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COASTAL STATES HAVE CONTROL OF COASTAL RESOURCES

COASTAL RESOURCES: The Submerged Lands Act of 1953 gives the states ownership and control of all coastal lands and waters claimed by the federal government under the doctrine of paramount rights. *United States v. California,* 436 U.S. 32 (1978).

BACKGROUND

In a recent decision the United States Supreme Court, exercising its original jurisdiction pursuant to Article III, § 2, cl. 2, of the United States Constitution, held that the economically valuable waters and submerged lands within one mile of the Channel Islands National Monument belong to California, not the federal government. The holding in *United States v. California*[1] (*United States v. California II*) will have a major impact on the coastal industry around the United States.

In 1938, President Roosevelt reserved most of the Santa Barbara and Anacapa Islands under the authority given him by the Antiquities Act of 1906.[2] This reservation of land formed the Channel Islands National Monument.[3] These beautiful islands are located almost due west of Los Angeles and lie between Santa Cruz Island to the north and Santa Catalina to the south. At the time of the reservation, title to the islands was held by the federal government. This title can be traced back to the Treaty of Guadalupe-Hidalgo in 1848.[4]

A "marginal belt" is a strip of submerged lands extending three miles seaward from the mean low water mark of a given coastline. The ownership of the marginal belt off California's coast was adjudicated by the United States Supreme Court in 1947 in *United States v. California*[5] (*United States v. California I*); the instant case is but a continuation of this suit. In *United States v. California I,* the Court stated:

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1. United States v. California, 436 U.S. 32 (1978).
2. Antiquities Act, 16 U.S.C. §431 (1976).
3. Proclamation No. 2281, 52 Stat. 1541 (1938).
4. 9 Stat. 922 (1848).
5. United States v. California, 332 U.S. 19 (1947).

> 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 over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil.[6]

Thus, the Court held, the islands and the three mile marginal belt were controlled by the federal government, while the intervening tidelands[7] were owned by California.

In 1949, President Truman, in a move to protect various rare or endangered species of marine life and other "objects of geological and scientific interest," enlarged the Channel Islands National Monument to include "the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands."[8] This action was based upon the authority given a President by the Antiquities Act of 1906[9] to reserve lands owned or controlled by the federal government for the protection of a defined class of objects. President Truman could reserve the lands in question because dominion over those lands was held by the federal government under *United States v. California I.*

In 1953, Congress enacted the Submerged Lands Act[10] (Act). This Act "vested in and assigned to . . . the states . . . (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective states, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources. . . ."[11] However, § 5(a) of the Act excepted from the above grant "any rights the United States has in lands presently and actually occupied by the United States under claim of right."[12] Thus, the stage was set for the instant case.

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6. *Id.* at 38-39.

7. Tidelands are those lands between the mean high and mean low water marks. United States v. California, 382 U.S. 448, 452 (1966).

8. Proclamation No. 2825, 63 Stat. 1258 (1949).

9. 16 U.S.C. §431 (1976).

10. 43 U.S.C. §1301 (1976).

11. *Id.*

12. § 5(a) reads: There is excepted from the operation of section 3 of this act [quoted, in pertinent part, in the text at note 11, *supra*] (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 (otherwise than by a general retention or cession of lands underlying the marginal sea); 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. 43 U.S.C. §1313(a) (1976).

UNITED STATES v. CALIFORNIA II

The United States Supreme Court in *United States v. California II*[13] held that the Act transferred dominion over the marginal belt to California.

The Court began its reasoning with the proposition that the very purpose of the Act was to undo the effect of the Court's decision in *United States v. California I.* Therefore, "[t]he entire purpose of the Submerged Lands Act would have been nullified . . . if the 'claim of right' exemption saved claims of the United States based solely upon this Court's 1947 decision. . . ."[14] The federal government's claim to the land and waters in question originates in the "paramount rights" doctrine spelled out by the Court in *United States v. California I.* But, California argued, a reservation under the Antiquities Act means no more than that the land is shifted from one federal use to another. This cannot operate to escalate the underlying claim of the United States to these lands. Thus, California claimed and the Court agreed, the federal government's rights to the marginal belt were given to California by operation of the Act.[15]

The Court's decision in this case was split five to three with Stewart joined by Brennan, Powell, Rehnquist and Stevens, J. J., for the majority and White, Blackmun, and the Chief Justice, dissenting. As is sometimes the case, the facts and weight of reason support the minority, while one is left to grasp for the straws of "policy" to find support for the majority.

Mr. Justice Stewart, speaking for the majority, placed great emphasis on what he thought was the intent of Congress in passing the Act. "The legislative history unmistakably shows that the 'claim of right' in the § 5(a) exception to the Act's general grant must be 'other than the claim arising by virtue of the decision in *United States v. California [I]*. . . .' "[16] The thread of his argument seems to be that Congress, through the Act, intended to negate the Supreme Court's decision in *United States v. California I* as to *all* lands encompassed by that decision. However, Mr. Justice Stewart both quotes and ignores the comments of the Acting Chairman, Senator Guy Gordon, of the Senate Committee on Interior and Insular Affairs, the committee hearing the bill. Senator Cordon stated that § 5(a) of the Act " '. . . neither validates the claim nor prejudices it' but merely

13. United States v. California, *supra* note 1.
14. *Id.* at 39.
15. *Id.*
16. *Id.*

'leaves it where we found it'[17] for eventual adjudication."[18] Hence, Mr. Justice stated, the Act did *not* alter or extinguish a claim to particular lands based generally on the doctrine of "paramount rights" if such lands were later occupied with more particularity, under the Antiquities Act of 1906 for example.

As pointed out by Mr. Justice White, in the minority opinion, the particular language of the Act concerning a "claim of right" was

> presented to the committee and explained by the Department of Justice as being for the purpose of reserving to the Federal Government the area of any installation, or part of an installation—*and I use the term "installation" to distinguish a specific area, used for a specific purpose, from any vast area that might be claimed under the paramount rights doctrine*—actually occupied by the Government under a claim of right.[19] (emphasis supplied).

A plainer statement of congressional intent would be hard to find.

According to Senator Long in the hearings on the Act, "this act does not affect any land which the United States is actually occupying. And that means that a representative of the United States Government in one capacity or another is occupying that land."[20] The test, the minority felt, is whether the lands held under some claim of right are actually occupied by the federal government. If so, they are not relinquished. The minority's reasoning is elegant in its simplicity: 1) the federal government and California stipulated that the area within one mile of the shoreline of Santa Barbara and Anacapa Islands is presently and actually occupied by the federal government; 2) the federal government is there for a particular purpose, *vis.*, that of maintaining the Channel Islands National Monument; and, 3) the presence of the federal government is under a "claim of right" since only federally controlled land can be made into a national monument.[21]

Thus, the minority argued, the Act did *not* grant to California the lands and waters in question. "The majority does not recognize that some rights can *originate* in the paramount rights doctrine, yet *rest* on actual occupation under claim of right as part of a federal installation annexed before the doctrine of paramounts was waived in 1953."[22] (emphasis supplied).

17. *Hearings on S.J. Res. 13, S. 294, S. 107, S. 107 Amendment and S.J. Res. 18, before the Senate Committee on Interior and Insular Affairs*, 83d Cong., 1st Sess., 1321, 1322 (1953).
18. United States v. California, *supra* note 1, at 39.
19. United States v. California, *supra* note 1, at 44.
20. United States v. California, *supra* note 1, at 45.
21. United States v. California, *supra* note 1, at 47.
22. United States v. California, *supra* note 1, at 48.

CONCLUSION

The particular lands and waters in question are possessed of substantial economic value. California's decision to attempt to lease these submerged lands for oil, gas and other mineral exploration, for a substantial sum, was one of the reasons that the action in *United States v. California I* was brought.[23] The instant case involves the commercial harvesting of giant kelp, *Macrocystis,* which grows along the Southern California coast.[24]

The resources in and under the coastal seas are only beginning to be tapped. The potential wealth is vast and, as yet, largely unrealized. This decision is evidence of a policy, at least arguably made by Congress and enforced by the Court, to place those resources under the control of the states. Whether it is best to leave the nation's off-shore resources to the control of only the coastal states is a question that only time will answer.

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23. *Supra* note 5, at 23.

24. United States v. California, *supra* note 1, at 35, n. 8, which cites North, *Giant Kelp, Sequoias of the Sea,* 142 NAT'L GEOGRAPHIC 251 and Zahl, *Algae: The Life-givers,* 145 NAT'L GEOGRAPHIC 361.