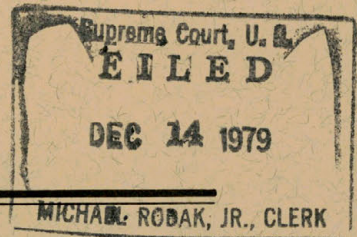


No. 84, Original



In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA

**MEMORANDUM OF THE UNITED STATES
IN RESPONSE TO ALASKA'S MOTION FOR LEAVE
TO FILE COUNTERCLAIM AND ANSWER
TO COUNTERCLAIM**

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

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JURISDICTION

The jurisdiction of this Court is invoked under Article III, Section 2, clause 2 of the United States Constitution and 28 U.S.C. 1251(b)(2).¹

STATEMENT

The United States filed this action against the State of Alaska to resolve a controversy over rights to oil and gas lands off the north coast of Alaska. On September 12, 1979, the State filed its Answer to the Complaint and a Motion for Leave to File Counterclaim. Through its

¹The State alleges that the United States has consented to the adjudication of the Counterclaim by the filing of the Complaint (Counterclaim paragraph II). We do not agree. Instead, we believe that the State's claim may be brought against the United States under 28 U.S.C. 2409a. See *California v. Arizona*, 440 U.S. 59 (1979).

Counterclaim the State would add two geographic areas to the litigation. These lie east and west of the area presently in suit along the north shore of Alaska.² There is a clear dispute between the State and the United States concerning ownership of each of the areas included in the Counterclaim, and the State's Counterclaim in this litigation presents an appropriate means of resolution.

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 more appropriate forum. *United States v. Alaska*, 422 U.S. 184, 186 n.2 (1975). This is, no doubt, in part because this Court has developed a unique expertise in the area and because 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. These considerations are fully applicable here.

²As the State indicated in its Memorandum in Support of Motion For Leave to File Counterclaim (at 15 n.1), the portion of the Counterclaim concerning Harrison, Smith and Peard Bays (west of the area in the Complaint) is already the subject of litigation in federal district court. *Alaska v. Hidalgo*, Civ. No. J75-13 (D. Alaska). The government's acquiescence to the Counterclaim in this Court is premised on the State's representation that it will consent to the dismissal of the portion of the district court litigation that overlaps with the Counterclaim filed in this Court.

CONCLUSION

It is therefore respectfully submitted that the Motion For Leave to File Counterclaim should be granted. The Answer of the United States to the Counterclaim is presented herewith.

WADE H. MCCREE, JR.
Solicitor General

DECEMBER 1979

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ANSWER TO COUNTERCLAIM

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

I

Admits the allegations contained in paragraph I of the Counterclaim.

II

Denies the allegation that the United States has consented to the adjudication of the Counterclaim by the filing of the Complaint.

Admits that 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.

III

Admits the allegations contained in paragraph III of the Counterclaim but affirmatively alleges that Section 5(a) of the Submerged Lands Act, 43 U.S.C. 1313(a),

exempts the lands which are the subject of this Counterclaim from transfer to the State of Alaska, and further affirmatively alleges that the grant of lands to Alaska under the Submerged Lands Act encompasses no territory more than three geographic miles from the coastline.

IV

With respect to paragraph IV of the Counterclaim, the United States admits that it claims the submerged lands described therein but denies that any of those lands were conveyed to the State of Alaska by the Submerged Lands Act or the Alaska Statehood Act.

V

With respect to paragraph V of the Counterclaim, the United States admits that its claims to the submerged lands described therein are adverse to and disputed by the State of Alaska. The United States denies the remaining allegations of paragraph V.

WHEREFORE the United States prays that, after due proceedings had, a decree be entered declaring the rights of the United States as against the State of Alaska in the subsoil and seabed underlying the waters adjacent to the coast of Alaska and within the boundaries of the Arctic National Wildlife Range and Harrison Bay, Smith Bay and Peard Bay.

WADE H. MCCREE, JR.
Solicitor General

DECEMBER 1979

