



Spring 1966

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Recommended Citation

Robert G. Meiners, *Submerged Lands—Submerged Lands Act of 1953—The Definition of "Inland Waters"*, 6 NAT. RESOURCES J. 186 (1966).

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SUBMERGED LANDS—SUBMERGED LANDS ACT OF 1953—THE
DEFINITION OF "INLAND WATERS"*

The recent decision by the Supreme Court in *United States v. California*¹ marks the end of a twenty-year struggle. Since 1945 the ownership of submerged lands lying off the California coast has been a matter of dispute between the two governments. More than a matter of relative sovereignty was at stake; millions of dollars worth of oil and gas leases were involved.

In 1945 the United States asserted its ownership to certain submerged lands and sought to enjoin California and those drilling for oil and gas under leases granted by California. In 1947 the Supreme Court rendered a decision in favor of the United States, stating that California had no title or property interest in lands "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."² That decision, rather than putting the matter to rest, was but the first step in what was to become a continuing running battle in which Congress later became involved.

In 1948 the United States reopened the controversy by requesting a supplemental decree to identify with more particularity the boundaries of three areas.³ It so happened that these were areas having very substantial oil-well activity. California contended that these areas were not included in the lands won by the federal government in 1947, but were rather a part of California's inland waters.⁴ The Court appointed a Special Master to make an inquiry into the matter.⁵ The Special Master (the late William H. Davis of New York) conducted the inquiry and filed a report in 1952 that generally favored the ownership rights of the United States.⁶ This, however, did not end the dispute, for in 1953 both California and the United States filed exceptions to the report. At this point and before the Court could take any further action, the Submerged

* *United States v. California*, 381 U.S. 139 (1965) (opinion), and 86 Sup. Ct. 607 (1966) (supplemental decree).

1. *United States v. California*, 381 U.S. 139 (1965). See also the Court's supplemental decree issued on January 31, 1966. 86 Sup. Ct. 607 (1966).

2. *United States v. California*, 332 U.S. 804, 805 (1947) (order and decree). The opinion of the Court is reported at 332 U.S. 19 (1947).

3. *United States v. California*, 334 U.S. 855 (1948).

4. *United States v. California*, 381 U.S. 139, 142 (1965).

5. *United States v. California*, 334 U.S. 855, 856 (1948).

6. *United States v. California*, 344 U.S. 872 (1952).

Lands Act⁷ of 1953 became law. The act declared it to be in the public interest that title to and ownership of lands as well as rights to natural resources beneath navigable waters within the boundaries of the respective states be vested in the states.⁸ This was not the first appearance of such legislation. In reaction to the 1947 decision which gave these lands to the federal government, Congress passed a bill which nullified that decision. This measure was vetoed by President Truman in May of 1952. However, after the Republican victory in the election of 1952, Congress passed the present act and President Eisenhower signed it into law.⁹ The act granted to each state all submerged lands shoreward of a line three geographical miles from its coast line. "Coast line" was derivatively defined in terms of "the seaward limit of inland waters."¹⁰ In a related measure, the Outer Continental Shelf Lands Act,¹¹ Congress declared that the United States owned all lands seaward of the lands granted to the states in the Submerged Lands Act. Once again it looked as though a solution to this controversy had been reached, and once again it was but a lull in the storm.

For the time being, however, passage of the act resulted in a temporary ceasefire. But as will be pointed out more fully below, because the act did not define the term "inland waters" the shooting was destined to break out anew. The reason that passage of the act brought a temporary halt to the controversy was that by virtue of the technology of the oil industry in 1953 it was impractical to drill for oil anywhere except close to shore, and these submerged lands clearly belonged to California. However, by 1963 oil drilling techniques had improved to such an extent that it became practical to drill in deeper waters farther from the coastline.

The Special Master's report had been lying dormant because of the passage of the act. However, with the new drilling technology, the United States felt it to be important to ascertain with particularity the exact offshore demarcation line between state and federal lands. Accordingly, in 1963 the United States again petitioned the Court, this time reviving the Special Master's report, filing new exceptions to it, and redescribing the issues as modified by the act. The battle thus joined anew, California also filed new exceptions to

7. 67 Stat. 29-32 (1953), 43 U.S.C. §§ 1301-15 (1964).

8. 67 Stat. 30 (1953), 43 U.S.C. § 1311 (a) (1964).

9. N.Y. Times, May 18, 1965, p. 1, col. 2.

10. 67 Stat. 29 (1953), 43 U.S.C. § 1301 (c) (1964).

11. 67 Stat. 462-70 (1953), 43 U.S.C. §§ 1331-43 (1964).

the Special Master's report.¹² The stage was then set for the 1965 decision.

In a five-to-two opinion the Court decided in favor of the United States. The majority opinion was written by Mr. Justice Harlan; the Chief Justice and Mr. Justice Clark refrained from participating. One writer has suggested what may be the obvious reason for their non-participation: Chief Justice Warren is from California and Mr. Justice Clark is from Texas, another state primarily affected by this decision.¹³

In the opinion of the majority, the "focal point" in this case was the interpretation to be placed on the term "inland waters" as used in the act.¹⁴ The principal contention of California was that this term should be defined as including those waters which the states historically considered to be inland waters.¹⁵ The United States contended that the act merely moved the boundary line between state and federal lands out three miles from the line established by the 1947 decree.¹⁶ If the contention of California concerning its historical expectations had been upheld, this would have encompassed more territory than might be imagined. The California Constitution of 1849, in defining the boundaries of the state, includes "all the islands, harbors, and bays, along and adjacent to the Pacific Coast."¹⁷ As a practical matter this would probably have given California submerged lands extending more than fifty miles into the Pacific Ocean.¹⁸

Since the act, in its final version, did not define the term "inland waters," the Court looked to the legislative history. The majority opinion first pointed out that two changes were made in the act as it passed through the Senate. As first introduced, the act not only defined "inland waters" but included as part of that definition the state's "historic bays."¹⁹ This definition was deleted before final passage, and in its final version the act was silent on any definition of the term. The second change made as the act passed through Congress, to which the Court pointed, was the addition of a three-

12. *United States v. California*, 375 U.S. 927 (1963).

13. *N.Y. Times*, May 18, 1965, p. 1, col. 2.

14. 381 U.S. at 149.

15. *Ibid.*

16. *Ibid.*

17. Cal. Const. art. 12 (1849). Virtually the same definition is repeated in the present constitution, Cal. Const. art. 21, § 1.

18. *N.Y. Times*, May 18, 1965, p. 1, col. 2.

19. 381 U.S. at 150.

mile limitation on the extent of a state's claim to submerged lands.²⁰ Taking these two changes together, the Court concluded that California's contention regarding the act's intention to restore to it those submerged lands that it had historically considered as belonging to the state could not prevail.²¹ Pointing specifically to the deletion of the definition of "inland waters," the Court concluded that Congress intended to leave this definition to the courts, acting independently of the act.

Having determined congressional intent in this manner, the Court pointed out that no prior Supreme Court decision had ever precisely defined "inland waters."²² The Court then looked to its 1947 opinion in this controversy and concluded that the 1947 opinion "clearly indicates" that this term was to have an "international content."²³ To bolster this conclusion the Court added in a footnote that the 1947 decision "relied heavily on the international responsibilities of the Federal Government."²⁴

What is the "international content" to be given to the term? Where do we look to find it? When the Special Master filed his report in 1952,²⁵ he indicated that at that time there was no internationally accepted definition of the term.²⁶ However, the Court felt that since 1952 a "settled international rule" had been established which defined the term.²⁷ This definition, the Court says, is contained in the Convention on the Territorial Sea and the Contiguous Zone, which was ratified by the United States in 1961 and went into force in 1964.²⁸ The definition of "inland waters" contained in the Convention is in terms of a 24-mile closing line coupled with a semi-circle test.²⁹

This Convention definition of "inland waters" is the definition adopted by the Court for purposes of determining the line of de-

20. *Ibid.*

21. *Ibid.*

22. 381 U.S. at 162.

23. *Ibid.*

24. 381 U.S. at 162 n.25.

25. *United States v. California*, 344 U.S. 872 (1952).

26. 381 U.S. at 163.

27. *Ibid.*

28. 381 U.S. at 164.

29. For the Court's statement of the Convention definition of "inland waters," using the 24-mile closing line and the semicircle test, see its supplemental decree in *United States v. California*, 86 Sup. Ct. 607, 608 (1966). In practical application, the definition means that California loses, and that oil companies in the future will seek leases from the Secretary of the Interior, not the state of California.

marcation between state and federal lands under the act.³⁰ It is of passing interest to note that California was not alone in arguing against this 24-mile closing line coupled with a semicircle test; the United States also opposed it.³¹ Nevertheless, this is now the test.

In a dissent twice the length of the majority opinion, Mr. Justice Black is joined by Mr. Justice Douglas. The dissenting opinion takes an entirely different view of the legislative history of the act. It sees the act as a manifestation of congressional intent to overturn the 1947 decision and restore to the states those lands lying within their historic expectations but which were given to the federal government as a result of the earlier decision.³² This, of course, is the California contention which the majority found to be untenable. Also, on the question of interpreting the legislative history of the act we see another difference of opinion. While a majority of the Court view the two changes made in the act as being not only relevant, but proof that California's contention could not prevail, the dissenters see these changes in an entirely different light. To them, the deletion of the definition of "inland waters" was not a "change of substance."³³ The addition of the three-mile limitation was "just a minor change of verbiage."³⁴ While not passing on the amount of submerged lands that would be included in California's historic claim, the dissent would honor this claim. And to carry out what the dissent believes to be the "congressional command in the Submerged Lands Act," it would "refer the case to a Special Master to give California" the opportunity of proving what its historic expectations really are.³⁵

Thus, twenty years of litigation over California's off-shore oil rights has ended, and California has lost. To place the decision in specific geographic terms, Monterey Bay is "inland waters" but San

30. 381 U.S. at 165.

31. *Id.* at 164.

32. *Id.* at 178.

33. *Id.* at 205. The majority of the Court pointed to this same deletion and said that it indicated that "Congress made plain its intent to leave the meaning of the term [inland waters] to be elaborated by the courts, independently of the Submerged Lands Act." 381 U.S. at 151. On the role of "intent" in statutory interpretation, a recent writer has said, "Intent" connotes a concern with the subjective state of mind of the lawmakers; the courts should not attempt to determine what the legislators thought they were doing." Bishin, *The Law Finders: An Essay in Statutory Interpretation*, 38 So. Cal. L. Rev. 1, 2 (1965).

34. 381 U.S. at 206.

35. *Id.* at 213.

Luis Obispo Bay, Santa Barbara Channel, Santa Monica Bay, San Pedro Bay, San Pedro Channel, Newport Bay, and the Gulf of Santa Catalina are not.³⁶ What this means in terms of lost oil and gas revenue will be a matter of speculation, especially as drilling techniques improve still further to allow operations in even deeper waters. If the dissent is correct and it was the intent of Congress in passing the act to overturn the 1947 decision, it will be interesting to see what Congress does about this one.

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36. See *United States v. California*, 86 Sup. Ct. 607 (1966), for the Court's supplemental decree defining the inland waters of these geographic areas. See also *Editorial Comment*, 14 L. Ed. 2d 296 (1965).

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