

# SUBMERGED LANDS ACT

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## REPORT

FROM THE

COMMITTEE ON INTERIOR AND  
INSULAR AFFAIRS

SENATE OF THE UNITED STATES

TO ACCOMPANY

### S. J. Res. 13

JOINT RESOLUTION TO CONFIRM AND ESTABLISH THE TITLES OF THE STATES TO LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES AND TO THE NATURAL RESOURCES WITHIN SUCH LANDS AND WATERS; TO PROVIDE FOR THE USE AND CONTROL OF SAID LANDS AND RESOURCES, AND TO CONFIRM THE JURISDICTION AND CONTROL OF THE UNITED STATES OVER THE NATURAL RESOURCES OF THE SEABED OF THE CONTINENTAL SHELF SEAWARD OF STATE BOUNDARIES



MARCH 27, 1958

UNITED STATES  
GOVERNMENT PRINTING OFFICE

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## SUBMERGED LANDS ACT

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 MARCH 27, 1953.—Ordered to be printed,
 

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Mr. CORDON, from the Committee on Interior and Insular Affairs, submitted the following

## REPORT

[To accompany S. J. Res. 13]

The Senate Committee on Interior and Insular Affairs, to whom was referred the resolution, Senate Joint Resolution 13, to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, and to provide for the use and control of said lands and resources, having considered the same, report favorably thereon with an amendment in the nature of a substitute, and recommend that the bill, as amended, do pass. Senate Joint Resolution 13 was introduced by Senator Spessard L. Holland, of Florida, and sponsored by the following 39 other Senators: Mr. Butler of Nebraska, Mr. Smathers, Mr. Byrd, Mr. Robertson, Mr. Bennett, Mr. Watkins, Mr. Bricker, Mr. Taft, Mr. Butler of Maryland, Mr. Beall, Mr. Cordon, Mr. Carlson, Mr. Schoepfel, Mr. Daniel, Mr. Johnson of Texas, Mr. Duff, Mr. Martin, Mr. Ellender, Mr. Long, Mr. Eastland, Mr. Stennis, Mr. Frear, Mr. Flanders, Mr. Goldwater, Mr. Hendrickson, Mr. Smith of New Jersey, Mr. Hickenlooper, Mr. Jenner, Mr. Knowland, Mr. Kuchel, Mr. McClellan, Mr. Maybank, Mr. Mundt, Mr. Potter, Mr. Saltonstall, Mr. Smith of North Carolina, Mr. Thye, Mr. Welker, and Mr. McCarran.

Public hearings were held on Senate Joint Resolution 13 and related measures on February 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, and March 2, 3, and 4, 1953. Some 66 witnesses appeared before the committee, including the Attorney General of the United States, the Secretary of the Interior, and the Secretary of the Navy. Testimony and exhibits submitted to the committee during this hearing comprise 1,282 printed pages.

## II. THE AMENDMENT

For the convenience of the Members of the Senate, the committee is reporting a clean bill. Therefore, the amendment is to strike out all after the enacting clause and in lieu thereof insert the language set forth below. In part VI of this report, *post*, the changes from the original Holland bill as introduced are shown in detail and explained.

The committee wishes to emphasize that, as will be seen from comparison with the measure as introduced, the changes are primarily those of form and language, and the committee amendment is consistent throughout with the philosophy and intent of Senate Joint Resolution 13 as introduced. The only change of substance is found in section 9, in which the jurisdiction and control of the Federal Government over the natural resources of the seabed of the Continental Shelf seaward of historic State boundaries is confirmed. This assertion gives the weight of statutory law to the jurisdiction asserted by the proclamation of the President of the United States in 1945. The text of this proclamation is set forth in appendix A of this report:

The committee's form of the bill is as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this Joint Resolution may be cited as the "Submerged Lands Act".

## TITLE I

## DEFINITION

SEC. 2. When used in this Joint Resolution—

(a) The term "lands beneath navigable waters" means—

(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore or hereafter approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore or hereafter approved by the Congress, or as extended or confirmed pursuant to section 4 hereof;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(d) The terms "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: *Provided, however*, That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs,

lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;

(g) The term "State" means any State of the Union;

(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation;

## TITLE II

### LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES

#### SEC. 3. RIGHTS OF THE STATES.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on the effective date of this Joint Resolution, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

(c) The rights, powers, and titles hereby recognized, confirmed, established and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however*, That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: *Provided, however*, That within ninety days from the effective date hereof (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the

Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;

(d) Nothing in this Joint Resolution shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power;

(e) Nothing in this Joint Resolution shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control, appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States.

**SEC. 4. SEAWARD BOUNDARIES.**—The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore or is hereafter approved by Congress.

**SEC. 5. EXCEPTIONS FROM OPERATION OF SECTION 3 OF THIS JOINT RESOLUTION.**—There is excepted from the operation of section 3 of this Joint Resolution—

(a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union; all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians; and

(c) all structures and improvements constructed by the United States in the exercise of its navigational servitude.

**SEC. 6. POWERS RETAINED BY THE UNITED STATES.**—(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Joint Resolution.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

SEC. 7. Nothing in this Joint Resolution shall be deemed to amend, modify, or repeal the Acts of July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377), June 17, 1902 (32 Stat. 388), and December 22, 1944 (58 Stat. 887), and Acts amendatory thereof or supplementary thereto.

SEC. 8. Nothing contained in this Joint Resolution shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Joint Resolution and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however,* That nothing contained in this Joint Resolution is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this Joint Resolution, or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this Joint Resolution.

SEC. 9. Nothing in this Joint Resolution shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

SEC. 10. Executive Order Numbered 10426, dated January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve", is hereby revoked insofar as it applies to any lands beneath navigable waters as defined in section 2 hereof.

SEC. 11. SEPARABILITY.—If any provision of this Joint Resolution, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Joint Resolution and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby; without limiting the generality of the foregoing, if subsection 3 (a) 1, 3 (a) 2, 3 (b) 1, 3 (b) 2, 3 (b) 3, or 3 (c) or any provision of any of those subsections is held invalid, such subsection or provision shall be held separable and the remaining subsections and provisions shall not be affected thereby.

Amend the title so as to read:

Joint resolution to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to confirm the jurisdiction and control of the United States over the natural resources of the seabed of the Continental Shelf seaward of State boundaries.

### III. PURPOSE OF BILL

Senate Joint Resolution 13, as amended, determines and declares that it is in the public interest that title and ownership of lands beneath navigable waters within the boundaries of the respective States, and of the resources therein, be established and vested in the respective States. Insofar as the Federal Government has any proprietary rights in such lands and waters, that interest is relinquished or "quitclaimed" to the individual States.

The measure also provides that in addition to title and ownership, but distinct from them, the States shall have the right and power to manage, administer, lease, develop, and use such lands and natural resources in accordance with the terms of Senate Joint Resolution 13 and applicable State law, and whatever rights the Federal Government may have in such management and administration are established in and assigned to the States.

The proposed legislation specifically sets forth that none of the interests or rights established in, or confirmed, assigned, or quitclaimed to the States shall in any wise affect the constitutional powers of the Federal Government to regulate commerce, provide for the common

defense, or to conduct international affairs in the navigable waters areas within State boundaries.

#### *Offshore submerged lands*

The offshore rights which are confirmed to the States and their grantees are rights growing out of the concept of ownership and proprietary use and development—rights which were first asserted by the Federal Government in recent years and which it has never exercised nor enjoyed. These rights, legally vested in the States and their grantees by Senate Joint Resolution 13, have in fact been enjoyed and exercised by them from the beginning of our history as a nation until the date of the California decision.

Under this concept of ownership and control by the several States and their grantees immense development has been achieved representing untold millions of dollars of new economic wealth. This wealth has been created through control of the taking, within the boundaries of the States, of various forms of marine life, such as fish, oysters, shrimp, sponges, kelp and others; through the use of sand, shell, gravel and important minerals; through the erection and use of piers, as well as bulkheads and groins for the filling and conservation of new lands; through the erection and control on said new-built lands of valuable recreational, commercial, and private improvements, and through construction and use of facilities for the disposal of sewage and industrial waste. The control by the States of the production of oil and gas from their coastal belts has also created substantial values, which will continue temporarily in a few places for a few years, but such production of oil and gas in the past, present, or future is insignificant in value when compared with the many permanent values which largely determine the development and prosperity of coastal communities and many important industries.

Considering the untold millions of dollars of economic wealth represented in the port and harbor developments of our great coastal cities, in the recreational, residential, and commercial areas of Boston Harbor, Long Island, Staten Island, New Jersey, Florida, California, and elsewhere, and the beginnings of the development of the undersea oil and gas deposits within State boundaries off the Gulf and Pacific coasts, the committee majority is firmly convinced that the State ownership under which all of these and many other developments have been achieved should be continued in the public interest and in the furtherance of our Federal-State system.

It is highly significant that in all 16 hearings on this subject, comprising over 8,000 printed pages of evidence, no single instance has been mentioned where any of the thousands of developments accomplished under the authority and direction of the States and their grantees has interfered in the slightest degree with the exercise by the United States of its paramount constitutional powers or its governmental functions. Senate Joint Resolution 13 makes certain that there shall be no such interference or impairment in the future.

#### *Lands beneath inland waters and Great Lakes*

The committee likewise calls attention to the fact that Senate Joint Resolution 13 will operate to confirm to all States in the Nation the ownership and control of the submerged lands under their navigable inland waters and will confirm to the States bordering on the Great

Lakes the ownership and control of the beds of the Great Lakes, extending in many cases to international boundaries. Particular attention is directed to those portions of the report of the Senate Judiciary Committee on S. 1988 of the 80th Congress, 2d session, appearing in the appendix to this report, which relate to inland navigable waters of all States in the Union, and to the beds of the Great Lakes. It is abundantly clear that as to the beds of these inland waters and the Great Lakes the States have, under present conditions, grave reason for the apprehensions which flow out of the wording of the decision of the California case, and also out of the printed observations of Federal counsel in the California case, and out of the testimony of a former Attorney General and a former Solicitor General. The fact that most of the attorneys general of the several noncoastal States have joined in drafting and supporting Senate Joint Resolution 13, coupled with the fact that the American Bar Association has officially expressed its concern relative to the beds of the inland waters and of the Great Lakes, shows clearly the necessity of confirming these values to all States as will be accomplished by Senate Joint Resolution 13.

Reference is made to the large areas of inland waters and Great Lakes waters contained within the various States and set forth in table E of the appendix.

#### *All States treated alike*

The joint resolution treats all of the States alike, both inland and coastal, with respect to lands beneath navigable waters within their respective boundaries. As shown by the list in appendix F, every State has submerged lands which are covered by this joint resolution. Comparative totals show far greater areas under inland waters and the Great Lakes, as follows:

	<i>Acres</i>
Lands under inland waters.....	28,960,640
Lands under Great Lakes.....	38,595,840
Lands under marginal seas.....	17,029,120

All of these areas of submerged lands have been treated alike in this legislation because they have been possessed, used, and claimed by the States under the same rule of law, to wit: That the States own all lands beneath navigable waters within their respective boundaries. Prior to the California decision, no distinction had been made between lands beneath inland waters and lands beneath seaward waters so long as they were within State boundaries.

The rule was stated by the Supreme Court in the early case of *Pollard v. Hagan* (3 How. 212, 229 (1845)) in the following words:

First. The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. Second. The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.

The *Pollard* case and its general rule common to lands under both inland and seaward waters was cited with approval by 52 Supreme Court decisions and 244 State and Federal court decisions prior to the California case.<sup>1</sup> Excerpts from some of these opinions are included in appendix G.

<sup>1</sup> See Sheppard's Citations, *Pollard v. Hagan*, supra.

The majority opinion in the California case concedes that the Supreme Court in the past has indicated its belief that this Pollard rule of State ownership applies equally to all lands under navigable waters within State boundaries, whether inland or seaward. Mr. Justice Black said for the majority in the California case:

As previously stated this Court has followed and reasserted the basic doctrine of the Pollard case many times. And in doing so it has used language strong enough to indicate that the Court then believed that States not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction whether inland or not.

The purpose of this legislation is to write the law for the future as the Supreme Court believed it to be in the past—that the States shall own and have proprietary use of all lands under navigable waters within their territorial jurisdiction, whether inland or seaward, subject only to the governmental powers delegated to the United States by the Constitution.

*“Oil grab” charge of opposition*

For years the charge has been made, and it is still being made, that those who believe that the States themselves are best qualified to own and manage the lands and resources within their State boundaries are somehow participating in an “oil grab” as “stooges” of the oil industry. Nowhere in the long and voluminous record is there a scintilla of evidence even remotely substantiating such a charge.

The evidence is undisputed that the States receive more money for their mineral leases than is received by the Federal Government. The States receive larger bonus payments and higher rentals and royalties. For instance, Texas has averaged \$20 per acre for its submerged land leases on unproven acreage in its marginal belt. The State has received over \$7,000,000 for leases on approximately 350,000 acres. If the same leases had been sold under the present Federal Mineral Leasing Act the Federal Government would have received only 50 cents per acre or a total of \$175,000.

Under any of the scores of bills that have been submitted since the California, Texas, and Louisiana decisions, both by proponents of Federal control and by proponents of State control, the equities have been recognized of the oil operators who in good faith obtained leases from the States and who then went out and spent their own money in exploration and initial development work. These equities specifically have been recognized in all of the so-called administration bills submitted during the 80th, 81st, and 82d Congresses. They are similarly recognized in Senate Joint Resolution 13; the rights, powers, and titles vested in the States are made subject to the prior grants from the States, and the State-issued leases in navigable waters within State boundaries which were in force and effect on June 5, 1950—the date of the Supreme Court decisions in the Louisiana and Texas cases—are continued under their own terms and applicable State law. The committee majority emphasizes the fact that with respect to existing leases the same operators would produce the same oil and pay the same royalties under Federal administration as they will under State administration.

## IV. LEGISLATION FOR CONTINENTAL SHELF

The committee majority is fully aware that in proposing legislation applying only to submerged lands inside State boundaries, there remains a large and important area requiring congressional action, namely, the Continental Shelf seaward of State boundaries. Senate Joint Resolution 13, as amended, deals with this vast area only to the extent that it gives statutory confirmation to the jurisdiction and control of the United States over the resources of the seabed and subsoil of the Continental Shelf which was asserted in 1945 by the Presidential proclamation. It does not attempt to provide for the administration and development of the area and the mechanics of control.

These highly important, complex matters, after full discussion in the hearings and in the committee, have been left for further early consideration in separate legislation.

The complexity of the problem presented by the assumption by the United States of jurisdiction and control over the subsoil and seabed of the outer Continental Shelf is immediately apparent from even a cursory examination of the Presidential proclamation. The declaration is limited to jurisdiction and control of the resources of the land mass; as stated in the proclamation—

the character as high seas of the waters above the Continental Shelf and the right to their free and unimpeded navigation are in no way thus affected.

Clearly, we have here neither absolute sovereignty nor absolute ownership.

It must follow that the interest of the United States is, from a national and an international standpoint, politically and legally, *sui generis*. What Federal laws are applicable, what should apply? In what court, where situated, does jurisdiction lie or where should it be placed? Should new Federal law be enacted where existing statutes are wholly inadequate, or should the laws of abutting States be made applicable? The necessity for answering these questions is clear when we take note of the fact that the full development of the estimated values in the shelf area will require the efforts and the physical presence of thousands of workers on fixed structures in the shelf area. Industrial accidents, accidental death, peace and order—these and many other problems and situations need and must have legislative attention.

Therefore, the committee feels that the dual legislative approach is most desirable. Thereby each problem may be judged and determined by the Senate on its merits and subject to the particular and different considerations involved in each. As stated previously, the committee already has done considerable work toward recommending a legislative solution of the problems of the outer shelf, and it is committed to introducing and reporting to the Senate a measure, or measures, to that end as soon as possible during this session of the 83d Congress.

## V. SECTIONAL ANALYSIS OF THE JOINT RESOLUTION AS REPORTED

## SECTION 1—TITLE

This joint resolution may be cited as the "Submerged Lands Act."

## SECTION 2—DEFINITIONS

The following terms are defined: "lands beneath navigable waters," "boundaries," "coast line," "grantees," "lessees," "natural resources," "State," and "person."

## SECTION 3—RIGHTS OF THE STATES

Section 3 (a) (1) provides that the rights of ownership of lands and natural resources beneath navigable waters within the historic boundaries of the respective States are vested in and assigned to the States or persons holding thereunder on June 5, 1950 (the date of the Supreme Court decision in the Louisiana and Texas cases) as explained in part III, "purpose of bill." Under the terms of the measure the lands confirmed in the States by Senate Joint Resolution 13 are (i) lands within State's boundaries which are above high-water mark and are covered by navigable, nontidal waters, (ii) lands between the high-water mark and a line 3 miles seaward from the coastline, except that in States whose boundary extended beyond that line when the State entered the Union, or whose boundary has been or may hereafter be so extended with the approval of Congress, the resolution covers lands between the high-water mark and that boundary and (iii) all filled in, made, or reclaimed lands formerly beneath navigable waters.

Section 3 (a) (2) authorizes the States to administer, develop, and use the lands and natural resources beneath navigable waters.

Section 3 (b) (1) releases the right, title, and interest of the United States in the lands, improvements, and natural resources, upon or beneath navigable waters.

Section 3 (b) (2) releases all claims of the United States for money or damages arising out of operations of States or persons holding thereunder on the lands beneath navigable waters.

Section 3 (b) (3) provides that the United States shall pay to the respective States all moneys under its control which have been tendered to it under leases issued by these States, except sums which are required to be returned to the lessee or are deductible pursuant to agreement between the United States and any State.

Section 3 (c) provides that the grants to the States are subject to the terms of State leases in force on June 5, 1950. This recognizes the equities of existing operators to continue to operate for the duration of their leases. The first proviso to this subsection states that if oil and gas was not being produced from a lease on December 11, 1950 (the date of the decree in the Texas and Louisiana cases), or if the primary term of a lease has expired since that date, the lease shall be for a term from the effective date of this act equal to the term remaining unexpired on December 11, 1950. The purpose of this proviso is to prevent lessees from being penalized for their failure to develop or renew their leases during the period when their exploration and development was enjoined by the Supreme Court. The second proviso to this subsection states that all lessees must tender to the

States within 90 days all unpaid rentals, royalties, and other sums due and owing, and that where the lessee may have paid such sums to the Federal Government under the lease, the lessee is required to authorize the Federal Government to return the money to the States, except where the lessee has also paid the State.

A question has been asked of the committee as to the effect of section 3 (c) of the bill on a Florida lease on which Florida abated the lease rentals until such time as the lands here involved are reverted in the State by congressional action.

The committee understands that where rentals have been abated, or otherwise satisfied by agreement between a State and its lessee, section 3 (c) will in nowise vary or affect such agreement.

Section 3 (d) provides that nothing in the act shall be construed as affecting or releasing any of the constitutional authority of the United States over said lands and waters for the purposes of navigation, flood control, or the production of power.

Section 3 (e) provides that nothing in this act shall affect the laws of the States lying wholly or in part westward of the 98th meridian, relating to the ownership and control of ground and surface waters.

#### SECTION 4—SEAWARD BOUNDARIES

The seaward boundary of each original coastal State is confirmed and approved as a line 3 geographical miles distant from its coast line. "Coastline" is defined as the line of ordinary low water or the line marking the seaward limit of inland waters. This provision stems from the fact that the Supreme Court decision in *United States v. California* has been thought by some persons to cast doubt on whether the boundary of various eastern seaboard States extends 3 miles seaward from their coastlines.

Congressional authority is given for any State admitted subsequent to the formation of the Union to extend its seaward boundary to a line 3 geographical miles distant from its coastline, or to the international boundary of the United States. Any such extension of a State's boundary is expressly without prejudice to any claim a State may have that its boundary extends beyond that line. It is also provided that this section is without prejudice to the existence of a State's boundary beyond the 3-mile limit, if it was so provided prior to or at the time such State entered the Union, or if it has been heretofore or is hereafter approved by Congress.

#### SECTION 5—LAND EXCEPTED

Section 5 (a) provides that there is excepted from the operation of section 3 all tracts of land, together with all accretions thereto, resources therein, or improvements thereon, which the United States acquired from any State, or from any person in whom title had vested under the law of the State or of the United States; all lands which the United States lawfully holds under the law of a State; all lands expressly retained by or ceded to the United States when the State entered the Union; all lands acquired by the United States by eminent domain, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights which the United States has in lands presently and actually occupied under claim of right.

Section 5 (b) provides that lands or interest therein held by the United States for the benefit of Indians are also excepted.

Section 5 (c) excepts all improvements constructed by the United States in the exercise of its navigational servitude.

#### SECTION 6—POWERS RETAINED BY THE UNITED STATES

Section 6 (a) provides that the United States retain all of its navigational servitude and rights and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, the rights and powers granted to the States by section 3 of this joint resolution.

Section 6 (b) provides that in time of war, or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase the natural resources covered by this act at the prevailing market price, or to acquire any portion of the lands covered by this act by proceeding in accordance with due process of law and paying just compensation.

#### SECTION 7—CONSTRUCTION WITH OTHER ACTS

This section provides that the joint resolution shall not affect, modify, or repeal the certain prior acts of Congress with respect to water rights and uses as follows:

*Act of July 26, 1866 (14 Stat. 251).*—The main purpose of this act is to provide that the mineral lands of the public domain are open to exploration and occupation and to set forth the procedure for obtaining patents. The act also provides that rights to the use of water which have become vested by priority of possession shall be protected, and it establishes the right of the owners of such vested water rights to construct ditches and canals for the use of the water.

*Act of July 9, 1870 (16 Stat. 217).*—This act amends the act of July 26, 1866 (mentioned above) by providing that placer claims are subject to entry and patent, and by establishing the procedure for making such entries. The amendment specifically provides that the water rights conferred by the act of July 26, 1866, shall not be abrogated by the amendment.

*Act of March 3, 1877 (19 Stat. 377).*—This act provides that desert lands can be purchased for 25 cents an acre by persons who declare their intention to reclaim the land by conducting water onto the land within 3 years. The act provides, however, that the right to use the water shall depend on a bona fide prior appropriation and shall not exceed the water actually used for irrigation and reclamation. Under the act, all surplus water over such actual appropriation and use and all other nonnavigable water on the public domain are declared to remain free for appropriation.

*Act of June 17, 1902 (32 Stat. 388).*—This act provides that all proceeds from the sale of public lands in 16 Western States (excepting the 5 percent set aside for education) shall be set aside in a reclamation fund for irrigation and reclamation projects. Under the act, a

procedure is set up for the construction and location of irrigation projects and provision is made for entry on lands to be irrigated and for the purchase of irrigation water by private individuals. Section 8 of the statute provides that nothing in the act shall affect State laws relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired under such State law.

*Act of December 22, 1944 (58 Stat. 887).*—This act establishes rules for the improvement of rivers for navigation and flood control, and authorizes the construction of certain public works on rivers and harbors for that purpose. The act declares that it is the policy of Congress to recognize the interests and rights of the States \* \* \* in water utilization and control and limits navigation works to those which can be operated consistently with "appropriate and economic use of the waters of such rivers by other users."

#### SECTION 8—SAVING CLAUSE

This section contains a saving clause providing that nothing in this resolution shall affect such rights, if any, as may have previously been acquired under any law of the United States on lands subject to the resolution.

#### SECTION 9—CONTINENTAL SHELF

This section provides that nothing in this act shall affect the rights of the United States to the resources of the Continental Shelf outside State boundaries, which are declared to appertain to the United States and confirmed to be under its jurisdiction and control.

#### SECTION 10—EXECUTIVE ORDER NO. 10426 REVOKED

This section provides that Executive Order No. 10426 entitled "Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve" is revoked insofar as it applies to lands beneath navigable waters as defined in the joint resolution.

#### SECTION 11—SEPARABILITY

This section contains, in addition to the standard form of separability clause, an additional clause indicating the specific intention of Congress that if any of the provisions of subsections 3 (a), (b), or (c) is held invalid, such provisions shall be held separable and the remainder of the joint resolution shall not be affected thereby.

## VI. THE COMMITTEE AMENDMENTS

For the information of the 40 sponsors of Senate Joint Resolution 13 and for the other Members of the Senate, the text of Senator Holland's measure as introduced with each change shown in *italic* is set forth below. The specific amendments are numbered and each is explained individually immediately following the text of the amended measure.

18. J. Res. 13 as introduced is shown in Roman type. Amendments by the Committee on Interior and Insular Affairs to S. J. Res. 13, as introduced, are numbered and shown in *italic*.

JOINT RESOLUTION To confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, and to provide for the use and control of said lands and resources.

*Resolved by the Senat and House of Representatives of the United States of America in Congress assembled, That this Joint Resolution may be cited as the "Submerged Lands Act".*

## TITLE I

## DEFINITION

SEC. 2. When used in this [1] *Act Joint Resolution—*

(a) The term "lands beneath navigable waters" [2] *includes means—*

(1) all lands within the boundaries of each of the respective States which [3] *were* are covered by [4] *nontidal* waters [5] *that were* navigable under the laws of the United States at the time such State became a member of the Union, [6] *and* or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore or hereafter approved by Congress, extends seaward (or into the [7] *Great Lakes or Gulf of Mexico*) beyond three geographical miles, and

[8] *(2) (5)* all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as [9] *hereinabove* defined; [10] *the*

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore or hereafter approved by the Congress, or as extended or confirmed pursuant to section 4 hereof;

[11] *(b) (c)* The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters [12]; *which include all estuaries, ports, harbors, bays, channels, straits, historic bays, and sounds, and all other bodies of water which join the open sea;*

[13] *(c) (d)* The terms "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or [14] *from its predecessor sovereign* [15] *if legally validated*, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: *Provided, however, That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;*

[16] *(d) (e)* The term "natural resources" [17] *shall include includes*, without limiting the generality thereof, [18] *oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but* [19] *shall does* not include water power, or the use of water for the production of power; [20] *at any site where the United States now owns the water power;*

[21] *(e) (f)* The term "lands beneath navigable waters" [22] *shall does* not include the beds of streams in lands now or heretofore constituting a part of the

public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States. [23] and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;

[24] (f) (g) The term "State" means any State of the Union;

[25] (e) (h) The term "person" includes [26] any citizen of the United States, in addition to a natural person, an association, [27] of such citizens; a State, a political subdivision of a State, or a private, public, or municipal corporation;

## TITLE II

### LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES

#### SEC. 3. RIGHTS OF THE STATES.—

[28] (a) It is hereby determined and declared to be in the public interest that [29] (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and [30] (2) the right and power to [31] manage, administer, lease, control, develop, and use the said [32] lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in [33] and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the [34] property law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof; [35] and the

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, [36] except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, [37] moneys, improvements, and natural resources [38]; and; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, [39] for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters [40]; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on the effective date of this joint resolution, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States; The

[41] (c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in [42] and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however,* That, if oil or gas was not being produced from such lease on and before December 11, 1950, [43] or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: *Provided, however,* [44] That all rents, royalties, and other sums payable under such lease and the laws of the State issuing or whose grantee issued such lease between June 5, 1950 and the effective date hereof, which have not been paid to the State or its grantee issuing it or to the Secretary of the Interior of the United States shall be paid to the State or its grantee issuing such lease within ninety days from the effective date hereof: That within ninety days from the effective date hereof (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such

lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee: **Provided, however, That nothing;**

[45] (d) Nothing in this [46] **Act Joint Resolution** shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the production of power [47] **at any site where the United States now owns or may hereafter acquire the water power** or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation or to provide for flood control or the production of power [48]; **at any site where the United States now owns the water power: Provided further, That nothing;**

[49] (e) Nothing in this [50] **Act Joint Resolution** shall be construed as affecting or intending to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control, appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States.

SEC. 4. SEAWARD BOUNDARIES.—[51] *The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line.* Any State [52] *admitted subsequent to the formation of the Union* which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or [53] *in the case of the Great Lakes, to the international* [54] *boundary boundaries of the United States* [55] *in the Great Lakes or any other body of water traversed by such boundaries.* Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so [56] *as to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line.* Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore or is hereafter approved by Congress.

SEC. 5. EXCEPTIONS FROM OPERATION OF SECTION 3 OF THIS [57] **Act JOINT RESOLUTION.**—There is excepted from the operation of section 3 of this [58] **Act Joint Resolution**—

(a) all [59] **specifically described tracts or parcels of land** [60] **and together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the** [61] **decisions of the courts of such State, or their respective grantees, or successors in interest, by cession, grant, quitclaim, or condemnation, or from any other owner or owners thereof by conveyance or by condemnation; provided such owner or owners had lawfully acquired the title to such lands and resources in accordance with the statutes or decisions of the courts of the State in which the lands are located; and law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union; all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;**

(b) such lands beneath navigable waters [62] **within the boundaries of the respective States and such interests therein as are held, or any interest in which is held by the United States** [63] **in trust for the benefit of any tribe, band, or group of Indians or for individual** [64] **Indians, Indians; and**

[65] (c) **all structures and improvements constructed by the United States in the exercise of its navigational servitude.**

SEC. 6. POWERS RETAINED BY THE UNITED STATES.—(a) The United States retains all its [66] **navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the** [67] **constitutional purposes of commerce, navigation, national defense, and international affairs,** [68]

none of which includes any of the all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, [69] or the rights of management, administration, leasing, or of use, [70] and development [71] and control of the lands and natural resources which are specifically recognized, confirmed, established, and vested in [72] and assigned to the respective States and others by section 3 of this [73] Act Joint Resolution.

(b) In time of war [74] or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

SEC. 7. Nothing in this [75] Act Joint Resolution shall be deemed to amend, modify, or repeal the Acts of July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377), June 17, 1902 (32 Stat. 388), and December 22, 1944 (58 Stat. 887), and Acts amend tory thereof or supplementary thereto.

[76] SEC. 8. Nothing in this Act shall be deemed to affect in any wise any issues between the United States and the respective States relating to the ownership or control of that portion of the subsoil and sea bed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, described in section 2 hereof.

[77] SEC. 8. Nothing contained in this Joint Resolution shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Joint Resolution and such rights; if any, shall be governed by the law in effect at the time they may have been acquired: Provided, however, That nothing contained in this Joint Resolution is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this Joint Resolution or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this Joint Resolution.

[78] SEC. 9. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

[79] SEC. 9. Nothing in this Joint Resolution shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

[80] SEC. 10. Executive Order Numbered 10426, dated January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve", is hereby revoked insofar as it applies to any lands beneath navigable waters as defined in section 2 hereof.

[81] SEC. 11. SEPARABILITY.—If any provision of this Joint Resolution, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Joint Resolution and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby; without limiting the generality of the foregoing, if subsection 3 (a) 1, 3 (a) 2, 3 (b) 1, 3 (b) 2, 3 (b) 3 or 3 (c) or any provision of any of those subsections is held invalid, such subsection or provision shall be held separable and the remaining subsections and provisions shall not be affected thereby.

[82] Amend the title so as to read: "To confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, and to provide for the use and control of said lands and resources, and to confirm the jurisdiction and control of the United States over the natural resources of the seabed of the Continental Shelf seaward of State boundaries."

#### EXPLANATION OF AMENDMENTS

[1] Strike out "Act" and insert: "Joint Resolution".

(1) Perfecting amendment.

[2] Strike out "includes" and insert: "means—".

(2) Clarifying amendment. Use of the word "includes" might have been interpreted as indicating there were other areas in addition to those set forth in the definition that might also be affected.

**[3]** Strike out "were" and insert: "are".

(3) Clarifying amendment. The nontidal or inland areas, title to which is legislatively recognized as being in the States, should not be limited to the submerged lands beneath inland navigable waters as they existed at the time statehood was acquired. The new language would recognize the changes that have taken place since admission.

**[4]** After the word "by", insert: "nontidal".

(4) The word "nontidal" is used to separate the inland water areas from the sea, or tidal areas, and to identify each such area specifically.

**[5]** After the word "waters", insert: "that were".

(5) This amendment is in furtherance of the committee's purpose, indicated in (3) above, to include lands beneath waters that formerly were navigable as well as those presently navigable.

**[6]** After the word "Union", strike out "and" and insert: "or acquired sovereignty over such lands and waters thereafter, up to the ordinary high watermark as heretofore or hereafter modified by accretion, erosion, and reliction; "

"(2)".

(6) The added words carry out the purposes set forth in (3) and (5) above. "Reliction" refers to lands that once were submerged but have become uncovered, either by the land rising or the waters receding.

**[7]** Strike out "Great Lakes or".

(7) The Great Lakes are not tidal waters. Hence, the words are deleted. They are, however, included in the definition of "boundaries" in subsection (b), and States are authorized by section 4 to extend their seaward boundaries to the international boundaries in said Great Lakes.

**[8]** Strike out "(2)" and insert: "(3)".

(8) Perfecting amendment.

**[9]** Strike out "herein" and insert: "hereinabove".

(9) Clarifying amendment.

**[10]** After the word "defined," strike out "the" and insert:

"(b) The".

(10) Clarifying amendment.

**[11]** Strike out "(b)" and insert: "(c)".

(11) Perfecting amendment.

**[12]** After the word "waters", strike out all of lines 3, 4, and 5 and insert a semicolon.

(12) The words "which include all estuaries, ports, harbors, bays, channels, straits, historic bays, and sounds, and all other bodies of water which join the open sea" have been deleted from the reported bill because of the committee's belief that the question of what constitutes inland waters should be left where Congress finds it. The committee is convinced that the definition neither adds nor takes away anything a State may have now in the way of a coast and the lands underneath waters behind it.

In this connection, however, the committee states categorically that the deletion of the quoted language in no way constitutes an indication that the so-called "Boggs Formula," the rule limiting bays to areas whose headlands are not more than 10 miles apart, or the artificial "arcs of circles" method is or should be the policy of the United States in delimiting inland waters or defining coastlines. The elimination of the language, in the committee's opinion, is consistent with the philosophy of the Holland bill to place the States in the position in which both they and the Federal Government thought they were for more than a century and a half, and not to create any situations with respect thereto.

**[13]** Strike "(c)" and insert: "(d)".

(13) Perfecting amendment.

**[14]** After the word "or", insert: "from".

(14) Clarifying amendment.

**[15]** Strike out the comma after "sovereign" and insert: "if legally validated,".

(15) The words "if legally validated" have been added because during Spanish and French days land grants were made which never were recognized by the United States or the subsequent State. On the other hand, a great many such old Spanish and French grants have been recognized and therefore are valid. The purpose of the addition of the provision is to insure that the bill will not validate old grants which have not been recognized heretofore.

**[16]** Strike out "(d)" and insert: "(e)".

(16) Perfecting amendment.

**[17]** Strike out "shall include." and insert: "includes"

(17) Clarifying amendment.

- [18]** After the word "thereof," insert "oil, gas, and all other minerals, and".  
 (18) The committee deems it desirable to specify oil and gas as being among the natural resources covered by the proposed legislation.
- [19]** After the word "but", strike out "shall" and insert: "does".  
 (19) Clarifying amendment.
- [20]** After the word "power," strike out lines 22 and 23 and insert a semicolon.  
 (20) The words "at any site where the United States now owns the water-power" have been stricken here in the definition of "natural resources". The same language also is stricken from subsection (d) of section 3, page 16, at line 12, after the word "power." It is the committee's view that the provision is (1) surplusage; the right of the United States to generate and dispose of electrical energy as an incident to regulation of commerce is amply protected in preceding language; and (2) use of the word "owns" in connection with water power may be construed to import some right other than and in addition to the rights of the United States under its constitutional power to regulate commerce.
- [21]** Strike out "(e)" and insert: "(f)".  
 (21) Perfecting amendment.
- [22]** Strike out the word "shall" and insert: "does".  
 (22) Clarifying amendment.
- [23]** After the words "United States", insert: "and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;"  
 (23) The provision has been added to the category of submerged lands excluded from the definition of "lands beneath navigable waters." As originally drafted, section 2 (f) of Title I did not specifically protect the title of persons holding patents from the United States to the beds of unmeandered streams, and on the other hand it did not confirm the rule to the effect that title to the beds of navigable streams, meandered or not, passed to the several States.
- [24]** Strike out "(f)" and insert: "(g)".  
 (24) Perfecting amendment.
- [25]** Strike out "(g)" and insert: "(h)".  
 (25) Perfecting amendment.
- [26]** After the word "includes", strike out "any citizen of the United States" and insert: "in addition to a natural person,".  
 (26) The original language restricted, in effect, the application of the measure to a United States citizen or corporation. This was believed too narrow. Also the amended definition is in harmony with and necessary to the separability section (sec. 11).
- [27]** Strike out the words "of such citizens".  
 (27) Change necessary to make language conform to purpose explained in (26).
- [28]** After "SEC. 3. RIGHTS OF THE STATES.—", insert: "(a)".  
 (28) The right confirmed in the States of (a) ownership and (b) of management and use of the lands beneath navigable waters are made independent of each other by the committee's changes of style and the addition of language separating the two.
- [29]** After the word "that", insert: "(1)".  
 (29) Perfecting amendment to above.
- [30]** After the words "waters, and", insert: "(2)".  
 (30) Perfecting amendment to (28).
- [31]** After the words "power to", strike out the word "control" and insert: "manage, administer, lease,".  
 (31) To carry out the purposes of (28).
- [32]** After the word "said", insert: "lands and".  
 (32) Spells out intent of section.
- [33]** After the words "vested in", insert the words: "and assigned to".  
 (33) The added words carry out the purposes explained in (28).
- [34]** Strike out the word "property".  
 (34) The committee believed it unwise to restrict the rights recognized to those under the property law.
- [35]** Strike out "and the" and insert: "(b) (1) The".  
 (35) Clarifying amendment.
- [36]** After the word "aforesaid", add a comma and insert: "except as otherwise reserved herein".  
 (36) Perfecting amendment.

- [37] Perfecting amendment.
- [38] Clarifying amendment.
- [39] The words "for money or damages" are added to make specific the type of claims the Federal Government is relinquishing with respect to previous operations under State law.
- [40] The provision is added to spell out legislatively just what funds should be paid to the States from revenues for past operations. The provisions of clause (2) are necessary because under the stipulations between the Federal Government and the State of California, some of the revenues have been expended for administrative cost incurred by the Federal Government.
- [41] Subsectioning made necessary by division explained in (28) above.
- [42] Words are added to make the subsection conform with the foregoing.
- [43] The words are added to protect an additional class of lessees who have been unable to keep their leases alive in accordance with the terms thereof because of the stalemate that has developed since the Supreme Court decisions.
- [44] The new language lays down legislative directives for the time and conditions of repayment of accrued funds.
- [45] Perfecting.
- [46] Perfecting.
- [47] The reason for the deletion of words is explained in (20).
- [48] Explained in (20).
- [49] Perfecting.
- [50] Perfecting.
- [51] Since, strictly speaking, the Thirteen Original States themselves formed rather than were admitted into the Union, it was deemed desirable to recognize in each coastal State of that group a 3-mile sea boundary.
- [52] The addition is necessary in view of the separation between original and subsequently admitted States.
- [53], [54], and [55] The deletions and rearrangement of the words were deemed desirable to bring within the legislation lands beneath navigable waters in such States as Washington which have boundaries in bodies of water other than the Great Lakes, as well as the Great Lakes States themselves.
- [56] Clarifying.
- [57] Perfecting.
- [58] Perfecting.
- [59] Perfecting.
- [60] The addition is made to provide for changes in the land formation.
- [61] The language that is substituted for that stricken in the original bill is generally similar in purpose, but spells out in greater detail the classes of land exempted from the operation of section 3 of the Joint Resolution. It is believed that, with this explanation, the language is otherwise self-explanatory. However, the committee wishes to emphasize that the exceptions spelled out in this amendment do not in anywise include any claim resting solely upon the doctrine of "paramount rights" enunciated by the Supreme Court with respect to the Federal Government's status in the areas beyond inland waters and mean low tide.
- [62], [63], and [64] The new language and arrangement broadens the protection afforded Indians. In some areas, lands are not held in trust, strictly speaking, but rather are for the benefit of Indians.
- [65] The new subsection specifically excepts from the operation of the Joint Resolution such structures as lighthouses, breakwaters and the like.
- [66] Same as (65).
- [67] The added word spells out that all of its constitutional powers are retained by the Federal Government.
- [68] The substituted language asserts the primacy of the Federal Government's constitutional powers, but specifies that such constitutional powers do not include rights or property management and use that are specifically vested in and assigned to the States in section 3.
- [69] The new words are consistent with the approach adopted in section 3.
- [70] Perfecting.
- [71] The words are stricken to be consistent with (68), above.
- [72] The words are added to make this section conform with section 3.
- [73] Perfecting.
- [74] The addition of the word "or" broadens the rights of the Federal Government to acquire the natural resources at prevailing market price, or to acquire and use the lands in question for a national purpose by paying just compensation.
- [75] Perfecting.
- [76] The section 8 of the original bill is stricken and its substitute incorporated into the new section 9.

[77] This is a new section and is in the nature of a savings clause. It follows the historic congressional practice of exempting from the operation of statutes of this character existing third party rights, if any there be. The section constitutes neither a denial of nor a recognition of such rights, either in fact or in law; it merely saves to third party claimants their rights to their day in court.

[78] The section 9 of the bill as introduced, which was the general separability section, has been retained and made specific. It is properly placed at the end of the Joint Resolution and now becomes section 11 by reason of the addition of two new sections.

[79] As stated previously, this section constitutes a legislative confirmation of jurisdiction over the natural resources of the seabed and subsoil of the Continental Shelf seaward of the original State boundaries, which was asserted in the Presidential Proclamation of 1945.

[80] President Truman's Executive Order of January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve," is obviously inconsistent with the provisions of Senate Joint Resolution 13 with respect to submerged lands within original State boundaries. Although the act would repeal the Executive Order by implication, the committee deems it desirable to add a specific repealer with respect to the subject matter of Senate Joint Resolution 13.

[81] The new language of the separability clause is specific, in addition to the general language of section 9 of the Joint Resolution as introduced.

[82] The amendment to the title is necessary because of the new provision explained in (79) above with respect to the Continental Shelf seaward of original State boundaries.

## VII. HISTORY OF LEGISLATION

Senate Joint Resolution 13 as introduced is identical with the measure passed last year by both Houses of the 82d Congress. Senate Joint Resolution 20, as amended on the floor of the Senate by the substitution of the quitclaim measure introduced by Senator Holland. It is also similar in purpose and effect to House Joint Resolution 225, 79th Congress, which likewise passed both the Senate and the House in 1946.

Federal claims to the submerged offshore lands within State boundaries were not heard until the late 1930's. Prior to that time it was the virtually unanimous opinion of all who considered the problem that the States owned all of the lands beneath navigable waters within their boundaries. Indeed, in the California case, the Supreme Court conceded that the Court had many times in the past—

used language strong enough to indicate that the Court then believed that the States owned soils under all navigable waters within their territorial jurisdiction, whether inland or not (332 U. S. at 36).

As late as 1933, the then Secretary of the Interior, Harold L. Ickes, in refusing to grant to Dr. Olin Proctor, Long Beach dentist, a Federal oil lease on offshore submerged lands within the boundaries of California, recognized that—

Title to the soil under the ocean within the 3-mile limit is in the State of California and the land may not be appropriated except by authority of the State (hearings, on S. J. Res. 13; also on S. J. Res. 195, 81st Cong.)

The first doubts as to State ownership of the submerged offshore lands were publicly expressed in 1937 in response to the insistence of applicants for Federal oil and gas leases on those lands. In Congress, the alleged existence of Federal rights in these offshore areas was first asserted in the Nye resolution introduced in the 75th Congress in 1938 and in the Hobbs, O'Connor, Nye, and Walsh resolutions introduced in the 76th Congress in 1939. Congress, however, refused to change the well-established rule of State ownership, and none of these resolutions was enacted.

### *Congress approves quitclaim*

In 1945 resolutions were introduced in the 79th Congress quieting title to the submerged offshore lands in the respective States. The introduction of these resolutions was in large part a result of continuing indications that Secretary of the Interior Ickes might accede to demands to grant Federal minerals leases on portions of the offshore lands. After extensive hearings, these resolutions were passed in 1946 as House Joint Resolution 225, by a vote of 188 to 67 in the House and 44 to 34 in the Senate.<sup>1</sup> As stated, President Truman vetoed the act.<sup>2</sup> The House failed to override the veto.<sup>3</sup>

While Congress was considering House Joint Resolution 225, on May 29, 1945, Federal officials initiated suit against the Pacific Western Oil Corp., a lessee of the State of California, in an attempt to establish Federal rights to the submerged offshore lands. This suit was voluntarily dismissed by the Attorney General, and an original action was brought by him against the State of California in the Supreme Court, where he alleged that the United States "is the owner in fee simple, or possessed of paramount rights in and power over" the submerged lands in the 3-mile belt.

### *The Supreme Court decision*

On June 23, 1947, the Supreme Court rendered its opinion in the original case of *United States v. California*, holding that California "is not the owner of the 3-mile belt along its coast, and that the Federal Government rather than the State has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil (332 U. S. 19, 38-39)." A decree to that effect was entered on October 27, 1947 (332 U. S. 804).

Legislation quit claiming the offshore submerged lands to the States was again introduced in the 80th Congress. On April 30, 1948, the House passed H. R. 5992, a quitclaim bill, by a vote of 259 to 29. The companion Senate bill, S. 1988, was reported out of committee during the closing days of the session, but no action was taken on it by the Senate.

Similar bills were likewise introduced in both Houses of the 81st Congress. However, none of the many bills introduced received favorable action. In the 81st Congress, as in subsequent Congresses, bills also were introduced to provide for Federal administration of the submerged offshore lands, but none of them has passed either the House or the Senate.

The Attorney General of the United States, on December 21, 1948, instituted original suits in the Supreme Court against the States of Texas and Louisiana for the purpose of establishing Federal rights in the submerged lands off the shores of those States. The Supreme Court rendered decisions in favor of the United States in those two cases on June 5, 1950. In the Louisiana case the Court held that the California decision was controlling (339 U. S. 699). In the Texas case, by a vote of 4 to 3, the Court held that when Texas came into the Union on an "equal footing" with all other States, she relinquished any claim that she may have had to the offshore submerged lands (339 U. S. 707). Both Louisiana and Texas asked the Court to hear

<sup>1</sup> 92 Congressional Record, 79th Cong., 9642, 10316 (1946).

<sup>2</sup> 92 Congressional Record, 79th Cong., 10660 (1946).

<sup>3</sup> 92 Congressional Record, 10745 (1946).

evidence in support of their claims; but this was denied and the decisions were rendered on the pleadings alone.

Legislation restoring to the States submerged offshore lands within their historic State boundaries was again passed in both Houses of the 82d Congress. The Walter bill, H. R. 4484, was passed on July 30, 1951, by a vote of 265 to 109. On April 2, 1952, the Senate substituted the language of Senator Holland's S. 940, a measure identical to Senate Joint Resolution 13 as introduced, for the O'Mahoney-Anderson Federal administration bill, Senate Joint Resolution 20 by a vote of 50 to 35. Both Houses adopted the Senate bill recommended by the conference committee, but President Truman vetoed the measure. No attempt was made to override the veto.

Additional history of, and reasons for, the legislation are set out in detail in the report of the Senate Committee on the Judiciary (S. Rept. No. 1592, 80th Cong., 2d sess. on S. 1988) which is set forth in full in appendix E.

### VIII. SUPPORT FOR THE LEGISLATION

*Public officials.*—Since 1938 officials from 47 States have appeared in support of this legislation. The measure is actively supported by a large number of organizations composed of public officials, among which are (a) the National Association of Attorneys General, made up of the attorneys general of the 48 States; (b) Conference of Governors, composed of the governors of the 48 States; (c) Council of State Governments; (d) National Association of State Land Officials; (e) American Association of Port Authorities; (f) National Institute of Municipal Law Officers; (g) Conference of Mayors; (h) Interstate Oil Compact Commission; (i) National Association of Secretaries of State; (j) National Association of County Officials; (k) American Municipal Association; (l) Great Lakes Harbor Association; (m) Pacific Coast Association of Port Authorities; and (n) Port of New York Authority.

*Other organizations.*—Other organizations which have endorsed the legislation include:

- The American Bar Association
- American Title Association
- United States Chamber of Commerce
- United States Junior Chamber of Commerce
- National Water Conservation Conference
- National Reclamation Associations
- State Bar Association of California
- State Bar Association of Texas
- State Bar Association of Louisiana
- State Bar Association of Oklahoma
- National Sand and Gravel Association
- National Association of Real Estate Boards
- National Ready Mix Concrete Association
- Western States Land Commissioners Association (12 States)
- Western States Council (representing chambers of commerce in the 11 Western States)
- Western Meat Packers Association
- Illinois State Chamber of Commerce
- Missouri State Chamber of Commerce
- Idaho State Chamber of Commerce
- Baltimore Chamber of Commerce
- Florida State Chamber of Commerce
- United States Wholesale Grocers Association, Inc.
- Southern States Industrial Council
- Board of Public Works of West Virginia
- Public Lands Corp. of West Virginia

## IX. CONCLUSION

The committee submits that the enactment of Senate Joint Resolution 13, as amended, is an act of simple justice to each of the 48 States in that it reestablishes in them as a matter of law that possession and control of the lands beneath navigable waters inside their boundaries which have existed in fact since the beginning of our Nation. It is not a gift; it is a restitution. By this joint resolution the Federal Government is itself doing the equity it expects of its citizens.

The committee recommends enactment of Senate Joint Resolution 13.

APPENDIXES TO SENATE REPORT 133, TO ACCOMPANY  
SENATE JOINT RESOLUTION 13, THE SUBMERGED  
LANDS ACT

APPENDIX A

A PROCLAMATION (No. 2667)

POLICY OF THE UNITED STATES WITH RESPECT TO THE NATURAL RESOURCES OF  
THE SUBSOIL AND SEA BED OF THE CONTINENTAL SHELF

(By the President of the United States of America)

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new resources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-eighth day of September, in the year of our Lord nineteen hundred and forty-five, and of the Independence of the United States of America, the one hundred and seventieth.

[SEAL]

HARRY S. TRUMAN.

By the President:

DEAN ACHESON,

*Acting Secretary of State.*

SEPTEMBER 28, 1945.

## APPENDIX B

## EXECUTIVE ORDER 9633

RESERVING AND PLACING CERTAIN RESOURCES OF THE CONTINENTAL SHELF UNDER  
THE CONTROL AND JURISDICTION OF THE SECRETARY OF THE INTERIOR

By virtue of and pursuant to the authority vested in me as President of the United States, it is ordered that the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States declare this day by proclamation to appertain to the United States and to be subject to its jurisdiction and control, be and they are hereby reserved, set aside, and placed under the jurisdiction and control of the Secretary of the Interior for administrative purposes, pending the enactment of legislation in regard thereto. Neither this Order nor the aforesaid proclamation shall be deemed to affect the determination by legislation or judicial decree of any issues between the United States and the several states, relating to the ownership or control of the subsoil and seabed of the continental shelf within or outside of the 3-mile limit.

HARRY S. TRUMAN.

THE WHITE HOUSE,  
September 28, 1945.

## APPENDIX C

TEXT OF SUPREME COURT DECISION IN U. S. vs. CALIFORNIA (332 U. S. 19),  
DECIDED JUNE 23, 1947

## UNITED STATES v. CALIFORNIA

NO. 12, ORIGINAL

Argued March 13-14, 1947.—Decided June 23, 1947

1. That complaint filed in this case by the United States against the State of California to determine which government owns, or has paramount rights in and power over, the submerged land off the coast of California between the low-water mark and the three-mile limit and has a superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land (much of which has already been, and more which is about to be, taken by or under authority of the State) presents a case or controversy over which this Court has original jurisdiction under Article III, § 2, of the Constitution. Pp. 24-25.
2. The fact that the coastal line is indefinite and that its exact location will involve many complexities and difficulties presents no insuperable obstacle to the exercise of the highly important jurisdiction conferred on this Court by Article III, § 2, of the Constitution. Pp. 25-26.
3. Congress has neither explicitly nor by implication stripped the Attorney General of the power to invoke the jurisdiction of this Court in this federal-state controversy, pursuant to his broad authority under 5 U. S. C. § § 291, 309, to protect the Government's interests through the courts. Pp. 26-29.
4. California is not the owner of the three-mile marginal belt along its coast; and the Federal Government rather than the State has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil. Pp. 29-39.
  - (a) There is no substantial support in history for the view that the thirteen original colonies separately acquired ownership to the three-mile belt beyond the low-water mark or the soil under it, even if they did acquire elements of the sovereignty of the English crown by their revolution against it. *Pollard's Lessee v. Hagan*, 3 How. 212, distinguished. Pp. 29-33.
  - (b) Acquisition of the three-mile belt has been accomplished by the National Government, and protection and control of it has been and is a function of national external sovereignty. Pp. 33-35.
  - (c) The assertion by the political agencies of this Nation of broad dominion and control over the three-mile marginal belt is binding upon this Court. Pp. 33-34.

(d) The fact that the State has been authorized to exercise local police power functions in the part of the marginal belt within its declared boundaries does not detract from the Federal Government's paramount rights in and power over this area. P. 36.

(e) *Manchester v. Massachusetts*, 139 U. S. 240; *Louisiana v. Mississippi*, 202 U. S. 1; *The Abby Dodge*, 223 U. S. 166, distinguished. Pp. 36-38.

5. The Federal Government's paramount rights in the three-mile belt have not been lost by reason of the conduct of its agents, nor by this conduct is the Government barred from enforcing its rights by reason of principles similar to laches, estoppel or adverse possession. Pp. 30-40.

(a) The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property. P. 40.

(b) Officers of the Government who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act. P. 40.

6. The great national question whether the State or the Nation has paramount rights in and power over the three-mile belt is not dependent upon what expenses may have been incurred by public or private agencies upon mistaken assumptions. P. 40.

7. It is not to be assumed that Congress, which has constitutional control over Government property, will so execute its powers as to bring about injustices to states, their subdivisions, or persons acting pursuant to their permission. P. 40.

8. The United States is entitled to a decree declaring its rights in the area in question as against California and enjoining California and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States. Pp. 22-23, 41.

The case is stated in the first paragraph of the opinion, and the conclusion that the United States is entitled to the relief prayed for is reported at page 41.

*Attorney General Clark* and *J. Howard McGrath*, then Solicitor General, were for the United States on the motion for leave to file the complaint, and on the complaint and other pleadings, including a motion for judgment on the pleadings.

*Robert W. Kenny*, then Attorney General of California, was for the defendant on its answer and other pleadings.

*Attorney General Clark* and *Arnold Raum* argued the cause for the United States. With them on the brief were *Acting Solicitor General Washington*, *Assistant Attorney General Babelon*, *Stanley M. Silverberg*, *J. Edward Williams*, *Robt. E. Mulrone*, *Robert M. Vaughan*, *Abraham J. Harris* and *Thomas L. McKevitt*.

*Fred N. Howser*, Attorney General of California, and *William W. Clary*, Assistant Attorney General, argued the cause for the defendant. With them on the brief were *C. Roy Smith*, Assistant Attorney General, *Homer Cummings*, *Max O'Rell Truitt*, *Louis W. Myers* and *Jackson W. Chance*.

By special leave of Court, *Price Daniel* Attorney General of Texas, argued the cause for National Association of Attorneys General, as *amicus curiae*, urging dismissal of the complaint. With him on the brief were *Walter R. Johnson*, Attorney General of Nebraska; *Clarence A. Barnes*, Attorney General of Massachusetts, *Nathan B. Bidwell* and *George P. Drury*, Assistant Attorneys General; *Hugh S. Jenkins*, Attorney General of Ohio; *Fred S. LeBlanc*, Attorney General of Louisiana, *John L. Madden*, Special Assistant Attorney General; *Edward F. Arn*, Attorney General of Kansas; *A. B. Mitchell*; *Elton M. Hyder, Jr.*, Assistant Attorney General of Texas; *Grover Sellers* and *Orrin G. Judd*.

By special leave of Court, *Leander I. Shelley* argued the cause for the American Association of Port Authorities, as *amicus curiae*, urging dismissal of the complaint. With him on the brief were *Eldon S. Lararus* and *Rueben Satterthwaite*.

*James E. Watson* and *Orin deM. Walker* filed a brief for Robert E. Lee Jordan, as *amicus curiae*, in support of the United States.

Briefs of *amici curiae* in support of the defendant were filed by *Nathaniel L. Goldstein*, Attorney General, and *Wendell P. Brown*, Solicitor General, for the State of New York; *T. McKeen Chidsey*, Attorney General, *M. Vashti Burr*, Deputy Attorney General, and *Harry F. Stanbaugh* for the Commonwealth of Pennsylvania; *Herman C. Wilson*, *Horace H. Edward*, *Walter J. Mattison*, *Ray L. Chesebro* and *Charles S. Rhyne* for the National Institute of Municipal Law

Officers; *Ray L. Chesebro, W. Reginald Jones, Irving M. Smith and Hugh M. MacDonald*, for the California Association of Port Authorities; *Archibald N. Jordan* for the Lawrence Wards Island Realty Co.; and *A. L. Weil and Thomas A. J. Dockweiler*.

MR. JUSTICE BLACK delivered the opinion of the Court.

The United States by its Attorney General and Solicitor General brought this suit against the State of California invoking our original jurisdiction under Article III, § 2, of the Constitution which provides that "In all Cases \* \* \* in which a State shall be a Party, the Supreme Court shall have original Jurisdiction." The complaint alleges that the United States "is the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low-water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California." It is further alleged that California, acting pursuant to state statutes, but without authority from the United States, has negotiated and executed numerous leases with persons and corporations purporting to authorize them to enter upon the described ocean area to take petroleum, gas, and other mineral deposits, and that the lessees have done so, paying to California large sums of money in rents and royalties for the petroleum products taken. The prayer is for a decree declaring the rights of the United States in the area as against California and enjoining California and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States.

California has filed an answer to the complaint. It admits that persons holding leases from California, or those claiming under it, have been extracting petroleum products from the land under the three-mile ocean belt immediately adjacent to California. The basis of California's asserted ownership is that a belt extending three English miles from low-water mark lies within the original boundaries of the state, Cal. Const., Art. XII (1849),<sup>1</sup> that the original thirteen States acquired from the Crown of England title to all lands within their boundaries under navigable waters, including a three-mile belt in adjacent seas; and that since California was admitted as a state on an "equal footing" with the original states, California at that time became vested with title to all such lands. The answer further sets up several "affirmative" defenses. Among these are that California should be adjudged to have title under a doctrine of prescription; because of an alleged long-existing Congressional policy of acquiescence in California's asserted ownership; because of estoppel or laches; and, finally, by application of the rule of *res judicata*.<sup>2</sup>

After California's answer was filed, the United States moved for judgment as prayed for in the complaint on the ground that the purported defenses were not sufficient in law. The legal issues thus raised have been exhaustively presented by counsel for the parties, both by brief and oral argument. Neither has suggested any necessity for the introduction of evidence, and we perceive no such necessity at this stage of the case. It is now ripe for determination of the basic legal issues presented by the motion. But before reaching the merits of these issues, we must first consider questions raised in California's brief and oral argument concerning the Government's right to an adjudication of its claim in this proceeding.

*First.* It is contended that the pleadings present no case or controversy under Article III, § 2, of the Constitution. The contention rests in the first place on an argument that there is no case or controversy in a legal sense, but only a difference of opinion between federal and state officials. It is true that there is a difference of opinion between federal and state officers. But there is far more than that. The point of difference is as to who owns, or has paramount rights in and power over several thousand square miles of land under the ocean off the coast of California. The difference involves the conflicting claims of federal and state officials as to which government, state or federal, has a superior right to take or authorize the taking of the vast quantities of oil

<sup>1</sup>The Government complaint claims an area extending three nautical miles from shore; the California boundary purports to extend three English miles. One nautical mile equals 1.15 English miles, so that there is a difference of 0.45 of an English mile between the boundary of the area claimed by the Government, and the boundary of California. See Cal. Const., Art. XII, § 1 (1879).

<sup>2</sup>The claim of *res judicata* rests on the following contention. The United States sued in ejectment for certain lands situated in San Francisco Bay. The defendant held the lands under a grant from California. This Court decided that the state grant was valid because the land under the bay had passed to the state upon its admission to the Union. *United States v. Mission Rock Co.*, 189 U. S. 391. There may be other reasons why the judgment in that case does not bar this litigation; but it is a sufficient reason that this case involves land under the open sea, and not land under the inland waters of San Francisco Bay.

and gas underneath that land, much of which has already been, and more of which is about to be, taken by or under authority of the state. Such concrete conflicts as these constitute a controversy in the classic legal sense, and are the very kind of differences which can only be settled by agreement, arbitration, force, or judicial action. The case principally relied upon by California, *United States v. West Virginia*, 295 U. S. 463, does not support its contention. For here there is a claim by the United States, admitted by California, that California has invaded the title or paramount right asserted by the United States to a large area of land and that California has converted to its own use oil which was extracted from that land. Cf. *United States v. West Virginia, supra*, 471. This alone would sufficiently establish the kind of concrete, actual conflict of which we have jurisdiction under Article III. The justiciability of this controversy rests therefore on conflicting claims of alleged invasions of interests in property and on conflicting claims of governmental powers to authorize its use. *United States v. Texas*, 143 U. S. 621, 646, 648; *United States v. Minnesota*, 270 U. S. 181, 194; *Nebraska v. Wyoming*, 325 U. S. 589, 608.

Nor can we sustain that phase of the state's contention as to the absence of a case or controversy resting on the argument that it is impossible to identify the subject matter of the suit so as to render a proper decree. The land claimed by the Government, it is said, has not been sufficiently described in the complaint since the only shoreward boundary of some segments of the marginal belt is the line between that belt and the State's inland waters. And the Government includes in the term "inland waters" ports, harbors, bays, rivers, and lakes. Pointing out the numerous difficulties in fixing the point where these inland waters end and the marginal sea begins, the state argues that the pleadings are therefore wholly devoid of a basis for a definite decree, the kind of decree essential to disposition of a case like this. Therefore, California concludes, all that is prayed for is an abstract declaration of rights concerning an unidentified three-mile belt, which could only be used as a basis for subsequent actions in which specific relief could be granted as to particular localities.

We may assume that location of the exact coastal line will involve many complexities and difficulties. But that does not make this any the less a justiciable controversy. Certainly demarcation of the boundary is not an impossibility. Despite difficulties this Court has previously adjudicated controversies concerning submerged land boundaries. See *New Jersey v. Delaware*, 291 U. S. 361, 295 U. S. 694; *Borax Ltd. v. Los Angeles*, 296 U. S. 10, 21-27; *Oklahoma v. Texas*, 256 U. S. 70, 602. And there is no reason why, after determining in general who owns the three-mile belt here involved, the Court might not later, if necessary, have more detailed hearings in order to determine with greater definiteness particular segments of the boundary. *Oklahoma v. Texas*, 258 U. S. 574, 582. Such practice is commonplace in actions similar to this which are in the nature of equitable proceedings. See e. g. *Oklahoma v. Texas*, 256 U. S. 602, 608-609; 260 U. S. 606, 625; 261 U. S. 340. California's contention concerning the indefiniteness of the claim presents no insuperable obstacle to the exercise of the highly important jurisdiction conferred on us by Article III of the Constitution.

*Second.* It is contended that we should dismiss this action on the ground that the Attorney General has not been granted power either to file or to maintain it. It is not denied that Congress has given a very broad authority to the Attorney General to institute and conduct litigation in order to establish and safeguard government rights and properties.<sup>5</sup> The argument is that Congress has for a long period of years acted in such a way as to manifest a clear policy to the effect that the states, not the Federal Government, have legal title to the land under the three-mile belt. Although Congress has not expressly declared such a policy, we are asked to imply it from certain conduct of Congress and other governmental agencies charged with responsibilities concerning the national domain. And, in effect, we are urged to infer that Congress has by implication amended its long-existing statutes which grant the Attorney General broad powers to institute and maintain court proceedings in order to safeguard national interests.

An Act passed by Congress and signed by the President could, of course, limit the power previously granted the Attorney General to prosecute claims for the Government. For Article IV, § 3, Cl. 2 of the Constitution vests in Congress "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . ." We have said that the constitutional power of Congress in this respect is without limitation.

<sup>5</sup> 5 U. S. C. §§ 291, 309; *United States v. San Jacinto Tin Co.*, 125 U. S. 273, 279, 284; *Kern River Co. v. United States*, 257 U. S. 147, 154-55; *Sanitary District v. United States*, 266 U. S. 405, 425-426; see also *In re Debs*, 158 U. S. 564, 584; *United States v. Oregon*, 295 U. S. 1, 24; *United States v. Wyoming*, 323 U. S. 669, 329 U. S. 670.

*United States v. San Francisco*, 310 U. S. 16, 29-30. Thus neither the courts nor the executive agencies could proceed contrary to an Act of Congress in this congressional area of national power.

But no act of Congress has amended the statutes which impose on the Attorney General the authority and the duty to protect the Government's interests through the courts. See *In re Cooper*, 143 U. S. 472, 502-503. That Congress twice failed to grant the Attorney General specific authority to file suit against California,<sup>4</sup> is not a sufficient basis upon which to rest a restriction of the Attorney General's statutory authority. And no more can we reach such a conclusion because both Houses of Congress passed a joint resolution quilclaiming to the adjacent states a three-mile belt of all land situated under the ocean beyond the low-water mark, except those which the Government had previously acquired by purchase, condemnation, or donation.<sup>5</sup> This joint resolution was vetoed by the President.<sup>6</sup> His veto was sustained.<sup>7</sup> Plainly, the resolution does not represent an exercise of the constitutional power of Congress to dispose of public property under Article IV, § 3, Cl. 2.

Neither the matters to which we have specifically referred, nor any others relied on by California, afford support for a holding that Congress has either explicitly or by implication stripped the Attorney General of his statutorily granted power to invoke our jurisdiction in this federal-state controversy. This brings us to the merits of the case.

*Third.* The crucial question on the merits is not merely who owns the bare legal title to the lands under the marginal sea. The United States here asserts rights in two capacities transcending those of a mere property owner. In one capacity it asserts the right and responsibility to exercise whatever power and dominion are necessary to protect this country against dangers to the security and tranquility of its people incident to the fact that the United States is located immediately adjacent to the ocean. The Government also appears in its capacity as a member of the family of nations. In that capacity it is responsible for conducting United States relations with other nations. It asserts that proper exercise of these constitutional responsibilities requires that it have power, unencumbered by State commitments, always to determine what agreements will be made concerning the control and use of the marginal sea and the land under it. See *McCulloch v. Maryland*, 4 Wheat. 316, 403-408; *United States v. Minnesota*, 270 U. S. 181, 194. In the light of the foregoing, our question is whether the State or the Federal Government has the paramount right and power to determine in the first instance when, how, and by what agencies, foreign or domestic, the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited.

California claims that it owns the resources of the soil under the three-mile marginal belt as an incident to those elements of sovereignty which it exercises in that water area. The state points out that its original Constitution, adopted in 1849 before that state was admitted to the Union, included within the state's boundary the water area extending three English miles from the shore. Cal. Const. (1849) Art. XII; that the Enabling Act which admitted California to the Union ratified the territorial boundary thus defined; and that California was admitted "on an equal footing with the original States in all respects whatever," 9 Stat. 452. With these premises admitted, California contends that its ownership follows from the rule originally announced in *Pollard's Lessee v. Hagen*, 3 How. 212; see also *Martin v. Waddell*, 16 Pet. 367, 410. In the *Pollard* case it was held, in effect, that the original states owned in trust for their people the navigable tidewaters between high and low water mark within each state's boundaries, and the soil under them, as an inseparable attribute of state sovereignty. Consequently it was decided that Alabama, because admitted into the Union on "an equal footing" with the other states, had thereby become the owner of the tidelands within its boundaries. Thus the title of Alabama's tidelands grantee was sustained as valid against that of a claimant holding under a United States grant made subsequent to Alabama's admission as a state.

<sup>4</sup> S. J. Res. 208, 75th Cong., 1st Sess. (1937); S. J. Res. 83 and 92, 76th Cong., 1st Sess. (1939). S. J. Res. 208 passed the Senate, 81 Cong. Rec. 9328 (1937), was favorably reported by the House Judiciary Committee H. R. Rept. 2378, 75th Cong., 3d Sess. (1938), but was never acted on in the House. Hearings were held on S. J. Res. 83 and 92 before the Senate Committee on Public Lands and Surveys, but no further action was taken. *Hearings before the Senate Committee on Public Lands and Surveys on S. J. Res. 83 and 92*, 76th Cong., 1st Sess. (1939). In both hearings objections to the resolutions were repeatedly made on the ground that passage of the resolutions was unnecessary since the Attorney General already had statutory authority to institute the proceedings. See *Hearing before the House Committee on the Judiciary on S. J. Res. 208*, 75th Cong., 3d Sess., 42-45, 59-61 (1938); *Hearings on S. J. Res. 83 and 92*, supra, 27-30.

<sup>5</sup> H. J. Res. 225, 79th Cong., 2d Sess. (1946); 92 Cong. Rec. 9642, 10316 (1946).

<sup>6</sup> 92 Cong. Rec. 10660 (1946).

<sup>7</sup> 92 Cong. Rec. 10745 (1946).

The Government does not deny that under the *Pollard* rule, as explained in later cases,<sup>9</sup> California has a qualified ownership<sup>9</sup> of lands under inland navigable water such as rivers, harbors, and even tidelands down to the low water mark. It does question the validity of the rationale in the *Pollard* case that ownership of such water areas, any more than ownership of uplands, is a necessary incident of the state sovereignty contemplated by the "equal footing" clause. *Cf. United States v. Oregon*, 295 U. S. 1, 14. For this reason, among others, it argues that the *Pollard* rule should not be extended so as to apply to lands under the ocean. It stresses that the thirteen original colonies did not own the marginal belt; that the Federal Government did not seriously assert its increasingly greater rights in this area until after the formation of the Union; that it has not bestowed any of these rights upon the states, but has retained them as appurtenances of national sovereignty. And the Government insists that no previous case in this Court has involved or decided conflicting claims of a state and the Federal Government to the three-mile belt in a way which requires our extension of the *Pollard* inland water rule to the ocean area.

It would unduly prolong our opinion to discuss in detail the multitude of references to which the able briefs of the parties have cited us with reference to the evolution of powers over marginal seas exercised by adjacent countries. From all the wealth of material supplied, however, we cannot say that the thirteen original colonies separately acquired ownership to the three-mile belt or the soil under it,<sup>10</sup> even if they did acquire elements of the sovereignty of the English Crown by their resolution against it. *Cf. United States v. Curtiss-Wright Export Corp.*, 299 U. S. 304, 316.

At the time this country won its independence from England there was no settled international custom or understanding among nations that each nation owned a three-mile water belt along its borders. Some countries, notably England, Spain, and Portugal, had, from time to time, made sweeping claims to a right of dominion over wide expanses of ocean. And controversies had arisen among nations about rights to fish in prescribed areas.<sup>11</sup> But when this nation was formed, the idea of a three-mile belt over which a littoral nation could exercise rights of ownership was but a nebulous suggestion.<sup>12</sup> Neither the English charters granted to this nation's settlers,<sup>13</sup> nor the treaty of peace with England,<sup>14</sup> nor any other document to which we have been referred, showed a purpose to set apart a three-mile ocean belt for colonial or state ownership.<sup>15</sup> Those who settled this country were interested in lands upon which to live, and waters upon which to fish and sail. There is no substantial support in history for the idea that they wanted or claimed a right to block off the ocean's bottom for private ownership and use in the extraction of its wealth.

It did happen that shortly after we became a nation our statesmen became interested in establishing national dominion over a definite marginal zone to protect our neutrality.<sup>16</sup> Largely as a result of their efforts, the idea of a definite

<sup>9</sup> See *e. g.*, *Manchester v. Massachusetts*, 139 U. S. 240; *Louisiana v. Mississippi*, 202 U. S. 1; *The Abby Dodge*, 223 U. S. 166. See also *United States v. Mission Fock Co.*, 189 U. S. 391; *Forax, Ltd. v. Los Angeles*, 296 U. S. 10.

Although the *Pollard* case has thus been generally approved many times, the case of *Shibly v. Bowly*, 152 U. S. 1, 47-48, held contrary to implications of the *Pollard* opinion, that the United States could lawfully dispose of tidelands while holding a future state's land "in trust" as a territory.

<sup>10</sup> See *United States v. Commodore Park*, 324 U. S. 388, 390, 391; *Scranton v. Wheeler*, 179 U. S. 141, 159, 160, 163; *Stockton v. Baltimore & N. Y. R. Co.*, 32 F. 9, 20; see also *United States v. Chandler-Dunbar Co.*, 229 U. S. 53.

<sup>11</sup> A representative collection of official documents and scholarship on the subject is Crocker. *The Extent of the Marginal Sea* (1919). See also I. Azuni, *Maritime Law of Europe* (published 1806) c. II; Fulton, *Sovereignty of the Sea* (1911); Masterson, *Jurisdiction in Marginal Seas* (1929); Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* (1927); Fraser, *The Extent and Delimitation of Territorial Waters*, 11 *Corn. L. Q.* 455 (1926); Ireland, *Marginal Seas Around the States*, 2 *La. L. Rev.* 252, 436 (1940); Comment, *Conflicting State and Federal Claims of Title in Submerged Lands of the Continental Shelf*, 56 *Yale L. J.* 356 (1947).

<sup>12</sup> See, *e. g.*, *Fulton, op. cit. supra*, 3-19, 144-145; *Jessup, op. cit. supra*, 4.

<sup>13</sup> *Fulton, op. cit. supra*, 21, says in fact that "mainly through the action and practice of the United States of America and Great Britain since the end of the eighteenth century, the distance of three miles from shore was more or less formally adopted by most maritime states as . . . more definitely fixing the limits of their jurisdiction and rights for various purposes, and, in particular, for exclusive fishery."

<sup>14</sup> Collected in Thorpe, *Federal and State Constitutions* (1909).

<sup>15</sup> Treaty of 1783, 8 *Stat.* 80.

<sup>16</sup> The Continental Congress did, for example, authorize capture of neutral and even American ships carrying British goods, "if found within three leagues [about nine miles] of the coasts." *Journ. of Cong.*, 185, 186, 187 (1781). *Cf. Declaration of Panama of 1830*. 1 *Dept. of State, Bull.* 221 (1839), claiming the right of the American Republics to be free from a hostile act in a zone 300 miles from the American coasts.

<sup>17</sup> Secretary of State Jefferson in a note to the British minister in 1793 pointed to the nebulous character of a nation's assertions of territorial rights in the marginal belt, and put forward the first official American claim for a three-mile zone which has since won general international acceptance. Reprinted in *H. Ex. Doc. No. 324*, 42d Cong., 2d Sess. (1872) 553-554. See also Secretary Jefferson's note to the French Minister, Genet, reprinted *American State Papers, I Foreign Relations* (1833), 183, 184; Act of June 5, 1794, 1 *Stat.* 381; 1 *Kent, Commentaries*, 14th Ed., 33-40.

three-mile belt in which an adjacent nation can, if it chooses, exercise broad, if not complete dominion, has apparently at last been generally accepted throughout the world,<sup>17</sup> although as late as 1876 there was still considerable doubt in England about its scope and even its existence. See *The Queen v. Keyn*, 2 Ex. D. 63. That the political agencies of this nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact. *Cunard Steamship Co. v. Mellon*, 262 U. S. 100, 122-124.<sup>18</sup> And this assertion of national dominion over the three-mile belt is binding upon this Court. See *Jones v. United States*, 137 U. S. 202, 212-214; *In re Cooper*, 143 U. S. 472, 502-503.

Not only has acquisition, as it were, of the three-mile belt been accomplished by the National Government but protection and control of it has been and is a function of national external sovereignty. See *Jones v. United States*, 137 U. S. 202; *In re Cooper*, 143 U. S. 472, 502. The belief that local interests are so predominant as constitutionally to require state dominion over lands under its land-locked navigable waters finds some argument for its support. But such can hardly be said in favor of state control over any part of the ocean or the ocean's bottom. This country, throughout its existence has stood for freedom of the seas, a principle whose breach has precipitated wars among nations. The country's adoption of the three-mile belt is by no means incompatible with its traditional insistence upon freedom of the sea, at least so long as the national Government's power to exercise control consistently with whatever international undertakings or commitments it may see fit to assume in the national interest is unencumbered. See *Hines v. Davidowitz* 312 U. S. 52, 62-64; *McCulloch v. Maryland*, *supra*. The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars raged on or too near its coasts. And insofar as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it,<sup>19</sup> is a question for consideration among nations as such, and not their separate governmental units. What this Government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations. See *United States v. Belmont*, 301 U. S. 324, 331-332. The very oil about which the state and nation here contend might well become the subject of international dispute and settlement.

The ocean, even its three-mile belt, is thus of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace. And as peace and world commerce are the paramount responsibilities of the nation, rather than an individual, state, so, if wars come, they must be fought by the nation. See *Chy Lung v. Freeman*, 92 U. S. 275, 279. The state is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks. Conceding that the state has been authorized to exercise local police power functions in the part of the marginal belt within its declared boundaries,<sup>20</sup> these do not detract from the Federal Government's paramount rights in and power over this area. Consequently, we are not persuaded to transplant the *Pollard* rule of ownership as an incident of state sovereignty in relation to inland waters out into the soil beneath the ocean, so much more a matter of

<sup>17</sup> See *Jessup*, *op. cit. supra*, 66; *Research in International Law*, 23 A. J. I. L. 249, 250 (Spec. Supp. 1929).

<sup>18</sup> See also *Church v. Hubbard*, 2 Cranch 187, 234. Congressional assertion of a territorial zone in the sea appears in statutes regulating seals, fishing, pollution of waters, etc. 36 Stat. 326, 328; 43 Stat. 604, 605; 37 Stat. 490, 501. Under the National Prohibition Act, territory including "a marginal belt of the sea extending from low-water mark outward a marine league, or 3 geographical miles" constituting the "territorial waters of the United States" was regulated. See U. S. Treas. Reg. 2, § 2201 (1927), reprinted in *Research in International Law*, *supra*, 250; 41 Stat. 305. Anti-smuggling treaties in which foreign nations agreed to permit the United States to pursue smugglers beyond the three-mile limit contained express stipulations that generally the three-mile limit constitutes "the proper limits of territorial waters." See *z. g.*, 43 Stat. 1761 (Pt. 2).

There are innumerable executive declarations to the world of our national claims to the three-mile belt, and more recently to the whole continental shelf. For references to diplomatic correspondence making these assertions, see 1 Moore, *International Law Digest* (1906), 705, 706, 707; 1 Wharton, *Digest of International Law* (1886), 100. See also Hughes, *Recent Questions and Negotiations*, 18 A. J. I. L. 229 (1924).

The latest and broadest claim is President Truman's recent proclamation that the United States "regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. . . ." Exec. Proc. 2667, Sept. 28, 1945, 10 F. R. 12303.

<sup>19</sup> See *Lord v. Steamship Co.*, 102 U. S. 541, 544.

<sup>20</sup> See *Utah Power & Light Co. v. United States*, 248 U. S. 389, 404; *cf. The Abby Dodge*, 223 U. S. 186, with *Skritotes v. Florida*, 313 U. S. 89, 74-75.

national concern. If this rationale of the *Pollard* case is a valid basis for a conclusion that paramount rights run to the states in inland waters to the shoreward of the low water mark, the same rationale leads to the conclusion that national interests, responsibilities, and therefore national rights are paramount in waters lying to the seaward in the three-mile belt. Cf. *United States v. Curtiss-Wright Corp.*, 299 U. S. 304, 316; *United States v. Causby*, 328 U. S. 256.

As previously stated, this Court has followed and reasserted the basic doctrine of the *Pollard* case many times. And in doing so it has used language strong enough to indicate that the Court then believed that states not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not. All of these statements were, however, merely paraphrases or offshoots of the *Pollard* inland-water rule, and were used, not as enunciation of a new ocean rule, but in explanation of the old inland-water principle. Notwithstanding the fact that none of these cases either involved or decided the state-federal conflict presented here, we are urged to say that the language used and repeated in those cases forecloses the Government from the right to have this Court decide that question now that it is squarely presented for the first time.

There are three such cases whose language probably lends more weight to California's argument than any others. The first is *Manchester v. Massachusetts*, 139 U. S. 240. That case involved only the power of Massachusetts to regulate fishing. Moreover, the illegal fishing charged was in Buzzards Bay, found to be within Massachusetts territory, and no question whatever was raised or decided as to title or paramount rights in the open sea. And the Court specifically laid to one side any question as to the rights of the Federal Government to regulate fishing there. The second case, *Louisiana v. Mississippi*, 202 U. S. 1, 52, uses language about "the sway of the riparian States" over "maritime belts." That was a case involving the boundary between Louisiana and Mississippi. It did not involve any dispute between the federal and state governments. And the Court there specifically laid aside questions concerning "the breadth of the maritime belt or the extent of the sway of the riparian States. \* \* \*" *id.* at 52. The third case is *The Abby Dodge*, 223 U. S. 166. That was an action against a ship landing sponges at a Florida port in violation of an Act of Congress, 34 Stat. 313, which made it unlawful to "land" sponges taken under certain conditions from the waters of the Gulf of Mexico. This Court construed the statute's prohibition as applying only to sponges outside the state's "territorial limits" in the Gulf. It thus narrowed the scope of the statute because of a belief that the United States was without power to regulate the Florida traffic in sponges obtained from within Florida's territorial limits, presumably the three-mile belt. But the opinion in that case was concerned with the state's power to regulate and conserve within its territorial waters, not with its exercise of the right to use and deplete resources which might be of national and international importance. And there was no argument there, nor did this Court decide, whether the Federal Government owned or had paramount rights in the soil under the Gulf waters. That this question remained undecided is evidenced by *Skiriotes v. Florida*, 313 U. S. 69, 75, where we have occasion to speak of Florida's power over sponge-fishing in its territorial waters. Through Mr. Chief Justice Hughes we said: "It is also clear that Florida has an interest in the proper maintenance of the sponge fishery and that the [state] statute so far as applied to conduct within the territorial waters of Florida, in the absence of conflicting federal legislation, is within the police power of the State." [Emphasis supplied.]

None of the foregoing cases, nor others which we have decided, are sufficient to require us to extend the *Pollard* inland-water rule so as to declare that California owns or has paramount rights in or power over the three-mile belt under the ocean. The question of who owned the bed of the sea only became of great potential importance at the beginning of this century when oil was discovered there.<sup>21</sup> As a consequence of this discovery, California passed an Act in 1921 authorizing the granting of permits to California residents to prospect for oil and gas on blocks of land off its coast under the ocean. Cal. Stats. 1921, c. 303. This state statute, and others which followed it, together with the leasing practices under them, have precipitated this extremely important controversy, and pointedly raised this state-federal conflict for the first time. Now that the question is here, we decide for the reasons we have stated that California is not the owner of the three-mile marginal belt along its coast, and that the Federal Government rather than the state has paramount rights in and power over that belt, an inci-

<sup>21</sup> Bull. No. 321, Dept. of Interior, Geological Survey.

dent to which is full dominion over the resources of the soil under that water area, including oil.

Fourth. Nor can we agree with California that the Federal Government's paramount rights have been lost by reason of the conduct of its agents. The state sets up such a defense, arguing that by this conduct the Government is barred from enforcing its rights by reason of principles similar to laches, estoppel, adverse possession. It would serve no useful purpose to recite the incidents in detail upon which the state relies for these defenses. Some of them are undoubtedly consistent with a belief on the part of some Government agents at the time that California owned all, or at least a part of the three-mile belt. This belief was indicated in the substantial number of instances in which the Government acquired title from the states to lands located in the belt; some decisions of the Department of Interior have denied applications for federal oil and gas leases in the California coastal belt on the ground that California owned the lands. Outside of court decisions following the *Pollard* rule, the foregoing are the types of conduct most nearly indicative of waiver upon which the state relies to show that the Government has lost its paramount rights in the belt. Assuming that Government agents could by conduct, short of a congressional surrender of title or interest, preclude the Government from asserting its legal rights, we cannot say it has done so here. As a matter of fact, the record plainly demonstrates that until the California oil issue began to be pressed in the thirties, neither the states nor the Government had reason to focus attention on the question of which of them owned or had paramount rights in or power over the three-mile belt. And even assuming that Government agencies have been negligent in failing to recognize or assert the claims of the Government at an earlier date, the great interests of the Government in this ocean area are not to be forfeited as a result. The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.<sup>22</sup>

We have not overlooked California's argument, buttressed by earnest briefs on behalf of other states, that improvements have been made along and near the shores at great expense to public and private agencies. And we note the Government's suggestion that the aggregate value of all these improvements are small in comparison with the tremendous value of the entire three-mile belt here in controversy. But, however, this may be, we are faced with the issue as to whether state or nation has paramount rights in and power over this ocean belt, and that great national question is not dependent upon what expenses may have been incurred upon mistaken assumptions. Furthermore, we cannot know how many of these improvements are within and how many without the boundary of the marginal sea which can later be accurately defined. But beyond all this we cannot and do not assume that Congress, which has constitutional control over Government property, will execute its powers in such way as to bring about injustices to states, their subdivisions, or persons acting pursuant to their permission. See *United States v. Texas*, 162 U. S. 1, 89, 90; *Lee Wilson & Co. v. United States*, 245 U. S. 24, 32.

We hold that the United States is entitled to the relief prayed for. The parties, or either of them, may, before September 15, 1947, submit the form of decree to carry this opinion into effect, failing which the Court will prepare and enter an appropriate decree at the next term of Court.

*It is so ordered.*

Mr. JUSTICE JACKSON took no part in the consideration or decision of this case. Mr. JUSTICE REED, dissenting.

In my view the controversy brought before this Court by the complaint of the United States against California seeks a judgment between State and Nation as to the ownership of the land underlying the Pacific Ocean, seaward of the ordinary low-water mark, on the coast of California and within the three-mile limit. The ownership of that land carries with it, it seems to me, the ownership of any minerals or other valuables in the soil, as well as the right to extract them.

The determination as to the ownership of the land in controversy turns for me on the fact as to ownership in the original thirteen states of similar lands prior to the formation of the Union. If the original states owned the bed of the sea.

<sup>22</sup> *United States v. San Francisco*, 310 U. S. 16, 31-32; *Utah v. United States*, 284 U. S. 534, 545, 546. *Lee Wilson & Co. v. United States*, 245 U. S. 24, 32; *Utah Power & Light Co. v. United States*, 243 U. S. 359, 409. See also *Sec'y of State for India v. Chelikani Rama Rao*, L. R. 43 Indian App. 192, 204 (1916).

adjacent to their coasts, to the three-mile limit, then I think California has the same title or ownership to the lands adjacent to her coast. The original states were sovereignties in their own right, possessed of so much of the land underneath the adjacent seas as was generally recognized to be under their jurisdiction. The scope of their jurisdiction and the boundaries of their lands were coterminous. Any part of that territory which had not passed from their ownership by existing valid grants were and remained public lands of the respective states. California, as is customary, was admitted into the Union "on an equal footing with the original States in all respects whatever." 9 Stat. 452. By § 3 of the Act of Admission, the public lands within its borders were reserved for disposition by the United States. "Public lands" was there used in its usual sense of lands subject to sale under general laws. As was the rule, title to lands under navigable waters vested in California as it had done in all other states. *Pollard v. Hagan*, 3 How. 212; *Barney v. Keokuk*, 94 U. S. 324, 338; *Shively v. Bowlby*, 152 U. S. 1, 49; *Mann v. Tacoma Land Co.*, 153 U. S. 273, 284; *Borax Consolidated, Ltd. v. Los Angeles*, 296 U. S. 10, 17.

The authorities cited in the Court's opinion lead me to the conclusion that the original states owned the lands under the seas to the three-mile limit. There were, of course, as is shown by the citations, variations in the claims of sovereignty, jurisdiction or ownership among the nations of the world. As early as 1793, Jefferson as Secretary of State, in a communication to the British Minister, said that the territorial protection of the United States would be extended "three geographical miles" and added:

"This distance can admit of no opposition, as it is recognized by treaties between some of the powers with whom we are connected in commerce and navigation, and is as little, or less, than is claimed by any of them on their own coasts." H. Ex. Doc. No. 324, 42d Cong., 2d Sess., pp. 553-54.

If the original states did claim, as I think they did, sovereignty and ownership to the three-mile limit, California has the same rights in the lands bordering its littoral.

This ownership in California would not interfere in any way with the needs or rights of the United States in war or peace. The power of the United States is plenary over these undersea lands precisely as it is over every river, farm, mine, and factory of the nation. While no square ruling of this Court has determined the ownership of those marginal lands, to me the tone of the decisions dealing with similar problems indicates that, without discussion, state ownership has been assumed. *Pollard v. Hagan*, *supra*; *Louisiana v. Mississippi*, 202 U. S. 1, 52; *The Abby Dodge*, 223 U. S. 166; *New Jersey v. Delaware*, 291 U. S. 361; 295 U. S. 694.

Mr. JUSTICE FRANKFURTER, dissenting.

By this original bill the United States prayed for a decree enjoining all persons, including those asserting a claim derived from the State of California, from trespassing upon the disputed area. An injunction against trespassers normally presupposes property rights. The Court, however, grants the prayer but does not do so by finding that the United States has proprietary interests in the area. To be sure, it denies such proprietary rights in California. But even if we assume an absence of ownership or possessory interest on the part of California, that does not establish a proprietary interest in the United States. It is significant that the Court does not adopt the Government's elaborate argument, based on dubious and tenuous writings of publicists, see Schwarzenberger, *Inductive Approach to International Law*, 60 Harv. L. Rev. 539, 559, that this part of the open sea belongs, in a proprietary sense, to the United States. See *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 351. Instead, the Court finds trespass against the United States on the basis of what it calls the "national dominion" by the United States over this area.

To speak of "dominion" carries precisely those overtones in the law which relate to property and not to political authority. Dominion from the Roman concept *dominium*, was concerned with the property and ownership, as against *imperium*, which related to political sovereignty. One may choose to say, for example, that the United States has "national dominion" over navigable streams. But the power to regulate commerce over these streams, and its continued exercise, do not change the *imperium* of the United States into *dominium* over the land below the waters. Of course the United States has "paramount rights" in the sea belt of California—the rights that are implied by the power to regulate interstate and foreign commerce, the power of condemnation, the treaty-making power, the war power. We have not now before us the validity of the exercise of any of these paramount rights. Rights of ownership are here as-

serted—and rights of ownership are something else. Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by session, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?

The fact that these oil deposits in the open sea may be vital to the national security, and important elements in the conduct of our foreign affairs, is no more relevant than is the existence of uranium deposits, wherever they may be, in determining questions of trespass to the land of which they form a part. This is not a stipulation where an exercise of national power is actively and presently interfered with. In such a case, the inherent power of a federal court of equity may be invoked to prevent or remove the obstruction. In *re Debs*, 158 U. S. 564; *Sanitary District v. United States*, 266 U. S. 405. Neither the bill, nor the opinion sustaining it, suggests that there is interference by California or the alleged trespassers with any authority which the Government presently seeks to exercise. It is beside the point to say that “if wars come, they must be fought by the Nation.” Nor is it relevant that “The very oil about which the State and Nation here contend might well become the subject of international dispute and settlement.” It is common knowledge that uranium has become “the subject of international dispute” with a view to settlement. Compare *Missouri v. Holland*, 252 U. S. 416.

To declare that the Government has “national dominion” is merely a way of saying that *vis-à-vis* all other nations the Government is the sovereign. If that is what the Court’s decree means, it needs no pronouncement by this Court to confer or declare such sovereignty. It means more than that, it implies that the Government has some proprietary interest. That has not been remotely established except by sliding from absence of ownership by California to ownership by the United States.

Let us assume, for the present, that ownership by California cannot be proven. On a fair analysis of all the evidence bearing on ownership, then, this area is, I believe, to be deemed unclaimed land, and the determination to claim it on the part of the United States is a political decision not for this Court. The Constitution places vast authority for the conduct of foreign relations in the independent hands of the President. See *United States v. Curtiss-Wright Corp.*, 299 U. S. 304. It is noteworthy that the Court does not treat the President’s proclamation in regard to the disputed area as an assertion of ownership. See Exec. Proc. 2667 (Sept. 28, 1945), 10 F. R. 12303. If California is found to have no title, and this area is regarded as unclaimed land, I have no doubt that the President and the Congress between them could make it part of the national domain and thereby bring it under Article IV, Section 3, of the Constitution. The disposition of the area, the rights to be created in it, the rights heretofore claimed in it through usage that might be respected though it fall short of prescription, all raise appropriate questions of policy, questions of accommodation, for the determination of which Congress and not this Court is the appropriate agency.

Today this Court has decided that a new application even in the old field of torts should not be made by adjudication, where Congress has refrained from acting. *United States v. Standard Oil Co.*, 332 U. S. 301. Considerations of judicial self-restraint would seem to me far more compelling where there are obviously at stake claims that involve so many far-reaching, complicated, historic interests, the proper adjustments of which are not readily resolved by the materials and methods to which this Court is confined.

This is a summary statement of views which it would serve no purpose to elaborate. I think that the bill should be dismissed without prejudice.

OCTOBER TERM, 1947

October 27, 1947

ORDER AND DECREE (332 U. S. 804)

No. 12, Original. *United States v. California*. Decided June 23, 1947 (332 U. S. 19)

Mr. Chief Justice VINSON announced the entry of the following order and decree: Since our opinion which was announced in this case June 23, 1947, two stipulations have been filed in this Court, signed by the Attorney General and Secretary of the Interior of the United States on the one hand and by the Attorney General of the State of California on the other hand. In these stipulations the Attorney General and the Secretary of the Interior purport to renounce and disclaim for

the United States Government paramount governmental power over certain particularly described submerged lands in the California coastal area. In such stipulations the United States Attorney General and Secretary of the Interior furthermore purport to bind the United States to agreements which purport to authorize state lessees of California coastal submerged lands to continue to occupy and exploit those lands, and which agreements also purport to authorize California under conditions set out to execute leases for other submerged coastal lands.

Robert E. Lee Jordan has filed a petition in this Court praying that he be permitted to file a motion as amicus curiae or in the alternative as an intervenor to have the foregoing stipulations and agreements set aside and declared null and void on the ground among others that the Attorney General and the Secretary of the Interior are without authority to bind the United States by agreements which it is alleged would if valid alienate and surrender the Government's paramount power over the submerged lands concerning which the stipulations are made.

It is ordered that the petition of Robert E. Lee Jordan to file the motion here to declare the stipulations null and void be denied, without prejudice to the assertion of any right he may have in a proper district court.

It is further ordered that the stipulations between the United States Attorney General and the Secretary of the Interior on the one hand and the Attorney General of California on the other, which stipulations purport to bind the United States, be stricken as irrelevant to any issues now before us.

And for the purpose of carrying into effect the conclusions of this Court as stated in its opinion announced June 23, 1947, it is ORDERED, ADJUDGED, AND DECREED as follows:

1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California. The State of California has no title thereto or property interest therein.

2. The United States is entitled to the injunctive relief prayed for in the complaint.

3. Jurisdiction is reserved by this Court to enter such further orders and to issue such writs as may from time to time be deemed advisable or necessary to give full force and effect to this decree.

Inasmuch as the stipulations of July 26, 1947, have been stricken, Mr. Justice Frankfurter desires explicitly to note his understanding that insofar as the meaning or scope or validity of the stipulations may give rise to any legal issue, no such issue has been before the Court or has here been considered.

MR. JUSTICE JACKSON took no part in the consideration or decision of this case.

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UNITED STATES *v.* LOUISIANA

(339 U. S. 699)

NO. 12, ORIGINAL

Argued March 27, 1950.—Decided June 5, 1950

1. In this suit, brought in this Court by the United States against the State of Louisiana under Art. III, § 2, Cl. 2 of the Constitution, *held*: The United States is entitled to a decree adjudging and declaring the paramount rights of the United States as against Louisiana in the area claimed by Louisiana which lies under the Gulf of Mexico beyond the low-water mark on the coast of Louisiana and outside of the inland waters, enjoining Louisiana and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States, and requiring Louisiana to account for the money derived by it from the area after June 23, 1947. *United States v. California*, 332 U. S. 19. Pp. 700-706.

(a) *Toomer v. Witsell*, 334 U. S. 385; *New Orleans v. United States*, 10 Pet. 662; *Pollard's Lessee v. Hagan*, 3 How. 212, distinguished. P. 704.

(b) The marginal sea is a national, not a state, concern, and national rights are paramount in that area. *United States v. California*, *supra*. P. 704.

(c) Prior to its admission to the Union, Louisiana had no stronger claim to ownership of the marginal sea than the original thirteen colonies or California; and Louisiana stands on no better footing than California, so far as the three-mile belt is concerned. P. 705.

(d) Since the three-mile belt off the shore is in the domain of the Nation rather than that of the separate States, it follows a *fortiori* that the area claimed by Louisiana extending 24 miles seaward beyond the three-mile belt is also in the domain of the Nation rather than that of Louisiana. Pp. 705-706.

2. In ruling on a motion for leave to file the complaint in this case, 337 U. S. 902, this Court held, in effect, that Art. III, § 2, Cl. 2 of the Constitution, granting this Court original jurisdiction in cases "in which a State shall be Party," includes cases brought by the United States against a State, notwithstanding a claim that the States have not consented to be sued by the Federal Government. Pp. 701-702.
3. In ruling on a demurrer and motions filed by the State of Louisiana, 338 U. S. 806, this Court held, in effect, that it had original jurisdiction of the parties and the subject matter; that lessees of oil, gas, and other similar rights in the disputed area are not indispensable parties to the case; and that Louisiana was not entitled to a more definite statement of the claim of the United States or to a bill of particulars. P. 702.
4. This being an equity suit for an injunction and accounting, Louisiana was not entitled to a jury trial. Even if the Seventh Amendment and 28 U. S. C. § 1872 extend to cases under the original jurisdiction of this Court, they require jury trials only in actions at law. P. 706.

The case and the earlier proceedings herein are stated in the opinion at pp. 700-703. The conclusion that the United States is entitled to the relief prayed for is reported at p. 706.

*Solicitor General Perlman* argued the cause for the United States. With him on the brief were *Attorney General McGrath*, *Assistant Attorney General Vanech*, *Arnold Raum*, *Oscar H. Davis*, *Robert E. Mulroney*, *Robert M. Vaughan*, *Frederick W. Smith* and *George S. Swarth*.

*L. H. Perez* and *Cullen R. Liskow* argued the cause for the defendant. With them on the brief were *Bolinvar E. Kemp, Jr.*, *Attorney General of Louisiana*, *John L. Madden*, *Assistant Attorney General*, *Stamps Farrar*, *Bailey Walsh* and *F. Trowbridge vom Baur*.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The United States by its Attorney General and its Solicitor General brought this suit against the State of Louisiana, invoking our jurisdiction under Art. III, § 2, Cl. 2 of the Constitution which provides "In all Cases \* \* \* in which a State shall be Party, the supreme Court shall have original Jurisdiction."

The complaint alleges that the United States was and is—

"the owner in fee simple of, or possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Louisiana and outside of the inland waters, extending seaward twenty-seven marine miles and bounded on the east and west, respectively, by the eastern and western boundaries of the State of Louisiana."

The complaint further alleges that Louisiana, claiming rights in that property adverse to the United States, has made leases under her statutes to various persons and corporations which have entered upon said lands, drilled wells for the recovery of petroleum, gas, and other hydrocarbon substances, and paid Louisiana substantial sums of money in bonuses, rent, and royalties, but that neither Louisiana nor its lessees have recognized the rights of the United States in said property.

The prayer of the complaint is for a decree adjudging and declaring the rights of the United States as against Louisiana in this area, enjoining Louisiana and all persons claiming under it from continuing to trespass upon the area in violation of the right of the United States, and requiring Louisiana to account for the money derived by it from the area subsequent to June 23, 1947.

Louisiana opposed the motion for leave to file the complaint, contending that the States have not consented to be sued by the Federal Government and that *United States v. Texas*, 143 U. S. 621, which held that Art. III, § 2, Cl. 2, a State shall be Party, includes cases brought by the United States against a State should be overruled. We heard argument on the motion for leave to file and thereafter granted it. 337 U. S. 902, rehearing denied, 337 U. S. 928.

Louisiana then filed a demurrer asserting that the Court has no original jurisdiction of the parties or of the subject matter. She moved to dismiss on the

ground that the lessees are indispensable parties to the case; and she also moved for a more definite statement of the claim of the United States and for a bill of particulars. The United States moved for judgment. The demurrer was overruled, Louisiana's motions denied, and the motion of the United States for judgment was denied, Louisiana being given 30 days in which to file an answer. 338 U. S. 806.

In her answer Louisiana admits that "the United States has paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Gulf of Mexico adjacent to the coast of Louisiana, to the extent of all governmental powers existing under the Constitution, laws, and treaties of the United States," but asserts that there are no conflicting claims of governmental powers to authorize the use of the bed of the Gulf of Mexico for the purpose of searching for and producing oil and other natural resources, on which the relief sought by the United States depends, since the Congress has not adopted any law which asserts such federal authority over the bed of the Gulf of Mexico. Louisiana therefore contends that there is no actual justiciable controversy between the parties. Louisiana in her answer denies that the United States has a fee-simple title to the lands, minerals, and other things underlying the Gulf of Mexico. As affirmative defenses Louisiana asserts that she is the holder of fee-simple title to all the lands, minerals, and other things in controversy; and that since she was admitted into the Union in 1812, she has exercised continuous, undisturbed, and unchallenged sovereignty and possession over the property in question.

Louisiana also moved for trial by jury. She asserts that this suit, involving title to the beds of tidewaters, is essentially an action at law and that the Seventh Amendment and 62 Stat. 953, 28 U. S. C. § 1872, require a jury.<sup>1</sup>

The United States then moved for judgment on the ground that Louisiana's asserted defenses were insufficient in law. We set the case down for argument on that motion.

The territory out of which Louisiana was created was purchased by the United States from France for \$15,000,000 under the Treaty of April 30, 1803, 8 Stat. 200. In 1804 the area thus acquired was divided into two territories, one being designated as the Territory of Orleans, 2 Stat. 283. By the Enabling Act of February 20, 1811, 2 Stat. 641, the inhabitants of the Territory of Orleans were authorized to form a constitution and a state government. By the Act of April 8, 1812, 2 Stat. 701, 703, Louisiana was admitted to the Union "on an equal footing with the original states, in all respects whatever." And as respects the southern boundary, that Act recited that Louisiana was "bounded by the said gulf [of Mexico] . . . including all islands within three leagues of the coast."<sup>2</sup> In 1938 Louisiana by statute declared its southern boundary to be twenty-seven marine miles from the shore line.<sup>3</sup>

We think *United States v. California* (332 U. S. 19) controls this case and that there must be a decree for the complainant.

We lay aside such cases as *Toomer v. Witsell* (334 U. S. 385, 393) where a State's regulation of coastal waters below the low-water mark collides with the interests of a person not acting on behalf of or under the authority of the United States. The question here is not the power of a State to use the marginal sea or to regulate its use in absence of a conflicting federal policy; it is the power of a State to deny the paramount authority which the United States seeks to assert over the area in question. We also put to one side *New Orleans v. United States* (10 Pet. 662) holding that title to or dominion over certain lots and vacant land along the river in the city of New Orleans did not pass to the United States under the treaty of cession but remained in the city. Such cases, like those involving ownership of the land under the inland waters (see, for example, *Pollard's Lessee v. Hagan* (3 How. 212)), are irrelevant here. As we pointed out in *United States v. California*, the issue in this class of litigation does not turn on title or ownership in the conventional sense. California, like the thirteen original colonies, never acquired ownership in the marginal sea. The claim to our three-mile belt was first asserted by the national government. Protection and control of the area are indeed functions of national external sovereignty. 332 U. S., pp. 31-34. The marginal sea is a national, not a state concern. National interests, national

<sup>1</sup> The Seventh Amendment provides: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

<sup>2</sup> 28 U. S. C. § 1872 provides: "In all original actions at law in the Supreme Court against citizens of the United States, issues of fact shall be tried by a jury."

<sup>3</sup> And see Dart, *Louisiana Constitutions* (1932), p. 499.

<sup>4</sup> 6 Dart. La. Gen. Stats. (1939), §§ 9311.1-9311.4.

responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war, and peace focus there. National rights must therefore be paramount in that area.

That is the rationale of *United States v. California*. It is fully elaborated in the opinion of the Court in that case and does not need repetition.

We have carefully considered the extended and able argument of Louisiana in all its aspects and have found no reason why Louisiana stands on a better footing than California so far as the three-mile belt is concerned. The national interest in that belt is as great off the shore line of Louisiana as it is off the shore line of California. And there are no material differences in the preadmission or post-admission history of Louisiana that make her case stronger than California's. Louisiana prior to admission had no stronger claim to ownership of the marginal sea than the original thirteen colonies or California had. Moreover, the national dominion in the three-mile belt has not been sacrificed or ceded away in either case. The United States, acting through its Attorney General, who has authority to assert claims of this character and to invoke our jurisdiction in a federal-state controversy (*United States v. California*, pp. 26-29), now claims its paramount rights in this domain.

There is one difference, however, between Louisiana's claim and California's. The latter claimed rights in the three-mile belt. Louisiana claims rights twenty-four miles seaward of the three-mile belt. We need note only briefly this difference. We intimate no opinion on the power of a State to extend, define, or establish its external territorial limits or on the consequences of any such extension *vis-a-vis* persons other than the United States or those acting on behalf of or pursuant to its authority. The matter of state boundaries has no bearing on the present problem. If, as we held in California's case, the three-mile belt is in the domain of the Nation rather than that of the separate States, it follows *a fortiori* that the ocean beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea. Certainly it is not less so. So far as the issues presented here are concerned, Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area, including oil.

Louisiana's motion for a jury trial is denied. We need not examine it beyond noting that this is an equity action for an injunction and accounting. The Seventh Amendment and the statute,<sup>4</sup> assuming they extend to cases under our original jurisdiction, are applicable only to actions at law. See *Shields v. Thomas* (18 How. 253, 262); *Barton v. Barbour* (104 U. S. 126, 133-134).

We hold that the United States is entitled to the relief prayed for. The parties, or either of them, may before September 15, 1950, submit the form of decree to carry this opinion into effect.

*So ordered.*

Mr. JUSTICE JACKSON and Mr. JUSTICE CLARK took no part in the consideration or decision of this case.

[For opinion of Mr. JUSTICE FRANKFURTER in this case and in No. 13, Original, *United States v. Texas*, see *post*, p. 723.]

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SUPREME COURT OF THE UNITED STATES

No 12 Orig., October Term, 1950

UNITED STATES OF AMERICA, PLAINTIFF, v. STATE OF LOUISIANA

DECREE

(340 U. S. 899)

This cause came on to be heard on the motion for judgment filed by the plaintiff and was argued by counsel.

For the purpose of carrying into effect the conclusions of this Court as stated in its opinion announced June 5, 1950, it is ORDERED, ADJUDGED, AND DECREED as follows:

1. The United States is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands,

<sup>4</sup> See note 1, *supra*

minerals, and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Louisiana, and outside of the inland waters, extending seaward twenty-seven marine miles and bounded on the east and west, respectively, by the eastern and western boundaries of the State of Louisiana. The State of Louisiana has no title thereto or property interest therein.

2. The State of Louisiana, its privies, assigns, lessees, and other persons claiming under it, are hereby enjoined from carrying on any activities upon or in the submerged area described in paragraph 1 hereof for the purpose of taking or removing therefrom any petroleum, gas, or other valuable mineral products, and from taking or removing therefrom any petroleum, gas, or other valuable mineral products, except under authorization first obtained from the United States. On appropriate showing, the United States may obtain the other injunctive relief prayed for in the complaint.

3. The United States is entitled to a true, full, and accurate accounting from the State of Louisiana of all or any part of the sums of money derived by the State from the area described in paragraph 1 hereof subsequent to June 5, 1950, which are properly owing to the United States under the opinion entered in this case on June 5, 1950, this decree, and the applicable principles of law.

4. Jurisdiction is reserved by this Court to enter such further orders and to issue such writs as may from time to time be deemed advisable or necessary to give full force and effect to this decree.

DECEMBER 11, 1950.

MR. JUSTICE JACKSON and MR. JUSTICE CLARK took no part in the consideration or decision of this case.

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UNITED STATES *v.* TEXAS

(339 U. S. 707)

NO. 13, ORIGINAL

Argued March 28, 1950.—Decided June 5, 1950

1. In this suit, brought in this Court by the United States against the State of Texas under Art. III, § 2, Cl. 2 of the Constitution, *held*: The United States is entitled to a decree adjudging and declaring the paramount rights of the United States as against Texas in the area claimed by Texas which lies under the Gulf of Mexico beyond the low-water mark on the coast of Texas and outside the inland waters, enjoining Texas and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States, and requiring Texas to account to the United States for all money derived by it from the area after June 23, 1947. Pp. 709-720.
2. Even if Texas had both *dominium* and *imperium* in and over this marginal belt when she existed as an independent Republic, any claim that she may have had to the marginal sea was relinquished to the United States when Texas ceased to be an independent Nation and was admitted to the Union "on an equal footing with the existing States" pursuant to the Joint Resolution of March 1, 1845, 5 Stat. 797. Pp. 715-720.
  - (a) The "equal footing" clause was designed not to wipe out economic diversities among the several States but to create parity as respects political standing and sovereignty. P. 716.
  - (b) The "equal footing" clause negatives any implied, special limitation of any of the paramount powers of the United States in favor of a State. P. 717.
  - (c) Although *dominium* and *imperium* are normally separable and separate, this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty. P. 719.
  - (d) If the property, whatever it may be, lies seaward of low-water mark, its use, disposition, management, and control involve national interests and national responsibilities, thereby giving rise to paramount national rights in it. *United States v. California*, 332 U. S. 19. P. 719.
  - (e) The "equal footing" clause prevents extension of the sovereignty of a State into the domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty which would produce inequality among the States. Pp. 719-720.

3. That Texas in 1941 sought to extend its boundary to a line in the Gulf of Mexico 24 marine miles beyond the three-mile limit and asserted ownership of the bed within that area and in 1947 sought to extend the boundary to the outer edge of the continental shelf do not require a different result. *United States v. Louisiana, ante*, p. 699. P. 720.
4. The motions of Texas for an order to take depositions and for the appointment of a special master are denied, because there is no need to take evidence in this case. Pp. 715, 720.
5. In ruling on a motion by the United States for leave to file the complaint in this case, 337 U. S. 902, and on a motion by Texas to dismiss the complaint for want of original jurisdiction, 338 U. S. 806, this Court, in effect, held that it had original jurisdiction under Art. III, § 2, Cl. 2 of the Constitution, even though Texas had not consented to be sued. Pp. 709-710.

The case and the earlier proceedings herein are stated in the opinion at pp. 709-712. The conclusion that the United States is entitled to the relief prayed for is reported at p. 720.

*Solicitor General Perlman* argued the case for the United States. With him on the brief were *Attorney General McGrath, Assistant Attorney General Vanech, Arnold Raum, Oscar H. Davis, Robert E. Mulroney, Robert M. Vaughan, Frederick W. Smith and George S. Swarth.*

*Price Daniel, Attorney General of Texas, and J. Chrys Dougherty, Assistant Attorney General, argued the cause for the defendant.* With them on the brief were *Jesse P. Luton, Jr., K. Bert Watson, Dow Heard, Walton S. Roberts, Claude C. McMillan, Fidencio M. Guerra, and Mary K. Wall, Assistant Attorneys General, and Roscoe Pound and Joseph Waller Bingham.*

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This suit, like its companion, *United States v. Louisiana, ante*, p. 699, decided this day, invokes our original jurisdiction under Art. III, § 2, Cl. 2 of the Constitution and puts into issue the conflicting claims of the parties to oil and other products under the bed of the ocean below low-water mark off the shores of Texas.

The complaint alleges that the United States was and is—

"the owner in fee simple of, or possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Texas and outside of the inland waters, extending seaward to the outer edge of the continental shelf and bounded on the east and southwest, respectively, by the eastern boundary of the State of Texas and the boundary between the United States and Mexico."

The complaint is in other material respects identical with that filed against Louisiana. The prayer is for a decree adjudging and declaring the rights of the United States as against Texas in the above-described area, enjoining Texas and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States, and requiring Texas to account to the United States for all money derived by it from the area subsequent to June 23, 1947.

Texas opposed the motion for leave to file the complaint on the grounds that the Attorney General was not authorized to bring the suit and that the suit, if brought, should be instituted in a District Court. And Texas, like Louisiana, moved to dismiss on the ground that since Texas has not consented to be sued, the Court had no original jurisdiction of the suit. After argument, we granted the motion for leave to file the complaint. 337 U. S. 902. Texas then moved to dismiss the complaint on the ground that the suit did not come within the original jurisdiction of the Court. She also moved for a more definite statement or for a bill of particulars and for an extension of time to answer. The United States then moved for judgment. These various motions were denied and Texas was granted thirty days to file an answer. 338 U. S. 806.

Texas in her answer, as later amended, renews her objection that this case is not one of which the Court has original jurisdiction; denies that the United States is or ever has been the owner of the lands, minerals, etc., underlying the Gulf of Mexico within the disputed area; denies that the United States is or ever has been possessed of paramount rights in or full dominion over the lands, minerals, etc., underlying the Gulf of Mexico within said area except the paramount power to control, improve, and regulate navigation which under the Commerce Clause the United States has over lands beneath all navigable waters and except the same dominion and paramount power which the United States has over uplands within the United States, whether privately or state owned; denies that these or any other paramount powers or rights of the United States include

ownership or the right to take or develop or authorize the taking or developing of oil or other minerals in the area in dispute without compensation to Texas; denies that any paramount powers or rights of the United States include the right to control or to prevent the taking or developing of these minerals by Texas or her lessees except when necessary in the exercise of the paramount federal powers, as recognized by Texas, and when duly authorized by appropriate action of the Congress; admits that she claims rights, title, and interests in said lands, minerals, etc., and says that her rights include ownership and the right to take, use, lease, and develop these properties; admits that she has leased some of the lands in the area and received royalties from the lessees but denies that the United States is entitled to any of them; and denies that she has no title to or interest in any of the lands in the disputed area.

As an affirmative defense, Texas asserts that as an independent nation the Republic of Texas had open, adverse, and exclusive possession and exercised jurisdiction and control over the land, minerals, etc., underlying that part of the Gulf of Mexico within her boundaries established at three marine leagues from shore by her First Congress and acquiesced in by the United States and other major nations; that when Texas was annexed to the United States the claim and rights of Texas to this land, minerals, etc., were recognized and preserved in Texas; that Texas continued as a State to hold open, adverse, and exclusive possession, jurisdiction, and control of these lands, minerals, etc., without dispute, challenge, or objection by the United States; that the United States has recognized and acquiesced in this claim and these rights; that Texas under the doctrine of prescription has established such title, ownership, and sovereign rights in the area as preclude the granting of the relief prayed.

As a second affirmative defense, Texas alleges that there was an agreement between the United States and the Republic of Texas that upon annexation Texas would not cede to the United States but would retain all of the lands, minerals, etc., underlying that part of the Gulf of Mexico within the original boundaries of the Republic.

As a third affirmative defense, Texas asserts that the United States acknowledged and confirmed the three-league boundary of Texas in the Gulf of Mexico as declared, established, and maintained by the Republic of Texas and as retained by Texas under the annexation agreement.

¶ Texas then moved for an order to take depositions of specified aged persons respective the existence and extent of knowledge and use of subsoil minerals within the disputed area prior to and since the annexation of Texas, and the uses to which Texas has devoted parts of the area as bearing on her alleged prescriptive rights. Texas also moved for the appointment of a special master to take evidence and report to the Court.

The United States opposed these motions and in turn moved for judgment asserting that the defenses tendered by Texas were insufficient in law and that no issue of fact had been raised which could not be resolved by judicial notice. We set the case down for argument on that motion.

We are told that the considerations which give the Federal Government paramount rights in, and full dominion and power over, the marginal sea off the shores of California and Louisiana (see *United States v. California*, 332 U. S. 19; *United States v. Louisiana*, *supra*) should be equally controlling when we come to the marginal sea off the shores of Texas. It is argued that the national interests, national responsibilities, and national concerns which are the basis of the paramount rights of the National Government in one case would seem to be equally applicable in the other.

But there is a difference in this case which, Texas says, requires a different result. That difference is largely in the preadmission history of Texas.

The sum of the argument is that prior to annexation Texas had both *dominium* (ownership or proprietary rights) and *imperium* (governmental powers of regulation and control) as respects the lands, minerals, and other products underlying the marginal sea. In the case of California we found that she, like the original thirteen colonies, never had *dominium* over that area. The first claim to the marginal sea was asserted by the National Government. We held that protection and control of it were, indeed, a function of national external sovereignty, 332 U. S. 31-34. The status of Texas, it is said, is different: Texas, when she came into the Union, retained the *dominium* over the marginal sea which she had previously acquired and transferred to the National Government only her powers of sovereignty—her *imperium*—over the marginal sea.

This argument leads into several chapters of Texas history.

The Republic of Texas was proclaimed by a convention on March 2, 1836.<sup>1</sup> The United States<sup>2</sup> and other nations<sup>3</sup> formally recognized it. The Congress of Texas on December 19, 1836, passed an act defining the boundaries of the Republic.<sup>4</sup> The southern boundary was described as follows: "beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande."<sup>5</sup> Texas was admitted to the Union in 1845 "on an equal footing with the original States in all respects whatever."<sup>6</sup> Texas claims that during the period from 1836 to 1845 she had brought this marginal belt into her territory and subjected it to her domestic law which recognized ownership in minerals under coastal waters. This the United States contests. Texas also claims that under international law, as it had evolved by the 1840's, the Republic of Texas as a sovereign nation became the owner of the bed and sub-soil of the marginal sea *vis-à-vis* other nations. Texas claims that the Republic of Texas acquired during that period the same interest in its marginal sea as the United States acquired in the marginal sea off California when it purchased from Mexico in 1848 the territory from which California was later formed. This the United States contests.

The Joint Resolution annexing Texas<sup>7</sup> provided in part:

"Said State, when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States." [Italics added.]

The United States contends that the inclusion of fortifications, barracks, ports and harbors, navy and navy yards, and docks in the cession clause of the Resolution demonstrates an intent to convey all interests of the Republic in the marginal sea, since most of these properties lie side by side with, and shade into, the marginal sea. It stresses the phrase in the Resolution "other property and means pertaining to the public defence." It argues that possession by the United States in the lands underlying the marginal sea is a defense necessity. Texas maintains that the construction of the Resolution both by the United States and Texas has been restricted to properties which the Republic actually used at the time in the public defense.

The United States contends that the "vacant and unappropriated lands" which by the Resolution were retained by Texas do not include the marginal belt. It argues that the purpose of the clause, the circumstances of its inclusion, and the meaning of the words in Texas and federal usage give them a more restricted meaning. Texas replies that since the United States refused to assume the liabilities of the Republic it was to have no claim to the assets of the Republic except the defense properties expressly ceded.

In the *California* case, neither party suggested the necessity for the introduction of evidence (332 U. S. 24). But Texas makes an earnest plea to be heard on the facts as they bear on the circumstances of her history which, she says, sets her apart from the other States on this issue.

The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts. *United States v. Texas*, 162 U. S. 1; *Kansas v. Colorado*, 185, U. S. 125, 144, 145, 147; *Oklahoma v. Texas*, 253 U. S. 465, 471. If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construc-

<sup>1</sup> 1 Laws, Rep. of Texas, p. 6.

<sup>2</sup> See the Resolution passed by the Senate March 1, 1837 (Cong. Globe, 24th Cong., 2d Sess., p. 270), the appropriation of a salary for a diplomatic agent to Texas (5 Stat. 170), and the confirmation of a charge d'affaires to the Republic in 1837. 5 Exec. Journ. 17.

<sup>3</sup> See 2 Gamble's Laws of Texas, 655, 880, 889, 905, for recognition by France, Great Britain, and The Netherlands.

<sup>4</sup> 1 Laws, Rep. of Texas, p. 133.

<sup>5</sup> The traditional three-mile maritime belt is one marine league or three marine miles in width. One marine league is 3.45 English statute miles.

<sup>6</sup> See Joint Resolution approved December 29, 1845, 9 Stat. 102.

<sup>7</sup> Joint Resolution approved March 1, 1845, 5 Stat. 797.

tion, usage, international law and the like, introduction of evidence and a full hearing would be essential.

We conclude, however, that no such hearing is required in this case. We are of the view that the "equal footing" clause of the Joint Resolution admitting Texas to the Union disposes of the present phase of the controversy.

The "equal footing" clause has long been held to refer to political rights and to sovereignty. See *Stearns v. Minnesota*, 179 U. S. 223, 245. It does not, of course, include economic stature or standing. There has never been equality among the States in that sense. Some States when they entered the Union had within their boundaries tracts of land belonging to the Federal Government; others were sovereigns of their soil. Some had special agreements with the Federal Government governing property within their borders. See *Stearns v. Minnesota*, *supra*, pp. 243-245. Area, location, geology, and latitude have created great diversity in the economic aspects of the several States. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty.

Yet the "equal footing" clause has long been held to have a direct effect on certain property rights. Thus the question early arose in controversies between the Federal Government and the States as to the ownership of the shores of navigable waters and the soils under them. It was consistently held that to deny to the States, admitted subsequent to the formation of the Union, ownership of this property would deny them admission on an equal footing with the original States, since the original States did not grant these properties to the United States but reserved them to themselves. See *Pollard's Lessee v. Hagan*, 3 How. 212, 228-229; *Mumford v. Wardwell*, 6 Wall. 423, 436; *Weber v. Harbor Comm'rs*, 18 Wall. 57, 65-66; *Knight v. U. S. Land Assn.*, 142 U. S. 161, 183; *Shively v. Bowlby*, 152 U. S. 1, 26; *United States v. Mission Rock Co.*, 189 U. S. 391, 404. The theory of these decisions was aptly summarized by Mr. Justice Stone speaking for the Court in *United States v. Oregon*, 295 U. S. 1, 14 as follows:<sup>8</sup>

"Dominion over navigable waters and property in the soil under them are so identified with the sovereign power of government that a presumption against their separation from sovereignty must be indulged in construing either grants by the sovereign of the lands to be held in private ownership or transfer of sovereignty itself. See *Massachusetts v. New York*, 271 U. S. 65, 89. For that reason, upon the admission of a State to the Union, the title of the United States to lands underlying navigable waters within the States passes to it, as incident to the transfer to the State of local sovereignty, and is subject only to the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce."

The "equal footing" clause, we hold, works the same way in the converse situation presented by this case. It negatives any implied, special limitation of any of the paramount powers of the United States in favor of a State. 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. In other words, we assume that it then had the *dominium* and *imperium* in and over this belt which the United States now claims. 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. The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. 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.

We stated the reasons for this in *United States v. California*, p. 35, as follows: "The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident

<sup>8</sup> The same idea was expressed somewhat differently by Mr. Justice Field in *Weber v. Harbor Comm'rs supra*, pp. 65-66 as follows: "Although the title to the soil under the tidewaters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future State. Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities of commerce with foreign nations or among the several States, the regulation of which was vested in the General government."

to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars waged on or too near its coasts. And insofar as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units. What this Government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations. See *United States v. Belmont*, 301 U. S. 324, 331-332. The very oil about which the state and nation here contend might well become the subject of international dispute and settlement."

And so although *dominium* and *imperium* are normally separable and separate,\* this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty.

It is said that there is no necessity for it—that the sovereignty of the sea can be complete and unimpaired no matter if Texas owns the oil underlying it. Yet, as pointed out in *United States v. California*, once low-water mark is passed the international domain is reached. Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign. Today the controversy is over oil. Tomorrow it may be over some other substance or mineral or perhaps the bed of the ocean itself. If the property, whatever it may be, lies seaward of low-water mark, its use, disposition, management, and control involve national interests and national responsibilities. That is the source of national rights in it. Such is the rationale of the *California* decision, which we have applied to Louisiana's case. The same result must be reached here if "equal footing" with the various States is to be achieved. Unless any claim or title which the Republic of Texas had to the marginal sea is subordinated to this full paramount power of the United States on admission, there is or may be in practical effect a subtraction in favor of Texas from the national sovereignty of the United States. Yet neither the original thirteen States (*United States v. California*, *supra*, pp. 31-32) nor California nor Louisiana enjoys such an advantage. The "equal footing" clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty (*Pollard's Lessee v. Hagan*, *supra*) which would produce inequality among the States. For equality of States means that they are not "less or greater, or different in dignity or power." See *Coyle v. Smith*, 221 U. S. 559, 566. There is no need to take evidence to establish that meaning of "equal footing."

Texas in 1941 sought to extend its boundary to a line in the Gulf of Mexico twenty-four marine miles beyond the three-mile limit and asserted ownership of the bed within that area.<sup>10</sup> And in 1947 she put the extended boundary to the outer edge of the continental shelf.<sup>11</sup> The irrelevancy of these acts to the issue before us has been adequately demonstrated in *United States v. Louisiana*. The other contentions of Texas need not be detailed. They have been foreclosed by *United States v. California* and *United States v. Louisiana*.

The motions of Texas for an order to take depositions and for the appointment of a Special Master are denied. The motion of the United States for judgment is granted. The parties, or either of them, may before September 15, 1950, submit the form of decree to carry this opinion into effect.

So ordered.

MR. JUSTICE JACKSON and MR. JUSTICE CLARK took no part in the consideration or decision of this case.

MR. JUSTICE REED, with whom MR. JUSTICE MINTON joins, dissenting.

This case brings before us the application of *United States v. California*, 332 U. S. 19, to Texas. Insofar as Louisiana is concerned, I see no difference between its situation and that passed upon in the *California* case. Texas, however, presents a variation which requires a different result.

The *California* case determines, p. 36, that since "paramount rights run to the states in inland waters to the shoreward of the low-water mark, the same rationale leads to the conclusion that national interests, responsibilities, and therefore

\* See the statement of Mr. Justice Field (then Chief Justice of the Supreme Court of California) in *Moore v. Swaw*, 17 Cal. 199, 218-219.

<sup>10</sup> Act of May 16, 1941, L. Texas, 47th Leg., p. 454.

<sup>11</sup> Act of May 23, 1947, L. Texas, 50th Leg., p. 451.

national rights are paramount in waters lying to the seaward in the three-mile belt." Thus the Court held, p. 39, that the Federal Government has power over that belt, an incident of which is "full dominion over the resources of the soil under that water area, including oil." But that decision was based on the premise, pp. 32-34, that the three-mile belt had never belonged to California. The *California* case points out that it was the United States which had acquired this seacoast area for the Nation. Sovereignty over that area passed from Mexico to this country. The Court commented that similar belts along their shores were not owned by the original seacoast states. Since something akin to ownership of the similar area along the coasts of the original states was thought by the Court to have been obtained through an assertion of full dominion by the United States to this hitherto unclaimed portion of the earth's surface, it was decided that a similar right in the California area was obtained by the United States. The contrary is true in the case of Texas. The Court concedes that prior to the Resolution of Annexation, the United States recognized Texas ownership of the three-league area claimed by Texas.<sup>12</sup>

The Court holds immaterial the fact of Texas' original ownership of this marginal sea area, because Texas was admitted on an "equal footing" with the other states by the Resolution of Annexation. 5 Stat. 797. The scope of the "equal footing" doctrine, however, has been thought to embrace only political rights or those rights considered necessary attributes of state sovereignty. Thus this Court has held in a consistent line of decisions that, since the original states, as an incident of sovereignty, had ownership and dominion over lands under navigable waters within their jurisdiction, states subsequently admitted must be accorded equivalent ownership. *E. g. Pollard v. Hagan*, 3 How 212; *Martin v. Waddell*, 16 Pet. 367. But it was an articulated premise of the *California* decision that the thirteen original states neither had asserted ownership nor had held dominion over the three-mile zone as an incident of sovereignty.

"Equal footing" has heretofore brought to a state the ownership of river beds, but never before has that phrase been interpreted to take away from a newly admitted state property that it had theretofore owned. I see no constitutional requirement that this should be done and I think the Resolution of Annexation left the marginal sea area in Texas. The Resolution expressly consented that Texas should retain all "the vacant and unappropriated lands lying within its limits." An agreement of this kind is in accord with the holding of this Court that ordinarily lands may be the subject of compact between a state and the Nation. *Stearns v. Minnesota*, 179 U. S. 223, 245. The Court, however, does not decide whether or not "the vacant and unappropriated lands lying within its limits" (at the time of annexation) includes the land under the marginal sea. I think that it does include those lands. *Cf. Hynes v. Grimes Packing Co.*, 337 U. S. 86, 110. At least we should permit evidence of its meaning.

Instead of deciding this question of cession, the Court relies upon the need for the United States to control the area seaward of low water because of its international responsibilities. It reasons that full dominion over the resources follows this paramount responsibility, and it refers to the *California* discussion of the point 332 U. S. at 35. But the argument based on international responsibilities prevailed in the *California* case because the marginal sea area was staked out by the United States. The argument cannot reasonably be extended to Texas without a holding that Texas ceded that area to the United States.

The necessity for the United States to defend the land and to handle international affairs is not enough to transfer property rights in the marginal sea from Texas to the United States. Federal sovereignty is paramount within national boundaries, but federal ownership depends on taking possession, as the *California* case holds; on consent, as in the case of places for federal use; or on purchase, as in the case of Alaska or the Territory of Louisiana. The needs of defense and foreign affairs alone cannot transfer ownership of an ocean bed from a state to the Federal Government any more than they could transfer iron ore under uplands from state to federal ownership. National responsibility is no greater in respect to the marginal sea than it is toward every other particle of American territory. In my view, Texas owned the marginal area by virtue of its original proprietorship; it has not been shown to my satisfaction that it lost it by the terms of the Resolution of Annexation.

I would deny the United States motion for judgment.

MR. JUSTICE FRANKFURTER.†

<sup>12</sup> See the statement in the Court's opinion as to the chapters of Texas history.

†(REPORTER'S NOTE.—This is also the opinion of MR. JUSTICE FRANKFURTER in No. 12, Original, *United States v. Louisiana*, ante, p. 699.)

Time has not made the reasoning of *United States v. California*, 332 U. S. 19, more persuasive but the issue there decided is no longer open for me. It is relevant, however, to note that in rejecting California's claim of ownership in the off-shore oil the Court carefully abstained from recognizing such claim of ownership by the United States. This was emphasized when the Court struck out the proprietary claim of the United States from the terms of the decree proposed by the United States in the *California* case.\*

I must leave it to those who deem the reasoning of that decision right to define its scope and apply it, particularly to the historically very different situation of Texas. As is made clear in the opinion of Mr. JUSTICE REED, the submerged lands now in controversy were part of the domain of Texas when she was on her own. The Court now decides that when Texas entered the Union she lost what she had and the United States acquired it. How that shift came to pass remains for me a puzzle.

SUPREME COURT OF THE UNITED STATES

No. 13 Orig., October Term, 1950

UNITED STATES OF AMERICA, PLAINTIFF, v. STATE OF TEXAS

DECREE

(340 U. S. 900)

This cause came on to be heard on the motion for judgment filed by the plaintiff and was argued by counsel.

For the purpose of carrying into effect the conclusions of this Court as stated in its opinion announced June 5, 1950, it is ORDERED, ADJUDGED, AND DECREED as follows:

1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Texas, and outside of the inland waters, extending seaward to the outer edge of the continental shelf and bounded on the east and southwest, respectively, by the eastern boundary of the State of Texas and the boundary between the United States and Mexico. The State of Texas has no title thereto or property interest therein.

2. The State of Texas, its privies, assigns, lessees, and other persons claiming under it are hereby enjoined from carrying on any activities upon or in the submerged area described in paragraph 1 hereof for the purpose of taking or removing therefrom any petroleum gas or other valuable mineral products, and from taking or removing therefrom any petroleum, gas, or other valuable mineral products, except under authorization first obtained from the United States. On appropriate showing, the United States may obtain the other injunctive relief prayed for in the complaint.

3. The United States is entitled to a true, full, and accurate accounting from the State of Texas of all or any part of the sums of money derived by the State from the area described in paragraph 1 hereof subsequent to June 5, 1950, which are properly owing to the United States under the opinion entered in this case on June 5, 1950, this decree, and the applicable principles of law.

4. Jurisdiction is reserved by this Court to enter such further orders and to issue such writs as may from time to time be deemed advisable or necessary to give full force and effect to this decree.

DECEMBER 11, 1950.

MR. JUSTICE JACKSON and MR. JUSTICE CLARK took no part in the consideration or decision of this case.

\* The decree proposed by the United States read in part:

"1. The United States of America is now, and has been at all times pertinent thereto, possessed of paramount rights of *proprietaryship* in, and full domination and power over, the lands, minerals, and other things underlying the Pacific Ocean. . . ."

The italicized words were omitted in the Court's decree. 332 U. S. 804, 805.

## APPENDIX D

[Excerpt from The Federal Register of January 20, 1953, vol. 18, No. 13]

## EXECUTIVE ORDER 10426

**SETTING ASIDE SUBMERGED LANDS OF THE CONTINENTAL SHELF AS A NAVAL PETROLEUM RESERVE**

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. (a) Subject to valid existing rights, if any, and to the provisions of this order, the lands of the continental shelf of the United States and Alaska lying seaward of the line of mean low tide and outside the inland waters and extending to the furthestmost limits of the paramount rights, full dominion, and power of the United States over lands of the continental shelf are hereby set aside as a naval petroleum reserve and shall be administered by the Secretary of the Navy.

(b) The reservation established by this section shall be for oil and gas only, and shall not interfere with the use of the lands or waters within the reserved area for any lawful purpose not inconsistent with the reservation.

SEC. 2. The provisions of this order shall not affect the operating stipulation which was entered into on July 26, 1947, by the Attorney General of the United States and the Attorney General of California in the case of *United States of America v. State of California* (in the Supreme Court of the United States, October Term, 1947, No. 12, Original), as thereafter extended and modified.

SEC. 3. (a) The functions of the Secretary of the Interior under Parts II and III of the notice issued by the Secretary of the Interior on December 11, 1950, and entitled "Oil and Gas Operations in the Submerged Coastal Lands of the Gulf of Mexico" (15 F. R. 8835), as supplemented and amended, are transferred to the Secretary of the Navy; and the term "Secretary of the Navy" shall be substituted for the term "Secretary of the Interior" wherever the latter term occurs in the said Parts II and III.

(b) Paragraph (c) of Part III of the aforesaid notice dated December 11, 1950, as amended, is amended to read as follows:

"(c) The remittance shall be deposited in a suspense account within the Treasury of the United States, subject to the control of the Secretary of the Navy, the proceeds to be expended in such manner as may hereafter be directed by an act of Congress or, in the absence of such direction, refunded (which may include a refund of the money for reasons other than those hereinafter set forth) or deposited into the general fund of the Treasury, as the Secretary of the Navy may deem to be proper."

(c) The provisions of Parts II and III of the aforesaid notice dated December 11, 1950, as supplemented and amended, including the amendments made by this order, shall continue in effect until changed by the Secretary of the Navy.

SEC. 4. Executive Order No. 9633 of September 28, 1945, entitled "Reserving and Placing Certain Resources of the Continental Shelf under the Control and Jurisdiction of the Secretary of the Interior" (10 F. R. 12305), is hereby revoked.

HARRY S. TRUMAN.

THE WHITE HOUSE,  
January 16, 1953.

(F. R. Doc. 53-734; Filed, Jan. 16, 1953; 4:56 p. m.)

## APPENDIX E

There is set forth below the text of the report of the Senate Judiciary Committee, 80th Congress, on S. 1988, the quitclaim bill which is identical in substance with Senate Joint Resolution 13 as introduced. This report, while prepared before the decisions in the Louisiana and Texas cases, is deemed to be of such pertinence to the present issues, because of its comprehensive presentation of the historical, factual, and judicial background of the submerged lands issue, that it is reprinted in full. It will be noted that the report speaks of the opposition of the Department of the Interior and the Attorney General to quitclaim legislation. While such was the fact in 1948 when S. 1988 was reported, the present Attorney General and Secretary of the Interior have appeared before the committee to express support of the legislation of the type of Senate Joint Resolution 13.

## Calendar No. 1649

80TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ No. 1592CONFIRMING AND ESTABLISHING THE TITLES OF THE STATES  
TO LANDS AND RESOURCES IN AND BENEATH NAVIGABLE  
WATERS WITHIN STATE BOUNDARIES AND TO PROVIDE FOR  
THE USE AND CONTROL OF SAID LANDS AND RESOURCES

---

JUNE 10 (legislative day, JUNE 1), 1948.—Ordered to be printed

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Mr. MOORE, from the Committee on the Judiciary, submitted the following

## R E P O R T

[To accompany S. 1988]

The Committee on the Judiciary, to whom was referred the bill (S. 1988)<sup>1</sup> to confirm and establish the titles of the States to lands and resources in and beneath navigable waters within State boundaries and to provide for the use and control of said lands and resources, having considered the same, report the bill to the Senate favorably, with amendments, and recommend that the bill, as amended, do pass.

The amendments are as follows:

## COMMITTEE AMENDMENT NO. 1

On page 1, line 3, strike out down through and including line 7, page 6, and insert in lieu thereof the following:

That the United States of America, recognizing—

(a) that the several States, and the others as hereinafter mentioned, since July 4, 1776, or since their formation and admission to the Union, have exercised full powers of ownership of all lands beneath navigable waters within their respective boundaries and all natural resources within such lands and waters, and full control of said natural resources, with the full acquiescence and approval of the United States and in accordance with many pronouncements of the Supreme Court and decisions of the executive departments of the Federal Government that such lands and resources were vested in the respective States as an incident to State sovereignty and that the exercise of such powers of ownership and control has not in the past impaired or interfered with and will not impair or interfere with the exercise by the Federal Government of its constitutional powers in relation to said lands and navigable waters and to the control and regulation of commerce, navigation, national defense, and international relations; and

<sup>1</sup> By Mr. Moore (for himself and Mr. McCarran, Mr. Knowland, Mr. Bricker, Mr. Hawkes, Mr. Butler, Mr. Holland, Mr. Eastland, Mr. Martin, Mr. Ellender, Mr. Saltonstall, Mr. O'Connor, Mr. O'Daniel, Mr. Downey, Mr. Connally, Mr. Byrd, Mr. Overton, Mr. Hickenlooper, Mr. Brooks and Mr. Capper).

(b) that the several States, their subdivisions, and persons lawfully acting pursuant to State authority have expended enormous sums of money on improving and reclaiming said lands and in developing the natural resources in said lands and waters in full reliance upon the validity of their titles; and

(c) that a recent decision of the Supreme Court held that the Federal Government has certain paramount powers with respect to a portion of said lands without reaffirming or settling the ultimate question of ownership of such lands and resources, but said decision recognizes that the question of the ownership and control of said lands and natural resources, is within the "congressional area of national power" and that Congress will not execute its powers "in such way as to bring about injustices to States, their subdivisions, or persons acting pursuant to their permission";

It is hereby determined and declared to be in the public interest that title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and the right and power to control, develop, and use the said natural resources in accordance with applicable State law be, and they are hereby recognized, confirmed, established, and vested in the respective States or the persons lawfully entitled thereto under the law as established by the decisions of the respective courts of such States, and the respective grantees, lessees, or successors in interest thereof; and the United States hereby releases and relinquishes unto said States and persons aforesaid all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources, and releases and relinquishes all claims of the United States, if any it has, arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters: *Provided, however,* That nothing in this Act shall affect the use, development, improvement, and control by or under the authority of the United States of said lands and waters for the purposes of navigation or flood control or the production or distribution of power, or be construed as the release or relinquishment of any rights of the United States arising under the authority of Congress to regulate or improve navigation or to provide for flood control or the production or distribution of power.

SEC. 2. As used in this Act—

(a) the term "lands beneath navigable waters" includes (1) all lands within the boundaries of each of the respective States which were covered by waters navigable under the laws of the United States, at the time such State became a member of the Union, and all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary, as it existed at the time such State became a member of the Union, or as heretofore or hereafter approved by Congress, extends seaward (or into the Great Lakes or Gulf of Mexico) beyond three geographical miles, and (2) all lands formerly beneath navigable waters, as herein defined, which have been filled or reclaimed; the term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore or hereafter approved by the Congress, or as extended or confirmed pursuant to section 3 hereof;

(b) the term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of all estuaries, ports, harbors, bays, straits, and sounds, and all other bodies of water which are landward of the open sea;

(c) the term "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, and persons holding grants or leases from a State to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated; and the term "person" shall include corporations, partnerships, and associations;

(d) the term "natural resources" shall not include water power or the use of water for the production of power;

(e) the term "lands beneath navigable waters" shall not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States.

**Sec. 3.** Any State which has not already done so may extend its seaward boundaries (or its boundaries in the Great Lakes) to a line three geographical miles distant from its coastline. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State to extend its boundaries to a line three geographical miles distant from its coastline is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. €

**Sec. 4.** There is excepted from the operation of the first section of this Act—

(a) all lands and resources therein or improvements thereon which have been lawfully acquired by the United States from any State or from any person in whom title had vested under the decisions of the courts of such State, or their respective grantees, or successors in interest, by cession, grant, quitclaim, or condemnation, or from any other owner or owners thereof by conveyance or by condemnation, provided such owner or owners had lawfully acquired the title to such lands and resources in accordance with the statutes or decisions of the courts of the State in which the lands are located; and

(b) such lands beneath navigable waters within the boundaries of the respective States and such interests therein as the United States is lawfully entitled to under the law as established by the decisions of the courts of the State in which the land is situated, or which are held by the United States in trust for the benefit of any tribe, band, or group of Indians or for individual Indians.

**Sec. 5.** (a) The United States retains all its powers of regulation and control of said lands and navigable waters for the purposes of commerce, navigation, national defense, and international affairs except those rights to the ownership, use, development, and control of the lands and natural resources, which are specifically recognized, confirmed, established, and vested in the respective States and others by the first section of this Act.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

**Sec. 6.** Nothing in this Act shall be deemed to affect the determination by legislation or judicial decree of any issues between the United States and the respective States relating to the ownership or control of that portion of the subsoil and sea bed of the Continental shelf lying seaward and outside of the area of lands beneath navigable waters, described in section 2 hereof.

**Sec. 7.** Nothing in this Act shall be deemed to amend, modify, or repeal the Acts of July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377), and June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto.

#### COMMITTEE AMENDMENT NO. 2

#### Amend the title so as to read:

A bill to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and natural resources within such lands and waters and to provide for the use and control of said lands and resources.

#### STATEMENT

Hearings on S. 1988 and on companion measures introduced in the House<sup>2</sup> were jointly conducted by the Committees on the Judiciary of the House of Representatives and the Senate for a total of 17 days, commencing on February 23, 1948, and concluding on March 18, 1948.

<sup>2</sup> H. R. 4999, Bradley; H. R. 5010, Fletcher; H. R. 5099, McDonough; H. R. 5105, Bramblett; H. R. 5121, Allen; H. R. 5128, Jackson; H. R. 5132, Nixon; H. R. 5136, Anderson; H. R. 5162, Allen; H. R. 5167, Poulson; H. R. 5238, Passman; H. R. 5273, Graham; H. R. 5281, Geurhart; H. R. 5288, Russell; H. R. 5297, Gossett; H. R. 5308, Coff; H. R. 5320, Peterson; H. R. 5349, Colmer; H. R. 5372, Mack; H. R. 5380, Teague; H. R. 5445, Jones; H. R. 5461, Horan; H. R. 5531, Hale; H. R. 5536, King; H. R. 5628, Weichel; H. R. 5660, Boggs; and H. R. 5680, Chadwick.

## I. SUPPORT FOR AND OPPOSITION TO THE LEGISLATION

### *Supported by public officials*

The measure is actively supported by a large number of organizations composed of public officials, among which are (a) the National Association of Attorneys General, made up of the attorneys general of the 48 States; (b) Conference of Governors, composed of the governors of the 48 States; (c) National Association of State Land Officials; (d) American Association of Port Authorities; (e) National Institute of Municipal Law Officers; (f) Council of State Governments; (g) Conference of Mayors; (h) Interstate Oil Compact Commission; (i) National Association of Secretaries of State; and (j) Port of New York Authority. Hon. Millard F. Caldwell, Governor of the State of Florida; Hon. J. Strom Thurmond, Governor of the State of South Carolina; Hon. William Tuck, Governor of the State of Virginia; Hon. Frank Carlson, Governor of the State of Kansas; Hon. Beauford H. Jester, Governor of the State of Texas; and Hon. Earl Warren, Governor of the State of California, appeared in person to support the legislation. Numerous other State governors appeared through personal representatives or filed statements in support of the legislation. The attorneys general of 38 States appeared in person or through their assistants and deputies or filed statements urging the adoption of the legislation. Representatives of the State Legislature of the State of California appeared in person. Resolutions and memorials in support of the legislation were received from a number of State legislative bodies.

### *Supported by other organizations*

Representatives of other organizations appeared to support the bill, including (a) American Bar Association, (b) Texas Bar Association, (c) United States Chamber of Commerce, and (d) Independent Petroleum Association of America. Also, numerous organizations submitted statements and resolutions supporting the legislation, including State teachers' associations, civic organizations, and commercial associations.

### *Opposition*

It is opposed by the Departments of Justice, Interior, and National Defense, and by a few persons and their lawyers, who, under the provisions of the Federal Mineral Leasing Act, are attempting to obtain from the Federal Government, for a nominal consideration, oil and gas leases on parts of the submerged lands that are the subject matter of this legislation, some of which applications cover and include submerged lands that have been developed for oil and gas under State leases by the expenditure of millions of dollars and are now producing large quantities of oil.

The bill was opposed by the legislative counsel of the National Grange, who stated, however, that it was the general policy of the Grange to assist cooperative associations, some of which are engaged in the business of producing, transporting, refining, and marketing petroleum and petroleum products to their members and the general public as well, and which have also filed application for Federal oil and gas leases on hundreds of thousands of acres of the submerged lands involved in this legislation. Congressman Sam Hobbs, of Alabama, appeared and discussed with the committee his theory

that the "3-mile belt" was incapable of actual ownership by any nation within the common understanding of such term, but that title actually rested in "the family of nations." A Washington correspondent of the St. Louis Post-Dispatch also appeared and expressed his personal opposition to the bill.

## II. PURPOSE OF LEGISLATION

The purpose of S. 1988, as reported, like that of House Joint Resolution 225, which passed the Seventy-ninth Congress by a very substantial majority but was vetoed by President Truman, is to confirm and establish the rights and claims of the 48 States, long asserted and enjoyed with the approval of the Federal Government, to the lands and resources beneath navigable waters within their boundaries; subject, however, to the right of the United States to exercise all of its constitutional regulatory powers over such lands and waters.

## III. HISTORY OF LEGISLATION

### *One hundred and sixty years of unchallenged ownership by the States*

Throughout our Nation's history the States have been in possession of and exercising all the rights and attributes of ownership in the lands and resources beneath the navigable waters within their boundaries. During a period of more than 150 years of American jurisprudence the Supreme Court, in the words of Mr. Justice Black,<sup>3</sup> had—

used language strong enough to indicate that the Court then believed that the States also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not.

That same belief was expressed in scores of Supreme Court opinions and in hundreds of lower Federal courts' and State courts' opinions. Similar beliefs were expressed in rulings by Attorneys General of the United States, the Department of the Interior, the War Department, and the Navy Department. Lawyers, legal publicists, and those holding under State authority accepted this principle as the well-settled law of the land.

As late as 1933, the then Secretary of the Interior, Harold L. Ickes, in refusing to grant a Federal oil lease on lands under the Pacific Ocean within the boundaries of California, recognized:—

Title to the soil under the ocean within the 3-mile limit is in the State of California, and the land may not be appropriated except by authority of the State.

### *Claims of States first challenged by Federal officials in 1937*

It was not until a few applicants for Federal oil leases and their attorneys continued to insist that the United States owned the soil under navigable waters, that, in the words of Mr. Ickes, "doubt" arose in his mind as to which Government owned the submerged lands. The "doubt" was first publicly expressed in the Nye resolution<sup>4</sup> introduced in the Seventy-fifth Congress in 1938, and was subsequently expressed in the Hobbs and O'Connor resolutions<sup>5</sup> and the

<sup>3</sup> *United States v. California* (1947), 91 Law Ed. Advance Opinions, p. 1423.

<sup>4</sup> Hearings before the Committee on the Judiciary, House of Representatives, 75th Cong., 3d sess., February 1938, on S. J. Res. 203.

<sup>5</sup> Hearings before Subcommittee No. 4, Committee on the Judiciary, House of Representatives, 76th Cong., 1st sess., March 1939, on H. J. Res. 176 and 181.

Nye and Walsh resolutions<sup>6</sup> introduced in the Seventy-sixth Congress in 1939, all of which failed of enactment. Had the Congress followed the recommendations of the Departments of Interior, Justice, and Navy, by enacting any one of the resolutions, it would have attempted to appropriate for the United States, without compensation to the States, the 3-mile marginal belt as a naval petroleum reserve, and the Attorney General would have been authorized to establish through judicial proceedings the Government's title.

The theory advanced in 1938 and 1939 by the same Federal departments which now oppose S. 1988 was to the effect that the United States had no right to appropriate the natural resources within the submerged coastal lands unless the Congress, as the policy-making branch of the Government, asserted what was contended to be a dormant right. They spoke of the right as being "novel" and one never before asserted by the United States under the Constitution, and as being a right which the States had been asserting and enjoying, and would continue to assert and enjoy unless and until the Congress changed the policy of the Federal Government. Congress, however, did not change the long-existing and recognized policy.

#### *Congress in 1946 recognized States' claims*

As a result of continuing threats of Secretary of the Interior Ickes to grant Federal leases on portions of the submerged coastal lands, resolutions were introduced in 1945 in the Seventy-ninth Congress, quieting title to these lands in the States. After extensive hearings,<sup>7</sup> these resolutions were passed in 1946 as House Joint Resolution 225.<sup>8</sup> However, the reaffirmation of the well-established policy was voided through a veto by President Truman.<sup>9</sup> The House failed to override the veto.<sup>10</sup>

While the Congress was considering House Joint Resolution 225, the Federal officials, being dissatisfied with the continued refusal of Congress to appropriate property long claimed by the States, instituted on May 29, 1945, a suit against the Pacific Western Oil Corp., a lessee of the State of California, to recover part of the submerged lands claimed by California and its lessee.

After House Joint Resolution 225 passed the House by a large vote, and while it was pending in the Senate, the suit against Pacific Western Oil Co. was voluntarily dismissed by Attorney General Clark, and an original action was brought by him in the Supreme Court against the State of California, wherein he alleged that the United States "is the owner in fee simple of, or possessed of paramount rights in and power over" the submerged lands within 3 miles of the California coast. These two suits were instituted and the latter one against California was prosecuted after the Congress had refused in 1938 and again in 1939 requests of the Attorney General and other Federal officials for permission to institute a suit for that purpose.

The House, in failing to override the veto of House Joint Resolution 225 was no doubt influenced, as the President had been, by the pending litigation.

<sup>6</sup> Hearings before Committee on Public Lands and Surveys, U. S. Senate, 76th Cong., 1st sess., March 1939, on S. J. Res. 83 and 92.

<sup>7</sup> Joint hearings, Committee on the Judiciary, House of Representatives, and a special subcommittee of the Senate Judiciary Committee, 79th Cong., 1st sess., on H. J. Res. 118 et al.; hearings before the Committee on the Judiciary, U. S. Senate, 79th Cong., 2d sess., on S. J. Res. 48 and H. J. Res. 225.

<sup>8</sup> 92 Congressional Record 9642, 10316 (1946).

<sup>9</sup> 92 Congressional Record 10660 (1946).

<sup>10</sup> 92 Congressional Record 10746 (1946).

*Decision of Supreme Court denying California ownership*

On June 23, 1947, the Supreme Court rendered its opinion in the case of *United States v. California*, and on October 27, 1947, a decree was entered which reads, in part, as follows:

1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California. The State of California has no title thereto or property interest therein.

In the Court's majority opinion, Mr. Justice Black said:

The crucial question on the merits is not merely who owns the bare legal title to the lands under the marginal sea. The United States here asserts rights in two capacities transcending those of a mere property owner.

He then proceeded to define those two capacities as that of national defense and of conducting foreign relations.

Mr. Justice Black, in the majority opinion, stated further:

As previously stated this Court has followed and reasserted the basic doctrine of the Pollard case many times. And in doing so it has used language strong enough to indicate that the Court then believed that States not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not.

Thus the Court by its decision not only established the law differently from what eminent jurists, lawyers, and public officials for more than a century had believed it to be, but also differently from what the Supreme Court apparently had believed it to be.

This committee, having heard the testimony of many able and distinguished State attorneys general, of representatives of the American Bar Association and State bar associations, and of other able and distinguished jurists and lawyers, is of the opinion that no decision of the Supreme Court in many years has caused such dissatisfaction, confusion, and protest as has the California case. We have heard it described in such terms as "novel," "strange," "extraordinary and unusual," "creating an estate never before heard of," "a reversal of what all competent people believed the law to be," "creating a new property interest," "a threat to our constitutional system of dual sovereignty," "a step toward the nationalization of our natural resources," "causing pandemonium," etc.

*Power of Congress to reestablish long-accepted policy of State ownership*

The committee recognizes that it is within the province of the Supreme Court to define the law as the Court believes it to be at the time of its opinion. However, the Supreme Court does not pass upon the wisdom of the law. That is exclusively within the congressional area of national power. Congress has the power to change the law, just as the Supreme Court has the power to change its interpretation of the law by overruling pronouncements in its former opinions which have been accepted as the law of the land. Therefore, in full acceptance of what the Supreme Court has now found the law to be, Congress may nevertheless enact such legislation as in its wisdom it deems advisable to solve the problems arising out of the decision.

Indeed, the power of the Congress to establish the law for the future as it was formerly believed to be, was, in effect, recognized by the

Court in the California case for it held in connection with the lands in question that the power of Congress under article IV, section 3, clause 2 of the Constitution to dispose of territory or other property of the United States was without limitation; and that it would not be assumed that—

Congress, which had constitutional control over Government property, would execute its powers in such way as to bring about injustices to States, their subdivisions, or persons acting pursuant to their permission.

Many witnesses testified that they construed the opinion as an invitation or recommendation to the Congress to consider the legislative question as to whether in the public interest the States should continue in possession of, and exercise State control of, the submerged lands within their boundaries, or the Federal Government should take from the States these lands and hereafter exercise all control over them.

#### IV. SUPREME COURT DECISION MAKES LEGISLATION NECESSARY

When House Joint Resolution 225 was passed by the Congress, there existed only a threat to the long-established and settled policy of State ownership of these lands. Now, as a result of the reversal of this policy by the Supreme Court's opinion in the California case, there exists, in the words of Attorney General Clark,<sup>11</sup> "a variety of unusually complex problems which must be resolved."

The committee deems it imperative that Congress take action at the earliest possible date to clarify the endless confusion and multitude of problems resulting from the California decision, and thereby bring to a speedy termination this whole controversy. Otherwise inequities, injustices, vexatious and interminable litigation, and the retardment of the much-needed development of the resources in these lands will inevitably result.

##### *Issue of title is confused*

While the Supreme Court decreed that California was not the owner of the 3-mile marginal belt, it failed expressly to decree that the United States was the owner. Furthermore, although requested by the Attorney General, and others appearing amici curiae, the Court refused to hold that the United States was the "owner in fee simple" or had "paramount rights of proprietorship" in such 3-mile belt.

"Fee simple" and "proprietorship" are words commonly used in law to denote ownership, while the words "paramount rights in and full dominion over" employed by the Court are foreign to the law of real property.

Attorney General Clark expressing the view that paramount rights and full dominion signified a title even higher than a fee simple testified:

They said to us in effect, go ahead and get the oil. That is what the effect of the opinion is. What more could the Supreme Court have held? If it held that we had fee simple title, something might come up some day on this particular land. This is a novel decision. This land is under water. It is in the 3-mile belt \* \* \* So they did not want to be bound by any fee simple proposition.

So they could have said fee simple title, they could have said any of the descriptive terms that we use with reference to titles, but they might have found them—

<sup>11</sup> Letter to the President dated October 30, 1947.

selves in difficulty later on when someone else might have claimed that all you have said here is that the United States had fee simple title.

Mr. Justice Frankfurter, in his dissenting opinion, had difficulty in determining the meaning and legal significance of the words used by Mr. Justice Black in the majority opinion, stating that:

The Court, however, grants the prayer but does not do so by finding that the United States has proprietary interests in the area. To be sure it denies such proprietary rights in California.

Of course the United States has "paramount rights" in the sea belt of California—the rights that are implied by the power to regulate interstate and foreign commerce, the power of condemnation, the treaty-making power, the war power. We have not now before us the validity of the exercise of any of these paramount rights. Rights of ownership are here asserted—and rights of ownership are something else. Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?

The fact that these oil deposits in the open sea may be vital to the national security, and important elements in the conduct of our foreign affairs, is no more relevant than is the existence of uranium deposits, wherever they may be, in determining questions of trespass to the land of which they form a part.

Mr. Justice Reed said in his dissent:

This ownership in California would not interfere in any way with the needs or rights of the United States in war or peace. The power of the United States is plenary over these undersea lands precisely as it is over every river, farm, mine, and factory of the Nation.

Many witnesses were of the opinion that the construction of paramount rights as including fee ownership would, if carried to its logical conclusion, destroy the basic legal distinction between governmental powers under the Constitution on the one hand, and State or private ownership of real property on the other, because the "paramount powers" of the United States do not depend upon whether the point at which they may need to be exercised is above or below low-water mark or on one side or the other of a line dividing a bay from the coastal waters.

Many witnesses expressed the opinion that the title was left suspended in mid-air, leaving the property ownerless, contrary to the basic concept of our common law that legal title to every piece of property must exist in someone; others expressed the view that the Supreme Court held, in effect, that Congress, as the policy-making branch of the Federal Government, had the power, in the first instance to determine who shall be the owner of the lands.

The theory that title to the 3-mile belt was in "the family of nations," expressed by Congressman Hobbs of Alabama, was also adhered to by representatives of the Navy Department in 1938 and 1939. With respect to inland waters, Congressman Hobbs agreed that the paramount rights of the Federal Government, as defined by the Supreme Court in *U. S. v. California*, might likewise be exercised for the purposes of national defense and international negotiations.

Mr. Justice Black, in speaking for the majority of the Court in the California case, said:

The very oil about which the State and Nation here contend might well become the subject of international dispute and settlement.

If the Court in making the statement had reference to the military power of a foreign nation to dispute the rights of the States to take

oil under submerged lands within their boundaries, then the same statement could correctly be made about oil under uplands; providing, of course, the foreign nation possessed a military force strong enough to compel a settlement by the United States. However, if the statement was made because the Congress had never legislatively asserted on behalf of the United States or the States title to the submerged lands within their boundaries, then we think that is all the more reason why the Congress should now remove all doubt about the title by ratifying and confirming the titles long asserted by the various States, subject always, of course, to the paramount powers of the Federal Government under the Constitution, which titles have never been disputed by any foreign nation.

The committee is unable to determine whether or not the Supreme Court held that the United States has actual title in and to the submerged coastal lands adjacent to California, but it is obvious that Congress has the power to legislate in any event, for, as the Court said, the Federal Government has—

the paramount right and power to determine in the first instance when, how, and by what agencies, foreign or domestic, the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited.

On the other hand, if the Federal Government does have a fee-simple title to these lands and even something greater and paramount to title as contended by the Attorney General of the United States, then the Congress, under the authority of article IV, section 3, clause 2, of the Constitution, has unlimited control over such lands and may dispose of them in such manner as it deems in the public interest. The committee is, therefore, of the opinion that S. 1988, as reported if enacted, will establish, confirm, and vest in the littoral States, which have since the formation of our Union claimed title to the marginal belt, such title and rights as the Federal Government has, subject to the reservations contained therein.

#### UNITED STATES SOVEREIGNTY AFFECTED

The Court held unconditionally, "that California is not the owner of the 3-mile marginal belt along its coast," but failed to hold that title was in the Federal Government.

The Attorney General of the United States and certain interveners expressly and forcefully urged that the United States be decreed to have "proprietaryship" of these lands and the resources therein but it is strikingly significant that the Court refused to do so.

Thus, the opinion presents the legal anomaly of holding that the defendant does not have title to the property involved but failing to hold that the plaintiff does have title.

It is beyond doubt that the Federal Government cannot assert any lawful control over lands or resources that are not located within the borders of the several States or the Territories or which has not been committed to it by treaty or other international negotiations.

In *Massachusetts v. Manchester*, the Supreme Court said:

There is no belt of land under the sea adjacent to the coast which is the property of the United States and not the property of the States.

Since the Court has held that the 3-mile belt is in the "open sea" and that "California is not the owner of the 3-mile belt along its

coast," and has expressly refused to hold that the United States does have "proprietorship" in such lands, then it is an inescapable consequence of the opinion that the Federal Government has been divested of Federal sovereignty over the lands and resources therein, which all courts and lawyers have heretofore recognized, subject to the constitutional limitations.

♦ The opinion gives comfort to the view expressed by Congressman Sam Hobbs, of Alabama, and counsel for the Navy in 1938 and 1939 when the Nye and Hobbs resolutions were being considered by the Congress and the view later expressed by Congressman Hobbs before the subcommittee considering S. 1988, that the United States does not own the 3-mile marginal belt but title to this area is actually in the "family of nations."

The language of the opinion in other respects also emphasizes the fact that the Court considers this area outside the sovereignty of the United States and that the exercise of Federal rights with respect to the 3-mile marginal belt is dependent upon the sheer military force of the United States to appropriate such lands and the resources therein to its own use. In this connection, the Court said:

Whatever any nation does in the open sea which detracts from its common usefulness to nations or which another nation may charge detracts from it, is a question for consideration among nations as such and not their separate governmental units. \* \* \* The very oil about which the State and the Nation here contend might well become the subject of international dispute and settlement.

The question of national sovereignty raised by the opinion of the Court makes it highly important that the Congress act to recognize the long asserted titles of the several States to all lands and resources within their lawfully established boundaries, which have never been disputed by any foreign power, and thus preserve the constitutional sovereignty of the United States over these lands.

*Applicability of California decision to other coastal and Great Lakes States*

The Attorney General of the United States testified that he intended to bring in the near future similar suits against other Coastal States and that, although each State would probably urge "special defenses" based upon the law and facts under which it joined the Union, the California decision was a precedent for the suits he intended to bring against other States.

The attorneys general of several Great Lakes States and other qualified witnesses testified that the California case was likewise a precedent which the Federal Government could properly urge in any suit against the Great Lakes States to recover for the Federal Government the submerged areas under the Lakes within the boundaries of such States. These witnesses called attention to the fact that the Supreme Court in *Illinois Central Railroad v. Illinois* (146 U. S. 387) held that because the Great Lakes partook of the nature of the open sea, the same rule of ownership would be applied to them that had been followed by the Court with reference to ownership of lands "under tide waters on the borders of the sea." These witnesses also pointed out that the Great Lakes are located on an international boundary and the Federal Government has the same right to conduct international negotiations involving the Lakes as it does with respect to the 3-mile belt off the shore of California.

The Attorney General of the United States when questioned on the applicability of the rule as announced in the California case to the submerged lands of the Great Lakes within the borders of the Great Lakes States was somewhat equivocal. He insisted that Lake Michigan was wholly an inland lake and, consequently, in his opinion, the rule in the California case could not apply in Lake Michigan. He also stated it to be his opinion that the rule would not apply with respect to the other Great Lakes. However, he was frank to say that this was a personal opinion without study and that he had not conferred with or consulted other members of his staff on this point. The Attorney General also conceded that all of the Great Lakes except Lake Michigan constituted international-boundary waters. Later in the testimony it was developed that the Chief of the Land Division of the Department of Justice and others in that Department had, soon after the Court decided the California case, held the opinion that in the event the United States should discover anything of value in the beds of the Great Lakes that it needed for national defense or which should become the subject of international negotiations, the Government could then, under the theory of the California case, assert its paramount power and full dominion over the lands and resources in such lands lying under the waters of the Great Lakes to the same extent and with the same force and effect as it had done within the 3-mile belt on the coast of California.

Apparently, in anticipation that the rule applicable to California submerged lands would be applied to the Great Lakes, an applicant following the California case applied to the Department of the Interior for a Federal oil lease on a part of Lake Michigan within the boundaries of the State of Michigan; thus, the State of Michigan is at the moment actually confronted with this legal problem, and it follows that the other States bordering on Lake Michigan and the other Great Lakes are directly affected.

The implications in the California decision have clouded the title of every State bordering on the sea or on the Great Lakes, and the committee is unable to estimate how many years it would take to adjudicate the question of whether the decision is applicable to other coastal and to the Great Lakes States. We are certain that until the Congress enacts a law consonant with what the States and the Supreme Court believed for more than a century was the law, confusion and uncertainty will continue to exist, titles will remain clouded, and years of vexatious and complicated litigation will result.

*Uncertainty as to what constitutes the marginal sea as distinguished from inland waters*

Much testimony was introduced to show the extreme complexities arising in any attempt to locate the precise line demarking the open sea from bays, harbors, ports, sounds, and other inland waters. For example, since the shores are constantly changing, what date should be used to fix the location of the low-water mark? What is a bay, a sound, etc.? At what precise point does a bay become a part of the open sea? Are waters landward of offshore islands inland waters? Are uplands formed by nature subsequent to the date of fixing the low-water mark subject to "the paramount power" of the United States as defined by the Court's opinion? Are uplands which have become submerged to be considered subject to State or Federal con-

trol? Are ports which are created by construction of breakwaters a part of the open sea?

The Department of Justice and the State of California are now engaged in a controversy in the Supreme Court over the establishment of a line demarking the 3-mile belt claimed by the United States, and certain bays and harbors claimed by California. This particular controversy involves only three small segments of the California Coast covering less than 150 of the State's 1,200 miles of coast line. Other similar controversies are inevitable.

The testimony showed that in the first case involving a demarkation line the Federal Government is claiming as a part of the 3-mile belt submerged lands heretofore historically considered and recognized as being within the bays. How long it would require even to litigate these questions on the California coast alone is unknown. If the California decision is applicable to the entire coast line of the United States, as claimed by the Department of Justice, the litigation would be interminable.

Unless S. 1988 as reported, is enacted, confusion will exist as to the ownership and taxability of, and powers over, bays and the 3-mile belt, and their development necessarily will be retarded. We consider it against the public interest for the Federal Government to commence a series of vexatious lawsuits against the sovereign States to recover submerged lands within the boundaries of the States, traditionally looked upon as the property of the States under a century of pronouncements by the Supreme Court reflecting its belief that the States owned these lands.

*Uncertainty as to resources to which decision is applicable*

The Court decreed that the Federal Government has—

paramount rights in and full dominion and power over, the lands, minerals, and other things underlying the Pacific Ocean—

in the 3-mile belt. Despite the fact that the Federal officials now in office disclaim any present desire to take anything except oil, such disclaimer is not conclusive. The testimony shows there is much concern over whether the words "other things" used in the decree include sand, gravel, sponges, kelp, oysters, clams, shrimp, crabs, saltwater-fish, etc. Certainly, if the Government has the "paramount power" and full dominion over the "3-mile belt" and can, therefore, take without compensation one of its resources, it can likewise take all of its resources. A case is now pending in the Supreme Court in which certain individuals are contending that under the decision, the State of South Carolina has no power to regulate fishing off its coast and within the historical boundary of the State.

*Uncertainty as to title of inland States to navigable waters within their boundaries*

State officials from every inland State in the Union, except three, testified or submitted statements that in their opinion the decision had clouded the long-asserted titles of the inland States to lands and natural resources below navigable waters within the boundaries of the inland States. Judge Manley O. Hudson, professor of international law at Harvard for the past 25 years and former member of the World Court at The Hague, testified:

<sup>1</sup> Was the rule as to State ownership of the beds of navigable inland waters transplanted to the marginal sea? Or was not the rule as to ownership of the

marginal sea transplanted to the navigable water of the bays and rivers? I think even a casual reading of the judicial pronouncements will show it was the latter. In the English case of the Royal Fishery of the River Banne, decided in 1610 (80 Eng. Rep. 540), it was said:

"The reason for which the King hath an interest in such navigable river, so high as the sea flows and ebbs in it, is, because such river participates of the nature of the sea, and is said to be a branch of the sea so far as it flows."

To give an American interpretation to the same effect, the Supreme Court said in *Barney v. Keokuk* (94 U. S. 324) that the principles applicable to tidewaters "are equally applicable to all navigable waters." There is the progression. The original planting was in the marginal sea; the transplanting was in other navigable waters. Not from the inland waters to the marginal sea, but from the marginal sea and tidewaters to navigable waters inland.

The rationale of the so-called inland water rule was vigorously attacked by the Attorney General of the United States in the California case. Although he did not ask that it be overruled, he did state that "the tidelands and inland waters rule is believed to be erroneous."<sup>12</sup>

The Supreme Court has as much power to overrule its prior decisions laying down the inland-water rule as it had power to change its belief regarding ownership of the marginal belt within the boundaries of the States; and it may well do so in view of its holding in the California case, unless Congress acts to establish the law for the future. There was testimony expressing the view that the Federal Government now had the right to take oil, gas, oysters, and other resources from under navigable inland waters, without compensation.

#### V. WHAT DISPOSITION OF THE SUBMERGED LANDS WITHIN STATE BOUNDARIES WILL BE IN THE PUBLIC INTEREST

Since legislation by the Congress is necessary before the States can continue efficient management of the submerged lands, or before the Federal Government could assume such management, two questions must be considered: (1) Should the principles of equity govern the Congress and the rights and powers of the States as they existed prior to the California decision, be confirmed? and (2) Will the public interest be best served by leaving the management of these lands in the several States or by transferring to a Federal bureau?

##### WHAT ARE THE EQUITIES INVOLVED?

The Supreme Court stated in the California decision that the Court could not and did not—

assume that Congress, which has constitutional control over Government property, will execute its powers in such way as to bring about injustices to States, their subdivisions, or persons acting pursuant to their permission.

The President has stated there was no desire on the part of the administration—

to destroy or confiscate any honest or bona fide investment.

It is uncontraverted that improvements of the lands in question have been made at great expense to public and private agencies in the bona fide belief of the States' authority over them. Whether equity should be done necessarily raises the question of how these equities came into existence. The committee finds they exist because of the

<sup>12</sup> Brief, United States, in *U. S. v. California*, p. 72.

affirmative acts of ownership by the States carried on over a long period with the acquiescence and consent of the Federal Government.

*Federal Government has traditionally obtained grants from the States*

At the request of executive departments of the Federal Government, the States have deeded to the United States portions of their submerged lands lying outside the inland waters and within the 3-mile belt. (See Government's brief, p. 227 et seq. and appendix to California's brief, p. 169 et seq. in *U. S. v. California*.) In 14 separate instances, from 1889 to 1941, grants of such lands admittedly outside inland waters were made by the States of Washington, California, Texas, Florida, and South Carolina. In another 22 instances, from 1847 to 1943, grants were made by the States of Massachusetts, Rhode Island, and California involving lands which, according to the Government's brief referred to above, might be considered under either inland or marginal sea waters. Since 1790 an additional 159 grants of submerged lands have been made by practically every coastal State, but the Government claimed in its brief that they covered only inland waters.

These facts establish conclusively that the States, during more than a century, have been exercising the highest rights of ownership by conveying to the United States a part of the submerged lands within their boundaries.

*Possession and use of submerged coastal lands by the States*

The earliest assertions by the States of proprietary rights in their submerged lands arose in connection with regulation of fishing. Except in a few instances, where international treaties were involved, State control of fishing in navigable waters, within the State's boundaries, has been exclusive. The principal basis for this right to control fishing rests upon the proprietary rights of the State to the waters and the soil thereunder.<sup>18</sup> Proprietary rights further have been exercised by granting leases for harvesting kelp, removing sand, gravel, shells, sponges, etc. States and their grantees have expended millions of dollars to build piers, breakwaters, jetties, and other structures, to install sewage-disposal systems and to fill in beaches and reclaim lands. During the past two decades California, Louisiana, and Texas have been leasing substantial portions of the lands in question for oil, gas, and mineral development. California commenced such leasing in 1921 and Texas in 1926. Other States, including Washington, Florida, Mississippi, North Carolina, and Maryland, have made leases for like purposes. States have levied and collected taxes upon interests in and improvements on these lands. It appears to the committee that the States have exercised every sovereign right incident to the utilization of these submerged coastal lands.

*Recognition of State ownership by Congress*

In 1850 Congress approved the constitutional boundaries of California upon its admission to the Union. Its boundaries were specifically described as extending 3 miles into the Pacific Ocean. In 1859 Congress admitted Oregon into the Union with its constitutional boundaries specifically defined as being 1 marine league from its coast line. In 1868 Congress approved the Constitution of Florida, in

<sup>18</sup> See *Smith v. Maryland* (18 How. 74), *McCready v. Virginia* (94 U. S. 204), *Manchester v. Mass.* (129 U. S. 234).

which its boundaries were defined as extending 3 marine leagues seaward and a like distance into the Gulf of Mexico. Texas' boundary was fixed 3 marine leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement. In 1889 Congress approved the Constitution of the State of Washington, which defined its boundary as extending 1 marine league into the ocean and which specifically asserted its ownership to the beds of all navigable waters within the territorial jurisdiction of the State. In 1898, in extending the homestead laws to Alaska, Congress declared that nothing should impair the title of any State to be created out of the Alaskan Territory to the beds of its navigable waters which was defined as including tidal waters up to the line of ordinary high tide. It must be remembered that at the time of these actions by the Congress it was the universal belief that the States owned the beds of all navigable waters within their territorial jurisdiction, whether inland or not.

In 1938 and 1939 the Congress failed to enact legislation asserting ownership of submerged lands in the Federal Government, and in 1946 the Congress confirmed States' ownership of such lands by enactment of House Joint Resolution 225, which was vetoed by President Truman.

These affirmative acts by the Congress, and its failure to deny State ownership at any time in our history, establish conclusively that the congressional policy, at least since 1850, consistently has been to recognize State ownership of the lands in question.

#### *Recognition of State ownership by the executive departments*

Many attorneys general have approved, over a period of 100 years, as required by law, the title to the submerged coastal lands granted to the United States by the States. The War and Navy Departments have treated these lands as owned by the States since the Departments originated most of the requests for State grants of such lands to the United States. In some 30 opinions, from 1900 to 1937, the Department of the Interior ruled that ownership of the soil in the 3-mile belt was in the respective States. A quotation from one of these decisions rendered February 7, 1935, will illustrate the opinion of the Interior Department:

It is not questioned that the land lies below the level of ordinary high tide of the Pacific Ocean. \* \* \*

"Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, \* \* \*" (*Weber v. Harbor Commissioners*, 18 Wall. 57, 65).

The Department, therefore, has no jurisdiction over the subject matter. This rule is regarded as decisive and binding on the Department. \* \* \*

In its opinion in the California case the Supreme Court agrees that the facts above discussed are—

undoubtedly consistent with the belief on the part of some Government agents at the time that California owned all, or at least a part, of the 3-mile belt.

The facts are conclusive that at least prior to 1937 the policy of the executive departments of the Government has consistently been to recognize State ownership of the submerged lands, whether inland or not, within the territorial jurisdiction of the State.

### *Recognition of State ownership by the judiciary*

The evidence conclusively establishes that prior to the California decision the Supreme Court had in more than 30 cases, covering the period 1842 to 1935, announced the principle that the States owned the soils under all navigable waters within their territorial jurisdiction whether inland or not. A few examples of the language used in these decisions follow [emphasis supplied]:

For when the Revolution took place the people of each State became themselves sovereign, and in that character hold the absolute right to *all their navigable waters and the soils under them* \* \* \* (*Martin v. Waddell*, 16 Peters 367, 410 (1842)).

All soils under the tidewaters within her limits passed to the State (*Weber v. Harbor Commissioners*, 18 Wallace 57, 66 (1873)).

It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tidewaters, *within the limits of the several States*, belong to the respective States within which they are found. \* \* \* (*Illinois Central R. R. Co. v. Illinois*, 146 U. S. 387 (1892)).

The soils under *tidewaters* within the original States were reserved to them respectively, and the States since admitted to the Union have the same sovereignty and jurisdiction to such lands *within their borders* as the original States possessed (*Borax Consolidated v. Los Angeles*, 296 U. S. 10, 15 (1935)).

The committee takes cognizance of the fact that the word "tidewaters" as applied to the facts in the cases cited above could not refer merely to the strip of land between high- and low-water mark. Indeed; it was held by the Supreme Court of the United States in *Manchester v. Mass.* (139 U. S. 258) that the term "tidewaters" includes the 3-mile belt.

The above citations are by no means isolated instances. Similar expressions have been used in Supreme Court opinions written by some of the most outstanding jurists in American history. Among them are Chief Justices Waite,<sup>14</sup> Fuller,<sup>15</sup> White,<sup>16</sup> Taft,<sup>17</sup> Stone,<sup>18</sup> and Justices Lamar,<sup>19</sup> Gray,<sup>20</sup> Holmes,<sup>21</sup> Brandeis,<sup>22</sup> and Cardozo.<sup>23</sup>

Hon. Manley O. Hudson, appearing at the request of Texas, after citing and quoting from a number of cases by the Supreme Court, commented on the expressions of the Court as follows:

It is an imposing array of pronouncements—as imposing for their consistency as for the repetition. Mr. Justice Black says with becoming modesty that the Court "has used language strong enough to indicate that the Court then"—that is, over a period of a hundred years—"believed that States not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not." He could have added that for generations lawyers, good lawyers, careful lawyers, all over the country believed the same thing, that they advised their clients that such was the law, and that acting on that advice their clients invested millions of their money and years of their energy in improvements and installations.

The evidence is conclusive that not only did our most eminent jurists so believe the law to be, but such was the belief of lower Federal court jurists and State supreme court jurists as reflected by more than 200 opinions. The pronouncements were accepted as the settled law by lawyers and authors of leading legal treatises.

<sup>14</sup> *McCready v. Virginia* (94 U. S. 391, 394 (1876)).

<sup>15</sup> *Louisiana v. Mississippi* (202 U. S. 1, 52 (1906)).

<sup>16</sup> *Ro The Abby Dodge* (223 U. S. 166, 174 (1912)).

<sup>17</sup> *Appleby v. N. Y.* (271 U. S. 384, 381 (1926)).

<sup>18</sup> *U. S. v. Oregon* (295 U. S. 1, 14 (1935)).

<sup>19</sup> *Knight v. U. S. Land Ass'n.* (142 U. S. 161, 183 (1891)).

<sup>20</sup> *Shively v. Bowlby* (152 U. S. 1, 57 (1894)).

<sup>21</sup> *Hardin v. Chedd* (190 U. S. 508, 519 (1903)). *U. S. v. Chandler-Dunbar Water Power Co.* (209 U. S. 447, 463 (1908)).

<sup>22</sup> *Port of Seattle v. Oregon & W. R. F. Co.* (255 U. S. 55, 63 (1921)).

<sup>23</sup> *New Jersey v. Delaware* (291 U. S. 361, 373 (1934)).

The present Court in the California decision did not expressly overrule these prior Supreme Court opinions but, in effect, said that all the eminent authorities were in error in their belief.

For the first time in history the Court drew a distinction between the legal principles applicable to bays, harbors, sounds, and other inland waters on the one hand, and to submerged lands lying seaward of the low-water mark on the other, although it appears the Court had ample opportunity to do so in many previous cases, but failed or refused to draw such distinction. In the California decision the Court refused to apply what it termed "the old inland water rule" to the submerged coastal lands; however, historically speaking, it seems clear that the rule of State ownership of inland waters is, in fact, an offshoot of the marginal sea rule established much earlier.

*Equity best served by establishing State ownership*

The repeated assertions by our highest Court for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not, and the universal belief that such was the settled law, have for all practical purposes established a principle which the committee believes should as a matter of policy be recognized and confirmed by Congress as a rule of property law.

The evidence shows that the States have in good faith always treated these lands as their property in their sovereign capacities; that the States and their grantees have invested large sums of money in such lands; that the States have received, and anticipate receiving large income from the use thereof, and from taxes thereon; that the bonded indebtedness, school funds, and tax structures of several States are largely dependent upon State ownership of these lands; and that the legislative, executive, and judicial branches of the Federal Government have always considered and acted upon the belief that these lands were the properties of the sovereign States.

If these same facts were involved in a dispute between private individuals, an equitable title to the lands would result in favor of the person in possession. The Court in the California case states, as a matter of law, that the Federal Government—

is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; \* \* \*

The effect of this ruling of the Court is to place the State of California in the same legal position as an individual, thereby depriving it of its status as a sovereign. It should be noted that the case of *U. S. v. California* was a controversy between two sovereigns, namely, the United States on the one hand and the State of California on the other, both of which occupied equal dignity as sovereigns. The sovereign rights enjoyed by the United States were in the first instance derived from the States and the sovereign powers of the United States can rise no higher or have any greater effect than that which was delegated to the Central Government by the Constitution. The committee believes that, as a matter of policy in this instance, the same equitable principles and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign States. (See *Indiana v. Kentucky*, 136 U. S. 479, 500 (1890); *U. S. v. Texas*, 162 U. S. 1, 61 (1896); *New Mexico v. Texas*, 275 U. S. 279 (1927).)

Therefore, the committee concludes that in order to avoid injustices to the sovereign States and their grantees, legislative equity can best be done by the enactment of S. 1988.

*S. 1988 is not a gift to the States in any equitable sense*

Attorney General Clark and Secretary Krug insisted that S. 1988 constituted a gift from the Federal Government to the several coastal States. Such objection, if it be one, must be predicated upon the assumption that S. 1988 will take from the United States Government some property right which it has heretofore enjoyed, and vest in the States rights and interests not hitherto enjoyed by the States. Such is not the case. The Federal Government has never, prior to 1937, asserted any right in the submerged tidelands, has never enjoyed any rights, either in its sovereign or proprietary capacity over such lands, but at all times, from the inception of the Government and prior to 1937, acting through its executive agencies, recognized that unqualified ownership was in the coastal States and that such States had full and complete sovereignty and dominion over these lands, subject to the constitutional right of the Federal Government to regulate commerce. The committee cannot agree that the relinquishment by the Federal Government of something it never believed it had, and the confirmation of rights in the States which they always believed they did have and which they have always exercised, can be properly classified as a "gift," but rather a mere confirmation of titles asserted under what was long believed and accepted to be the law. On the basis of such belief and acceptance the States and their citizens have made large investments, in good faith, that would now be wiped out by the rule announced in the California case.

The Congress, in the exercise of its policy powers, is not and should not be confined to the same technical rules that bind the courts in their determination of legal rights of litigants. Too many people have acted over too long a period of time under a justifiable and reasonable belief for the Congress to refuse to vest in the States the submerged lands within their boundaries, merely because of the lack of a technical legal consideration moving from the States.

*Inland States to not look upon S. 1988 as a gift*

Representatives of the Federal Government have implied that the so-called gift will result to the detriment of inland States. If any great wrong were being done the inland States by S. 1988, the States being harmed would have protested its enactment. Not one State official appeared before the committee to oppose it. The governors, attorneys general, or other State officials of a total of 45 States have vigorously urged its enactment.

**IT IS NOT IN THE PUBLIC INTEREST THAT ADMINISTRATION AND CONTROL OF SUBMERGED LANDS BE TRANSFERRED FROM THE STATES TO THE FEDERAL GOVERNMENT**

This problem, as suggested by Mr. Justice Frankfurter, "involves many far-reaching, complicated, historic interests." Here we have the broad question whether Congress should confirm or whether it should reverse the traditional and long-accepted policy and practice that submerged lands within a State's boundary and all resources

therein belong in a proprietary sense to the States, subject, of course, to all powers delegated to the United States by the Constitution. This far-reaching historic policy should be reversed only if the national interest demands such reversal. The committee is of the opinion that not only will the public interest be best served by confirming the rights of the States but that common justice and equity require such action.

The only reason advanced by the Federal officials who advocate the change is their desire for Federal management of the production of oil. It is noteworthy that the controversy had its inception in 1937 by reason of the Federal departments' attempt to secure congressional sanction of their plans to assume control of the oil fields off the California coast. The subject matter of the litigation instituted by the Department of Justice and resulting in the decision in *United States v. California* was oil. The Departments of the Interior, Justice, and Defense base their objection to the continuance of State management of submerged lands on the sole ground that such lands contain valuable oil deposits. In their testimony the representatives of the Federal departments have admitted that they are not interested in anything but the oil. The Government's management bill (S. 2165), pending in another committee of the Senate, deals only with oil. When asked why the Federal Government was not interested in other products, Attorney General Clark stated:

Because we told the Court we were not. That is the policy of the Government.

The committee does not agree that the problem is limited to oil: The Court's opinion in the California case is not limited to oil. The paramount power under which the Federal Government now claims the right to take the oil extends to the 3-mile belt in all its aspects. The problem before Congress is as broad as the Court's decision.

#### *Public interest as to oil in submerged lands*

The immediate needs of this country with regard to oil in the submerged lands are stated by Secretary of Defense Forrestal as follows:

The maximum military requirements of petroleum in the event of a war emergency are now estimated nearly to double the requirements of World War II. \* \* \* Regarding the quantity of reserves as a fund which supports a certain optimum withdrawal, it is clear that the National Military Establishment favors policies which will promote discoveries of new petroleum reserves. \* \* \* The tidelands areas in particular are believed to hold great promise in adding oil to our available resources. It is the view of the National Military Establishment that development of the tidelands areas should proceed as rapidly as possible, and that all necessary action should be taken to permit rapid development of these areas. Delays in the development of the oil potentials in the tidelands is considered contrary to the best interest of the United States from the viewpoint of national security. \* \* \* I do wish to emphasize that undeveloped oil fields provide no power for the machines of either war or peace.

The record shows that our highest civilian authorities and representatives of the oil industry are in complete agreement with Secretary Forrestal's statement.

The theory of establishing Government oil reserves by setting aside undeveloped areas has been discarded by practically all competent persons who have studied the matter.

The National Military Establishment is now in process of returning to the Interior Department for leasing to private interest, under existing laws, all naval reserve areas, except two, which are developed

or in the process of development. It is the committee's opinion that the most effective petroleum reserve and the key to our national security is the development of an adequate reserve of productive capacity that can be drawn upon immediately in time of emergency. Although at the commencement of World War II we had such reserve, we do not now have the desired surplus productive capacity. To meet this essential and imperative need the tidelands should be developed as rapidly as possible. Thus, our principal consideration is whether that need will be best met under State or Federal control.

The evidence shows that intensive development of the submerged lands under State control is now under way, particularly in the Gulf of Mexico. Many geophysical crews have been and are now exploring the area. Millions of acres of leases have been sold through competitive bidding off the coasts of Texas and Louisiana. Important test wells have been and are now being drilled. Plans have been made and the necessary preliminary work is under way for the drilling of more important test wells as the result of past geophysical work and leasing. Years have been spent by the States in working out legislation, rules, and regulations, and details of procedure and practices governing the geophysical work, leasing methods and drilling problems involved in this new and hazardous type of oil exploration. The States have established and maintain departments, technical staffs, and experienced personnel to handle these matters and supervise these activities. In other words, the States are "going concerns" in full and adequate operation.

Most of the oil-producing States are members of the interstate oil compact, which has been approved several times by Congress, and the purpose of which "is to conserve oil and gas by the prevention of physical waste thereof by any cause." The purposes for which the compact was created are being effectively and efficiently fulfilled.

If the submerged lands are transferred from State to Federal control, the Federal Government will have to begin from scratch. The ownership of the submerged lands off the coasts of Texas and Louisiana and other coastal States will have to be determined by litigation. At present there is not even a law under which the Federal Government could operate these lands. Even if such a law should be finally enacted, additional bureaus would have to be created and organized, new rules and regulations promulgated, new personnel obtained and trained, and new Federal leases acquired before any development could get under way.

The committee believes that failure to continue existing State control will result in delaying for an indefinite time the intensive development now under way on these lands and that any delay is, in the words of Secretary Forrestal, "contrary to the best interest of the United States from the viewpoint of national security."

The evidence does not show any reason why, from a policy standpoint, State control should not be continued. There is nothing in the record to justify a conclusion that State control is wasteful or improvident, or that under Federal control one more additional barrel of oil will be discovered or produced from these lands. None of the Federal Government's representatives had any criticisms to offer concerning either the management by the States of their submerged lands or the conservation regulations imposed upon the oil industry generally by the States.

When asked whether the Federal Government had any complaint as to the ability of the oil industry under the present policy of State control to comply with all Government needs in times of peace and war, Secretary Krug replied:

They have done a miraculous job. I think they will continue to do a miraculous job, whether or not the United States gives up its ownership of these lands to the States.

No evidence was presented to show that the Federal Government could do a better job in administering the submerged lands than the States are doing. The evidence is overwhelming that State control is not only adequate but is desirable. Geological, engineering, and physical conditions in oil production vary greatly not only from State to State, but also from field to field within a State. Different practices and procedures have been established to fit the peculiar local needs. Problems incident to the development of a new field and to the production of oil are complex and individualistic and, in many instances, demand a prompt solution so as to avoid waste. Local controls and promptness of action are highly desirable. The fixed, inflexible rules and the delays and remoteness which are inseparable from a centralized national control would, in the committee's judgment, be improvident.

The evidence is conclusive that private interests operating under State controls have been eminently more successful in developing our oil resources than under Federal controls. The State of New Mexico furnishes a good example. There are 11,500,000 acres of State-owned lands in New Mexico, while the Federal Government owns in excess of 34,000,000 acres. At the present time over 6,000,000 acres of State lands, or 52 percent, are under lease for oil and gas exploration, while only a little more than 2,000,000 acres of Federal lands, or about 6 percent, are under lease for oil and gas exploration.

In the five public land States producing oil and gas, the Federal Government owns approximately 36½ percent of the acreage but produces only about 13 percent of the oil and gas produced in these States. The 1946 total production from these lands was approximately 62,000,000 barrels, while the production from State and privately owned lands in the same States was in excess of 380,000,000 barrels. Thus, it will be seen that in these five "public land" States, where Federal- and State-owned lands are in direct competition with each other, development has been much faster and production has been much greater under State regulation than under Federal control. The total annual production of oil from the vast federally owned domain in 1946 was less than 12 days' production of the Nation. It must be conceded that the Federal Government has made a pitiful showing with respect to the development of public lands for oil and gas purposes.

The reasons for this situation are obvious. They may be listed as follows:

- (1) The acreage limitations serve definitely to discourage exploration and production. It would be doubly true under the expensive and hazardous conditions of operations on the submerged lands.
- (2) The Government reserves the right to change the royalty and otherwise change the terms of the lease. If changes are to be made after the risks have been taken and a discovery is made, the incentive

to effort is materially reduced and the competitive urge to discover and produce new fields, and thus make oil available, is lessened.

(3) The basic difficulty in the Government's concept of leasing oil lands is that it reserves control of operations in Washington. That the Government may not exercise those controls is no argument; the control exists and, if experience may be relied upon, it is exercised. Certainly, the most oil will be produced for our national needs when the operator is left free to exercise his own judgment as an experienced and prudent person in determining how his property shall be developed and produced, subject always to the control of the States under its conservation laws, rules, and regulations.

Under the proposed Government bill, on advice from the Secretary of Defense and in the event of war, the Secretary of the Interior may terminate the lease and pay the owner such consideration as he thinks is proper. This is an example of the Government's concept of proper controls.

(4) Government control is particularly unattractive to the smaller operators. It is a fact that 20 large companies actually own more than one-half of all the productive lease acreage on the public lands. The hazards and expense of operations in the submerged coastal lands are much greater than on the uplands. Government control would increase those hazards by imposing unnecessary and impractical restrictions and limitations. Such policy would particularly discourage individuals and small units in the industry and tend to delay immediate and early development of these lands so necessary for our national welfare.

Two other policy considerations lead the committee to believe that continued State control of these lands is desirable. One is that State control is more conducive to operations on submerged lands by the smaller independent producers. The evidence shows that Federal administration would have a strong tendency to eliminate the smaller producer from participation in development of the submerged lands. The second consideration is that Federal control of these vast deposits would be another step in the direction of nationalization of the natural resources of the Nation to which the committee is opposed.

In view of all these considerations, particularly the critical and imperative need in these uncertain times for the development of new oil resources with the greatest speed possible, the committee believes that it would not be in the public interest for this Congress to destroy the highly developed, experienced, and efficient State organizations now controlling the submerged oil deposits by transferring such resources to a Federal bureau which has no facilities, no intimate knowledge of the complex local problems, and no laws or established rules or practices under which operations can be carried on.

*Public interest as to resources other than oil*

The Court's decree in the California case covered not only the oil but the land, minerals, and "other things" underlying the ocean in the 3-mile belt.

The fishing industry is one of the major industries in our country and represents an important source of our food supply and of our national income. State control of fishing, especially for sedentary fish, such as shrimp, oysters, clams, crabs, lobsters, etc., has been

based upon the State's ownership of the soil. Regulations by many States are based upon the statutory declaration of the State's ownership of the waters and the fish in them. In *Smith v. Maryland* (18 How. 74) the Court said:

¶The State holds the *propriety* of this soil for the conservation of the public rights of fishing thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. \* \* \* *This power results from the ownership of the soil, from the legislative jurisdiction of the State over it, and from its duty to preserve those public uses for which the soil is held.* (Italics supplied.)

Kelp is a very important product in California's 3-mile belt. It grows from the bed of the sea and is, like grain, harvested with a reaper. It is a potential source of potash salts and iodine. In the year 1945, 37,542 tons of kelp were harvested under State leases. In 1911 the Department of Agriculture said:

The giant kelp beds of the Pacific coast are \* \* \* a national asset of first importance. (See S. Doc. 190, 62d Cong., 2d sess.)

In many of the coastal States there are other important industries that take resources from the soil of the 3-mile belt, such as sponges, sand, gravel, shell, etc.

No witness contended that the California decision is not broad enough to permit Federal regulation of these resources. No evidence was submitted to show that the public interest would be better served by transferring the management of these resources to the Federal Government and thereby destroy the existing controls that have been long established by the States.

Representatives of the Federal departments in effect admitted the efficacy of continued State management by their statements that they were not interested in the fish, shrimp, oysters, kelp, and other products of the marginal sea. No explanation has been given for this discriminatory policy whereby the oil lessees are to be subject to Federal control, while other lessees of submerged lands remain under State control.

Under the holding in the California case, the administrative officers now in office can no more legally waive the rights of the Federal Government to these other resources by saying they are not interested in them, than could their predecessors in office legally waive the Federal Government's paramount rights over the oil by ruling the submerged lands belonged to the States.

Only the Congress can assure the States, and the widespread and important industries affected, that they will not be subject to Federal control but will remain under State control. The committee believes that they are entitled to such assurance from the Congress.

#### *Other public interests in submerged lands*

Apart from the resources which may be taken from submerged lands, the States have other interests in the use of such lands. Many piers, docks, wharves, jetties, sea walls, groins, pipe lines, sewage-disposal systems, acres of reclaimed land and filled-in beaches, etc., have been established and many more will be established on these lands. The recreational use of the submerged areas along the Atlantic, Pacific, and Gulf coasts has become of great importance. The uses to which these lands are put are essentially local in character, and are of

primary concern to the people of the particular locality. Any conflict of interests arising from the use of the submerged lands should be, and can best be solved by local authorities.

Even if the departments' proposed S. 2222 is enacted, confusion and delay in programs for the future development of these lands (for example, the \$100,000,000 program in the city of Los Angeles) are inevitable, inasmuch as all development after June 23, 1947, would be subject to Federal authority. First, the demarcation line between the so-called inland waters and the submerged coastal area must be drawn in order to determine jurisdiction. Secondly, a complete new Federal procedure duplicating State procedure must be established. Then the portion of the improvement situated on lands between high- and low-water mark will be under State jurisdiction, while the portion situated on lands seaward from low-water mark will be under Federal jurisdiction. The confusion and practical difficulties seem obvious and interminable.

No witness contended that the Federal Government had any need to own or control the submerged lands for these purposes. The committee believes that the States have such need, and is of the opinion that these interests are so intimately connected with local activities that it constitutes another paramount reason why the control of these submerged lands should not be taken from the local authorities and transferred to a centralized Federal authority.

#### VI. OBJECTIONS TO S. 1988 BY FEDERAL MINERAL APPLICANTS

Objections to S. 1988 were interposed by a few individuals and their lawyers, who have applied to the Department of the Interior, under the Mineral Leasing Act, for oil leases on submerged areas adjacent to the California coast. Their objections stem from their applications for Federal leases, and are based on their contention that the Federal Government is the owner of the submerged areas and should issue to them, without payment of any bonus, oil leases on such areas, some of which include completely developed oil fields valued at millions of dollars. Whether the Government is required to issue the leases is a legal question now involved in a suit brought by some of the applicants against the Secretary of the Interior, and, of course, cannot be determined by the committee. We do not think, however, the dispute is material to the policy question which the Congress must decide, namely, whether the Congress should ratify and confirm in the States their claims to the soil and resources under navigable waters within their boundaries.

#### VII. SYNOPSIS OF S. 1988 WITH AMENDMENTS

(a) It confirms, establishes, and vests in the States or persons lawfully entitled thereto under State law all right, title, and interest of the United States, if any it has, in and to the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and the right and power to control, develop, and use such natural resources, subject to the reservation of all Federal powers under the Constitution.

(b) It releases any claims that it may have arising out of the previous operations conducted on the submerged lands or in the waters covering them under State authority.

(c) It gives the United States a preferential right in time of war, or at any other time, when necessary for national defense, to purchase any of the natural resources produced from the lands included in the bill.

(d) The bill protects, but obviously does not extend or enlarge, the jurisdiction and authority of the United States Government and all of its agencies, such as the Federal Power Commission, and all departments of the Government, such as the Army, Navy, Interior, and Commerce, to exercise constitutional powers to control and improve navigable waters in aid of navigation and commerce, or to regulate navigable waters for flood control, and to use such waters for the development of hydroelectric power and for all other purposes necessary to regulate commerce. It protects the jurisdiction of the Federal Government and all rights exercised under the reclamation laws by an express provision that the act may not be construed to repeal, amend, or modify any of the reclamation acts or amendments thereto. It protects and confirms the rights of those holdings under Federal authority with respect to the beds of streams now or hereafter constituting a part of the public lands of the United States not meandered in connection with the public survey of such lands under the laws of the United States. By the express provisions of the bill, all rights and claims of the United States to the Continental Shelf lying outside the boundaries of the States are preserved.

(e) Finally, it is the intent and purpose of this bill to establish the law for the future so that the rights and powers of the States and those holding under State authority may be preserved as they existed prior to the decision of the Supreme Court of the United States in the California case.

## APPENDIX F

*Approximate areas of submerged lands within State boundaries*

[Expressed in acres]

State	Inland waters <sup>1</sup>	Great Lakes <sup>2</sup>	Marginal sea <sup>3</sup>
Alabama.....	339,840		101,760
Arizona.....	210,560		
Arkansas.....	241,280		
California.....	1,209,600		2,540,800
Colorado.....	179,200		
Connecticut.....	70,400		384,000
Delaware.....	50,560		53,760
Florida.....	2,750,720		4,697,600
Georgia.....	229,120		192,000
Idaho.....	479,360		
Illinois.....	299,920	976,640	
Indiana.....	55,040	145,920	
Iowa.....	188,160		
Kansas.....	104,320		
Kentucky.....	183,040		
Louisiana.....	2,141,440		2,668,160
Maine.....	1,392,000		759,680
Maryland.....	441,600		59,520
Massachusetts.....	224,000		368,640
Michigan.....	764,160	24,613,760	
Minnesota.....	2,597,760	1,415,680	
Mississippi.....	189,440		136,320
Missouri.....	258,560		
Montana.....	526,080		
Nebraska.....	373,760		
Nevada.....	472,320		
New Hampshire.....	179,200		8,960
New Jersey.....	200,960		249,600
New Mexico.....	99,200		
New York.....	1,054,080	2,321,280	243,840
North Carolina.....	2,284,800		577,920
North Dakota.....	391,040		
Ohio.....	64,000	2,212,480	
Oklahoma.....	470,940		
Oregon.....	403,840		568,320
Pennsylvania.....	184,320	470,400	
Rhode Island.....	98,840		76,800
South Carolina.....	295,040		359,040
South Dakota.....	327,040		
Tennessee.....	182,400		
Texas.....	2,364,800		2,466,560
Utah.....	1,044,800		
Vermont.....	211,840		
Virginia.....	586,240		215,040
Washington.....	777,600		300,800
West Virginia.....	58,240		
Wisconsin.....	920,960	6,439,680	
Wyoming.....	261,120		
Total.....	28,960,640	38,595,840	17,029,120

<sup>1</sup> Areas of the United States, 1940, 16th Census of the United States (Government Printing Office, 1942) p. 2 et seq. The figures are very approximate but are absolute minimums.

<sup>2</sup> World Almanac and Book of Facts for 1947, published by the New York World-Telegram (1947), p. 138; Serial No. 24, Department of Commerce, U. S. Coast and Geodetic Survey, November 1915. In figuring the marginal sea area, only original State boundaries have been used. These coincide with the 3-mile limit for all States except Texas, Louisiana, and Florida gulf coast. In the latter cases, the 3-league limit as established before or at the time of entry into the Union has been used.

## APPENDIX G

## MEMORANDUM BRIEF

(By National Association of Attorneys General)

## I

*Use, possession, and claim of ownership by the States of lands beneath all navigable waters within their boundaries has been in good faith and supported by all previous decisions of the Supreme Court, other Federal courts, State courts, and administrative agencies for more than 100 years*

It is significant that the latest authority for the above statement of the rule recognized by former decisions of the Supreme Court is the opinion by Mr. Justice Black in *United States v. California* (332 U. S. 19, 36 (1947)), as follows: "As previously stated this Court has followed and reasserted the basic doctrine of the Pollard case many times. And in doing so it has used language strong enough to indicate that *the Court then believed that States not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not.*" [Emphasis added throughout.]

The above-mentioned Pollard case, decided in 1844, has been cited with approval in 52 United States Supreme Court decisions and 244 State and Federal court decisions during the past 100 years.<sup>1</sup> If the rule of State ownership was stated by the Supreme Court over those many years in language "strong enough" to indicate that our highest court "*then believed*" that the States owned the soils under all navigable waters within their boundaries, "*whether inland or not,*" then no one should deny that the States were justified in the same belief and that their use, possession, and ownership has been in good faith. Many great Justices of the Supreme Court used this "strong language" and "then believed" as the States did. The list includes Chief Justice Taney, Mr. Justice Field, Mr. Justice Holmes, Mr. Justice Brandeis, Chief Justice Taft, Chief Justice Hughes, and 46 of the 54 other Supreme Court Justices who concurred in such opinions between 1842 and 1947.

## RULE NOT LIMITED TO INLAND WATERS

Despite this long line of decisions, in the California case the Supreme Court sought to limit the long-recognized rule to a "*qualified*" ownership of land under inland waters and no ownership at all of land under coastal waters within State boundaries. There is no English or American decision indicating that the sovereign right theory of ownership is only an "*inland water*" rule. On the contrary, all court decisions on the point *indicate and say* that the rule of State ownership applies to all lands which are (1) beneath *navigable waters*, and (2) within State boundaries.

The whole rule of ownership of land under navigable waters as a sovereign right grew from the common law's recognition of ownership by the king of soils under the adjoining marginal seas. The rule was extended to bays and rivers as "arms of the sea," and since then all of such submerged lands have come within the same rule of ownership as a sovereign right so long as they are (1) navigable and (2) within the jurisdiction or boundaries of the sovereign concerned.

As early as 1610, in the *Case of Royal Fishery of River Banne* (80 Eng. Rep. 540), the highest court of England related the history of and stated the rule to be:

"The reason for which the King hath an interest in such navigable river, so high as the sea flows and ebbs in it, is, because such river participates of the nature of the sea, and is said to be a branch of the sea so far as it flows; \* \* \* And that the King hath the same prerogative and interest in the branches of the sea and navigable rivers, so high as the sea flows and ebbs in them, which he hath in *alto mari*, is manifest by several authorities and records."

<sup>1</sup> See Shepard's U. S. Citations for list of cases.

This derivation of the one rule applicable to lands under all navigable waters was recognized in many United States Supreme Court cases, including the following:

In *Weber v. Board of Harbor Commissioners* (1873) (18 Wall. 57, 66):

"\* \* \* the title to the shore of the sea, and of the arms of the sea, and in the soils under tide waters, is, in England, in the King, and in this country, in the state."

For exhaustive discussion of the rule and how it was extended from the sea to cover all navigable waters, see *Shively v. Bowlby* (152 U. S. 1), wherein it is said:

"In England, from the time of Lord Hale, it has been treated as settled that the title in the soil of the sea, or of arms of the sea, below ordinary high water mark, is in the King. \* \* \* And upon the American Revolution, all the rights of the Crown and of Parliament vested in the several States, subject to the rights surrendered to the national government by the Constitution of the United States." (It is made clear that these surrendered rights are paramount but regulatory and do not involve any proprietary rights.)

The history of this ownership as a sovereign right under all navigable waters within State boundaries is summed up in the able text of Gould on Waters (Chicago, third edition, 1900) as follows:

"The rule of the modern common law, whereby the king has a private interest, apart from the ownership of the adjoining lands, in those tide waters which are within the territory of England, appears to be connected historically with the above claim of sovereignty over the sea, and to be derived therefrom (p. 7).

\* \* \* \* \*  
 "Those rivers and parts of rivers in which the tide ebbs and flows are known as 'navigable' rivers, and by the common law they are vested prima facie in the Crown. Hence, as was said in an early case, 'all navigable rivers in England appertain to the king.' They are arms of the sea, and the king has them because they partake of its nature. This ownership is for the public benefit, and in this country each State, as sovereign, has succeeded to the rights which the king formerly possessed in such rivers and in the soil beneath" (p. 100).

The unity of this rule of property and State-Federal relations, as applied to both inland and coastal waters within State boundaries, properly accounts for the great concern of all the States, both inland and coastal, in its preservation. It also accounts for the fact that all previous members of the Supreme Court have written the rule broad enough to cover "all navigable waters \* \* \* whether inland or not." There is no dispute that the tidewater area within the marginal sea is navigable both in law and in fact, and that all such areas covered by this legislation are within the lawful boundaries of the respective States.

In the above mentioned Pollard decision (*Pollard v. Hagan*, 3 How. 212, 229), Mr. Justice McKinley expressly said that "the territorial boundaries of Alabama have extended all her sovereign powers *into the sea*" (p. 230), and stated the broad question of the case as being "whether Alabama is entitled to the shores of the navigable waters, and the soil under them, *within her limits*" (p. 225). Holding that Alabama's sovereign municipal power was the same on the sea as on the shore within her boundaries, the Court said:

"\* \* \* First. The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. Second. The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States." (3 How. at 230.)

Note the emphasis and the controlling points for State ownership of all lands beneath all navigable waters *within State boundaries* in the following excerpts from other learned justices:

Chief Justice Taney, in 1842, in the first case establishing the rule, said:

"For when the Revolution took place the people of each State became themselves sovereign, and in that character hold the absolute right to *all their navigable waters* and the soils under them \* \* \*"

Mr. Justice Clifford in 1867 said:

"\* \* \* Settled rule of law in this Court is, that the shores of navigable waters and the soils under the same in the original States were not granted by the Constitution to the United States, but were reserved to the several States, and that the new States since admitted have the same rights, sovereignty, and jurisdiction in that behalf as the original States possess within their respective borders. When the Revolution took place, the people of each State became themselves sovereign,

<sup>1</sup> *Martin v. Waddell*, 16 Peters 367, 410 (1842).

and in that character hold the *absolute right to all their navigable waters and the soils under them.* \* \* \*

Mr. Justice Field in 1873, for a unanimous Court that included Chief Justice Chase, said that " \* \* \* all soils under the tide waters within her limits passed to the State; \* \* \* "

Mr. Justice Bradley in 1876 said:

" \* \* \* In our view of the subject the correct principles were laid down in *Martin v. Waddell* (16 Pet. 367), *Pollard's Lessee v. Hagan* (3 How. 312), and *Goodtitle v. Kibbe* (9 How. 471). These cases related to tidewaters, it is true; that they enunciated principles which are equally applicable to *all navigable waters* \* \* \* it (the bed and shore of such waters) properly belongs to the State by their inherent sovereignty \* \* \* "

Chief Justice Waite in 1876 said that " \* \* \* each State owns the beds of *all tide-waters* within its jurisdiction \* \* \* "

Mr. Justice Gray in 1894 said:

"The new States admitted into the Union since the adoption of the Constitution have the same rights as the original States in the tide waters, and in the lands under them, within their respective jurisdictions." \*

Chief Justice White said in 1912:

" \* \* \* each State owns the beds of *all tide-waters* within its jurisdiction; \* \* \* "

Chief Justice Taft in 1926 said that " \* \* \* all the proprietary rights of the Crown and Parliament in, and all their dominion over, lands under tidewater vested in the several states; \* \* \* "

Chief Justice Hughes said in 1935: " \* \* \* The soils under tidewaters within the original states were reserved to them respectively, and the States since admitted to the Union have the same sovereignty and jurisdiction in relation to such lands within their borders as the original States possessed; \* \* \* " <sup>10</sup>

Probably the strongest case directly on State ownership of land under the marginal sea is *Illinois Central R. R. Co. v. Illinois* (146 U. S. 387 (1892)), in which title to the bed of Lake Michigan was in issue. Holding that the Great Lakes are "open seas" and should be governed by the same property rule as applies to tidewaters on the coastal seas, the Supreme Court said:

"It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tidewaters, within the limits of the several States, belong to the respective States within which they are found \* \* \* subject always to the paramount right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the States \* \* \* "

"The same doctrine is in this country held to be applicable to lands covered by fresh water in the Great Lakes over which is conducted an extended commerce with different States and foreign nations. These lakes possess all the general characteristics of *open seas*, except in the freshness of their waters, and in the absence of the ebb and flow of the tide. In other respects they are inland seas and there is no reason or principle for the assertion of dominion and sovereignty over and ownership by the State of lands covered by tidewaters that is not equally applicable to its ownership of and dominion and sovereignty over lands covered by the fresh waters of these lakes. \* \* \* "

" \* \* \* We hold, therefore, that the same doctrine as to the dominion and sovereignty over and ownership of lands under the navigable waters of the Great Lakes applies, which obtains at the common law as to the dominion and sovereignty over and ownership of lands under tidewaters on the borders of the sea \* \* \* " (146 U. S. at 435-437).

<sup>1</sup> *Mumford v. Wardwell*, 6 Wall. 423, 436 (1867).

<sup>2</sup> *Weber v. Harbor Commissioners*, 18 Wall. 57, 66 (1873).

<sup>3</sup> *Barney v. Keokuk*, 94 U. S. 324, 338 (1876).

<sup>4</sup> *McCready v. Virginia* 94 U. S. 391, 394 (1876).

<sup>5</sup> *Shively v. B. Wiby*, 152 U. S. 1, 57 (1894).

<sup>6</sup> *Abby Dodge*, 223 U. S. 166, 174 (1912).

<sup>7</sup> *Appleby v. New York*, 271 U. S. 364, 381 (1926).

<sup>8</sup> *Borax Consolidated v. Los Angeles*, 296 U. S. 10, 15 (1935).

## II

*State ownership (jus privatum or dominium) of lands under navigable waters is separate and distinct from State and Federal governmental powers (jus publicum or imperium) over said lands for public uses of navigation, commerce, and fishing. Ownership cannot interfere with governmental control for public uses, because the latter is paramount to the former. Likewise, exercise of the paramount governmental powers cannot acquire or destroy any of the proprietorship, except so much as may be necessary to keep the waters open and suitable for navigation.*

In English and American jurisprudence two separate and distinct sovereign rights have always been recognized with relation to navigable waters and the soils beneath them. These rights are: (1) proprietorship (jus privatum or dominium), and (2) governmental control for public use (jus publicum or imperium). Proprietorship (jus privatum—using, leasing, collecting revenues) must not and cannot interfere with the regulatory control (jus publicum), because the latter has always been paramount for the protection of the public uses of commerce, navigation, and fishing.

In England both ownership and regulatory control (jus privatum and jus publicum) were vested in the King. Under our constitutional system in the United States, the sovereign right of ownership (jus privatum) is vested in the respective States. The sovereign right of governmental control (jus publicum) is divided between the dual State and Federal sovereignties, with the States reserving all of such rights which were not delegated to the Federal Government. Under such a division of sovereign rights, State ownership of lands beneath navigable waters has not in the past and will not in the future interfere with that portion of the jus publicum contained in the paramount constitutional powers of the Federal Government for regulation and control of navigation, national defense, and other Federal powers.

Some of the English and American cases recognizing these fundamental and historical distinctions between proprietorship and governmental powers are as follows:

*Blundell v. Catterall* (5 B. & Ald. 268, 106 Eng. Rep. 1190, 1199):

"\* \* \* as he (Hale) also there lays it down, in the main sea itself, adjacent to his dominions, the King only hath the propriety, but a subject hath not \* \* \*."

"By the common law, though the shore, that is to say the soil betwixt the ordinary flux and reflux of the tide, as well as the sea itself, belongs to the King; yet it is true that the same are also *prima facie publici juris*, or clothed with a public interest. But this *jus publicum* appears from Lord Hale to be the public right in all the king's subjects, or navigation for the purposes of commerce, trade, and intercourse; and also the liberty of fishing in the sea or the creeks or arms, thereof \* \* \*."

*Shively v. Bowlby* (152 U. S. 1, 13 (1894)), opinion by Mr. Justice Gray:

"In England, from the time of Lord Hale, it has been treated as settled that the title in the soil of the sea, or of arms of the sea, below ordinary high water mark, is in the King, except so far as an individual or a corporation has acquired rights in it by express grant, or by prescription or usage (citing cases); and that this title, *jus privatum*, whether in the King or in a subject, is held subject to the public right *jus publicum*, of navigation and fishing \* \* \*."

"And upon the American Revolution, all the rights of the Crown and of Parliament vested in the several States, subject to the rights surrendered to the National Government by the Constitution of the United States."

*Narragansett Real Estate Co. v. McKenzie* (82 Atl. 804, 810 (R. I. Sup. 1912)):

"\* \* \* It is well settled in England that the title in the bed of the ocean is in the sovereign, subject to the *jus publicum*—the right of navigation and fishery of which the public cannot be deprived. In this country, where the people are sovereign, the title to the bed of the ocean is in the state, which represents the sovereign power; \* \* \*."

*Corfield v. Coryell* (6 Fed. Cas., 546, 551 (1823)):

"\* \* \* The grant to Congress to regulate commerce on the navigable waters belonging to the several States, renders those waters the public property of the United States, for all the purposes of navigation and commercial intercourse; subject only to congressional regulation. But this grant contains no cession, either express or implied, of territory, or of public or private property."

*Pollard v. Hagan* (3 How. (U. S.) 212, 230 (1844)):

"\* \* \* To give to the United States the right to transfer to a citizen the title to the shores and the soils under the navigable waters, would be placing in their hands a weapon which might be wielded greatly to the injury of State sovereignty,

and deprive the States of the power to exercise a numerous and important class of police powers. *But in the hands of the States this power can never be used so as to affect the exercise of any national right of eminent domain or jurisdiction with which the United States have been invested by the Constitution.*"

The distinction between proprietorship and governmental rights was recognized also by Mr. Justice Frankfurter in his dissenting opinion in the California case and by Justices Reed and Minton in the Texas case. Mr. Justice Frankfurter said:

"To speak of 'dominion' carries precisely those overtones in the law which relate to property and not to political authority. Dominion, from the Roman concept *dominium*, was concerned with property and ownership, as against *imperium*, which related to political sovereignty. One may choose to say for example, that the United States has 'national dominion' over navigable streams. But the power to regulate commerce over these streams, and its continued exercise, do not change the *imperium* of the United States into *dominium* over the land below the waters. Of course the United States has 'paramount rights' in the sea belt of California—the rights are implied by the power to regulate interstate and foreign commerce, the power of condemnation, the treaty-making power, the war power. We have not now before us the validity of the exercise of any of these paramount rights. Rights of ownership are here asserted—and rights of ownership are something else. Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?"

"The fact that these oil deposits in the open sea may be vital to the national security, and important elements in the conduct of our foreign affairs, is no more relevant than is the existence of uranium deposits, wherever they may be, in determining questions of trespass to the land of which they form a part. This is not a situation where an exercise of national power is actively and presently interfered with. \* \* \*" (332 U. S. at 43-44.)

In the dissenting opinion of Mr. Justice Reed, in which Mr. Justice Minton joined, in the Texas case, the following is said:

"The necessity for the United States to defend the land and to handle international affairs is not enough to transfer property rights. \* \* \* The needs of defense and foreign affairs alone cannot transfer ownership of an ocean bed from a State to the Federal Government any more than they could transfer iron ore under uplands from State to Federal ownership. National responsibility is no greater in respect to the marginal sea than it is toward every other particle of American territory. \* \* \*" (339 U. S. at 723.)

The States admit that the Federal Government has paramount powers over navigable waters to improve and keep them open for public use, and that the Government has paramount constitutional powers of government over these lands for national defense, commerce, and international affairs. They ask merely that governmental powers be maintained separate and distinct from proprietorship, and that no exercise of governmental powers be allowed to acquire without compensation resources that have heretofore been considered as part of and attached to ownership of the soil.

Senate Joint Resolution 13 follows the established "real property concept" and the heretofore established separation of *proprietorship* from *governmental powers*, giving due respect to both. It makes certain that the right to use, develop, and control natural resources of and beneath the submerged soils is vested in and assigned to the respective States, but that their use of the property is subject to and shall not interfere with or impair the constitutional functions of the Federal Government in such areas.