IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

NO. 8, ORIGINAL

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF TEXAS,
Defendant

REPLY OF THE STATE OF TEXAS IN OPPOSITION TO PLAINTIFF'S REQUEST FOR A SUPPLEMENTAL DECREE AND PRELIMINARY INJUNCTION

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OCTOBER TERM, 1966

NO. 9, ORIGINAL

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF TEXAS,
Defendant

REPLY OF THE STATE OF TEXAS IN OPPOSITION TO PLAINTIFF'S REQUEST FOR A SUPPLEMENTAL DECREE AND PRELIMINARY INJUNCTION.

Now comes the State of Texas, defendant in the pending Motion for Supplemental Decree and Injunctive Relief, by its Attorney General, and answers as follows:

AS TO THE REQUESTED SUPPLEMENTAL DECREE

Defendant State denies that the baseline from which to measure Texas' three-league boundary and marginal belt of submerged lands granted and restored to the State under the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301-1315, is the natural shore line as it existed when Texas became a member of the Union on December 29, 1845, in the controverted areas seaward of permanent harbor works,

jetties, and protective works, which existed at such time or which presently exist.

There are presently existing protective jetties which constitute part of the permanent harbor works and mark the seaward limits of inland waters opposite the natural headlands at the entrances of Sabine Pass, Galveston Harbor, and other Texas harbors, and the proper baseline from which to measure Texas' grant under the Submerged Lands Act opposite such harbor works is the outermost seaward limit thereof. These outermost permanent harbor works, which form an integral part of the harbor system, are regarded as forming part of the coast for the purpose of interpreting the definitions and determining the baseline to be applied in the Submerged Lands Act. Such was the holding of this Court in the case of United States v. California, 381 U.S. 139 (1965). Therefore, the outermost limit of the harbor works is the correct baseline from which to measure the extent of the three-leagues granted and restored to Texas under the Submerged Lands Act.

Texas denies that the United States is entitled to the Supplemental Decree sought in its pending Motion, and for specific reply to the grounds enumerated by plaintiff in support of the Motion, the State says:

I

Answering the grounds enumerated as 1, 2, and 3, page 3, of the Motion, defendant admits the statements of fact therein contained but denies that the Submerged Lands Act restricts the baseline to

the natural shore line in harbor areas, as distinguished from the outermost limits of permanent harbor works forming an integral part of the harbor system as they presently exist.

II

Answering ground 4, defendant denies the allegation therein contained and says that the coast line of Texas, from which its seaward boundary was measured, included artificial harbor works and other artificial works or structures which marked the seaward limits opposite its harbors, including Galveston Harbor and Sabine Pass, at the present time.

III

Defendant admits the allegations contained in ground 5 of the Motion.

IV

Answering grounds 6 and 7, defendant denies the allegations therein contained and the conclusions that the lands in controversy are not included in the lands granted to Texas by the Submerged Lands Act and that they were included in the lands adjudged to the United States in the decree of December 12, 1960 in the case of United States v. Texas, 364 U.S. 502 (1960). Defendant alleges, as heretofore stated, that the lands in controversy were included in the grant to Texas contained in the Submerged Lands Act.

AS TO THE REQUESTED PRELIMINARY INJUNCTION

V.

Answering ground 8, defendant denies that any proposed action by the State in leasing the lands in controversy would have resulted in any injury or damage to the United States, because the Texas leases on sealed bids require the same royalty as on Federal leases; payment of a minimum bonus of Twenty-five Dollars per acre as compared with a minimum of Fifteen Dollars per acre on Federal leases; payment of a minimum of Five Dollars per acre annual rentals as compared with a minimum of Three Dollars per acre on Federal lease; and that the Attorney General of Texas offered to enter into a written agreement with the Secretary of Interior to hold in trust and suspense any sums paid for such leases, together with rentals and royalties thereon, in so far as the leases covered any portion of the lands in controversy, pending a determination of the controversy, as was done in the case of California and Louisiana, but the Secretary of Interior declined to do so.

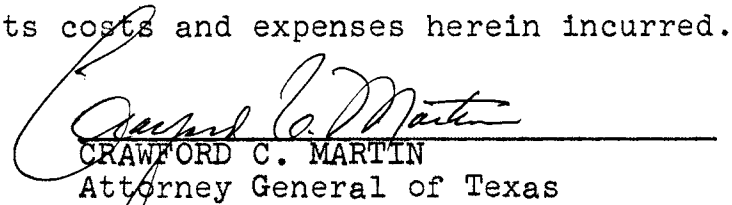
The result is that substantial sums of money for bonuses and annual rentals will be lost to either the State or the United States during the pendency of this case. Upon refusal of the Secretary of Interior to enter into such an agreement, the State withdrew the leases from the proposed sale and will not again offer such leases on any of the controverted area without such an agreement approved by this Court, until this controversy has been settled or determined on the merits in this proceeding. Therefore, there is no need or

justification for the granting of the preliminary injunction sought by the United States.

CONCLUSION AND PRAYER

Under the foregoing circumstances, since Texas does not intend to lease any of the controverted area pending determination of this controversy, the Motion for Preliminary Injunction should be denied. In the alternative, if Texas is enjoined despite these representations to the Court, which are the same as the representations made by the Solicitor General that the United States will refrain from leasing in the disputed area pending a determination on the merits, then the injunction should include and apply also to the United States, for which defendant hereby applies by way of cross-action, but only in the event that an unjunction is granted against Texas.

Further, the defendant prays that the plaintiff take nothing by its Motion filed herein; that the Motion for a Supplemental Decree be denied after the case has been submitted upon briefs and oral argument; and that defendant recover its costs and expenses herein incurred.



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PROOF OF SERVICE

I, Crawford C. Martin, Attorney for Respondent herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 10th day of April, 1967, I served copies of the foregoing Brief in Opposition to Plaintiff's Request for a Supplemental Decree and Preliminary Injunction by mailing a copy in a duly addressed envelope, first class mail, postage prepaid, on Hon. Thurgood Marshall, Solicitor General of the United States, to the Justice Department, Washington, D.C.; Hon. Ramsey Clark, Attorney General of the United States, to the Justice Department, Washington, D.C.; Hon. MacDonald Gallion, Attorney General of Alabama, State Administration Building, Montgomery, Alabama, 36104; Hon. Earl Faircloth, Attorney General of Florida, State Capitol, Tallahassee, Florida, 32304; Hon. Jack P. F. Gremillion, Attorney General of Louisiana, State Capitol, Baton Rouge, Louisiana, 70804; and Hon. Joe T. Patterson, Attorney General of Mississippi, State Capitol, Jackson, Mississippi, 65101.

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