidence of the Government's sincerity in its repeated assertions that it was not making any claims to bays and harbors. The City of Long Beach owns the oil wells in the harbor of San Pedro Bay. While the city was not a party to the pending suit, the United States recognized that since the Government could make no claim to these wells (as being in a conceded bay), it was only just to make a formal declaration to that effect.

I am reporting to you on these stipulations in some detail, because their provisions and effect have been

misunderstood. The fact is that the stipulation on operations was necessary to conserve the oil supplies, and prevent enormous wastage and loss; and the stipulation on the Government's claim was limited in scope, so as to make sure that no portion of the Federal property was involved.

Congress is now in a position to determine how the assets which have been declared to be the property of the United States shall be administered. Only a relatively small section of the marginal sea has been developed. What has been recovered may prove, in the coming years, to be but an insignificant fraction of the undeveloped and as yet unknown resources in the remaining area.

Respectfully,

[Signed] TOM C. CLARK
Attorney General