

SEP 14 1979

MICHAEL BODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 84 Original

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALASKA,

Defendant.

ANSWER, MOTION FOR LEAVE TO FILE
COUNTERCLAIM, COUNTERCLAIM, and
MEMORANDUM IN SUPPORT OF MOTION FOR
LEAVE TO FILE COUNTERCLAIM

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September 12, 1979

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IN THE
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No. 84 Original

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALASKA,

Defendant.

ANSWER

The State of Alaska, defendant, for and as its answer to plaintiff United States of America's Complaint, admits, denies and alleges as follows:

I

Admits the allegations of Part I of the Complaint.

II

With respect to the allegations of Part II of this Complaint:

Alleges that it cannot be determined what times are referred to in the phrase "[a]t all material times", and therefore denies that 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 outer continental shelf “[a]t all material times”;

Admits that the United States has exercised sovereign rights over the entire 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 outer continental shelf prior to the admission of the State of Alaska into the Union on January 3, 1959;

Admits that the United States has exercised sovereign rights over the seabed and subsoil area along the coast of Alaska from the boundaries of the State of Alaska to the limits of the outer continental shelf since the admission of the State of Alaska into the Union;

Admits that those sovereign rights exercised by the United States include the rights to explore the area and to exploit its natural resources; and

Affirmatively alleges that the State of Alaska has exercised such 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 boundaries of the State of Alaska since the admission of the State of Alaska into the Union.

III

With respect to the allegations of Part III of the Complaint:

Admits that, upon the admission of the State of Alaska to the Union, the State became entitled to those rights in its adjacent coastal seabed and subsoil area that are granted to States by the Submerged Lands Act of 1953, P.L. 83-31, 67 Stat. 29, 43 U.S.C. §§1301, *et. seq.*;

Denies that the State of Alaska thus obtained from the United States the title and ownership only of the seabed and subsoil area adjacent to the coast of Alaska which is not more than three geographical miles from the ordinary low-water mark and the outer limit of inland waters;

Denies that the United States retained ownership of the seabed and subsoil area adjacent to the coast of Alaska which is more than three geographical miles from the ordinary low-water mark and the outer limit of inland waters but nonetheless is within the boundaries of the State of Alaska; and

Affirmatively alleges that the State of Alaska obtained from the United States the title and ownership of the seabed and subsoil area within the boundaries of the State of Alaska at the time the State of Alaska was admitted to the Union.

IV

With respect to the allegations of Part IV of the Complaint:

Admits that the State of Alaska claims some right, title, or interest in the seabed area of the continental shelf underlying the Beaufort Sea which may be more than three geographical miles from the ordinary low-water mark and the outer limit of inland waters along the coast of Alaska;

Admits that the State of Alaska's claim is adverse to and is disputed by the United States; and

Affirmatively alleges that all of the seabed and subsoil area claimed by the State of Alaska which may be more than three geographical miles from the ordinary low-water mark and the outer limit of inland waters along

the coast of Alaska is within the boundaries of the State of Alaska.

V

With respect to the allegations of Part V of the Complaint:

Admits that the State of Alaska attempted to offer lands in the Beaufort Sea which may be more than three geographical miles from the ordinary low-water mark and the outer limit of inland waters for leasing to exploit natural resources under the seabed, that the United States protested the State of Alaska's attempt to lease those lands, and that the State of Alaska persists in its resolve to award leases on those lands in the exercise of the rights which the State of Alaska claims;

Admits that, in enacting §8 of the Outer Continental Shelf Lands Act, P.L. 83-212, 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;

Denies that, 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;

Denies, in particular, that the State of Alaska's actions hinder the conduct of competitive bidding by the Secretary for the award of leases covering submerged lands of the outer continental shelf in the Beaufort Sea;

Denies that the State of Alaska's actions have or will continue to cause great and irreparable injury to the United States; and

Affirmatively alleges that the United States' actions in contesting the State of Alaska's ownership of certain parcels of the seabed and subsoil area within the boundaries of the State of Alaska are interfering with and obstructing, or threaten to obstruct, the conduct of competitive bidding by the State of Alaska for the award of leases in the Beaufort Sea on lands owned by the State of Alaska, and have caused and will continue to cause great and irreparable injury to the State of Alaska unless the rights of the State of Alaska are declared and established by this Court.

VI

With respect to the allegations of Part VI of the Complaint:

Denies that the coast line to be used for determining the respective rights of the United States and the State of Alaska under the Submerged Lands Act must, in all cases, be the the same coast line employed to determine the territorial sea of the United States in its conduct of foreign affairs;

Denies that the State of Alaska, by its conduct and claims, has cast 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;

Affirmatively alleges that Congress, in enacting §2(c) of Title I of the Submerged Lands Act, 43 U.S.C. §1301(c), defined the term "coast line" for the purely domestic purpose of determining the grant of submerged

lands to the several coastal States and that said "coast line" is not necessarily the same coast line employed to determine the territorial sea of the United States in its conduct of foreign affairs.

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

DATED: September 12, 1979.

Respectfully submitted,

AVRUM M. GROSS

Attorney General

G. THOMAS KOESTER

Assistant Attorney General

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

No. 84 Original

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALASKA,

Defendant.

MOTION FOR LEAVE TO FILE COUNTERCLAIM

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

DATED: September 12, 1979.

Respectfully submitted,

AVRUM M. GROSS
Attorney General

G. THOMAS KOESTER
Assistant Attorney General

IN THE
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UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALASKA,

Defendant.

COUNTERCLAIM

The State of Alaska, defendant, for and as its counterclaim against plaintiff United States of America, alleges for its cause of action as follows:

I

The jurisdiction of this Court to hear and decide the issues raised in this Counterclaim is invoked under Art. III, §2, cl. 2 of the U.S. CONST. and 28 U.S.C. §1251(b)(2).

II

The United States has consented to the adjudication of this Counterclaim by virtue of having filed the Complaint in this action.

In the alternative, the United States has consented to adjudication of disputes over the ownership of lands in which the United States claims an interest by virtue of 28 U.S.C. §2409a(a).

III

Upon admission to the Union, the State of Alaska became entitled to those rights in its adjacent coastal seabed and subsoil that are granted to States by the Submerged Lands Act of 1953, P.L. 83-31, 67 Stat. 29, 43 U.S.C. §§1301 *et seq.*, as incorporated in the Alaska Statehood Act, P.L. 85-508, 48 U.S.C. note prec. §21, at §6(m), 72 Stat. 343.

The Submerged Lands Act legislatively conveyed to the several States the United States' interest in submerged lands within their boundaries, and vested in and assigned to the States the title to and ownership of the submerged lands and natural resources within those lands and the waters above them. The submerged lands within the boundaries of the States which were conveyed under the Submerged Lands Act include submerged lands underlying navigable inland waters (hereafter "inland submerged lands") and all lands permanently or periodically covered by tidal waters extending from the line of mean high tide to, at minimum, a line three geographical miles seaward from the ordinary low-water mark and the outer limit of inland waters.

IV

The United States claims some right, title, or interest in offshore submerged lands in the Arctic Ocean within the boundaries of the State of Alaska which are less than three geographical miles seaward from the ordinary

low-water mark and from the outer limit of inland waters, and also claims some right, title, or interest in submerged lands underlying certain inland waters the outer limits of which form portions of the northern coast line of the State of Alaska. Specifically, the United States claims the offshore submerged lands lying inside the barrier inlands north of the Arctic National Wildlife Range and the submerged lands underlying the inland waters of Harrison Bay, Smith Bay and Peard Bay, all of which were conveyed to the State of Alaska pursuant to the Submerged Lands Act and the Alaska Statehood Act, as stated herein.

V

The United States' claims to the offshore submerged lands below the line of extreme low water inside the barrier inlands north of the Arctic National Wildlife Range and the submerged lands underlying the inland waters of Smith Bay, Harrison Bay and Peard Bay are adverse to and disputed by the State of Alaska and create a cloud on the State of Alaska's title to its land, and the United States' actions will continue to cause great and irreparable injury to the State of Alaska unless the rights of the State of Alaska are declared and established by this Court.

WHEREFORE the State of Alaska prays that the United States be required to answer the State of Alaska's Counterclaim and that, after due proceedings, a decree be entered declaring the rights of the State of Alaska as against the United States in the subsoil and seabed underlying the waters adjacent to the State of Alaska in the area of the Arctic Ocean, quieting the State of Alaska's title to the submerged lands below the line of extreme low water inside the barrier inlands north of the Arctic National Wildlife Range and underlying the inland waters

of Harrison Bay, Smith Bay and Peard Bay, and enjoining the United States, its privies, assigns, lessees and other persons claiming under it from interfering with the rights of the State of Alaska.

DATED: September 12, 1979.

Respectfully submitted,

AVRUM M. GROSS
Attorney General

G. THOMAS KOESTER
Assistant Attorney General

IN THE
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No. 84 Original

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALASKA,

Defendant.

MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE COUNTERCLAIM

JURISDICTION

The jurisdiction of this Court to hear and decide the issues raised by the State of Alaska's Counterclaim rests on Art. III, §2, cl. 2 of the U.S. CONST. and 28 U.S.C. §1251(b)(2). *United States v. California*, 322 U.S. 19 (1947).

STATEMENT OF DISPUTE

The State of Alaska received title to all lands beneath inland navigable waters within its boundaries at the time of its admission to the Union. *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212 (1845). This grant was the direct

result of the State of Alaska's admission to the Union on an equal footing with all other States under Art. IV, §3, cl. 1 of the U.S. CONST., and was not the result of any legislative largess. See *Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363 (1977); *United States v. Louisiana*, 363 U.S. 1 (1960).

In addition to the constitutional grant of inland submerged lands under the equal footing doctrine, the State of Alaska became entitled to the same rights previously conferred on other States by the Submerged Lands Act of 1953, P.L. 83-31, 67 Stat. 29, 43 U.S.C. §§1301 *et seq.*, which was expressly made applicable to the State of Alaska in §6(m) of the Alaska Statehood Act, 48 U.S.C. note prec. §21. Under the Submerged Lands Act, the United States' interest in offshore submerged lands within the boundaries of the State of Alaska was conveyed to and vested in the State of Alaska as an incident of Statehood at the time the State of Alaska was admitted to the Union. Alaska Statehood Act, §6(m) and 43 U.S.C. §1311(b).

This suit was originally filed by the United States against the State of Alaska to resolve certain boundary disputes in the Beaufort Sea. In essence, the United States sought to clear its title claims to certain areas in the Beaufort Sea which it now desires to lease for oil exploration. The State's counterclaim simply seeks from the Court similar relief for the State of Alaska, for in addition to the areas specified in the suit filed by the United States, two other areas in the Beaufort Sea and adjacent waters are under dispute — areas in which state ownership has recently been challenged by federal action. It appears reasonable that if the Court is to act to resolve boundary disputes in the Beaufort Sea and on the northern coast of Alaska, that it do so for all the major disputed areas, not just those areas chosen by the United

States.¹ This is particularly true since neither of these disputes will add materially to the factual complexity of the litigation.

The first disputed area consists of offshore submerged lands in the Beaufort Sea lying inside the barrier islands north of the Arctic National Wildlife Range. In a December 12, 1978 Memorandum Opinion, the Solicitor of the United States Department of the Interior concluded that those lands had been described in an application for a withdrawal filed by the U.S. Fish and Wildlife Service in January, 1958 (hereafter "the Application"), and that, under the applicable departmental regulation then in effect, 43 CFR 295.11(a) (1959 Supp.), the Application by itself segregated the land from all forms of disposal, including a transfer of the United States' interest in those lands under the Submerged Lands Act. In his Memorandum Opinion, the Solicitor did not address the fact that all of the lands for which the Fish and Wildlife Service applied for a withdrawal were above the line of extreme low water of the Arctic Ocean and did not include any offshore submerged lands. Notwithstanding this fact, the Solicitor concluded that those submerged lands did not pass to the State of Alaska and that the United States retained an interest in those lands under the §5(a) exceptions to the Submerged Lands Act grant at the time the State of

¹The dispute regarding Harrison, Smith and Peard Bays is already in litigation and will probably reach this Court at some time in the future. *State of Alaska and Arctic Slope Regional Corp. v. John W. Warner, et al.*, D.C. Alaska, No. J75-13. The remaining dispute has not yet become a matter for judicial resolution but the State has informed the Department of the Interior that it intends to challenge its legal position at some future time. Consolidation of all these matters before a master would obviously be an economic use of judicial resources.

Alaska was admitted to the Union. The Secretary of the United States Department of the Interior concurred in the Solicitor's Memorandum Opinion on December 15, 1978. The State of Alaska disputes the Solicitor's conclusion which now represents the United States' position on the issue.

The second area of lands consists of the submerged lands underlying the inland waters of Harrison Bay, Smith Bay and Peard Bay, tidal waters of the Arctic Ocean in the vicinity of the National Petroleum Reserve A (hereafter "the Reserve")² on the North Slope of the State of Alaska. The Reserve was created by President Warren G. Harding in Executive Order No. 3797-A on February 27, 1923, which described the seaward boundary as the Reserve (with certain exceptions not relevant here) as "the highest high-water mark on the coast of the mainland." On April 18, 1958 the Secretary of the United States Department of the Interior issued Public Land Order No. 1621 which defined the seaward boundary of the Reserve in the same manner. 23 Fed. Reg. 2637 (1958). Executive Order No. 3797-A and Public Land Order No. 1621 were in full force and effect when the State of Alaska was admitted to the Union on January 3, 1959. At that time, Harrison Bay, Smith Bay and Peard Bay were inland tidal waters of the United States, the submerged lands underlying them were seaward of and below "the highest high-water mark on the mainland", and the United States' interest in those

²Originally created as Naval Petroleum Reserve No. 4, jurisdiction over the Reserve was transferred to the Secretary of the United States Department of the Interior under the Naval Petroleum Reserves Production Act of 1976. P.L. 94-258, 90 Stat. 307. 10 U.S.C. §§ 7420 *et seq.*

lands was conveyed to the State of Alaska at the time the State of Alaska was admitted to the Union under the Submerged Lands Act.

However, on May 19, 1972 the Judge Advocate General of the United States Navy published a "Notice of Boundary Description of Naval Petroleum Reserve No. 4" in the Federal Register. 37 Fed. Reg. 10088 (1972) (hereafter "the Notice"). The Notice redefined the seaward boundary of the Reserve to include the inland submerged lands underlying Harrison Bay, Smith Bay and Peard Bay. No explanation, justification or authority for redefining the boundaries of the Reserve to include those inland submerged lands appears on the face of the Notice. The State of Alaska disputes the redefined boundaries of the Reserve which now represent the United States' position on the issue.

CONSENT TO ADJUDICATION OF COUNTERCLAIM

By filing the Complaint in this action, the United States has consented to adjudication of the State of Alaska's Counterclaim. In its complaint, the United States prays for the following relief: "... [A] decree ... declaring the rights on the United States as against the defendant State [of Alaska] in the subsoil and seabed underlying the waters adjacent to Alaska . . .". Complaint, p. 6 (in part). The United States has placed in issue the scope and extent of the conveyance of the United States' interest in submerged lands to the State of Alaska under the Submerged Lands Act. In its Counterclaim, the State of Alaska is seeking precisely the same adjudication: a declaration of the respective rights of the State of Alaska and the United States in the seabed and subsoil area adjacent to the northern coast of the State of Alaska.

In the alternative, the United States has waived its sovereign immunity to suits seeking to quiet title to land in which the United States claims an interest. 28 U.S.C. § 2409a(a). This Court recently held that this waiver of sovereign immunity was effective in original actions brought directly in this Court, notwithstanding the language of 28 U.S.C. § 1346(f) purporting to confer exclusive jurisdiction on the federal district courts to adjudicate quiet title actions against the United States. *State of California v. State of Arizona and the United States*, _____ U.S. _____, No. 78 Original, Opinion on Motion for Leave to File a Bill of Complaint issued February 22, 1979, 47 U.S.L.W. 4174.

ARGUMENT

THE STATE OF ALASKA'S COUNTERCLAIM IS APPROPRIATE FOR RESOLUTION AS PART OF THIS ACTION

The policy grounds which the United States advanced to support its motion for leave to file the Complaint in this action support the State of Alaska's motion for leave to file its Counterclaim. United States' Memorandum, pp. 11-12. The State's Counterclaim involves an important controversy between the United States and Alaska. The submerged lands adjacent to the northern coast of the State of Alaska are believed to be richly endowed with oil, natural gas and commercially valuable minerals. Dispute over ownership of these lands are obstacles 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.

Adjudication of the issues raised by the State of Alaska's Counterclaim will go a long way toward

resolving all ownership disputes between the State of Alaska and the United States concerning the submerged lands off the northern coast of Alaska. Once the legal issues have been determined, it is anticipated that the State of Alaska and the United States will be able to negotiate (subject to Court approval) any remaining disputes, such as the precise location of boundary lines separating those lands subject to the jurisdiction of the State of Alaska from those lands subject to the United States' jurisdiction.

It cannot be denied that the issues raised by the State of Alaska's Counterclaim are appropriate for resolution in this Court. With 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; the Court indicated in that exceptional case that its original jurisdiction was the most appropriate forum for resolving such disputes. *United States' Memorandum*, pp. 13-14 n. 2; *see United States v. Alaska*, 422 U.S. 184, 186 n. 2 (1975).

The State of Alaska's remedy in the event this Court denies the State's Motion for Leave to File a Counterclaim is to await entry of an Order and Decree in this action and then apply to the Court for entry of a Supplemental Decree, a procedure that the Court authorized in at least one other case under the Submerged Lands Act. *United States v. California*. 382 U.S. 448, 453 (1966). However, such a procedure seems needlessly cumbersome and contrary to this Court's policy of encouraging the settlement of competing claims in a single proceeding:

The adjustment of defendant's demand by counterclaim in plaintiff's action rather than by inde-

pendent suit is favored and encouraged by the law. That practice serves to avoid circuitry of action, inconvenience, expense, consumption of the courts' time, and injustice.

Chicago & N.W. Ry. v. Lindell, 281 U.S. 14, 17 (1930) (citations omitted).

Sovereign immunity is not a bar to this Court's resolution of the issues raised in the State of Alaska's Counterclaim. The United States has petitioned for a declaratory judgment of the respective rights of the State of Alaska and the United States under the Submerged Lands Act by filing its Complaint. Furthermore, the United States has waived sovereign immunity to quiet title actions by virtue of 28 U.S.C. §2409a(a).

It is true that the quiet title aspects of the State of Alaska's Counterclaim could be resolved by the Federal District Court for the District of Alaska. 28 U.S.C. §1346(f). However, such an approach would be contrary to this Court's indication that its original jurisdiction is a more appropriate forum for resolution of Submerged Lands Act cases. *United States v. Alaska*, *supra*. In addition, it would lead to a loss of judicial efficiency and economy, as pointed out by the United States:

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.

United States' Memorandum, pp. 13-14 n. 2 (in part). Since a Special Master undoubtedly will be appointed to make recommended findings and conclusions on the issues raised by the United States' Complaint in this action, significant judicial economy can be achieved by referring the issues raised in the State of Alaska's Counterclaim to file at the same time.

In summary, granting the State of Alaska's motion for leave to file a Counterclaim (1) will resolve an important controversy which is an obstacle to early development of much-needed natural resources; (2) will permit early resolution of issues which, in all likelihood, will ultimately be decided by this Court in any event; (3) conforms with this Court's policy of encouraging resolution of disputes in a single action to promote judicial efficiency; (4) has been consented to by the United States; and (5) will place before this Court issues which the Court has indicated are most appropriate for resolution under its original jurisdiction.

CONCLUSION

It is therefore respectfully submitted that the State of Alaska's motion for leave to file a Counterclaim should be granted, that plaintiff United States should be required to answer, and that a Special Master should be appointed to hear evidence and report to the Court his recommended findings and conclusions on all issues raised in the Complaint and Counterclaim.

DATED: September 12, 1979.

Respectfully submitted,

AVRUM M. GROSS
Attorney General

G. THOMAS KOESTER
Assistant Attorney General

