

No.

84

Original

MAY 30 1979

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA

**MOTION FOR LEAVE TO FILE COMPLAINT,
COMPLAINT AND MEMORANDUM IN
SUPPORT OF MOTION**

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA

MOTION FOR LEAVE TO FILE COMPLAINT

The United States of America respectfully asks leave of the Court to file the attached Complaint against the State of Alaska.

WADE H. MCCREE, JR.
Solicitor General

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UNITED STATES OF AMERICA, PLAINTIFF

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STATE OF ALASKA

COMPLAINT

The United States of America, plaintiff, alleges for its cause of action as follows:

I

The jurisdiction of this Court is invoked under Article III, Section 2, clause 2, of the Constitution of the United States and 28 U.S.C. 1251(b)(2).

II

At all material times, the United States has exercised sovereign rights over the seabed and subsoil area along the coast of Alaska from the low-water mark and outer limit of inland waters to the limits of the continental shelf. These sovereign rights include the right to explore the area and exploit its natural resources.

III

Upon admission of the State of Alaska to the Union, the State became entitled to those rights in its adjacent coastal seabed and subsoil that are granted to states by the Submerged Lands Act of 1953, ch. 65, 67 Stat. 29, 43 U.S.C. 1301, *et seq.* See Alaska Statehood Act, Pub. L. No. 85-508, Section 6(m), 72 Stat. 343, 48 U.S.C. page 1246. The State thus obtained from the United States the title and ownership of the submerged lands adjacent to the State for a distance not more than three geographical miles from the ordinary low-water mark or the outer limit of the inland waters. The United States retained, however, ownership of the seabed and subsoil areas adjacent to the coast of Alaska lying more than three geographical miles seaward of the low-water mark and outer limit of the inland waters.

IV

Alaska claims some right, title, or interest in the seabed and subsoil of the continental shelf underlying the Beaufort Sea more than three geographical miles seaward from the ordinary low-water mark and from the outer limit of inland waters along the coast of Alaska. The State's claim is adverse to and is disputed by the United States.

V

In the exercise of the rights claimed by it, Alaska attempted to offer lands in the Beaufort Sea more than three geographical miles seaward from the ordi-

nary low-water mark and the outer limit of inland waters for leasing to exploit the valuable natural resources (primarily petroleum and natural gas) under the seabed. The United States protested Alaska's attempt to lease these lands. The State persists, however, in its resolve to award leases in these lands.

In enacting Section 8 of the Outer Continental Shelf Lands Act, Pub. L. No. 212, 67 Stat. 462, 468, 43 U.S.C. 1331, 1337, Congress declared the "urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf" and authorized the Secretary of the Interior to grant mineral leases in that area by competitive bidding. By its conduct and claims, the State of Alaska is interfering with and obstructing, or threatens to obstruct, the orderly and effective leasing, exploration, and development of said mineral resources. In particular, the State's actions hinder the conduct of competitive bidding by the Secretary for the award of leases in the Beaufort Sea. The State's actions will continue to cause great and irreparable injury to the United States unless the rights of the United States are declared and established by this Court.

VI

The coastline to be used for determining the respective rights of the United States and Alaska under the Submerged Lands Act is the same coastline employed to determine the territorial sea of the United States in its conduct of foreign affairs. *United States v. California*, 381 U.S. 139, 165 (1965). By its conduct

and claims, the State of Alaska casts uncertainty on the position of the United States as to the location of its territorial seas and threatens to embarrass the United States in the conduct of foreign affairs and thereby cause great and irreparable injury to the United States unless the rights of the United States are declared and established by this Court.

WHEREFORE the United States prays that the defendant be required to answer this complaint, and that, after due proceedings had, a decree be entered declaring the rights of the United States as against the defendant State in the subsoil and seabed underlying the waters adjacent to Alaska in the area of the Beaufort Sea, and enjoining the defendant, its privies, assigns, lessees and other persons claiming under it, from interfering with the said rights of the United States.

WADE H. MCCREE, JR.
Solicitor General

In the Supreme Court of the United States

OCTOBER TERM, 1978 ____

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

JURISDICTION

The jurisdiction of this court rests on Article III, Section 2, clause 2 of the United States Constitution and 28 U.S.C. 1251(b)(2). *United States v. California*, 332 U.S. 19 (1947).

STATEMENT

The United States exercises sovereign rights over the seabed and subsoil area along the coast of Alaska from the low-water mark to the limits of the continental shelf. These sovereign rights include the right to explore the area and exploit its natural resources.

When Alaska was admitted to the Union, it became entitled to the same rights previously conferred on other states by the Submerged Lands Act, ch. 65, 67 Stat. 29, 43 U.S.C. 1301, *et seq.* See Alaska Statehood Act, Pub. L. No. 85-508, Section 6(m), 72 Stat. 343, 48 U.S.C. page 1246. The State thus obtained title and ownership of the submerged lands adjacent to its coastline at a distance not more than three miles from the "ordinary low water" mark and the "seaward limit of [the] inland waters" of the State. 43 U.S.C. 1301(c), 1311, 1312.

The terms "ordinary low water" and "seaward limit of inland waters"—which are the baseline for determining the State's rights—are not further defined in the Submerged Lands Act. In *United States v. California*, 381 U.S. 139, 150-160, 165 (1965), the Court determined that the purposes of the Act can best be advanced by adopting the coastline definitions employed in the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1607, T.I.A.S. No. 5639. "This establishes a single coastline for both the administration of the Submerged Lands Act and the conduct of our future international relations * * *." 381 U.S. at 165.

In 1970, the United States prepared a set of maps applying the principles of the Convention and depicting the territorial sea along the entire coast of the Nation, including Alaska. These maps are an appropriate basis for determining the submerged coastal areas granted to the States by the Submerged Lands Act. See *United States v. Florida*, No. 52, Original,

Report of Special Master at 52-55 (January 18, 1974), exceptions overruled in relevant part, 420 U.S. 531 (1975); *United States v. California*, *supra*, 381 U.S. at 165.

Alaska has contested the delimitation of the territorial sea along the coast of Alaska as depicted in these maps. The State claims that the United States is not properly applying the principles of the Convention. See, generally, *Provisional U.S. Charts Delimiting Alaskan Territorial Boundaries: Hearing Before the Senate Comm. on Commerce*, 92d Cong., 2d Sess. (1972). In particular, Alaska contests the determination made by the United States of the coastline in the areas along the north slope of the State at the Beaufort Sea.

The territorial sea of the United States along the Beaufort Sea is depicted by a line generally paralleling the low water line of the mainland at a distance of three geographical miles. Where appropriate, the territorial sea also includes an area within three miles of offshore islands. Large portions of the area between these islands and the mainland, however, fall outside this delimitation of the territorial sea.

Alaska, on the other hand, claims that all of the submerged lands between the mainland and the offshore islands in the Beaufort Sea are properly subject to its control under the Submerged Lands Act. Apparently, it is the State's contention that the offshore islands are to be connected with straight lines in determining our coastline under the Convention on

the Territorial Sea and Contiguous Zone and that all submerged areas landward of the islands are thus within the grant made to the State by the Submerged Lands Act. In the alternative, the State claims that the waters between the offshore islands and the mainland are historic inland waters of the United States. Cf. *United States v. Alaska*, 422 U.S. 184 (1975).

The United States does not assert a claim to historic inland waters in the areas along the Beaufort Sea. Nor could such a claim be supported under the analysis of *United States v. Alaska*, *supra*. Moreover, although Article IV of the Convention on the Territorial Sea and Contiguous Zone, *supra*, 15 U.S.T. at 1608, permits a nation to utilize straight closing lines between offshore islands to enclose inland waters "where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast," the United States does not employ this method in determining its territorial sea. The Court has noted that the choice whether to employ the straight line system "rests with the Federal Government, and not with the individual States." *United States v. Louisiana*, 394 U.S. 11, 72-73 (1969), quoting *United States v. California*, 381 U.S. 139, 168 (1965).

Pursuant to its claims, however, the State issued a public notice in February 1975 of its intention to award leases for areas within the Beaufort Sea that included certain lands outside the territorial sea established by the United States. The Federal Government protested the proposed leases, and the State withheld

any award of leases in the disputed area. The State and the United States have attempted to negotiate a resolution of their dispute, but these efforts have been unsuccessful.

ARGUMENT

THIS CASE IS AN APPROPRIATE ACTION FOR DECLARATORY RELIEF AND IS SUITED FOR RESOLUTION IN THIS COURT

1. This case involves an important controversy between the United States and Alaska. The dispute over ownership of portions of the submerged lands in the Beaufort Sea concerns an area richly endowed with oil, natural gas and commercially valuable minerals. See, *e.g.*, S. Rep. No. 93-207, 93d Cong., 2d Sess. (1973); H.R. Conf. Rep. No. 93-624, 93d Cong., 1st Sess. (1973). It is estimated that over three billion barrels of oil and eight trillion cubic feet of natural gas lie beneath the Beaufort Sea.

2. The dispute over ownership of these submerged lands is an obstacle to "[t]he early development and delivery of oil and gas from Alaska's North Slope to domestic markets," which Congress has declared "is in the national interest." 43 U.S.C. 1651. As early as 1953, when Congress enacted the Outer Continental Shelf Lands Act, Pub. L. No. 212, 67 Stat. 462, 43 U.S.C. 1331, *et seq.*, it has been recognized that there is an "urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf." 43 U.S.C. 1337 (a). Accordingly, the Secretary of the Interior has been authorized to award leases for oil and gas ex-

ploration and production in the portion of the submerged lands in the continental shelf retained by the United States. *Ibid.* Such leases are to be awarded by competitive bidding. *Ibid.* But before companies will commit substantial resources to bid on such leases and explore for petroleum and natural gas in the continental shelf, they must be assured that their lessor—whether the United States or the State—has authority to award the lease.¹ The dispute between the United States and Alaska over submerged lands in the Beaufort Sea has placed a cloud over title in this area and hindered the development of its abundant resources. Prompt resolution of this dispute is therefore essential.

3. The extensive coastal claims of Alaska in the Beaufort Sea also threaten to interfere with the con-

¹ When a controversy exists as to ownership of a submerged area, the State and the United States may agree jointly to award a lease to permit exploration and development in the disputed area pending final determination of the dispute. 43 U.S.C. 1336. Pursuant to such an agreement, the oil and gas resources underlying the seabed of the Gulf of Mexico adjacent to the State of Louisiana have been under development since 1956. The State and the Federal Government have continued to seek final resolution of that dispute. See *United States v. Louisiana*, 404 U.S. 388 (1971); *United States v. Louisiana*, 420 U.S. 529 (1975); *United States v. Louisiana*, 422 U.S. 13 (1975).

The State of Alaska and the Federal Government have entered into a Memorandum of Understanding establishing procedures for a joint lease sale in the disputed area of the Beaufort Sea. This memorandum contemplates the execution of an interim agreement pursuant to 43 U.S.C. 1336 to permit immediate leasing of the resources in the disputed area. It is anticipated that the interim agreement will be made promptly upon the filing of the complaint in this Court.

duct of the foreign affairs of the United States. This Court has determined that the "coastline" under the Submerged Lands Act is also the coastline established for international purposes in delimiting our territorial sea. *United States v. California*, 381 U.S. 139, 165 (1965). Alaska's expansive coastal claims thus create uncertainty for foreign nations as to the position of the United States on the location of our territorial seas. This uncertainty affects the interests of foreign nations directly, for they are entitled to exercise rights on the high seas that are denied them in territorial waters. Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1607, T.I.A.S. No. 5639, Convention on the High Seas, 13 U.S.T. 2314, T.I.A.S. No. 5200. Moreover, the expansive State claims are inconsistent with the longstanding policy of the United States to encourage restraint in territorial sea assertions. The United States has emphasized the need for such restraint in the continuing negotiations at the United Nations Law of the Sea Conference. The State's claims thus have the potential for embarrassing the United States in the conduct of its foreign affairs.

4. The issues involved in the controversy between the United States and Alaska are suited for resolution in this Court. See *United States v. Alaska, supra*, 422 U.S. at 186 n.2.²

² With only one exception, all disputes between the United States and the States concerning ownership of submerged lands have been resolved by original actions in this Court. In the one case that the United States initiated in the district court, the Court indicated that its original jurisdiction was a

CONCLUSION

It is therefore respectfully submitted that, the motion for leave to file the complaint should be granted, that the defendant State be required to answer, and that a Special Master be appointed to hear evidence and report his recommended findings and conclusions to the Court.

WADE H. MCCREE, JR.
Solicitor General

MAY 1979

more appropriate forum for the dispute. *United States v. Alaska, supra*, 422 U.S. at 186 n.2.

Experience in submerged lands litigation has shown that original actions in this Court can be completed more expeditiously than actions filed in the district court that are reviewed in the court of appeals before reaching this Court on a writ of certiorari. Moreover, determination of coastline boundaries frequently involves the application of international law to complex historic and cartographic facts. The district courts only rarely confront problems in this specialized area of the law in which this Court, assisted by Special Masters, has developed substantial expertise.

