

No. 31, ORIGINAL

IN THE
Supreme Court of the United States

OCTOBER TERM, 1967

STATE OF UTAH, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *Defendant*.

**BRIEF OF MORTON INTERNATIONAL, INC. IN
RESPONSE TO STIPULATION AND SUPPLEMENTAL
MEMORANDUM FOR THE UNITED STATES**

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This brief is submitted by MORTON INTERNATIONAL, INC. (hereinafter referred to as "Morton") in response to the Stipulation dated March, 1968, between the United States and the State of Utah and in response to the Supplemental Memorandum filed by the United States regarding the effect of said Stipulation on Morton's motion for leave to intervene, presently before the Special Master.

ARGUMENT

I. THE STIPULATION HAS NO EFFECT ON MORTON'S INDISPENSABILITY AND REQUIRED INTERVENTION

The United States has abruptly reversed its position with respect to Morton's motion to intervene. Without amending the complaint previously filed by the State of Utah or the answer filed by the United States, counsel for those parties have now entered into a stipulation for the purpose of purportedly "limiting the scope of the present litigation." This agreement, in the Government's view, converts Morton from its previous position in this litigation as an indispensable party to an unnecessary party. We disagree that the stipulation has such effect (assuming, *arguendo*, that the stipulation is valid).

The stipulation does not alter either party's claims to the subject matter in dispute. In other words, apart from its invalidity as shown in Point II, the stipulation is merely an agreement between counsel for the parties, not binding on Morton, as to how they will proceed during the course of the litigation. Obviously, this agreement could be rescinded at any time by mutual consent, and the fact that it is in writing rather than verbal does not add dignity to it.

Since the parties' claims remain the same, a brief review of them as set forth in the complaint and answer is appropriate:

Complaint — III

Answer — III

"... the State of Utah ... is the owner of the absolute right to the bed of the Great Salt Lake as delineated and determined by the official surveyed meander line of the Great Salt Lake, which meander line represents the mean high water mark of said lake as it existed at date of survey and as it existed at the date of statehood."

Denied to the extent it is an allegation of fact.

* * *

"The State of Utah further owns all of the minerals contained within the waters of the Great Salt Lake and within the lands constituting the bed of the Great Salt Lake as herein defined."

Denied to the extent it is an allegation of fact.

Complaint — IV

Answer — IV

"The State of Utah believes that the United States of America now claims to own approximately 436,000 acres of the bed of the Great Salt Lake."

Admitted

* * *

"In fact, the United States of America has no right, title, or interest in or to any of the lands illustrated in Exhibit A [of the complaint] or to any other part of the bed of the Great Salt Lake as located below and within the surveyed meander line."

Denied

Complaint — V

Answer — V

"The State of Utah owns the minerals and brines included within the waters of the Great Salt Lake."

Denied to the extent it is an allegation of fact.

The respective prayers for relief in the complaint and answer make it clear that each party is seeking an adjudication quieting title in it to the lands, brines and minerals described in Section 2 of the Great Salt Lake Lands Act.¹ The fact remains that the United States and Utah each claim lands, brines and minerals which are also claimed by Morton, and in order to determine the right, title and interest of the United States in the lands conveyed pursuant to the Act, the Court will have to determine whether Morton or the United States owns the lands, brines and minerals in dispute between them. Only after this is accomplished will the Secretary of the Interior be able to comply with Section 5(b) of the Act to determine the fair market value of the lands and minerals conveyed.

1. Referring again to the pleadings, the United States has denied Utah's allegation in paragraph III of the complaint that the Great Salt Lake is a navigable body of water. The United States' allegation of lack of knowledge or information sufficient to form a belief as to the truth of

(1) Act of June 3, 1966, 80 Stat. 192, as amended by Act of August 23, 1966, 80 Stat. 349.

the allegation of navigability constitutes a denial.² Thus, the ownership of the brines and minerals in solution in the Lake is an issue in this litigation, and it is plain, as set forth in paragraph 2 of the stipulation, that the United States is asserting ownership of “*all* the brines and minerals in solution” in the Lake and of “*all* of the presently submerged lands underlying the Lake.” (Emphasis added)

The United States’ claim of ownership of all the brines and minerals and all the submerged lands obviously encompasses the brines, minerals and submerged lands claimed by Morton. This claim of ownership can be predicated on either or both the following theories:

(a) The Basart lands extend to the thread of the non-navigable Lake.

(b) The lack of intent on the part of the United States to convey the bed of the non-navigable Lake in the patents granting title to the uplands. See *Brewer-Elliott Oil & Gas Co. v. United States*, 260 U.S. 77 (1922); *Oklahoma v. Texas*, 258 U.S. 574 (1922).

Accordingly, the disclaimer in paragraph 6 of the stipulation as to the effect of a judgment on the title of third parties claiming lands, brines or minerals is meaningless. A decision that either the United States or Utah owns *all* the submerged lands, brines and minerals in the Lake in effect will adjudicate the title of Morton and will necessarily adversely affect its interests.

We are aware of no case in which title to all the brines or minerals in solution in a non-navigable body of water has been allocated among the riparian owners and this complex problem is one which the Court may well have to resolve. It is clear, however, that a person claiming title to a body of water is an indispensable party to a suit over ownership

⁽²⁾ Federal Rules of Civil Procedure, Rule 8(b).

of that water. *California v. United States*, 180 F.2d 596 (9th Cir. 1950), involved an action by the United States to quiet title to waters wholly within California against a licensee of the State of California which was diverting a portion of the water for irrigation purposes. The State of California moved to intervene as owner of the water, the denial of which motion was reversed by the court of appeals stating (180 F.2d at 602) :

“The State is asserting an interest in the subject matter as the absolute owner of the water, and as *parens patriae* on behalf of all of its citizens. That is a sufficient interest in the subject matter to entitle it to be heard just as much as if the State were joined by the United States originally as a defendant.”

Despite Utah's theory of navigability set forth in the complaint, it is apparent, as is recognized in Utah's motion to file the complaint, that there are various other theories upon which Utah depends to support its claim to all or part of the property in dispute. Therefore, this litigation will not necessarily result in an all-or-nothing decision predicated on navigability or non-navigability. For example :

(a) the Lake could be held to be navigable and the “mean high water line” fixed substantially below the meander line resulting in a division of the relicted lands between Utah and the upland owners, or

(b) the Lake could be held to be navigable and only relictions existing before statehood be held to be the property of the upland owners, or

(c) the Lake could be held to be navigable with all relicted lands held to be owned by the upland owners to the water's edge wherever it may be from time to time.

There could be other variations, of course, predicated on Utah's theory of man-made diversions, etc., as mentioned in its motion, but the foregoing are sufficient to illustrate

that the stipulation reflects only a superficial consideration of the substantive issues involved.

2. But even assuming that the stipulation could effectively remove from litigation the lands claimed by private parties, Morton's property rights would still be adversely affected by a decision in this suit. Pursuant to Section 6 of the Great Salt Lake Lands Act, Utah is authorized "to issue permits, licenses, and leases covering such of these lands as the State deems necessary or appropriate to further the development of the water and mineral resources of the Great Salt Lake or for other purposes." Since part of the lands and minerals claimed by the United States are claimed by Morton, the Act authorizes Utah to lease property which the United States may not own. Furthermore, Section 6 provides that all proceeds derived by Utah from the leases and licenses shall be paid to the United States as part of the compensation for the lands conveyed. Section 6 further provides:

"If the question of the title to the United States is litigated as authorized in section 5(b) of this Act, and it is determined that the United States has no right, title and interest in lands from which revenues have been derived and paid to the United States pursuant to this section, the revenues paid to the United States shall be returned to the State of Utah without interest."

Obviously, however, if Morton owns part of the lands leased, the proceeds therefrom are Morton's property, the disposition of which will depend on the Court's decision. Neither the United States nor Utah has the right to take possession of another person's property and deprive him of the profits therefrom. Unless Morton is permitted to intervene to protect its right to these proceeds as well as to the lands and minerals in dispute, it will, in effect, be rendered remediless.

It is no answer to say that Morton can sue either the United States or Utah for the wrong done to it in depriving it of this money, since neither sovereign can be sued without its consent. Although Utah and the United States recognize in paragraph 8 of the stipulation that these payments may constitute a private person's property and that there would be liability therefor, the doctrine of sovereign immunity is ignored as is the fact that a decree will affect the disposition of this property.

The last word of the Court on the doctrine of indispensability is *Provident Trademans Bank & Trust Co. v. Patterson*, U.S., 88 S. Ct. 733 (1968), decided January 29, 1968, in which the Court, while reversing the court of appeals for not pragmatically analyzing the facts, clearly adheres to the criteria established in previous decisions. The pragmatic approach to be used in determining whether an absent person must be joined as a party is clearly not intended by the Court to mean mere expediency in resolving a difficult problem. This stipulation is an excellent example of an expedient approach on the part of the United States and Utah, which completely ignores the practical effect of the non-joinder of Morton. The Court in discussing the interest of the outsider expressly adopts the criteria of Rule 19(a) (88 S. Ct. at 738):

“[T]he Court must consider the extent to which the judgment may ‘as a practical matter impair or impede his ability to protect’ his interest in the subject matter.”

Applying this criterion to Dutcher, the outsider, the Court stated (88 S. Ct. at 737):

“We may assume, at the outset, that Dutcher falls within the category or [sic] persons who, under §(a), should be ‘joined if feasible.’ The action was for an adjudication of the validity of certain claims against a

fund. Dutcher, faced with the possibility of judgments against him, had an interest in having the fund preserved to cover that potential liability. Hence there existed, when this case went to trial, at least the possibility that a judgment might impede Dutcher's ability to protect his interest, or lead to later relitigation by him."

Dutcher had not sought to intervene prior to trial and it was not until the matter had gone to judgment and appeal, after years of litigation, that the court of appeals dismissed for lack of an indispensable party. In this case, which is in its initial stages, it is apparent that property, whether land, brine, minerals or money, claimed by Morton will be disposed of as a result of the Court's decree, regardless of whether or not the stipulation can be carried out. Pursuant to Section 3 of the Great Salt Lake Lands Act, the United States has expressly reserved all mineral rights, except as to brines and minerals in solution, in the lands conveyed to Utah under Section 2 and this includes the Basart lands. In any suit brought by Morton against Utah, assuming consent on the part of Utah, to test the title to the Basart lands, the United States, due to this reservation, would clearly be an indispensable party and it cannot be joined without its consent. Obviously, a disposition by reason of this litigation would "as a practical matter impair or impede" Morton's ability to protect its interest.

Since Morton's joinder will not deprive the Court of jurisdiction of the subject matter of the action—the position that the Solicitor General previously argued and to which he still adheres (see Supplemental Memorandum, p. 3—its joinder is required under Rule 19(a). Whether the Court will lose jurisdiction if other persons are joined, or whether the case should be dismissed pursuant to Rule 19(b) if they cannot be joined, has no bearing on Morton's motion.

The fourth criterion set forth by the Court in the *Provident* case is also clearly applicable to this situation, i.e., (88 S. Ct. at 739) :

“Fourth, there remains the interest of the courts and the public in complete, consistent, and efficient settlement of controversies. We read the Rule’s third criterion, whether the judgment issued in the absence of the non-joined person will be ‘adequate,’ to refer to this public stake in settling disputes by wholes, whenever possible, for clearly the plaintiff, who himself chose both the forum and the parties defendant, will not be heard to complain about the sufficiency of the relief obtainable against them. After trial, considerations of efficiency of course include the fact that the time and expense of a trial have already been spent.”

The piecemeal judgment suggested by the stipulation before the Court would not be “adequate” from the point of view of the public’s interest “in complete, consistent, and efficient settlement” of the dispute with respect to the lands lying below the meander line.

II. THE STIPULATION IS AN ACTION NOT AUTHORIZED BY CONGRESS AND IS THEREFORE INVALID

A. The Stipulation Is Contrary To The Provisions Of The Great Salt Lake Lands Act

By this stipulation, the Solicitor General and the Attorney General of Utah are attempting, for the sake of convenience, to amend the plain language and intent of the Great Salt Lake Lands Act. The requirements of Section 5(b) of the Act are that Utah “may maintain an action in the Supreme Court of the United States to secure a judicial determination of the right, title and interest of the United States in the lands conveyed to the State of Utah pursuant to section 2 of this Act . . .” and that “Within two years from the completion of the action, the Secretary of the Interior shall determine the fair market value,

as of the date of the decision of the court, of such lands (including minerals) conveyed to the State pursuant to section 2 of this Act as may be found by the court to have been the property of the United States prior to the conveyance." Despite this unequivocal language that the United States' title is the subject of adjudication, paragraph 1 of the stipulation states:

"Notwithstanding anything to the contrary in the Complaint filed herein by the State of Utah or the Answer filed by the United States, the *only objective* of the present suit is to determine whether, as against the United States, *the State* held title to the lands, brines and minerals below the meander line of the Great Salt Lake which the United States claims to have owned and conveyed to the State on June 15, 1967, with a view to later determining the compensation, if any, due by the State to the United States on account of that conveyance under Public Law 89-441." (Emphasis added)

On the basis of this stipulation, the Solicitor General, in his supplemental memorandum, arrives at the remarkable conclusion that there need be no adjudication of the United States' title in the lands.

An excellent refutation of the approach represented by this stipulation was made by the Solicitor General during the hearings before the Special Master on February 9, 1968 as follows (Transcript, pp. 27-32):

"[Mr. Griswold] Now, the situation is different with respect to Morton International. Morton is making a claim to land adverse to the State of Utah and adverse to the United States.

"With respect to the lands which come within the Basart Doctrine, the United States claims those lands and Morton International claims those lands. And I find no escape in my own mind from the conclusion that

Morton International is an indispensable party, because under the Statute and under the pleadings of the State of Utah, Utah is claiming title to these lands.

"The Secretary of the Interior is directed to convey all of the lands to which the United States may have title, and he is then directed to determine the fair market value of such lands, and that is the lands which are to be conveyed, and it is that amount which the State of Utah is under obligation to make payment, if it accepts the amount. And I do not see how this Court can render the judgment, *which is required by the Statute*, and which is sought by Utah's pleadings, without determining whether these various tracts of land are indeed owned by the United States or are owned by Morton International.

"JUDGE GANEY: Isn't Utah the only one that has any concern about that? It is only the lands that they may have title to? Morton hasn't any concern about whether Utah gets all this land, have they?

"MR. GRISWOLD: As I see it, that is not the way the Statute is written, *and I assume that the way the Statute is written defines the consent of the United States to this suit.*

"The way the Statute is written is that all lands owned by the United States shall be conveyed to the State of Utah.

"JUDGE GANEY: Except valid claims.

"MR. GRISWOLD: And we have no way of determining whether these claims are valid or not except by having them litigated before this Court.

"The United States claims these Basart lands, Morton International claims these Basart lands. If the United States' claim that it owns the land is sound, then it is entitled to have those lands included in the lands that are valued by the Secretary of the Interior and are paid for by the State of Utah.

"If the claim of the United States is not sound, then these lands are excluded from the conveyance to Utah and from the payment of the right of Morton remains inviolate, but that question cannot be determined until it is litigated. And I find no escape from the conclusion that Morton and others similarly situated are indispensable parties to this case because the question of their title or not is absolutely essential to the determination of what lands are conveyed to Utah; and on that basis what lands Utah is obligated to pay for.

"JUDGE GANEY: What is your suggestion, assuming, without deciding, that they are not indispensable and the Court could prepare a decree, as I have indicated, and convey to Utah all those lands which are uncontested, and that would leave Morton, as I said to Mr. Wollaeger, in the same position as they are today, there is no impairment under the guideline which Mr. Justice Harlan laid down, and that is the last that I know of, the last of the criteria which ought to be applied as to indispensable parties. What harm comes to Morton?

"MR. GRISWOLD: *As I have thought about this problem over the last two weeks, there have been times when it seems to me that a solution might be if Utah would be willing to amend its bill so as to make it applicable only as to such areas of land, and it might have to specify them by metes and bounds, which might be an enormous task, only as to such land as to which there was no other claim, thus narrowing the case to the areas which are vast, where the sole issue is between the United States and the State of Utah. And that would eliminate all questions of other, or indispensable, parties.*

"*But I am afraid that that just wouldn't comply with the Statute as Congress has enacted it. Maybe we could get the Statute amended to make it applicable only to lands as to which there is no other claimant, but the Statute provides that the Secretary of Interior shall by quit-claim deed convey to the State of Utah*

all right, title and interest of the United States in lands including brines and minerals in solution in the brines or precipitated or extracted therefrom, lying below the meander line of the Great Salt Lake, and these Basart lands are lands, which lie below the meander line of the Great Salt Lake.

"Title to them is claimed by the United States and, indeed, it is not limited to Basart lands. As I understand it, there are some other lands where title is owned by the United States, and unless the United States conveys all its lands, it does not comply with the Statute.

"The provision of the Statute with respect to Utah 'may maintain an action in the Supreme Court of the United States to secure a judicial determination of the right, title and interest of the United States in the lands conveyed to the State of Utah pursuant to Section 2 of this Act.' And the lands conveyed to Utah under Section 2 of the Act are all right, title and interest in lands below the meander line, and they include the Basart and the other lands, and I don't see how you can determine what lands are to be conveyed, what lands are to be adjudicated, and what lands are to be paid for, unless you determine the claims of Morton International and, as far as I can see, of any other claimant to these lands other than the United States.

"On that basis, it seems to me that parties who claim adverse to the United States are indispensable parties.

"JUDGE GANEY: What is your thought back to the exception of valid claims in the Statute?

"MR. GRISWOLD: If this Court adjudicates that Mortor [sic] has a valid claim, then this consequence is that the conveyance made by the Secretary of the Interior does not include that land.

"JUDGE GANEY: You think it must be determined first, not on mere allegation, but there must be a determination of title?

"MR. GRISWOLD: I don't see how that can be avoided, because if this Court determines that the title is in the United States, then it is covered by the conveyance and is to be valued and paid for by the State of Utah. *I don't see how you can duck that, or dodge it, or escape it.*

"I repeat, a possible solution would be to see some kind of amendment of the Statute which would narrow the conveyance to what might be called the in-dispute lands, meaning by that, only the dispute between Utah and the United States remaining. Whether that would be acceptable to Utah or not, I don't know. If the Statute were so amended and Utah then amended its bill under the Statute, it would be conceivable that this case in this Court could be confined to the dispute [sic] between the United States and Utah. That would, of course, leave a large amount of loose ends out there, from which there is no easy way to see how they could be resolved."

(Emphasis added)

And, again, quoting the Solicitor General (Transcript, pp. 77-81):

"MR. GRISWOLD: I share to some extent the wish or hope of the State of Utah that this could be kept a nice, simple case with two parties, because it obviously presents problems, both practical and legal, if it can't.

"But with respect to the suggestion that since a quit-claim deed has already been given, there is no legal problem, I find myself getting back to the Statute which underlies this whole proceeding.

"You will recall that the State of Utah had an option to either proceed without a Court decision or to start an original action in the Supreme Court of the United States, and the language of the Statute with respect to the second option, which is the one which has been followed, the State may maintain an action in the Supreme Court of the United States to secure a judi-

cial determination of the right, title and interest of the United States in the lands conveyed to the State of Utah, pursuant to Section 2 of this Act.

"So that the proceeding is to determine, is to obtain a judicial determination of the right, title and interest. It isn't enough to say the United States, or whatever it is, quit-claims it. There must be a determination of what is the right, title and/or interest of the United States, and specifically as between the United States and Morton Salt, that becomes an issue because if the land belongs to Morton Salt, then the United States has no right, title or interest and the quit-claim deed conveyed no interest.

"Then the Statute goes on, consent to join the United States as a defendant to such an action is hereby given. That is an action to determine the right, title and interest of the United States. Then the Statute goes on, within two years from the completion of the action, the Secretary of the Interior shall determine the fair market value as of the date of the decision of the Court, of such lands conveyed to the State, and not until you determine what lands were in fact conveyed to the State by the quit-claim deed, and that involves the resolution of the issue between the United States and Morton Salt, to use it as an example, but all the other possible claimants, too, and not until that question has been determined is the objective of the suit carried out.

"So I find, simply, no escape, much as I would like to do it otherwise, from the proposition that persons who claim adversely to the United States are indispensable parties without whose presence this action, *as contemplated by the Statute and to which Congress has given its consent*, simply cannot be carried out.

"JUDGE GANEY: In summary, you say that the Statute, the basic right here, gives the United States the right to have determined the validity of its lands there?

"MR. GRISWOLD: Yes, sir, Your Honor.

"JUDGE GANEY: You think that is the contemplation and Congressional intent in the passage of this Act giving permission, basically, to the United States?

"MR. GRISWOLD: Because it is only such lands which the United States owns which are conveyed to Utah, and for which Utah must make payment, and which is the object of this decision.

"JUDGE GANEY: But Utah doesn't want lands that are not, that are in dispute. Why must there be a decision to the validity of Morton Salt and 100 other claimants here in this action before the United States could convey to Utah?

"MR. GRISWOLD: I quite agree, Your Honor, the Statute could have been drafted differently. It could have been drafted to provide for a conveyance to the State of Utah of all lands not owned by any other party and not disputed as to title, between the United States and any other party, *but the Statute is perfectly plainly worded.*

"JUDGE GANEY: Yes, I have read its many words.

"MR. GRISWOLD: For a judicial determination of the right, title and interest of the United States, and with respect to the lands that Morton Salt claims and the United States claims, *you cannot comply with the terms of the Statute without determining whether the United States is wrong or Morton Salt is right.*

"JUDGE GANEY: Well, you read that in. Maybe that is correct. The validity of all of the lands there must be conveyed to Utah. They must be conveyed. Otherwise, the Statute is of no effect.

"MR. GRISWOLD: If the lands Morton Salt claims does not, in fact, belong to Morton Salt, then it is covered by this conveyance which the United States has already given and must be paid for by the State of Utah.

"JUDGE GANEY: Yes, but Utah isn't concerned with that. They are the persons bringing this suit. Why should the United States be concerned with what lands Utah demands?

"MR. GRISWOLD: Because the United States will get payment for it and Utah must make payment.

"JUDGE GANEY: For only the lands that Utah wants.

"MR. GRISWOLD: No, for all of the lands in which the United States has title. Not just the land that Utah wants.

"JUDGE GANEY: But they aren't suing for all the lands. They are suing, it seems to me, for all the lands of the United States, except those that are in dispute.

"MR. GRISWOLD: No, I am sorry. It might well have been that. That might have been in retrospect a convenient way to have drafted the Statute. But the Statute provides for a judicial determination of the right, title and interest of the United States in the lands conveyed to the State of Utah, and the lands conveyed to the State of Utah are all the right, title and interest of the United States in lands lying below the meander line of the Great Salt Lake. And if the United States, in fact, owns these lands that Morton Salt claims, and other claimants claim, that land is conveyed to the State of Utah and the State of Utah is obligated to pay for it."

(Emphasis added)

The temptation to try the stipulation device to keep this "a nice simple case with two parties" has evidently overpowered reason. The Solicitor General was right the first time.

B. The Agreements To Convey And The Conveyances Provided For By This Stipulation Are Beyond The Power Of The Solicitor General; Moreover, The Agreement Of The Attorney General Of Utah Is Not Binding On The State

1. Despite the requirements of the Act that Utah shall pay the fair market value, as determined by the Secretary,

“of such lands (including minerals)” conveyed to Utah “as may be found by the Court to have been the property of the United States prior to the conveyance,” the Solicitor General pursuant to this stipulation has agreed:

“Should the State establish its own superior title as against the United States to the uncovered lands indicated on the attached map as ‘public domain reliction lands,’ the United States, without further contest in this or any other proceeding, shall abandon any claim as against the State to ownership prior to June 15, 1967, of the uncovered lands indicated on the attached map as ‘public land reliction under *Basart*,’ and shall acknowledge that the State owes nothing to the United States on account of the conveyance of such lands under Public Law 89-441.”

In other words, the Solicitor General is agreeing, purportedly on behalf of the United States, that the United States will convey the Basart lands to Utah without compensation if Utah should successfully show that it has title to “public domain reliction lands.” There is nothing in the Act, however, which can possibly be construed to delegate to the Solicitor General (or to anyone else in the Executive Branch of the Government) the authority to make such an agreement, nor to relinquish Federal rights in lands without compensation unless and until such lands have been determined by the Court, pursuant to the Act, not to have been owned by the United States.

Accordingly, the agreement to relinquish Federal rights is invalid and the conveyance of such lands would be void. As stated by this Court in *Sioux Tribe of Indians v. United States*, 316 U.S. 317, 326 (1942):

“Since the Constitution places the authority to dispose of public lands exclusively in Congress, the executive’s power to convey any interest in these lands must be traced to Congressional delegation of its authority.”

See also *Alabama v. Texas*, 347 U.S. 272 (1954).

2. With respect to the Attorney General of Utah's power to bind the State to pay for the Basart lands without adjudication of title thereto as provided in paragraphs 3 and 4 of the stipulation or to indemnify the United States as provided in paragraph 8 of the stipulation, Section 4(5) of the Utah legislation authorizing the State to initiate this action³ provides:

"No money payments to the United States other than proceeds paid to the United States from permits, licenses, and leases issued by the State on lands below the meander line as provided in S-265 shall be made without specific appropriation by the State Legislature."

It seems clear that the Attorney General's undertakings are also beyond his power and not binding on the State, at least with respect to this specific piece of litigation.

III. TO PRESERVE ITS CONSTITUTIONALITY THE ACT SHOULD BE CONSTRUED TO REQUIRE MORTON'S INTERVENTION

If the Great Salt Lake Lands Act could be construed to prevent a private party such as Morton from intervening to protect the validity of its title or its property interest, the Act would be unconstitutional as a deprivation of property without due process of law prohibited by the Fifth Amendment. A person's property rights are not subject to impairment by legislative action. *Choate v. Trapp*, 224 U.S. 665 (1911); *Union Pacific Railroad Co. v. United States*, 99 U.S. 700 (1879). Such a construction is to be avoided. In the interpretation of a Federal statute it is a cardinal principle of the Court to reach a conclusion which will avoid serious doubt as to the statute's constitutionality. *United States v. Rumely*, 345 U.S. 41 (1953). Nor will the Court lightly impute to Congress an intent to invade the

(³) Laws of Utah, 1966, 2d Spec. Sess. ch. 11.

rights protected by the Bill of Rights. *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1960).

We would hope that the issue of the constitutionality of the Act can be avoided in the interest of obtaining a judicial resolution of the important substantive questions involved in this case.

CONCLUSION

For the reasons set forth in this brief Morton's motion to intervene should be granted.

Respectfully submitted,

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April, 1968

CERTIFICATE OF SERVICE

I, Frank A. Wollaeger, one of the attorneys for Morton International, Inc. and a member of the Bar of this Court, do hereby certify that copies of the foregoing Brief were served upon the Solicitor General of the United States of America, Department of Justice, Washington, D. C. 20530; the Attorney General of Utah, 236 State Capitol Building, Salt Lake City, Utah 84114; and George E. Boss, Senior & Senior, 10 Exchange Place, Salt Lake City, Utah 84111, counsel for Great Salt Lake Minerals & Chemicals Corporation, by having the same delivered to their respective offices, in accordance with Rule 33 of the Rules of this Court.

FRANK A. WOLLAEGER

Counsel for Morton International, Inc.

