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 Bill of Complaint

STATE OF CALIFORNIA'S PETITION FOR REHEARING

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Plaintiff State of California hereby petitions for rehearing following the decision of the Supreme Court in this case, rendered June 18, 1982.

INTRODUCTION

As framed by the pleadings and briefs of both parties, the issue in this case pertains solely to the situation where oceanfront uplands owned by the United States abut lands to which the State gained title under the equal-footing doctrine upon admission to the Union. The specific issue is what law—State or federal—governs the location of this common boundary where artificially-caused physical changes in the shoreline have occurred subsequent to statehood.

Part of the Court's opinion is confined to the issue presented for decision. For reasons set forth later in this petition, California believes that this issue was wrongly decided. But the Court's opinion does not stop with disposition of the issue presented by this case. Without the benefit of briefing by the parties and, more importantly, without an appreciation of the pernicious practical consequences of its decision, the Court continues on to dispose of an issue that simply was not before it: What law governs the effect on oceanfront boundaries of artificially-caused shoreline changes where the upland owner is not the federal government, but rather a private party who merely derives title through a federal patent?

Such independent judicial initiatives sometimes result in bad law, and such is the case here. With one improvident tug, the Court has unraveled a carefully-woven fabric that was over one hundred years in the making. *State Land Board v. Corvallis Sand & Gravel Co.* is only the latest in a string of Supreme Court decisions holding that such State-private boundary disputes are controlled by State law. The worst of it is that the opinion utterly fails to provide the reasons of compelling practical policy that are required to support a conclusion that federal law must displace State law on this latter issue of private versus State ownership. We refer here not merely to the distinct and secondary question of the content of federal law, but to the threshold question of whether federal law applies at all.

The general rule long ago set down by this Court for cases involving accretions to federally-patented lands along navigable waterways is that state, not federal, law governs the rights of the private owner:

> "[W]*hatever incidents or rights attached to the ownership of the property conveyed by the United States bordering on a navigable stream* [emphasis in original] would be determined by the States in which it is situated, subject to the limitation that their rules do not impair the efficacy of the grant, or the use and enjoyment of the property by the grantee. . . .
>
> "As this land in controversy is not the land described in the letters patent or the acts of Congress, but, as is stated in the petition, is formed by *accretions or gradual deposits from the river,* whether such land belongs to the [party claiming the accretions] is, under the cases just cited, *a matter of local or state law, and not one arising under the laws of the United States.*" (Emphasis added.) (*Joy v. St. Louis* (1906) 201 U.S. 332, 342-343.)

The only exception is where there is "present some other principle of federal law requiring state law to be displaced." (*State Land Board v. Corvallis Sand & Gravel Co.* (1977) 429 U.S. 363, 371; accord, *Wilson v. Omaha Indian Tribe* (1979) 442 U.S. 653, 669-670.) Stated another way, "the guiding principle is that a significant conflict between some federal policy or interest and the use of state law in the premises must first be specifically shown." (*Wallis v. Pan American Pet. Corp.* (1966) 384 U.S. 63, 68.)

What is this overriding federal policy or interest that compels displacement of State law regarding the disposition of artificially-caused oceanfront accretions between the

State and a private littoral owner? The opinion does not say. At no point is such a dominant federal policy or interest put forth to justify the result reached. The opinion does cite *Hughes v. Washington* (1967) 389 U.S. 290, but it neither attempts a defense of that case's discredited "international relations" rationale nor offers a substitute rationale.

Particularly in light of the sweeping and unsettling impact of this opinion up and down the California coast, this failure to supply the predicate for application of federal law in the first instance leaves fatally flawed the Court's subsequent and secondary discussion of what the content of federal law should be.

The practical problems caused by the opinion on this point can be set forth briefly. In many of the western states, virtually all of the upland property was, upon admission to the Union, public land of the United States. Things were different in California, where, by the time of statehood, almost 9,000,000 acres of upland property had passed into private ownership by prior Spanish and Mexican land grants. (Donley, Atlas of California (1979) p. 12.) Many of these grants were along the coast; they proceeded northward from San Diego along the oceanfront to a point some 100 miles north of San Francisco, interspersed with ungranted lands of varying ocean frontages, which ungranted lands passed to the United States in 1848 by virtue of the Treaty of Guadalupe Hidalgo and became federal public lands. (See *ibid.*) Today, some 508 miles of the oceanfront land in California derives from these Spanish and Mexican grants and is held neither by the United States nor its public land patentees. An additional 264 miles of oceanfront land is owned by patentees of the federal government. A remaining 213 miles of oceanfront land is owned by the federal government, either as unsold public land or as land that the government acquired from owners who held title under Spanish or Mexican grants.

The oceanfront lands granted by Spain and Mexico, never having been in federal ownership, are subject to California's rule that artificial shoreline changes do not effect changes in the littoral boundary between private and State ownership. (See *Los Angeles Milling Co. v. Los Angeles* (1910) 217 U.S. 217, 225, 227-228; *Carpenter v. City of Santa Monica* (1944) 63 Cal.App.2d 772, 783-787 [147 P.2d 964].)

Under the Court's decision in this case, however, the privately-owned oceanfront lands that do not derive from such Spanish or Mexican grants (and perhaps even those that do, where the federal government has acquired such lands and later sold them as surplus to private parties) are subject to a different rule. As to such oceanfront lands, the opinion says, artificial changes in the shoreline *do* change the private-State littoral boundary.

Applying two divergent rules to private littoral frontage along California's coast leads to irrational and anomalous results where artificial influences have been at work, most obviously when the private ownerships having differing title histories lie adjacent to one another. The result is a jagged, saw-toothed ownership pattern along the oceanfront that bears no relation to any actual configuration of the coast, past or present. The problem is not merely one of inequity as among private oceanfront owners. Beyond that, and more importantly, the opinion does great damage to California's policy of maximizing public access to, and use of, the State's beaches, a goal that goes to the heart of the purpose for which the State holds its sovereign lands in trust for its people (see *Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29, 42-43 [84 Cal.Rptr. 162, 465 P.2d 50]). At many locations up and down the State, artificial structures (such as the breakwater at issue in this case) have been built and have caused the buildup and expansion of sandy beaches onto State-owned tideland. Under State law, such beaches are in State ownership, and so available for use by the public. Under the "federal rule" set forth in the opinion, however, they are in private ownership, and, if the public wants to use them, it will have to pay dearly for that privilege. Condemnation of the beaches that the federal rule renders "private" is not a realistic alternative in many instances, given the fiscal difficulties in which State and local governments find themselves. The result is that such beaches will remain preserves of the few who are fortunate enough to own oceanfront property.

We ask again, what is the dominant and countervailing federal policy or interest that requires a result so damaging to the public interest? What transcendent and overriding federal concern mandates that federal patentees not be subject to the same rules to which all other private oceanfront landowners in California are subject? In California's view, there is no such federal policy, interest, or principle that is threatened by evenhanded application of the California rule to all private oceanfront owners in the State, regardless of their source of title. For that reason principally, and for the additional reasons set forth below, the State of California petitions for rehearing.

GROUNDS FOR REHEARING

The petition for rehearing is based upon the following grounds:

1. As to oceanfront lands, the Court's opinion abandons long-established precedent that state law governs the effect of shoreline changes on the boundary along navigable waterways as between private parties and the States. Rather than articulating a strong and countervailing federal policy that the cases require as a predicate to such a displacement of otherwise applicable state law, the opinion merely cites *Hughes v. Washington,* a case whose "international relations" rationale for the displacement of state law has been gutted by past decisions of this Court. No substitute rationale is even attempted.

2. Even assuming a question of federal law is presented, the opinion is wrong when it finds content for such law in the past decisions of this Court and in the Submerged Lands Act. Both of these proffered sources of "federal common law" were specifically rejected in *State Land Board v. Corvallis Sand & Gravel Co.* (1977) 429 U.S. 363, 371, 380-381. Reliance upon the supposed "directive" of the Submerged Lands Act regarding "coastal" lands is particularly misplaced. First, the act did not purport to, nor could it, alter State title to, or rules of property regarding, lands that had already vested in the States years earlier under the equal-footing doctrine of the Constitution. *Corvallis* so holds. (429 U.S. at pp. 371-372, fn. 4.) Second, the relied-upon language regarding "accretions" is not limited

to "coastal" lands. The word "coastal" is not even used in section 5 of the act. The supposed directive of the act regarding accretions applies across the board, without differentiation, to all lands mentioned in the act, including lands beneath inland navigable waters.

3. The failure of the opinion to state a strong federal interest or policy requiring application of federal law also leaves unsupported the opinion's conclusion on the issue of whether State law should be borrowed to give content to federal law. *Wilson v. Omaha Indian Tribe* (1979) 442 U.S. 653, 672-673, makes frustration of federal policy or functions by applicable state law a precondition to creation of a federal rule. Further, *Wilson* requires an assessment of the impact that a federal rule might have on existing property relationships under state law. The opinion here honors neither of these requirements.

4. The above defects and omissions in the Court's opinion also undermine its conclusion on the issue that was presented for decision here: What law applies when the federal government is itself the owner of oceanfront property?

ARGUMENT

I

State Law Governs Ownership of Additions to Private Oceanfront Property Where That Property Abuts State Sovereign Land Owned Under the Equal-Footing Doctrine, Absent a Conflict with a Dominant Federal Interest. The Opinion Sets Forth No Such Countervailing Federal Interest

Where federally patented uplands abut lands held by the States under the equal-footing doctrine, state law governs ownership of any additions to the uplands as between the State and the private owner. On this point, it is enough to quote from past decisions of this Court, all of which concerned the ownership of such additions.

From *Joy v. St. Louis* (1906) 201 U.S. 332:

> "As this land in controversy is not the land described in the letters patent or the acts of Congress, but, as is stated in the petition, is formed by accretions or gradual deposits from the river, whether such land belongs to the [party claiming the accretions] is, under the cases just cited, a matter of local or state law, and not one arising under the laws of the United States." (*Id.,* at p. 343.)

From *State Land Board v. Corvallis Sand & Gravel Co.* (1977) 429 U.S. 363:

> "The equal-footing doctrine did not, therefore, provide a basis for federal law to supersede the State's application of its own law in deciding title to the Bonelli land, and state law should have been applied unless there were present some other principle of federal law requiring state law to be displaced. The only other basis [footnote omitted] for a colorable claim of federal right in *Bonelli* was that the Bonelli land had originally been patented to its predecessor by the United States, just as had most other land in the Western States. But that land had long been in private ownership and, hence, under the great weight of precedent from this Court, subject to the general body of state property law. *Wilcox v. Jackson, supra,* at 517. Since the application of federal common law is required neither by the equal-footing doctrine nor by any other

claim of federal right, we now believe that title to the Bonelli land should have been governed by Arizona law, and that the disputed ownership of the lands in the bed of the Willamette River in this case should be decided solely as a matter of Oregon law." (*Id.*, at pp. 371-372.)

"[T]his Court has held that subsequent changes in the contour of the land, as well as subsequent transfers of the land, are governed by the state law. *Joy v. St. Louis*, 201 U.S. 332, 343 (1906). Indeed, the rule that lands once having passed from the Federal Government are subject to the laws of the State in which they lie antedates *Pollard's Lessee*." (*Id.*, at p. 377.)

From *Wilson v. Omaha Indian Tribe* (1979) 442 U.S. 653:

"In . . . *Corvallis* . . . this Court held that, absent an overriding federal interest, the laws of the several States determine the ownership of the banks and shores of waterways. This was expressive of the general rule with respect to the incidents of federal land grants. . . ." (*Id.*, at p. 669.)

The above statements govern here. Under this same equal-footing doctrine, California gained sovereign title to oceanfront tidelands upon admission to the Union in 1850.[1]

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[1]*United States v. California* (1947) 332 U.S. 19, 38-39; *United States v. California* (1947) 332 U.S. 804, 805 (Decree); *United States v. Texas* (1950) 339 U.S. 707, 719, 723 (Reed, J., dissenting), 724 (separate views of Frankfurter, J.); *United States v. California* (1966) 382 U.S. 448, 452-453 (Supplemental Decree); 42 Op.Atty. Gen. 241, 243 (1963); Memorandum for the United States on Motion for Leave to File Complaint (Aug. 1981) p. 8 ("[T]idelands along the coast, unlike permanently submerged lands, are deemed

The Court never explains why a different rule applies to private uplands along the oceanfront. Regarding lands still owned by the federal government, the opinion chooses to rely on *Wilson v. Omaha Indian Tribe, supra;* but that case has no bearing on lands in private ownership that are held under a federal patent. Neither does *Borax Ltd. v. Los Angeles* (1935) 296 U.S. 10, provide helpful authority, because, as was made clear in *Corvallis, supra,* 429 U.S. at pp. 376-377, that case pertained only to determination of the initial littoral boundary at statehood, and had no application concerning the impact on ownership of subsequent shoreline changes. The Court's opinion must therefore stand or fall on the single case of *Hughes v. Washington,* which, in turn, teeters on the unsupportable premise that the dominant federal concern with international relations provides the countervailing federal interest that will displace state law when oceanfront property is involved. As set forth in California's opening brief in support of its summary judgment motion, pages 15-17, that premise is baseless in light of the opinion and decrees of this Court in *United States v. California.* Ironically, the dissent in *Corvallis, supra,* itself scuttles the *Hughes* "international relations" rationale:

> "It is difficult to take seriously the suggestion that the national interest in international relations justifies applying a different rule to ocean-front land grants

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to have inured to the State upon admission to the Union under the *Pollard* rule, a principle left unimpaired by this Court's more recent decisions denying State property claims in the marginal sea beyond the low water line [footnote omitted].").)

As to such oceanfront tidelands, distinct from submerged lands lying oceanward of the low water line, the equal-footing doctrine, not the Submerged Lands Act, is the source of California's title.

than to other grants by the Federal Government. It is clear that the States have complete title to lands below the line of mean high tide. See *Borax, Ltd. v. Los Angeles,* 296 U.S. 10 (1935); 43 U.S.C. §§ 1301(a)(2), 1311. 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.' ". . . . There are no international relations implications in the ownership of lands above the line of mean high tide." (429 U.S. 363, 383, fn. 1 (Marshall, J., joined by White, J., dissenting).)

Understandably, no effort is made in the opinion to defend the international relations rationale of *Hughes.* The opinion contents itself with reciting the requirement that there be "present some other principle of federal law requiring state law to be displaced." The "other principle of federal law" is never put forth, however. As to private oceanfront lands, the State is left with two divergent rules of law applicable to a single coastline, without ever being told why. Under the cases, this does not suffice.

II

The Notions that Prior Case Law Embodied a Federal Common Law of Accretion and that the Submerged Lands Act Could Operate Retroactively to Divest States of Lands Gained Upon Admission to the Union Were Both Rejected in Corvallis

Concerning the existence of a federal common law to govern the supposed federal question presented regarding federally patented oceanfront lands, the Court's opinion resurrects two theories that the States had thought safely interred by *Corvallis.*

Concerning the first theory, *Corvallis* specifically rejected the premise of *Bonelli Cattle Co. v. Arizona* (1973) 414 U.S. 313, that some of this Court's earlier cases had announced a "federal common law" of accretion that controlled the rights of federal patentees to shoreline additions along navigable waterways. (*Corvallis, supra,* 429 U.S. at pp. 380-381, fn. 8.) This lack of any existing federal common law regarding accretions and avulsions was implicitly recognized in *Wilson v. Omaha Indian Tribe, supra,* when the Court discussed whether to *create* such a federal common law, or instead to borrow state law as the rule of decision. (442 U.S. at pp. 672-673.) *Corvallis* specifically discussed two of the cases relied upon in the Court's opinion as expressive of this asserted federal common law, *New Orleans v. United States* (1836) 35 U.S. (10 Pet.) 662, and *County of St. Clair v. Lovingston* (1874) 90 U.S. (23 Wall.) 46, and stated that there was no indication in those cases that the court was articulating anything other than the applicable law of the respective states. The Court concluded:

> "In light of the treatment of the subject in such later cases as *Barney v. Keokuk, Packer v. Bird, Shively v. Bowlby,* and *Joy v. St. Louis* . . ., no 'rule' requiring the application of 'federal common law' to questions of riparian ownership may be deduced from *New Orleans* and *Lovingston.*" (429 U.S. at p. 391, fn. 8.)

We agree. In neither of these two cases, nor in the two other cases cited in the Court's opinion here, *Jefferis v. East Omaha Land Co.* (1890) 134 U.S. 178, and *Banks v. Ogden* (1864) 69 U.S. (2 Wall.) 57, is there any indication that the Court viewed the issue of accretion as presenting a federal question or that the conclusion reached was any different from that which would have been reached by the state court on the same question. Moreover, in none of these cases was a *State* claiming ownership of the disputed lands on the ground that it had title under the equal-footing doctrine.

Concerning the second theory, any supposed applicability of the Submerged Lands Act to boundary questions involving lands already owned by the States under the equal-footing doctrine was also expressly rejected in *Corvallis:*

> "[A]s discussed in *Bonelli,* the Submerged Lands Act did not alter the scope or effect of the equal-footing doctrine, *nor did it alter state property law regarding riparian ownership.* The effect of the Act was merely to confirm the States' title to the beds of navigable waters within their boundaries as against any claim of the United States Government. As merely a declaration of the States' *pre-existing* rights in the riverbeds, *nothing in the Act in any way mandates, or even indicates, that federal common law should be used to resolve ownership of lands which, by the very terms of the Act, reside in the States.*" (Emphasis added.) (429 U.S. at pp. 371-372, fn. 4.)

It is simply astounding that the Court should purport to find in the Submerged Lands Act a "directive" from Congress concerning a new federal common law of accretion that was meant to govern titles to sovereign lands that had long since passed to the States under the equal-footing doctrine. The whole purpose of the act was to *benefit* the States by quitclaiming to them what this Court earlier had said the States did *not* own under the equal-footing doctrine. In merely confirming title to the unaffected equal-footing lands, the congressional purpose was not to retroactively alter State ownership, or the rules governing ownership, regarding lands that had in no wise been affected by *United States v. California* and its companion cases.

Solicitor General Cox summarizes our point quite succinctly:

> "The Submerged Lands Act deals with the problems resulting from that decision—not with lands and doctrines not involved in that controversy. The act is wholly inapplicable to accretions to what had long been upland, whether mainland or an established island. No one ever supposed that *United States v. California* affected those areas." (42 Op.Atty.Gen. 241, 260 (1963).)

Neither could Congress have imposed such a directive even had it wanted to. *Corvallis* made clear that the States' title is constitutionally founded and not subject to change by Congress:

> "[T]he State's title to lands underlying navigable waters within its boundaries is conferred not by Congress but by the Constitution itself. . . . [T]he title thus acquired by the State is absolute so far as any federal principle of land title is concerned." (429 U.S. at p. 374.)

Congress could, of course, in quitclaiming lands *that were not already in State ownership,* limit the scope of that quitclaim; but clearly, such "reservations" could have no effect on lands already vested in the States, and which had not been affected by this Court's decisions concerning ownership of offshore lands below the low tide line. Against this background, the opinion's statement that Congress "withheld" from the "grant" to the States the accretions to coastal lands makes no sense. The tidelands abutting the high tide line were already in State ownership. As to such lands, the act confirmed title; it did not grant it.

Equally puzzling is the opinion's conclusion that Congress announced in the act a federal common law regarding "coastal" accretions. The opinion relies upon section 5 of the act, which nowhere uses the word "coastal" or anything similar. The literal sweep of the section includes all lands mentioned in the act, including lands where previously vested State ownership was merely confirmed. If what the Court means to say is that accretions to offshore coastal lands *newly in State ownership* by virtue of the act were meant by Congress to be subject to a federal rule, that is one thing; but we are not here dealing with such lands. California already owned tidelands along the coast above the low water line by virtue of the equal-footing doctrine. (See footnote 1, *supra.*)[2]

Finally, the Submerged Lands Act relates to land ownership as between the States and the federal government. It does not purport to regulate or govern land ownership as between the States and private parties. It is thus even more surprising that the Court finds in the act a "directive"

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[2]It appears from certain portions of the Court's opinion that the Court may have mistakenly viewed California's arguments concerning the equal-footing doctrine and the Submerged Lands Act as interdependent. To the contrary, as we thought we had made clear, California's ownership claim based on the act was completely independent of its claim based on the equal-footing doctrine, and was put forth as an alternate ground for decision.

by which Congress meant to control disputes between the State and private persons concerning the boundaries of the State's equal-footing lands. Indeed, the opinion itself, in discussing the federal rule of accretion assertedly embodied in the act, speaks only of "accretions to federal land" and "federal ownership." Where is the analytical link to privately owned lands? The opinion does not provide one.

III

At Minimum, Because of the Damaging Effect on State Policies and Property Relationships of Applying a Conflicting Federal Rule, and Because No Federal Policy or Function Would Be Frustrated by Applying State Law to Private Patentees of the Federal Government, State Law Should Have Been Borrowed

Wilson v. Omaha Indian Tribe, supra, involved questions of accretion along a navigable waterway where the United States was itself the owner of the riparian property. The Court determined that a federal question was presented, but nonetheless borrowed state law as the rule of decision. The Court set out the criteria for whether to borrow state law:

> "[W]e should consider whether there is need for a nationally uniform body of law to apply in situations comparable to this, whether application of state law would frustrate federal policy or functions, and the impact a federal rule might have on existing relationships under state law." (442 U.S. at pp. 672-673.)

The Court had no qualms about applying state law to govern accretions to land within the Indian reservation:

> "[W]e see little reason why federal interests should not be treated under the same rules of property that apply to private persons holding property in the same area by virtue of state, rather than federal, law. . . . [A]s long as the applicable standard is applied evenhandedly to particular disputes, we discern no imperative need to develop a general body of federal common law to decide cases such as this. . . ." (442 U.S. at p. 673.)

Still less is there a need for a nationally uniform rule when private patentees of the federal government, not the government itself, are the upland owners.

The Court also discussed the strong State interest in applying its own law to questions of property ownership and the need to protect the expectations of private landowners from frustration by the application of conflicting federal law to accretions on adjacent property. (442 U.S. at p. 674.) These are precisely the strong State concerns that are present in this case, augmented by California's strong public policy in favor of public access to, and use of, ocean beaches.

What, then, is the "federal policy or function" that is frustrated when the State's rule is to be applied, not even to the federal government, but to private landowners, in common with all other private landowners in the State? The opinion simply doesn't discuss the issue at all. The State can conceive of no such overriding federal concern regarding private federal patentees of oceanfront land, particularly in the face of the chaotic and damaging impact of the Court's federal rule upon property relationships within the State, both between adjacent private owners, and between the State as tideland owner and abutting private owners of upland. Along California's oceanfront, some 264 miles of federally patented upland are interspersed among 508 miles of upland that derives from Spanish and Mexican grants. All should be subject to the same uniform rule.

IV

State Law Should Govern the Boundaries of Federally Owned Upland as Well

The opinion's decision to choose federal law as the law governing boundaries of federally owned oceanfront lands is flawed in the same way as its decision to make federal law applicable to boundaries of privately owned oceanfront lands held by virtue of a federal patent. In both cases, there is absent from the opinion any discussion of the overriding federal policy or interest that would mandate displacement of State law, which discussion is a necessary precondition, under *Corvallis*, to a decision on the threshold question of whether federal law applies in the first instance. Further, the opinion proceeds beyond *Wilson,* and makes the littoral boundaries of *all* federally owned lands, throughout the United States, subject to federal law, although limiting application of the federal *rule* to oceanfront lands.

These points aside, even *Wilson* did not impose a uniform federal *rule* regarding accretion to federally owned lands along inland navigable waters. Application of the previously discussed *Wilson* criteria for borrowing State law yields no different conclusion where the federally owned uplands are situated along the oceanfront. The damaging effects upon State property relationships and the need for intrastate uniformity in matters of coastal land ownership have been discussed in the preceding section and are the same regardless of who owns the upland. State law should have been borrowed as the rule of decision here, as well.

The Submerged Lands Act has no bearing on the question. The act's reservation of accretions pertained only to land that was newly placed in State ownership by virtue of the act; Congress was holding back some of the lands that it was at that time giving up, not purporting to move shoreward across lands already owned by the coastal States under the equal-footing doctrine and retroactively establish a rule of accretion along the high water line different from that already in effect under State law. Such an intent would be wholly alien to the congressional purpose that motivated passage of the Submerged Lands Act in the first instance. By gratuitously "confirming" in the States title to tidelands and lands beneath inland waters that were already State-owned under the equal-footing doctrine, Congress did not intend to thereby take away previously vested State lands as a quid pro quo for the lands in the marginal sea that it was newly vesting in the States.

The federal government owns some 213 miles of oceanfront land in California.[3] There is no practical reason

[3]The ownership of fully 143 miles of this federally owned ocean frontage derives from lands originally granted by Spain or Mexico; these lands were not federal public land upon California's admission to the Union, but were later condemned or otherwise acquired by the United States. In private hands, such lands would be subject to California's rule of accretion, even under the Court's deci-

offered in the opinion why that frontage should not be subject to the same State rule of accretion that applies to private oceanfront owners, that is, that naturally occurring accretions belong to the upland owner but that accretions caused by breakwaters and other artificial influences do not. The California rule seems particularly reasonable where, as here, the accretions are claimed by the very upland owner that caused them to occur.

Wilson v. Omaha Indian Tribe borrowed state law because the expectations of private riparian owners, who were subject to state law, would otherwise be "upset by the vagaries of being located adjacent to or across from Indian reservations or other property in which the United States has a substantial interest." (442 U.S. at p. 674.) In this case, the Court frustrates the expectations not only of adjacent private owners, but of the State as well, by allowing ownership to turn on the fortuitous circumstance of whether the federal government is the upland owner. Such a distinction had no appeal for the Court in *Wilson,* and it should have no determining force here. State law should provide the rule of decision for oceanfront lands as well as lands riparian to inland waterways.

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sion. Merely by virtue of the federal government's having acquired such land, was the applicable law of accretion thereby changed from State to federal law? And what happens if some of this land is declared surplus and sold back into private ownership? What law governs then? Does the private owner gain the benefit of artificial accretions that occurred while the land was in federal ownership, but not of accretions occurring after sale to the private party? Or are these lands now to be treated the same as lands patented out of the federal public domain? The mere statement of these various situations is a strong recommendation for a single, uniform State rule, applicable in all instances regardless of ownership history.

CONCLUSION

The Courts' opinion should be altered to bring it into line with prior cases, particularly the cases which have held that state law governs the effect of shoreline changes on the common boundary between State-owned sovereign land and privately owned upland. At minimum, the opinion should be confined to oceanfront lands still in federal ownership, and the language regarding lands patented by the United States should be stricken. Accordingly, we respectfully request that the Court grant rehearing.

Dated, July 12, 1982

Respectfully submitted,

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I, Dennis M. Eagan, am one of the attorneys for plaintiff State of California, and do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

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Deputy Attorney General