No. 31, Original

In the Supreme Court of the United States

October Term, 1970

STATE OF UTAH *Plaintiff,*

v.

UNITED STATES OF AMERICA *Defendant.*

Motion by State of Utah for Leave to File Supplemental Brief, Statement in Support of Motion, and Supplemental Brief

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April 22, 1971
(To Supplement Utah's Brief Dated March 9, 1971)

CONTENTS

AUTHORITIES CITED

I. Cases:

II. Statutes:

III. Miscellaneous:

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I. MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

The State of Utah respectfully moves this Honorable Court for leave to file a supplemental brief in the above entitled action, for the reasons set forth in the Statement in Support of Motion.

Dated this 22nd day of April, 1971.

VERNON B. ROMNEY
Utah Attorney General

II. STATEMENT IN SUPPORT OF MOTION

The State of Utah filed with this Court a brief dated March 9, 1971 in support of the Special Master's Report and in answer to exceptions filed by the United States. As the filing date for that brief drew near, the draft as then prepared appeared to be too long, and a considerable amount of material was deleted before the brief was sent to the printer.

One of the sections of the draft brief that was omitted related to the legislative history of the Submerged Lands Act. Utah's claim of title to the bed of the Great Salt Lake is based on the navigability of the Lake at statehood, and Utah's title would thus have vested on January 4, 1896, when Utah obtained statehood. The 1953 enactment of the Submerged Lands Act served only to "confirm" that pre-existing title. But the Government, in its brief supporting its exceptions to the Special Master's Report, contended that the Submerged Lands Act did not apply to navigable intrastate waters. In response to that, Utah prepared material to show that the act clearly and specifically applied to navigable intrastate waters. That part of this material which covered the legislative history of the act was deleted because it seemed primarily to show the specific acreage of the bed of the Great Salt Lake that was confirmed in Utah by the act. Since the Special Master concluded:

> Unless the parties to this action otherwise stipulate or agree, all issues relating to the exact boundaries of the bed of Great Salt Lake, as of January 4, 1896, are to be reserved for subsequent determination by this Court. (Conclusion of Law No. 19, Special Master's Report, p. 52),

it was assumed by Utah that it would be more proper to

reserve the material relating to the legislative history of the Submerged Lands Act for use in subsequent proceedings to determine exact boundaries. The rationale was that, if the Lake were found to be navigable at statehood, the Submerged Lands Act would be useful at that point to show exact boundaries as late as 1953, as between Utah and the United States. Any question of reliction, then, would be limted to the period of time between 1953 and the date of the quit-claim conveyance by the Government to Utah (June 15, 1967).

Counsel for the Government advised Counsel for Utah by telephone on Monday, April 19, 1971, that the Government would file a reply brief in response to Utah's brief dated March 9, 1971, and that such reply brief would contain argument by the Government to the effect that the Submerged Lands Act does not apply to the Great Salt Lake. In light of such expected argument by the Government, it now appears that it was an error in judgment on Utah's part to have deleted the legislative history of the Submerged Lands Act from its brief of March 9, 1971. Since there now is an issue before this Court as to whether the Submerged Lands Act applies at all to intrastate navigable waters, the legislative history of the act is useful to show, not only the exact acreage of the bed of the Lake that was confirmed in Utah, but, *a fortiori*, that the Submerged Lands Act does apply to intrastate navigable waters such as the Great Salt Lake.

Believing that the legislative history of that act will indeed be useful to the Court at the present stage of the proceedings, Utah respectfully requests the Court for leave to file a supplemental brief. The supplemental

brief desired by Utah to be filed is included as part III hereof, but should be read and considered as part of Point V.B. 3. of Utah's brief dated March 9, 1971. Since Utah has not received a copy of the Government's reply brief, the proposed supplemental brief does not respond to that brief, but simply supplements Utah's brief of March 9, 1971.

III. SUPPLEMENTAL BRIEF: LEGISLATIVE HISTORY OF SUBMERGED LANDS ACT

A. SYNOPSIS

In Utah's brief dated March 9, 1971, the Submerged Lands Act (43 U.S.C. 1301 *et seq.*) was discussed, but only to show the judicial background of the act, and to show that the phrase "laws of the United States" referred to the test of navigability-in-fact, applied as a rule of federal law in the federal courts. Indeed, the legislative history of the Submerged Lands Act makes that proposition clear in House Report 215 (to accompany H.R. 4198, see 1953 U.S. Code Cong. and Adm. News, p. 1387):

> Section 2(a) defines the term "lands beneath navigable waters" to mean the lands which were within State boundaries and covered by non-tidal waters *which were navigable under Federal law* at the time the State entered the Union . . . (emphasis added)

The term "navigability" is defined neither in the Submerged Lands Act nor in any other federal statute. Congress has always deferred to the judicial definition. It is generally true that the phrase "laws of the United

States" includes decisional law. See, for example, *United States v. Hvass*, 355 U.S. 570, 575 (1958) ("laws of the United States" include rules and regulations "and also decisional law"); *Warren v. United States*, 340 U.S. 523, 526-27 (1951) ("national laws" include "rules of court decisions"); and compare *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) ("laws of the several states" include state decisional law). And it is abundantly clear that Congress, in the Submerged Lands Act, used the phrase "navigable under the laws of the United States" as a reference to federal judicial decisions defining navigability (see Point V.B.3. at pages 92-97 of Utah's brief dated March 9, 1971).

But the focus of this supplemental brief is in another direction. The emphasis here is to show that the legislative history of the Submerged Lands Act clearly demonstrates that it was to apply not only to all inland navigable waters, including waters that are navigable intrastate only, but that it specifically applied to the Great Salt Lake.

This supplemental brief will show that:

1. Members of Congress (including both proponents and opponents of submerged lands legislation) clearly and expressly recognized that such legislation covered inland waters, including intrastate navigable waters. The same understanding was expressed by President Truman and the United States Solicitor General.

2. Congressional debate over submerged lands legislation endured over an eight year period, during which three bills were passed by the Congress. The first two were vetoed by President Truman and the third became law on

May 22, 1953. All three bills purported to confirm title in the states to all inland navigable waters.

3. The essence of the debate in Congress over inland waters was as follows:
   a. The proponents of the legislation (active support from 45 of the 48 states) argued that the submerged lands cases had cast a cloud upon state ownership of the beds of inland navigable waters, and that federal legislation confirming state title was necessary to remove the cloud;
   b. The opponents of the legislation (including President Truman and the United States Solicitor General, as well as certain members of Congress) argued that it was unnecessary to confirm state title to inland waters, because such state title had always been recognized and never questioned, and that such a course of action was simply a devious maneuver by coastal states to marshall support in Congress to obtain ownership of the three mile belt of the bed of the marginal sea.
4. Nevertheless, the Submerged Lands Act of May 22, 1953 clearly confirmed in the states title to 28,960,640 acres of land underlying inland waters. Of this total, 1,644,800 acres were said to be located in Utah. And, of Utah's total, 1,300,800 acres were clearly identified as constituting the bed of the Great Salt Lake.

B. LEGISLATIVE ATTENTION TO INLAND WATERS

During the 1930's and 1940's, considerable interest developed in the bed of the marginal sea as a source of petroleum, particularly off the California coast. The State of California issued a number of oil and gas leases

within a three mile belt of the marginal sea along the California coastline, assuming that such seabed and natural resources therein were state owned. The Federal Government became very much interested in the potential oil reserves in the bed of the marginal sea and began to examine the possibility of federal ownership of such seabed.

On May 29, 1945 the United States Attorney General, at the request of President Truman, filed suit against the State of California to determine whether the United States or California owned the bed of the marginal sea within the three mile belt. The submerged lands cases are discussed at pp. 86-90 of Utah's brief dated March 9, 1971.

Needless to say, the coastal states immediately became concerned when the United States began to question state ownership of the three mile belt of the marginal seabed. While the *California* case was still in litigation, and prior to its decision, the coastal states generated a good deal of activity in Congress to resolve any ownership questions in favor of the states. In order to marshall sufficient support in Congress to resolve such questions in favor of the states, it was suggested that all state ownership of the beds of navigable waters was in jeopardy, and that state title should be confirmed to inland waters and tidelands as well as the bed of the marginal sea. This would have been the effect of House Joint Resolution 225 (79th Cong., 2d Sess., 1946), but it was vetoed by President Truman on August 1, 1946. In his veto message, the President pointed out that the *California* case had been filed at his direction, and that he considered the Supreme Court, rather than the Con-

gress, to be the proper forum for determining state versus federal rights in the seabed. Moreover, the President pointed out that tidelands and inland waters would in no way be threatened, and that the Government had been willing, during the congressional debate on the measure, to give an outright disclaimer of any federal ownership as to the beds of such waters, but that Congress had rejected such an offer:

> The Supreme Court's decision in the pending case [*United States v. California*] will determine rights in land lying beyond ordinary low-water mark along the coast extending seaward for a distance of 3 miles. Contrary to widespread misunderstanding, the case does not involve any tidelands, which are lands covered and uncovered by the daily ebb and flow of the tides; nor does it involve any lands under bays, harbors, ports, lakes, rivers, or other inland waters. Consequently the case does not constitute any threat to or cloud upon the titles of the several States to such lands, or the improvements thereon. When the joint resolution was being debated in the Senate, an amendment was offered which would have resulted in giving an outright acquittance to the respective States of all tidelands and all lands, under bays, harbors, ports, lakes, rivers, and other inland waters. Proponents of the present measure, however, defeated this amendment. This clearly emphasized that the primary purpose of the legislation was to give to the States and their lessees any right, title, or interest of the United States in the lands and minerals under the waters within the 3-mile limit. (H. Doc. No. 765, 79th Cong., 2d Sess.) (See Senate Report No. 133, Part 2, p. 113, 83rd Cong., 1st Sess.)

As a result of the presidential veto, congressional activity did not abate on the submerged lands question,

but continued to flourish, with vigorous proponents and opponents both for state ownership and federal ownership. Then, after the Supreme Court had decided the *California, Louisiana* and *Texas* cases (see Utah's brief dated March 9, 1971, at pp. 86-90), Congress again sought to vest and confirm state ownership, not only to the three mile belt of the marginal sea, but also to tidelands and inland waters. This congressional declaration came in 1952, as Senate Joint Resolution 20, but was also vetoed by President Truman, on May 29, 1952. In this veto message the President said that he considered the joint resolution to be an unjustified gift of submerged lands to a few states, at the expense of the nation as a whole, because the inland states were getting nothing but deception in the confirmation of title to the beds of inland waters. This was so, thought the President, because the states already owned such lands:

> It has been claimed that such legislation as this is necessary to protect the rights of all the States in the lands beneath their navigable inland waters. It has been argued that the decisions of the Supreme Court in the California, Louisiana, and Texas cases have somehow cast doubt on the status of lands under these inland waters. There is no truth in this at all. Nothing in these cases raises the slightest question about the ownership of lands beneath inland waters. A long and unbroken line of Supreme Court decisions, extending back for more than 100 years, holds unequivocally that the States or their grantees own the lands beneath the navigable inland waters within the State boundaries.
>
> . . .
>
> If the Congress wishes to enact legislation confirming the ownership of what is already theirs

> —that is, the lands and resources under navigable inland waters and the tidelands—I shall, of course, be glad to approve it. But such legislation is completely unnecessary, and bears no relation whatever to the question of what should be done with lands which the States do not now own—that is, the lands under the open sea. (See Senate Report No. 133, Part 2, p. 135, 83rd Cong. 1st Sess.)

The controversy continued as to whether the submerged lands cases had cast any cloud upon state ownership of tidelands and the beds of inland waters. In support of the Submerged Lands Act, the National Association of State Attorneys General prepared a memorandum brief for Congress, which was placed in the Congressional Record, and which suggested that the Supreme Court decisions in the submerged lands cases could be read as portending only a qualified state ownership of tidelands and inland waters to protect the trust of public use; but which contended that such ownership had always been both in a proprietary and sovereign capacity, subject only to superior Federal powers granted by the Constitution:

> In English and American jurisprudence two separate and distinct sovereign rights have always been recognized with relation to navigable waters and the soils beneath them. These rights are: (1) proprietorship (jus privatum or dominium), and (2) governmental control for public use (jus publicum or imperium). Proprietorship (jus privatum—using, leasing, collecting revenues) must not and cannot interfere with the regulatory control (jus publicum), because the latter has always been paramount for the protection of the public uses of commerce, navigation, and fishing. In England both ownership and regulatory control (jus privatum and jus publicum) were vest-

> ed in the King. Under our constitutional system in the United States, the sovereign right of ownership (jus privatum) is vested in the respective States. The sovereign right of governmental control (jus publicum) is divided between the dual State and Federal sovereignties, with the States reserving all of such rights which were not delegated to the Federal Government. Under such a division of sovereign rights, State ownership of lands beneath navigable waters has not in the past and will not in the future interfere with that portion of the jus publicum contained in the paramount constitutional powers of the Federal Government for regulation and control of navigation, national defense, and other Federal powers. (1953 U.S. Code Cong. and Adm. News, p. 1531)

United States Solicitor General Philip B. Perlman responded to the contentions of the States Attorneys General, contending that as to tidelands and inland waters, there never had been and was not any question as to complete state ownership, and challenged the good faith of the States Attorneys General in even raising such an argument:

> . . . the Attorneys General's pamphlet purports to prove that the decisions by the Supreme Court as to the status of the submerged lands of the marginal sea involve the title to the submerged lands of the rivers, harbors, bays, lakes, and other inland waters of the States.
>
> This is not true, and never has been true. Those in charge of the quit-claim legislation know it. Part of the effort to legitimize the trespass on Federal areas by 3 States at the expense of the other 45 States is directed to concealing the true status of submerged lands of inland waters, and to block legislation proposed by the Government to dispose permanently of baseless and frivolous

> contentions in which the entire pamphlet is framed. (1953 U.S. Code Cong. and Adm. News, p. 1618).

The States Attorneys General had said, referring, among other things, to state ownership of submerged lands, that "This long-recognized rule of law, applicable to the waters and submerged lands of every State, has been destroyed and State titles clouded by the Supreme Court's 'tidelands' decision." Solicitor General Perlman responded:

> It is difficult to deal patiently with this series of misstatements. In the first place it should be noted that the word "tidelands" is a misnomer; the United States does not claim any rights, by reason of national sovereignty, in the soil of lands covered by the tides, and its rights begin at the low-water mark outside of tidelands, and seaward of inland waters, such as rivers, bays, etc., which empty into or are arms of the ocean.
>
> There is absolutely nothing, absolutely nothing, in the decisions by the Supreme Court in the California case or in the Louisiana and Texas cases (citations omitted) which destroys or impairs or affects in any degree any long-recognized rule of law, applicable to the inland waters and submerged lands under inland waters of any State. The Supreme Court in the California case, may fairly be said to have confirmed State rights in "lands under inland navigable waters such as rivers, harbors, and even tidelands down to the low-water mark." (1953 U.S. Code Cong. and Adm. News, p. 1621)

and, further:

> State ownership of submerged lands under inland waters has not been affected by the rejection of State claims to the resources of the sub-

> merged lands of the marginal sea, and, as has been shown, beyond even the marginal sea. But in order to take away from quitclaim proponents the opportunity to continue to present such a baseless contention, the appropriate Federal agencies prepared and submitted to Congress a bill releasing and relinquishing to the States, and to all others lawfully entitled, all right, title, and interest of the United States, if any it has, in and to all lands beneath navigable inland waters within the boundaries of the respective States. (1953 U.S. Code Cong. and Adm. News, p. 1623).

The final version of the Submerged Lands Act, identified as Senate Joint Resolution 13 and H.R. 4198 (83rd Cong., 1st Sess.), persisted in including a confirmation of state title for tidelands and inland waters, as well as the marginal sea. The Senate Committee Report explained:

> The joint resolution treats all of the States alike, both inland and coastal, with respect to lands beneath navigable waters within their respective boundaries. As shown by the list in appendix F, every State has submerged lands which are covered by this joint resolution. Comparative totals show far greater areas under inland waters and the Great Lakes, as follows:
>
> | | *Acres* |
> |---|---|
> | Lands under inland waters | 28,960,640 |
> | Lands under Great Lakes | 38,595,840 |
> | Lands under marginal seas | 17,029,120 |
>
> All of these areas of submerged lands have been treated alike in this legislation because they have been possessed, used, and claimed by the States under the same rule of law, to wit: That the States own all lands beneath navigable waters within their respective boundaries. (Senate Re-

port No. 133, March 27, 1953 [to accompany S.J. 13], 83rd Cong., 1st Sess., at p. 7)

The lands under the Great Lakes and the belt of land under the marginal sea are not difficult to identify, but the 28,960,640 acres of lands under inland waters require further identification. Part of that identification was provided in Appendix F to the Senate Report, which contained the following table (at page 76):

APPENDIX F

Approximate areas of submerged lands within State boundaries

[Expressed in acres]

State	Inland waters [1]	Great Lakes [2]	Marginal sea [1]
Alabama	339, 840		101, 760
Arizona	210, 560		
Arkansas	241, 280		
California	1, 209, 600		2, 540, 800
Colorado	179, 200		
Connecticut	70, 100		384, 000
Delaware	50, 560		53, 760
Florida	2, 750, 720		4, 697, 600
Georgia	229, 120		192, 000
Idaho	479, 360		
Illinois	289, 920	976, 640	
Indiana	55, 040	145, 920	
Iowa	188, 160		
Kansas	101, 320		
Kentucky	183, 040		
Louisiana	2, 141, 440		2, 668, 160
Maine	1, 392, 000		750, 080
Maryland	441, 600		59, 520
Massachusetts	224, 000		368, 640
Michigan	764, 160	24, 613, 760	
Minnesota	2, 597, 760	1, 415, 680	
Mississippi	189, 440		136, 320
Missouri	258, 560		
Montana	526, 080		
Nebraska	373, 760		
Nevada	472, 320		
New Hampshire	179, 200		8, 960
New Jersey	200, 960		249, 600
New Mexico	99, 200		
New York	1, 054, 080	2, 321, 280	243, 840
North Carolina	2, 284, 800		577, 920
North Dakota	391, 040		
Ohio	64, 000	2, 212, 480	
Oklahoma	470, 910		
Oregon	403, 840		568, 320
Pennsylvania	184, 320	470, 400	
Rhode Island	90, 840		76, 800
South Carolina	295, 040		359, 040
South Dakota	327, 040		
Tennessee	182, 400		
Texas	2, 364, 800		2, 466, 560
Utah	1, 011, 800		
Vermont	211, 840		
Virginia	586, 240		215, 040
Washington	777, 600		300, 800
West Virginia	58, 240		
Wisconsin	920, 960	6, 439, 680	
Wyoming	261, 120		
Total	28, 960, 640	38, 595, 840	17, 029, 120

1 Areas of the United States, 1940, 16th Census of the United States (Government Printing Office, 1942) p. 2 et seq. The figures are very approximate but are absolute minimums.

2 World Almanac and Book of Facts for 1947, published by the New York World-Telegram (1947), p. 138; Serial No. 22d Department of Commerce, U. S. Coast and Geodetic Survey, November 1915. In figuring the marginal sea area, only original State boundaries have been used. These coincide with the 3-mile limit for all States except Texas, Louisiana, and Florida gulf coast. In the latter cases, the 3-league limit as established before or at the time of entry into the Union has been used.

The same tabulation of acreage for lands beneath inland waters as used by the Senate Report in its Appendix F had earlier been included in the brief of the States Attorneys General which had been placed in the Congressional Record, along with a statement to the effect that such submerged lands contained valuable minerals which produced revenues to support education and other functions of state government, as follows:

(See Cong. Rec., July 24, 1951—Senate, Vol. 97, Part 7, 82nd Cong., 1st Sess., p. 8720)

Approximate areas and present uses of submerged lands within State boundaries

[Expressed in acres]

State	Inland waters [1]	Great Lakes [2]	Marginal sea [2]	Present uses and revenues include—
Alabama	339,840	.....	101,760	Sand, gravel, shell, oysters, oil and gas leases.
Arizona	210,560	.....	.....	Sand and gravel.
Arkansas	241,280	.....	.....	84,641 acres under oil and gas lease; sand and gravel.
California	1,209,600	.....	2,540,800	Oil, gas, sand, gravel, kelp, and shell.
Colorado	179,200	.....	.....	Sand, gravel, and gold.
Connecticut	70,400	.....	384,000	50,000 acres of marginal sea under lease; shell fish, sand, gravel, oysters, clams, mussels.
Delaware	50,560	.....	53,760	Oyster bed leases, sand, gravel.
Florida	2,750,720	.....	4,697,600	003,000 acres of Gulf of Mexico under lease. 2,748,000 acres of land under inland waters and under lease; oil, gas, sand, gravel, sponges, oysters.
Georgia	220,120	.....	192,000	Sand and shell, approximately 1,000 acres of land in marginal sea leased.
Idaho	479,360	.....	.....	Sand and gravel. 1,302.96 acres under lease for gold and gravel.
Illinois	289,920	976,640	.....	Sand, gravel, coal, and clay.
Indiana	55,040	145,920	.....	Sand, gravel, coal, oil, mussel shells, peat, and marl. The revenues during 1948–49 included: sand and gravel, $50,563.68; oil, $101,413.51; coal, $4,453.56.
Iowa	188,160	.....	.....	Sand and gravel, coal, stone, ice, shell.
Kansas	104,320	.....	.....	Sand, gravel, oil, and gas. 6,944.96 acres of submerged lands under mineral leases.
Kentucky	183,040	.....	.....	Fish, mussel, shells, coal, gas, oil, sand and gravel.
Louisiana	2,141,440	.....	2,668,160	Sand, gravel, oysters, and other marine products. 2,191,179 acres under lease in coastal waters.
Maine	1,392,000	.....	759,680	Kelp, clams, lobsters, mussels, fish. Total income of $14,000,000.
Maryland	441,600	.....	59,520	Oil and gas leases on entire marginal sea. Receive $20,557 annual rentals.
Massachusetts	224,000	.....	368,640	Clams, lobsters, mussels, sand, rock.
Michigan	764,160	24,613,760	.....	Leases cover oil and gas, sand and gravel.
Minnesota	2,597,760	1,415,680	.....	Sand, gravel, clay.
Mississippi	189,440	.....	136,320	Sand, gravel, oyster shell.
Missouri	258,560	.....	.....	Sand and gravel.
Montana	526,080	.....	.....	Do.
Nebraska	373,760	.....	.....	Do.
Nevada	472,320	.....	.....	Do.
New Hampshire	179,200	.....	8,960	Kelp leases, sand and shell.
New Jersey	200,960	.....	249,600	$55,000,000 improvements below high-water mark, including Atlantic City piers.
New Mexico	99,200	.....	.....	Sand and gravel.
New York	1,054,080	2,321,280	243,840	Recreation beaches, surf; removal of sand and earth. Millions of improvements on filled-in lands.
North Carolina	2,284,800	.....	577,920	Oysters, shellfish, clams, sand, seaweed, shrimp.
North Dakota	391,040	.....	.....	Sodium sulphate, good prospects for oil, sand and gravel. Revenues dedicated to school fund.
Ohio	64,000	2,212,480	.....	Sand and gravel.
Oklahoma	470,040	.....	.....	Mineral leases- sand and gravel.
Oregon	403,840	.....	568,320	Sand and gravel, oil, gas, kelp.
Pennsylvania	184,320	470,400	.....	Oil sands, clays, and coals.
Rhode Island	99,840	.....	76,800	Sand, gravel, oysters.
South Carolina	295,040	.....	359,040	Sand and gravel. All lands leased for oil and gas explorations.
South Dakota	327,040	.....	.....	Sand and gravel. Possibility of oil under submerged lands.
Tennessee	182,400	.....	.....	Sand and gravel.
Texas	2,364,800	.....	2,466,560	Sand, gravel, oysters, shell, shrimp, sulfur, oil, and gas.
Utah	1,644,800	.....	.....	Mineral leases for salt; sodium sulphate, oil and gas.
Vermont	211,840	.....	.....	Sand, gravel, and quarries.
Virginia	586,240	.....	215,040	Sand, gravel, oysters.
Washington	777,600	.....	300,800	Placer gold, gold, copper, lead, silver, zinc, coal, limestone, marl, peat and salines, sand and gravel, and rentals on 130 oil and gas leases: 1 producing oil well in the tidelands area.
West Virginia	58,240	.....	.....	Sand and gravel, and prospecting for coal, oil and gas.
Wisconsin	920,960	6,439,680	.....	Sand, gravel and marl.
Wyoming	261,120	.....	.....	Sand and gravel.
Total (expressed in acres)	28,960,640	38,595,840	17,020,120	

[1] Areas of the United States, 1940, Sixteenth Census of the United States (Government Printing Office, 1942), p. 2, et seq. The figures are very approximate but are absolute minimums.

[2] World Almanac and Book of Facts for 1947, published by the New York World-Telegram (1947), p. 138; serial No. 22, Department of Commerce, U. S. Coast and Geodetic Survey, November 1915. In figuring marginal sea area, only original State boundaries have been used. These coincide with the 3-mile limit for all States except Texas, Louisiana, and Florida Gulf coast. In the latter cases, the 3-league limit as established before or at the time of entry into the Union has been used.

Solicitor General Perlman had responded:

> This statement [that states were deriving revenues from natural resources within inland waters], standing alone, is undoubtedly true. What is false about it—and the publication with it of lists of the acreages of lands under inland waters, the Great Lakes and the marginal sea; and of the known resources of the waters and the submerged lands of such waters—is the treatment of the facts as if such waters and their submerged lands and resources have been held to be subject to the paramount power and full dominion of the United States. No more complete misrepresentation has ever been made to the Members of Congress of the United States. In this way, and only in this way, could the proponents of the Walter bill dare print a list of every one of the 48 States with the acreages and resources of submerged lands of inland waters, in an attempt to persuade the elected representatives of all the States, that, unless the Walter bill is enacted, they may be deprived of valuable resources belonging to their people. (1953 U.S. Code Cong. and Adm. News, p. 1619)

The Minority Views of those opposing the Submerged Lands Act were published as part of House Report 215 (To accompany H.R. 4198) and as Part II of Senate Report No. 133 (To accompany S. J. Res. 13) (both reports dated March 27, 1953, 83rd Cong., 1st Sess.), wherein a considerable space was devoted to detailing what the Minority Members thought was clear evidence that state ownership of inland navigable waters had never been challenged by the Federal Government, but in fact had been explicitly and repeatedly recognized. (See, for example, 1953 U.S. Code Cong. and Adm. News, pp. 1440, 1468-69, 1550-55, 1617-40)

As note 1 to Appendix F of the Senate Report ex-

plained, the tabulation for lands under inland waters was taken from a Government publication entitled Areas of the United States, 1940, and published in connection with the 16th Census of the United States. That note explains that the acreage figures "are very approximate but are absolute minimums."

A reference to the U.S. Census publication cited shows that there the figures are expressed in square miles, rather than acres, although the figures correspond when converted from square miles to acres. As will be seen, the "approximate" nature of the figures might have resulted from the fact that the basic table for states in the Census report rounded acreage amounts to the nearest square mile, and thus dealt in no units smaller than 640 acres. However, supplementary tables in the Census publication do show a breakdown of lands under inland waters for each county in each state, for each voting precinct in each state, and for all incorporated areas having a population of 1,000 or more persons. Thus, it is possible to locate the exact number of square miles (in these tables the area is broken down to the nearest one-tenth of a square mile) of inland waters in each voting precinct or minor political subdivision in the entire United States. With respect to the Great Salt Lake, this identification will be illustrated in the next section of this brief.

But, before turning to an examination of the Submerged Lands Act's confirmation of specific acreage (as shown in the legislative history of the act), it is perhaps important to point out that the key language of the act, so far as relevant here, is found in what now is codified as 43 U.S.C. 1311 (a):

> It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the provision hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950 [the date of the Supreme Court decisions in the *Louisiana* and *Texas* cases], entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

This language, as will be seen, was specifically intended to cover the bed of the Great Salt Lake in the State of Utah.

C. SPECIFIC LEGISLATIVE CONFIRMATION OF TITLE IN UTAH TO THE BED OF THE GREAT SALT LAKE

1. *Senate Committee Report*: As already shown above, the final Senate Committee Report on the Submerged Lands Act (Report No. 133, March 27, 1953, 83rd Cong., 1st Sess., To accompany S.J. 13) set forth the exact acreages of the beds of navigable waters confirmed in each state. This tabulation was contained in Appendix F to the report (at page 76), and the State of Utah was listed as having 1,644,800 acres of land underlying inland waters, title to which was confirmed in Utah under the act. Footnote No. 1 to that Appendix characterized the acreage figures as "absolute minimums" and cited, in support thereof, a publication en-

titled "Areas of the United States, 1940" (16th Census of the United States, Government Printing Office, 1942).

2. *Areas of the United States, 1940*: This publication, as cited by the Senate Committee Report, contains at page 6 a table of land areas expressed in square miles, rather than acres, as follows:

AREAS OF THE UNITED STATES: 1940

TABLE 1.—LAND AND WATER AREA OF THE UNITED STATES, BY STATES: 1940

STATE	AREA IN SQUARE MILES			STATE	AREA IN SQUARE MILES		
	Total	Land[1]	Inland water[2]		Total	Land[1]	Inland water[2]
UNITED STATES	3,022,387	2,977,128	45,259	UNITED STATES—Continued			
Alabama	51,609	51,078	531	Nebraska	77,237	76,653	584
Arizona	113,909	113,580	329	Nevada	110,540	109,802	738
Arkansas	53,102	52,725	377	New Hampshire	9,304	9,024	280
California	158,693	156,803	1,890	New Jersey	7,836	7,522	314
Colorado	104,247	103,967	280	New Mexico	121,666	121,511	155
Connecticut	5,009	4,899	110	New York	49,576	47,929	1,647
Delaware	2,057	1,978	79	North Carolina	52,712	49,142	3,570
District of Columbia	69	61	8	North Dakota	70,665	70,054	611
Florida	58,560	54,262	4,298	Ohio	41,222	41,122	100
Georgia	58,876	58,518	358	Oklahoma	69,919	69,283	636
Idaho	83,557	82,808	749	Oregon	96,981	96,350	631
Illinois	56,400	55,947	453	Pennsylvania	45,333	45,045	288
Indiana	36,291	36,205	86	Rhode Island	1,214	1,058	156
Iowa	56,280	55,986	294	South Carolina	31,055	30,594	461
Kansas	82,276	82,113	163	South Dakota	77,047	76,536	511
Kentucky	40,395	40,109	286	Tennessee	42,246	41,961	285
Louisiana	48,523	45,177	3,346	Texas	267,339	263,644	3,695
Maine	33,215	31,040	2,175	Utah	84,916	82,346	2,570
Maryland	10,577	9,887	690	Vermont	9,609	9,278	331
Massachusetts	8,257	7,907	350	Virginia	40,815	39,899	916
Michigan	58,216	57,022	1,194	Washington	68,192	66,977	1,215
Minnesota	84,068	80,009	4,059	West Virginia	24,181	24,090	91
Mississippi	47,716	47,420	296	Wisconsin	56,154	54,715	1,439
Missouri	69,674	69,270	404	Wyoming	97,914	97,506	408
Montana	147,138	146,316	822				

[1] Land area is defined to include: Dry land and land temporarily or partially covered by water, such as marshland, swamps, and river flood plains; streams, sloughs, estuaries, and canals less than one-eighth of a statute mile in width; and lakes, reservoirs and ponds having less than 40 acres of area.

[2] Inland water is defined to include: Permanent inland water surface, such as lakes, reservoirs and ponds having 40 acres or more of area; streams, sloughs, estuaries, and canals one-eighth of a statute mile or more in width; deeply indented embayments and sounds, and other coastal waters behind or sheltered by headlands or islands separated by less than one nautical mile of water; and islands having less than 40 acres of area. This inland water excludes 74,364 square miles of water which consists of deeply indented embayments and sounds, and other coastal waters lying between the outer limits set for inland water and behind or sheltered by headlands or islands separated by less than 10 nautical miles of water; table IV shows in detail such waters for each state.

It will be observed that the above figures expressed in square miles correspond exactly to the Senate Report where the figures were expressed in acres. For example, the above table lists Utah as having 2,570 square miles of land underlying inland waters, which, when multiplied by 640 to convert to acres, exactly equals the 1,644,800 acres contained in the Senate Committee Report. The same publication contains supplementary tables which further identify the lands underlying navigable waters covered by the Submerged Lands Act, as will be shown below.

3. *County Charts*: The same Census Bureau publication, at pp. 6 through 17, lists the exact acreage of lands underlying inland navigable waters for each county within each of the forty-eight states. For example, at page 16, the twenty-nine counties of Utah are listed as follows:

COUNTY	Total area in square miles	Land area in square miles	Inland water area in square miles
UTAH	84,916	82,346	2,570
Beaver	2,589	2,587	2
Box Elder	6,719	5,594	1,125
Cache	1,176	1,175	1
Carbon	1,482	1,474	8
Daggett	764	764	(#)
Davis	633	268	365
Duchesne	3,264	3,260	4
Emery	4,450	4,442	8
Garfield	5,218	5,217	1
Grand	3,702	3,692	10
Iron	3,306	3,300	6
Juab	3,421	3,412	9
Kane	4,116	4,105	11
Millard	6,805	6,648	157
Morgan	611	610	1
Piute	761	753	8
Rich	1,078	1,022	56
Salt Lake	814	764	50
San Juan	7,916	7,884	32
Sanpete	1,613	1,597	16
Sevier	1,938	1,932	6
Summit	1,864	1,860	4
Tooele	7,289	6,911	378
Uintah	4,445	4,420	25
Utah	2,141	1,998	143
Wasatch	1,207	1,194	13
Washington	2,428	2,425	3
Wayne	2,493	2,489	4
Weber	673	549	124

It will be observed that, of Utah's total of 2,570 square miles of land underlying inland waters, the five counties bordering on the Great Salt Lake have the following figures listed as the number of square miles underlying inland waters within those counties:

Box Elder County	1,125 square miles
Davis County	365 square miles
Salt Lake County	50 square miles
Tooele County	378 square miles
Weber County	124 square miles
Five County Total	2,042 square miles

Thus, of Utah's total of 2,570 square miles of land underlying inland waters, 2,042 square miles are located in the counties bordering the Great Salt Lake. Converted to acres, of Utah's total of 1,644,800 acres, 1,306,880 acres are located in the counties bordering the Lake. But not quite all of this land was located within the surveyed meander line of the Great Salt Lake, as will be shown below.

4. *Voting Precinct Tables*: The same publication contains more detailed figures at pp. 18 through 304, where the tables are entitled "Land and Water Area of Counties by Minor Civil Divisions: 1940," and where the area is broken down to the nearest one-tenth of a square mile. The table for Utah appears at pp. 271-74, and the minor civil divisions used are the election precincts of the counties within the State. At pages 440-41 are maps of the State of Utah, showing the exact election precincts set forth in the table appearing at pp. 271-74. Thus, the combination of the table and the maps gives the exact area of land underlying inland water for each

election precinct, and the exact boundaries of each precinct can be identified on the maps.

So far as relevant here, the map appearing on page 440 covers the northern half of Utah, and includes the area where the Great Salt Lake is located. The bed of the Great Salt Lake is shown as that area within the surveyed meander line of the Lake. The boundaries of each election precinct adjacent to the Lake are shown, and that part of the bed of the Lake contained within each such precinct is also shown. Thus, from this map one can readily see the exact part of the bed of the Lake contained within each such precinct, and from the table appearing at pp. 271-74 one can further readily ascertain the exact area (to the nearest one-tenth of a square mile) of lakebed included within any particular precinct. The table and the map show that the following election precincts have the following land areas underlying the Great Salt Lake as a body of inland water, title to which was confirmed in Utah by the Submerged Lands Act:

County	*Election Precinct*	*Inland Water Area in Square Miles*
Box Elder	Lakeside	361.2
	Balance of County (this large area of the Lake was excluded from election precincts, as shown on map at page 440)	758.4
Davis	Centerville Precinct	9.2
	Farmington Precinct (excluding Farmington City)	314.1
	Kaysville Precinct (excluding Kaysville City)	5.1
	Syracuse Precinct	24.1
	West Point Precinct	13.0

Salt Lake	Precinct No. 4	20.9
	Precinct No. 12	27.4
Tooele	Precinct No. 2 (Grantsville, excluding Grantsville City)	320.7
	Precinct No. 3 (Lake Point)	56.9
Weber	Hooper Precinct	12.5
	Warren Precinct	17.0
	West Warren Precinct	92.0
	Total Great Salt Lake Area	2,032.5

Thus, of the total of 2,570 square miles of land underlying inland water confirmed in Utah by the Submerged Lands Act, 2,032.5 square miles are specifically identified as constituting the bed of the Great Salt Lake; and, converted to acres, of Utah's total of 1,644,800, it is indisputable that 1,300,800 acres constituted the bed of the Lake within the surveyed meander line.

D. SUMMARY

It is really rather absurd for anyone to argue that the Submerged Lands Act does not apply to the Great Salt Lake, because:

1. For several years Congress vigorously debated the inclusion of inland waters in that act, and had before it the specific list of acreages within each state, including an express figure of 1,644,800 acres located within Utah and to be covered by the act;

2. Neither the members of Congress who opposed the Submerged Lands Act, nor the President of the United States, nor the United States Solicitor General, ever questioned the applicability of the act to the acreages listed as lands underlying inland waters; but, on the contrary, expressly recognized such coverage by

the act, and simply argued that such coverage was unnecessary because the states already owned such lands;

3. The Census Bureau publication, specifically cited by Congress as the source of information for the acreage figures used for lands underlying inland waters and to be confirmed in the states, clearly identifies the Great Salt Lake as having 1,300,800 acres of lakebed lands covered by the act;

4. The final Senate Committee Report on the Submerged Lands Act said that the figures used for the acreage underlying inland waters, title to which was to be confirmed in the states, were "absolute minimums." And, in identifying this specific acreage, the Senate Committee Report said:

> As shown by Appendix F, every State has submerged lands which are covered by this joint resolution. (Senate Report No. 133, March 27, 1953 [To accompany S.J. 13], 83rd Cong., 1st Sess., p. 7)

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April 22, 1971

CERTIFICATE OF SERVICE

I, VERNON B. ROMNEY, Attorney General of, and counsel for, the State of Utah, and a member of the Bar of this Court, do hereby certify that copies of the foregoing MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF, STATEMENT IN SUPPORT OF MOTION, and SUPPLEMENTAL BRIEF of the State of Utah were served upon the Solicitor General of the United States of America, Department of Justice, Washington, D.C. 20530; by delivering the same, this 22nd day of April, 1971, all in accordance with the Rules of this Court.

VERNON B. ROMNEY
Utah Attorney General