No. 89, Original

IN THE

SUPREME COURT

OF THE
UNITED STATES

OCTOBER TERM, 1981

STATE OF CALIFORNIA, ex rel. STATE LANDS COMMISSION,

Plaintiff,

-VS-

UNITED STATES OF AMERICA,

Defendant.

ON CROSS-MOTIONS FOR JUDGMENT

BRIEF OF AMICI CURIAE STATES OF WASHINGTON, ALABAMA, ALASKA, ARIZONA, HAWAII, NEW MEXICO AND OREGON

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QUESTIONS PRESENTED

(1) Does federal common law exist and, in derogation of both state law and the equal-footing doctrine, determine title to accretions formed since statehood (whether by natural or artificial means) to ocean front tidelands?

(2) Should *Hughes v. Washington,* 389 U.S. 290 (1967), be overruled?

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BRIEF OF AMICI CURIAE STATES OF WASHINGTON, ALABAMA, ALASKA, ARIZONA, HAWAII, NEW MEXICO AND OREGON

STATEMENT OF THE CASE

This is a quiet title action between the State of California and the United States. The case is before the court as an original action under the jurisdiction conferred by Article III, § 2 of the Constitution and 28 USC § 1251(b). This *amici curiae* brief of the States of Washington, Alabama, Alaska, Arizona, Hawaii, New Mexico, and Oregon is submitted in support of the position taken by California.

Amici have taken the liberty of rephrasing the "Questions Presented" in order to more accurately reflect their view of the nature of the issue for decision. As phrased by California (Ca. Opening Br., p. i) the question

stated the underlying issue but is couched in narrow terms stemming from the facts of the case. The United States' version of the question (Br. of United States, p. (I)) assumes the answer on a faulty premise based on the Submerged Lands Act[1] (see discussion *infra,* pp. 7-10).

The property involved in this lawsuit is accretion[2] land on the Pacific Ocean coast situated just north of the mouth of Humboldt Bay in Northern California. The United States owns the adjacent uplands, which are administered as a Coast Guard Reservation. The dispute is over the question of ownership of the accretions; there is no material controversy over how or when the accretions were formed.[3] Since the relevant factual background of this case is adequately developed in the briefs of the parties, it will not be restated here.

California contends that at the time of its admission to statehood it was, as a sovereign state, vested with title to the beds underlying the navigable waters of its coastal tidelands, including those abutting on uplands in which title was retained by the United States. Thereafter, the state argues, as a littoral owner the United States' title to alluvion vis-a-vis California's as owner of the beds of the adjoining tidelands was subject to determination under applicable rules of *state* property law.[4]

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[1]Act of May 22, 1953, Title II, § 3, 67 Stat. 30 (43 USC § 1301 *et seq.*).

[2]Throughout this brief, the terms "alluvion" and "accretion" are used to refer to land built up by the physical process of gradually accumulating sedimentary deposits.

[3]California characterizes the accretions as having been formed artificially by virtue of the construction of a jetty on the north side of the entrance channel to Humboldt Bay. Ca. Opening Br., pp. 4-5. The United States, on the other hand, characterizes the accretions as having been formed by natural processes, albeit directly related to the construction of the jetty. Br. of United States, pp. 3, 5, 6. The United States does not, however, suggest that this is a distinction with any bearing on the outcome of the case. Nor should it be; see footnote 4, *infra.*

[4]Under the facts as characterized by California (i.e., artificially created accretion lands), title to the disputed accretion lands is in the state. *Carpenter v. City of Santa Monica,* 63 Cal.App.2d 772, 147 P.2d 964 (1944). In Washington, the same result would follow irrespective of whether the accretions were formed naturally or artificially. *Hughes v.*

The United States, on the other hand, first sidesteps California's position by ignoring the constitutional force and effect of the equal-footing doctrine (discussed *infra*). And then, it postulates a strained application of the Submerged Lands Act which ignores physical reality and, if followed, would produce an untenable hiatus in the law.[5]

California properly portrays this action as impinging on vital attributes of its sovereignty, and those attributes are of no less critical importance to *amici*. California also correctly characterizes this case as the vehicle by which the Court should critically review its decision in *Hughes v. Washington*, 389 U.S. 290 (1967) and, in turn, overrule *Hughes* on the basis of *State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 363 (1977). The United States, however, expressly disclaims any need to reexamine *Hughes*. Br. of United States, pp. 16, 19-20.

INTEREST OF *AMICI*

Amici join with California in urging the Court to ring the long-overdue death knell for *Hughes*. Those states should be free, once again, to follow the mandate of their public trusts on ocean beaches, such as public recreation,[6] or to pursue other diverse proprietary interests. *Hughes* frustrates those purposes and casts a cloud on the title to state sovereign lands, as well as the validity of the title of many state grantees.[7]

The advancement of their sovereign rights, as well as the protection of their rights of ownership to similarly sit-

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State of Washington, 67 Wn.2d 799, 410 P.2d 20 (1966), rev. *sub. nom. Hughes v. Washington*, 389 U.S. 290 (1967).

[5]See footnote 12, *infra*.

[6]*See, e.g.*, Revised Code of Washington 43.51.650-.685 (Seashore Conservation Act).

[7]In Washington, for example, since statehood there have been 25,021 sales of state owned tide and shore lands, many of which have been along the ocean beaches and to those other than the adjoining upland owner. Records of Tideland and Shoreland Deeds, Office of the Commissioner of Public Lands, Olympia, Washington.

uated land constitute the interest of *amici* in this case.[8]

SUMMARY OF ARGUMENT

When California was admitted to the Union it was (as was true of any new state) vested absolutely with title to the beds and shores of its navigable waters and tidelands by virtue of its constitutional right to stand on an equal footing with the original 13 colonies. The operation of the equal-footing doctrine extends to all tidelands and navigable waters within the boundaries of a state, without any distinction between inland and coastal tidelands.

A state's title to those tidelands acquired under the equal-footing doctrine is, of course, always subject to the paramount power of Congress to control the waters lying over such lands for purposes specifically reserved to the federal government in the constitution, such as commerce among the states and with foreign nations. But, even where the United States had acquired title to property prior to the creation of a state, the beds and shores of tidal and navigable waters were held in trust for the future state. The title in such lands which otherwise would pass to the state under the equal-footing doctrine could be defeated only by a prior conveyance by the United States in performing international obligations, or under the most exigent circumstances, in using or improving the lands for purposes of commerce or other appropriate public purposes for which the property was held.

Here, however, the United States did not at any time prior to California's admission to the Union convey title to the tidelands involved in this action, i.e., those now abutting the Coast Guard site. Title to those tidelands was thus vested absolutely in California on the date of statehood in 1850. The only function of federal law is to

[8]The trial court in which *Hughes v. Washington*, 389 U.S. 290 (1967), arose has held that *Hughes* was overruled by *State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 363 (1977), leaving the questions of title to ocean front accretions in Washington to be resolved by application of state law. *Bay Haven Associates, et al. v. State of Washington*, Pacific County Superior Court No. 20386 (May, 1981), on appeal to the Supreme Court of the State of Washington, docket No. 48090-7 (appeal stayed pending the outcome of the instant case).

determine the extent of the landward limit of the property thus acquired; i.e., the location of the high water line which, at the time of statehood, served as the boundary between the state's tideland ownership and the United States' upland holding.[9] In other words, federal law answers the question of how much property was acquired under the equal-footing doctrine, and state law then controls so that, thereafter, the legal interest of the United States as a littoral owner (including its right to acquire title to alluvion deposited by accretion seaward of its property) is entirely a state law matter. In short, California's absolute title to the subject tidelands was fixed and vested in 1850 as an element of state sovereignty as was its right to determine and apply state law to questions of land title subsequently arising by virtue of physical changes to those tidelands. This element of state sovereignty may be subjugated only where some counterveiling and overriding principle of federal law requires state law to be displaced.

Finally, transcending each state's interest in preserving its constitutional sovereign prerogatives over its own lands is its legitimate concern with the reasoned application of traditional concepts of federalism. There is no valid and well founded reason to create and apply federal common law to determine the title to the accretions in this case or in any other case involving ocean front property. *Hughes v. Washington, supra,* should be overruled, and California should prevail under the application of its own state law.

ARGUMENT

When the original 13 colonies first formed the Union they succeeded entirely to the title previously held by the English Crown in the beds underlying the navigable waters within their boundaries subject only to those rights surrendered by the constitution. *Martin v. Waddell,* 41 U.S. (16 Pet.) 367, 410 (1842). Likewise, under the equal-footing

[9]The same would be true for the purpose of determining the seaward extent of the state's holding, be that a low water line, or some point yet further seaward. That facet of the situation, for present purposes however, is quite irrelevant.

doctrine, this Court has long held that new states subsequently admitted to the Union obtained the same ownership of those underlying shorelands and tidelands. *Id.* at 410; *Pollard's Lessee v. Hagan,* 44 U.S. (3 How.) 212, 223 (1845); *Mumford v. Wardwell,* 73 U.S. (6 Wall.) 423, 436 (1867); *Shively v. Bowlby,* 152 U.S. 1, 49 (1894); *State Land Board v. Corvallis Sand & Gravel Co., supra*; 429 U.S. at 370; *Montana v. United States,* 450 U.S. 544, 551 (1981). The purpose of this rule was and is, of course, to insure that new states have all rights, sovereignty and jurisdiction within their respective borders on an equal footing with the original states. *Mumford v. Wardwell, supra.* The court has referred to this condition of equality as an inherent attribute of membership in the Federal Union. *Illinois Central Ry. Co. v. Illinois,* 146 U.S. 387, 434 (1892).

A state's title to the beds of navigable waters under the equal-footing doctrine is not conferred by Congress but, rather, by the constitution itself. *Pollard's Lessee v. Hagan, supra.* At the time of a state's admission to the Union that title vests absolutely. *State Land Board v. Corvallis Sand & Gravel Co., supra.* It is not subject to later defeasance by operation of any doctrine of federal common law. *Wilcox v. Jackson,* 38 U.S. (13 Pet.) 498 (1839); *Weber v. Harbor Comm'rs,* 85 U.S. (18 Wall.) 57 (1873). Nor is it subject to divestiture by any act of Congress. *Pollard's Lessee v. Hagan, supra.*

The only qualifications or restrictions on the state's title acquired under the equal-footing doctrine are those imposed by the paramount rights granted to the United States by the constitution, *id.*, such as a navigational servitude in favor of the federal government for regulating and improving navigation and commerce between the states and with foreign nations. *Gibson v. United States,* 166 U.S. 269 (1897). And the only exception to a state's obtaining such title upon admission to the Union exists where, prior to statehood, the federal government conveyed title to the beds underlying navigable waters of a territory in furtherance of international duties, or some other exceptional circumstances attendant upon carrying

out the purposes for which the territory was held. *United States v. Holt Bank,* 270 U.S. 49, 54 (1926). However, the policy is strong in favor of regarding all lands acquired by the United States during the territorial period as being held in trust for the benefit of future states. *Shively v. Bowlby, supra,* 152 U.S. at pp. 49, 57-58. Only on very rare occasions has a pre-statehood federal conveyance been found to defeat the later vesting of title to the beds of navigable waters in a state. Compare *Choctaw Nation v. Oklahoma,* 397 U.S. 620 (1970), with *Montana v. United States, supra,* and *United States v. Holt Bank, supra.*

In the instant case, upon its admission to the Union in 1850, Calfornia was vested with absolute, sovereign title to the tidelands fronting on the property held by the United States. *E.g., State Land Board v. Corvallis Sand & Gravel Co., supra.* There was no conveyance of the tidelands prior to statehood; and it was not until 1859 that any of the uplands were withdrawn from the public domain. The only restrictions or qualifications on California's absolute property ownership stemmed from the federal government's paramount constitutional powers to control navigation and commerce on the overlying waters. *Id.; Pollard's Lessee v. Hagan, supra.*

The United States would have this Court believe, however, that for some unexplicable reason the equal-footing doctrine does not operate to vest title in a state to the lands underlying its tidal waters along the open sea coast. While it is true that this may never have been a question previously put squarely to the Court for decision, the cases are nevertheless replete with every conceivable indication that the doctrine does in fact apply to tidelands along the ocean. They consistently refer to the tidelands encompassed by operation of the doctrine in such all inclusive terms as "* * * absolute right to all their navigable waters, and the soils under them * * *," *Martin v. Waddell, supra,* 41 U.S. (16 Pet.) at p. 410; "* * * all soils under the tidewaters within her limits * * *," *Weber v. Harbor Comm'rs, supra,* 85 U.S. (18 Wall.) at pp. 65-66; "* * * riparian or littoral proprietors * * *" (in respect to their property rights vis-a-vis the state), *Pol-*

lard's Lessee v. Hagan, supra, 152 U.S. at pp. 57-58.[10]

In *United States v. Texas,* 339 U.S. 707 (1950) the Court said, at pp. 717-719

> * * * Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. * * * When Texas came into the Union, she ceased to be an independent nation. She then became a sister State on an "equal footing" with all the other States. That act concededly entailed a relinquishment of some of her sovereignty. * * * In external affairs the United States became the sole and exclusive spokesman for the Nation. We hold that as an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States.
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> * * * as was pointed out in *United States v. California* [332 U.S. 19], once low-water mark is passed the international domain is reached.

The clear implication of this case is that Texas, on an "equal footing" with all other states, retained full sovereignty and ownership of the soils landward of the low-water mark along the open sea.

Finally, in the same vein, this Court has said that the Submerged Lands Act[11] "* * * did not alter the scope or effect of the equal-footing doctrine * * *" Rather, it "* * * confirm[ed] the States' title to the beds of navigable waters within their boundaries * * *" *State Land Board v. Corvallis Sand & Gravel Co., supra,* 429 U.S. at 371, n. 4. And the Submerged Lands Act clearly covers tidelands along the ocean. 43 USC §§ 1311(a), 1301(a)(2). Perforce, the ocean tidelands are included within the operation of the equal-footing doctrine.

The United States nevertheless goes to considerable length in its brief in an attempt to establish that the Sub-

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[10]"Riparian proprietor" refers to an owner of land which is bounded or traversed by a natural stream; "littoral proprietor" refers to owners of premises on the shores of the sea or a lake. Ballentine's Law Dictionary (3rd Ed., 1969).

[11]43 USC § 1301, *et seq.*

merged Lands Act (and hence the equal-footing doctrine) conveys only title to an ambulatory strip along the ocean that is subject to ever changing displacement landward or seaward by the forces of accretion, erosion or reliction. In so doing it relies heavily on an opinion of former Solicitor General Cox in 42 Op. Att'y Gen. 241 (1963) (interpreting various provisions of the Submerged Lands Act) but does not explain how its theory is reconciled with the clear holding in *State Land Board v. Corvallis Sand & Gravel Co., supra,* i.e., that once title vests in the beds of navigable waters the state's ownership of such lands is absolute and is not divested if those bedlands reemerge as dry land.

Tidelands along the ocean become uplands by virtue of accretion in just the same manner as might the beds underlying a navigable river. There is no distinction between the two; and no reason to treat them differently.

The United States would also ask this Court to conceptualize the accretion process which created the disputed alluvion in this case as separately exposing "former tidelands" and then, in turn, what was once the bed of the marginal sea. As to the latter, inasmuch as they became dry land and "attached to" the uplands prior to 1953, the United States asserts it has title because California did not receive title to any of the beds of the marginal sea prior to passage of the Submerged Lands Act in 1953.[12] As to the reemerged "former tidelands," the United States blithely suggests they be given to the United States to avoid a small intervening strip of state land between its larger parcels.

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[12]Assuming for the moment there is any merit in this argument, it is plainly tailored only to resolution of this case, and leaves unanswered how any post-1953 accretions might be handled. The United States hints that perhaps *Wilson v. Omaha Tribe,* 442 U.S. 653 (1979) would be controlling, and would require application of the federal common law of accretion inasmuch as the federal government has retained and never relinquished its ownership of the uplands. Aside from the fact that the effect of the equal-footing doctrine was not even addressed in *Wilson,* however, that case is completely inapposite here because in *Wilson* the federal government's "retained title" was in fact title it held in trust for the Omaha Tribe, to whom it had conveyed or "assigned" the land in question. That trust responsibility may well present a situation which

Moreover, in any event, whatever room might be left to argue the proposition that prior to 1953 the states had no title to the beds of the marginal sea under the equal-footing doctrine (*but see, State Land Board v. Corvallis Sand & Gravel Co., supra,* 429 U.S. at p. 371, n. 4), the government's analysis remains fallacious. As the ocean receded from the federally owned uplands and alluvion was built up, the entire process took place on the tidelands as the tidelands themselves moved westward. The marginal sea remained forever seaward of those tidelands, and if there is any ambulatory nature to the title conveyed by Congress in the Submerged Lands Act, that is it. There is nothing ambulatory about the nature of the title to the tidelands vested in California under the equal-footing doctrine. *Id,* at pp. 370-371. The disposition of the present tidelands, and those former tidelands (now uplands by virtue of accretion) as far inland as the state's title was vested at statehood, is entirely a matter left to state law, barring the presence of any federal principle requiring displacement of the state law. *State Land Board v. Corvallis Sand & Gravel Co., supra,* and cases cited therein.

Finally, implicit in the United States' position is the argument that the federal government, as a pre-statehood upland littoral owner, should somehow be accorded different treatment than private proprietors as respects the operation of the equal-footing doctrine. This notion, however, simply does not withstand scrutiny. As the Court said in *United States v. Texas, supra,* 339 U.S. at pp. 719-720

> The "equal-footing" clause * * * prevents a contradiction of sovereignty [*Pollard's Lessee v. Hagan, supra*] which would produce inequality among the States.

None of the land in the original 13 colonies was owned by the United States prior to formation of the Union so none of the lands bordering on the navigable waters of those colonies could possibly have been retained by the United

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precludes deference to state law in furtherance of paramount federal interests totally unlike the instant situation. *Id.; see also* 43 USC § 1313(b).

States prior to their statehood. Therefore, it will readily be seen that to allow the United States relief from the effect of the equal-footing doctrine in any of the later states (see, Br. of United States, pp. 16-17, and n. 6) would produce an irrational contradiction in sovereignty among the states.

In summary: the preceding argument has shown that California was vested with fixed, sovereign title in the tidelands abutting the federally owned uplands on the date of its admission to the Union. Any disposition of that property, including accretions thereto, is governed by state law thereafter, unless overriding principles of federal concern dictate otherwise. Since the United States is in no different position than a private littoral owner whose title derives from a pre-statehood patent (absent special circumstances such as holding land in trust for Indians[13]) the same rule applies as that which pertains to questions of title to ocean front accretions abutting such private holdings. See *Hughes v. Washington, supra.*

With that in mind we turn, now, to *Hughes v. Washington, supra.* There the Court held that title to ocean beach accretions would be decided on the basis of federal common law based on its reasoning in *Borax, Ltd. v. Los Angeles,* 296 U.S. 10 (1935). In *Borax,* the Court applied federal law to locate the high water mark in a harbor area (unaffected by accretions), in order to fix the extent of a grant in a federal patent, and to establish the boundary between the uplands and the tidelands. The *Hughes* Court could find no reason to differentiate between boundary questions based on "the general definition of the shoreline or on a particularized problem relating to the ownership of accretion." *Hughes v. Washington, supra,* 389 U.S. at p. 292. Mr. Justice Black enunciated the Court's reason for applying federal law in *Hughes* by saying, at p. 292

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[13]*But cf., United States v. Washington,* 294 F.2d 830 (1961), which involved the question of title to ocean beach accretions along the Washington coast, where the United States held the uplands in trust for Indians. Federal law was held to apply, although based on the same reasoning derived from *Borax, Ltd. v. Los Angeles,* 296 U.S. 10 (1935) that was applied in *Hughes v. Washington,* 389 U.S. 290 (1967), a case which dealt with ocean beach accretions to privately owned uplands.

> The rule deals with waters that lap both the lands of the State and the boundaries of the international sea. This relationship, at this particular point of the marginal sea, is too close to the vital interest of the Nation in its own boundaries to allow it to be governed by any but the "supreme Law of the Land."[14]

Later, however, in *State Land Board v. Corvallis Sand & Gravel Co., supra,* the Court overruled *Bonelli Cattle Co. v. Arizona,* 414 U.S. 313 (1973), reasoning that *Bonelli* went too far in finding, in *Borax, Ltd. v. Los Angeles, supra,* justification to apply federal common law to a question involving title to lands which once lay beneath a navigable river in Arizona. The *Corvallis* Court said, at 429 U.S., 371

> Once the equal-footing doctrine had vested title to the riverbed in Arizona as of the time of its admission to the Union, the force of that doctrine was spent; it did not operate after that date to determine what effect on titles the movement of the river might have. Our error, as we now see it, was to view the equal-footing doctrine enunciated in Pollard's Lessee v. Hagan as a basis upon which federal common law could supersede state law in the determination of land titles. *Precisely the contrary is true.* [Emphasis Supplied.]

The Court also there acknowledged that *Hughes v. Washington, supra,* had accorded *Borax* the same expansive reading as did *Bonelli. State Land Board v. Corvallis Sand & Gravel Co., supra,* 429 U.S. at p. 377, n. 6.[15] The Court expressly declined to overrule *Hughes,* however, because "Hughes was not cited by the Oregon courts below, and in Bonelli we expressly declined to rely upon it

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[14]"Beautiful prose, but what does it mean?" Beck, *Federal Common Law and Real Property,* 47 N. Dak. L.Rev. 77, 79 (1970). "It is clear that states have complete title to the lands below the line of mean high tide. (Citation omitted) These lands, of course, are the only place where the waters 'lap both the lands of the State and the boundaries of the international sea.' (citation omitted)" *State Land Board v. Corvallis Sand & Gravel Co.,* 429 U.S. 363, 383, n. 1 (1977) (Marshall, J., dissenting).

[15]*See also* Hopp, *Federal Accretion Law,* 50 Wash. L.Rev. 777, 783, n. 36 (1975).

as a basis for our decision there. (citation omitted) We therefore have no occasion to address the issue." *Id.*[16]

The occasion to address the issue is now here. We are now squarely presented with the question of whether application of the equal-footing doctrine in *Borax, Ltd. v. Los Angeles, supra,* provides any basis to apply federal common law to the question of who owns accretions to ocean front property once the equal-footing doctrine has vested title to the tidelands in the state. And, clearly, the answer is no. For once the doctrine vests title to the tidelands in the state, it is spent. *State Land Board v. Corvallis Sand & Gravel Co., supra,* 429 U.S. at 371. *Hughes v. Washington, supra,* erred in taking the doctrine one step further to determine questions of title to accretions formed after the tidelands boundary was established and title vested in the state. Therefore it also must necessarily succumb, as did *Bonelli.*

What remains to be seen is whether there exists any reasoned principle of federal law which ought to displace state law in determining questions of title to ocean front accretions. *State Land Board v. Corvallis Sand & Gravel Co., supra,* 429 U.S. at 371. As discussed above, the mere fact that the uplands remained in federal ownership since prior to statehood provides no sound basis to apply a different rule (*supra,* pp. 10-11). As for private owners claiming a reason to apply federal common law based on the mere fact that their uplands were patented prior to statehood, that rationale has been expressly rejected by the Court. *State Land Board v. Corvallis Sand & Gravel Co., supra,* 429 U.S. at 371-372.

The only remaining rationale which has been suggested in support of the uniform application of federal common law is that offered by Justice Black in *Hughes*: the proximity to the boundaries of the international sea. This principle, weak when announced, has fallen prey to considerable criticism.[17] The boundary of the international

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[16]"* * * as the Court is certain to announce when the occasion arises, today's holding [in *Corvallis*] also overrules Hughes v. Washington (citation omitted) * * *" *State Land Board v. Corvallis Sand & Gravel Co.,* 429 U.S. 363, 383 (1977) (Marshall, J., dissenting).

[17]See footnote 14, *supra. See also,* Ca. Opening Br., pp. 15-17.

sea lies three miles offshore from the line of ordinary low water. 43 USC §§ 1312, 1301(c). Nothing affecting the title to accretion lands which have become dry, on-shore uplands can *in any way imaginable* touch and concern the national interests in or alter the location of the international boundary, which will always remain its prescribed distance offshore.

The fact is, applying federal law in this situation merely *creates* federal or private proprietary interests where they might not otherwise exist.[18] States in the exercise of their essential sovereignty should be free to determine if public interests in the use and disposition of state sovereign tidelands outweigh any private interest to the contrary. State law embodying those considerations should prevail in such an obvious absence of any true federal concern.

CONCLUSION

For the many reasons discussed above, *Hughes v. Washington, supra,* should be overruled, and summary judgment in this case should be granted to California, allowing it to apply the law of its own jurisdiction to this title dispute.

Respectfully submitted,

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[18]Application of "(a)ny other rule [than the federal common law of accretions] would leave riparian [sic] owners continually in danger of losing the access to water which is often the most valuable feature of their property." *Hughes v. Washington,* 389 U.S. 290, 294 (1967).