THE TIDELAND OIL CONTROVERSY

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For more than ten years the citizens of the United States have been witnessing a controversy with respect to the ownership of the lands underlying the marginal seas and the rich oil deposits beneath. Basically it is a controversy between the federal and the state governments. But before the final decision was handed down by the Supreme Court oil companies, port authorities, real estate boards, city commissioners, and many other organizations had entered the dispute, usually in support of the states' claims. All three branches of the federal government entered the controversy in one capacity or another. The administrative departments of Justice and Interior were active from the very conception of the problem. Congress from time to time considered various resolutions pertaining to the issue. The judicial branch of government was called upon to make the final decision.

Many aspects of the domestic economy are affected by this dispute, and the final decision may produce widely felt repercussions. International affairs and international politics likewise have played a major role in the federal stand on the issue. Therefore, what appeared on the surface to be a controversy between the federal and state governments concerning ownership of land, became a very complex problem.

In seeking information on the tidelands, it was necessary to write to various sources in order to consider all sides of the issue. Information
pertaining to the legal dispute before the Supreme Court and the many pages of debate on the issue in Congress were received from Senator Bourke Hickenlooper of Iowa. Senator Hickenlooper helped, also in the preparation of the final stages of this presentation by supplying the Supreme Court ruling on the Rhode Island and Alabama cases and references to other related material.

Information pertaining to the states' side of the controversy were received from the Attorneys General of the states of Texas, Louisiana, and California. A request to the State of Florida for information was not granted because, as the Attorney General stated, Florida did not become an active participant in the controversy. The greatest amount of information was received from the Attorney General of Texas, who was more than willing to supply any needed information which might help to bolster the Texas case.

The third source of information was the oil companies and their related associations. Most of the information received from these sources helped to enlighten the author on the scope of operation in the tideland oil region, but only indirectly did it find its way into this thesis.

After accumulating all the information from these various sources and reading the material thoroughly, it was necessary to evaluate the material and to separate the propaganda from the facts. In an issue as vital to the economy as the tidelands had become there was a great amount of propaganda being used by both sides. Education, fisheries, boat building, forests, and many other aspects of the economy were brought into the dispute before the solution was finally recorded. The tideland issue, reduced to its essential elements was primarily a problem of interpretation.
of early law and the historical conditions of the entrance into the Union of the various states involved.

The first chapter of this thesis will relate to the early history of the controversy. It will trace briefly the history of the question of ownership from the discovery of oil in the tidelands to the final legislation granting the tidelands to the states.

The second chapter is devoted to the states' position in the controversy. An analysis will be made of the arguments presented by California, Louisiana, and Texas. These were not only the major states involved in the issue but also represent different lines of attack upon the federal government's position.

The third chapter deals with the arguments presented by the federal government before the Supreme Court in support of its claim to the tidelands, as well as the reasoning of the Supreme Court in making its decision. The case of each state will be discussed separately in order to emphasize the reasoning used by the Court in arriving at its decision in each particular case.

The fourth chapter brings the tideland issue up to the present time. The chapter is concerned with the part played by the tidelands issue in the presidential election of 1952. Also, this chapter traces the legislative action by the Republican party which passed title to the states and the later attempt by Rhode Island and Alabama to sue the tideland states of California, Louisiana, Texas, and Florida for their just share of the royalties from the tidelands.

The fifth and concluding chapter will summarize the issue and draw such conclusions as seem justified by the evidence at hand. An attempt
will be made to trace the many ramifications of the tideland issue upon the American economy, and show that the tideland oil controversy is still not a dead issue, but that repercussions may be felt for years to come.
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CHAPTER I

THE EARLY HISTORY OF TIDELAND OIL

Summerland Field, Santa Barbara, California, 1894

The first off-shore oil well was discovered at Summerland Field, Santa Barbara, California in 1894. This was thirty-five years after the first oil well was brought in at Titusville, Pennsylvania. A period of twenty-seven years elapsed before the second tidelands well was brought in. During this period of time the oil companies continued to explore the continent for oil.

Huntington Beach, California (1927-1931)

The second off-shore discovery was made at Huntington Beach, California in 1921. This discovery increased the interest in tideland oil by indicating an unexplored area of oil. There followed an increase in exploration and appropriations to carry on the necessary work. Between 1927 and 1931 three more fields were opened up in the California area; these were Rincon, Elwood, and Capitan. Following the discovery of these three fields, the richest tideland deposit of oil to date was discovered in the Wilmington-Long Beach area in 1936. With this discovery the tideland oil hunt was given increased impetus and a number of companies entered the field in search of oil in the marginal seas.
Federal Government Becomes Interested in the Tidelands

The federal government did not become interested in the tideland dispute until the second term of the Franklin Roosevelt administration. Then, according to the Ickes diary:

F. D. R., Hopkins, and Ickes had lunch together on April 27, 1937; at that time President Roosevelt asked who owned the oil under the ocean bordering our coasts. He implied during the conversation that the tideland fields ought to be turned into naval reserves, if the federal government were found to own them.¹

Previous to this meeting the federal government had maintained a hands off policy in regard to the marginal seas. This is substantiated by the fact that as early as 1924 the companies and individuals that had petitioned the government for leases to land under the marginal seas had had their petitions denied. Secretary Ickes even went so far as to refer these petitioners to the states, implying that jurisdiction was in the hands of the states and not the federal government. By 1937 several hundred lease applications had been received by the Secretary of Interior. Following his meeting with Roosevelt, the Secretary of Interior began to hold these applications without action.

The Nye Resolution

"During this same year, 1937, Senator Gerald Nye, Republican of North Dakota, offered a resolution in Congress declaring all tidelands to be part of the public domain."² This resolution was killed by the

¹ Congressional Digest, "Congress Considers Tidelands Controversy," XXVII (October, 1943), 234.

adjournment of the 75th Congress on June 16, 1938. Senator Nye proposed the same resolution in later Congresses but to no avail. However, Senator Nye's resolution, plus the fact that Secretary Ickes was not acting on the lease applications, served the purpose of alerting the states to the fact that the federal government was moving to secure the tidelands for its own use.

The Controversy Through the Forties

The year 1940 saw the first suit filed against Secretary of Interior Ickes to compel him to act upon lease applications.¹ A second followed four years later.² Both suits were defeated in the courts. The courts refused to interfere with the Secretary, saying that he had "wide and discretionary powers" and refused to grant a Writ of Certiorari.³

The next event was the introduction of a resolution in the House by Representative Geyer, Democrat of California, which would have assured continued state control of the tidelands. Representative Geyer's action was taken to combat a move by the Department of Justice in the District Court of Los Angeles to take over ownership of three hundred acres of submerged lands in Los Angeles Harbor without paying compensation. William Clary, a title company attorney, later testified before the Senate Committee on Interior and Insular Affairs that this action would cause a clouding of

¹Dunn v. Ickes, 115 F (2d) 36; Certiorari denied 311 U.S. 698.
²Jordan v. Ickes, 143 F (2d); Certiorari denied 320 U.S. 801, 323 U.S. 759.
³An order by a superior court to an inferior court that the records of the case should be submitted for examination and possible correction.
titles of submerged and filled in lands up and down the coasts. This asserted clouding of titles caused many quit-claim resolutions to be introduced in both Houses during the forties.

With the beginning of the Second World War in 1941, the tideland controversy was dropped for the duration of the war. One reason for this lack of activity was the fact that since 1938 all exploration had been in the Gulf of Mexico. Here the development of the German submarine menace provided an increased incentive to produce from land sources. However, with the cessation of hostilities in 1945, the controversy was again re-kindled into full flame.

On May 29, 1945, Attorney General Biddle filed a suit in the District Court of Los Angeles against the Pacific Western Oil Corporation to recover a section of tideland near Santa Barbara. This action by the Attorney General confirmed the belief of state authorities that the federal government was moving to take over the tidelands oil. This suit was brought as a test case to determine whether the state or federal government had jurisdiction over submerged lands containing the rich oil deposits.

Less than a month after the preceding action was taken by Attorney General Biddle, the states sought to counteract the suit through House Joint Resolution 225\(^1\) introduced by Representative Hatton Summers, Chairman of the House Committee on the Judiciary. This resolution provided for the release to the states of all federal interests in the lands underlying the marginal seas. The resolution met with success in both Houses of

Congress but was vetoed by President Truman.

On June 20, 1945, Secretary of Interior Ickes addressed a letter to the Chairman of the House Judiciary Committee declaring that the issue involved was primarily one of states' rights. The question, he stated, was who owns and who gets the valuable oil off the coast of California and, as such, the issue involved the control of a natural resource which was vital to the security of the nation. Ickes further stated that, when he realized there was substantial doubt concerning the states' claim of ownership of the submerged coastal lands below low water mark, he had felt it inconsistent with his responsibility as a cabinet member to renounce any claim which the federal government might have to these submerged lands.

In August of 1945, Attorney General Clark, who succeeded Biddle, dropped the suit against the Pacific Western Oil Corporation. Instead, he filed suit against the State of California to determine ownership of the marginal seas. This positive action by Clark was followed by an executive order by President Truman proclaiming jurisdiction by the United States over the continental shelf surrounding the United States.

In November there were two interesting developments in the controversy. First, the National Attorneys General Association retained Attorney General Johnson of Nebraska to push for a bill affirming states' titles. Second, the St. Louis Post-Dispatch disclosed its findings in an investigation into the interest behind Joint Resolution 225. The Post-Dispatch found that the special assistant to the Attorney General of California

1 Nebraska law permits its Attorney General to engage in private practice at the same time that he occupies his public office.

2 William Clary.
was being paid both by the State of California and the oil companies. Correspondent Edward A. Harris of the *Post-Dispatch* said that Attorney General Kenny of California and his assistant, William Clary, had been introduced to three congressmen by the treasurer of the Democratic National Committee, Edwin Pauley. Harris also claimed that Pauley had taken Kenny and Clark to see Speaker Rayburn and Chairman Hatton Summers of the House Committee on the Judiciary. Pauley replied that the *Post-Dispatch* was shooting at him to hit Truman. Clary remarked that mention of the fact that the oil companies paid a part of his salary was merely an attempt to confuse the issue by red herring tactics.

In order to still the growing tide of fears about the clouding of existing titles to submerged and filled in lands, Attorney General Clark, in January of 1946, stated that "the navigable rivers and lakes of the country were not included in the marginal waters. These, he contended, were strictly state title lands."¹ "He developed the matter further by adding that the courts had confirmed state title to the inland waters, but noted there had been no court decision pertaining to the ownership of the marginal seas."²

The first six months of 1946 added more timber to the fires of controversy. The *New York Herald Tribune* asserted in one of its articles that the federal suit was a peril to the ports.³ The *Christian Science Monitor* questioned the appointment of Harold Judson as Assistant Solicitor

¹For the story on the *Post-Dispatch*'s findings and Pauley and Clary's replies see: "Sniff of Oil," *Newsweek*, XXVI (November 5, 1945), 76.
²*New York World-Telegram*, January 24, 1946.
General in the United States Department of Justice, stating that it was a doubtful appointment due to the fact that he had been aligned with the oil interests of California.¹

In the meantime Joint Resolution 225² was slowly making headway in Congress. On July 23, 1946, the Senate passed the resolution, and on the 28th it was passed in the House with a margin of eighteen votes, 188 to 67, under a suspension of rules procedure which required a two-thirds vote. The resolution no sooner cleared the House than Senator Barkley of Kentucky raised his voice in protest. Proclaiming the resolution as a gift to the oil men, he urged that President Truman veto the measure. Representative Carl Hinshaw of California retaliated with the declaration that "the reason some members of Congress voted against the bill was to aid the federal government in obtaining oil rich property."³

In his veto message to Congress President Truman said "the Congress is not an appropriate forum to determine the legal issue now before the court. The jurisdiction of the Supreme Court should not be interfered with while it is arriving at its decision in the pending case."⁴ He also stated that "if the United States owns the land, it should not be given away."⁵

¹New York Herald Tribune, February 3, 1946.
⁴New York Herald Tribune, August 1, 1946.
⁵New York Herald Tribune, August 1, 1946.
It should be conserved for the national defense of the country. The following day, August 2, the House failed to secure sufficient votes to override the presidential veto and the bill died in the House.

The next development in the history of the tideland dispute was the Supreme Court decision in 1947, United States v. California. This decision gave the federal government jurisdiction over the marginal seas and the oil deposits beneath. The Supreme Court decision declared that the federal government had "paramount rights," but the court did not state if "paramount rights" meant higher than state rights or actual ownership.

The next congressional action was taken when the 80th Congress convened on January 6, 1948. Senator E. H. Moore, Republican of Oklahoma, and Representative Willis W. Bradley, Republican of California, introduced similar bills in both Houses of Congress. The purpose of the bills was to pass title of the tidelands to the states. Following this action twenty-six like measures were placed before Congress. In February two bills, drafted jointly by the Departments of National Defense, Justice, and Interior, were introduced. One provided for the operation and leasing of lands under the marginal sea; the other proposed to establish recognition by the federal government of state ownership of lands under inland navigable waters.

Joint hearings on these measures were held by the Senate and House Committees on the Judiciary in February. Further hearings by a Senate subcommittee of the Committee on the Judiciary followed in March.

The next resolution (H.R. 5992) was introduced by Representative E. Wallace Chadwick, Republican of Pennsylvania. This measure was brought to debate on April 30 with only one member, Representative Sabath, Democrat
of Illinois, debating the issue. The bill was then brought to a roll call vote and passed the House by a 257 to 29 vote. The opposition was predominantly Democratic. The bill was introduced into the Senate on May 3. In June, Senator Moore's bill was also reported ready for action on the floor of the Senate by the Committee. However, before action could be taken on either bill, Congress adjourned on June 21.

The tidelands controversy lurked in the shadows during the presidential campaign of 1948. The Republican party incorporated states' rights to the tidelands in its platform. President Truman attacked the 80th Congress on the tidelands issue at Rochester, New York when he stated that "he had stopped a move by a Republican controlled Congress to pass a tideland oil bill for the benefit of the oil lobby."¹

Following the election, a further move was made in the controversy when Attorney General Clark, on December 22, 1948, filed suit in federal court to obtain the marginal seas resources off the coasts of Texas and Louisiana. Both states argued that they had come into the Union under different circumstances than California. They argued that the California case, decided by the court, did not act as a blanket case to extort from them the tideland mineral resources in the Gulf of Mexico.

Texas took the initiative in fighting the case in the courts. The Texas legislature went so far as to pass a resolution on January 23, 1949 proposing an amendment to the federal constitution giving the states ownership of the tidelands. This resolution provided "that Congress be petitioned to call a convention to draft a state ownership amendment. That

each state legislature be asked to send similar petitions to Congress.\(^1\)

Attorney General Daniel of Texas vowed that Texas "would fight this case with the same spirit that caused our predecessors to win these lands by blood and valor at San Jacinto."\(^2\) Bascon Giles, Texas' Land Commissioner, "declared in favor of seceding from the Union, if necessary."\(^3\)

The Texas and Louisiana cases were decided in favor of the federal government on June 5, 1950.\(^4\) Thus, the federal government had won its tidelands fight with the three major states. But Congress was not so easily pacified, as later developments proved, and the federal position was altered by a change in the administration.

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\(^2\)"States Rights in the Gulf," Newsweek, XXXIII (January 3, 1949), 45.

\(^3\)"Muddy Waters," Time, L (July 7, 1947), 84.

CHAPTER II

THE CASE FOR THE STATES

California

The basis of California's asserted ownership of the tidelands lies in the fact that a belt extending three English miles from low water mark was within its original boundaries. To substantiate its claim, California quoted its Constitution of 1849, Article XII. This Article states that California's boundary runs down the middle channel of the Colorado River to the Mexican border, "thence running west along said boundary line to the Pacific Ocean, and extending therein three English miles; then running in a northwesterly direction, and following the direction of the Pacific coast; to the 42 degree of north latitude."²

With its boundaries thus defined in its Constitution, California was admitted into the Union "on an equal footing with the original states in all respects whatsoever."³ Since the original thirteen colonies were thought to have acquired from the crown of England "title to all lands within their boundaries under navigable waters, including a three mile

²California Constitution (1849), Article XII.
³Enabling Act of September 9, 1850, 9 Stat. 452.
belt in the adjacent sea,"\(^1\) California claimed that all states were vested with title to these lands when they entered the Union.

The fact that the original thirteen colonies possessed ownership to the tidelands and, secondly, that title passed to the states when they won their independence, can be shown by several documents. First, a study of the charters of the original colonies shows that they covered wide expanses of land, sometimes from the Atlantic to the Pacific, which included rivers, bays, and apparently the tidelands. The Plymouth Charter of 1620 specified jurisdiction over the mainland and "also with the Islands and Seas adjoining."

Secondly, there is some indication that the marginal lands were ceded to the states when they won their independence by the following two writings.

In 1792, the year prior to the Paris Peace Conference, the United States instructed its delegates that our contest will be with his Britannic Majesty alone. Under his authority the limits of the states, while in the charter of Colonies, was established; to these limits the United States, considered as independent sovereignties, have succeeded. Whatever territorial rights, therefore, belonged to them before the revolution were necessarily devolved upon them at the era of independence.

In the Treaty of 1783 the King relinquished all territorial rights to the free, sovereign, and independent states.\(^2\)

In addition to the previous claim of original ownership and the fact that title to the marginal lands passed to the state when it entered the Union, California set up four affirmative defenses to its claim to

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the tidelands.

First, California claimed ownership under the doctrine of prescription, i.e., that it had asserted its right of ownership over a long period of time. The time was established as beginning prior to its admission to the Union and continuing to the present litigation. Therefore, title should remain in the state. Secondly, California declared it was entitled to the tidelands because of the long existing congressional policy of acquiescence in California's ownership. Thirdly, California alleged that ownership was deserved by estoppel or laches; that this undue delay in the federal government's assertion of rights in the marginal lands was too long; so long, in fact, that it could no longer be asserted. Last, but not least, was the right of res judicata. California contended that the case had already been judicially decided and therefore need not be determined again.¹

Louisiana

Louisiana based its defense in the Supreme Court against the United States in the tideland oil controversy on four major points.² First, Louisiana contended that it had not consented to be sued by the United States;³ also, that the Supreme Court was the court of original jurisdiction neither with respect to the parties nor the subject matter involved; and,

¹Pollard's Lessee v. Hogan (3 How. 212) (1845).
³United States v. Texas, 143 U.S. 621, which held that Art. III, § 2, Cl. 2, a State shall be a Party, includes cases brought by the United States against a State.
Furthermore, the Lessee (Louisiana) was an indispensable party to the case and, therefore, the case against her should be dismissed.

Secondly, Louisiana admitted that the United States had "paramount rights and full dominion over the lands underlying the Gulf of Mexico and adjacent to the coast of Louisiana, to the extent of all governmental powers existing under the Constitution, laws, and treaties of the United States."¹ But Louisiana contended that there were no conflicting claims against any governmental powers to authorize the use of the bed of the Gulf of Mexico to search for and produce oil. Furthermore, Louisiana contended that there had been no laws passed by Congress which interfered with Louisiana's exploitation of the Gulf of Mexico for oil. Since there was no conflict with the United States, the United States had no case against Louisiana in regard to the tideland.

Thirdly, Louisiana claimed that it was the owner in fee simple of all the lands, minerals, and all other resources involved in the controversy. Louisiana claimed that it had been admitted into the Union in 1812, and had since exercised "continuous, undisturbed, and unchallenged sovereignty and possession over the property."² Therefore, it was entitled to the land by the right of fee simple.

Louisiana's fourth contention was based upon the history of its entrance into the Union. It was that:

... 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). On March 3 (1804) the area thus acquired was divided into two territories, one being designated

²Tbid.
as the Territory of Orleans. By the Enabling Act of February 20, 1811, (2 Stat 641, ch 21), 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, ch 50), Louisiana was admitted to the Union on an equal footing with the original states in all respects whatsoever. And as respects the Southern boundary, that act recited . . . including all islands within three leagues of the coast.¹

This bounding on the Gulf of Mexico by all islands within three leagues of the coast was interpreted by Louisiana as meaning that the marginal sea belonged to the states. Allied with the fact that it had entered the Union on an "equal footing with the rest of the states,"² which, it was believed, owned the marginal seas helped to confirm Louisiana's belief that it had title to the tidelands.

Aside from the many legal reasons why the tidelands should belong to the states there are a few economic reasons. These were enumerated by Senator Russell B. Long of Louisiana³ before the Committee on Interior and Insular Affairs of the Senate.

In summarizing Senator Long's speech it is found that among other things he believed the tideland worker would be too far removed from the federal seat of government. The tidelands, he said, would be administered from Washington with power vested in the Secretary of Interior. Any litigation that the tideland worker might have either with the federal government or against the oil companies would be tried in a distant court too far


²Enabling Act of February 20, 1811, 2 Stat 641, Ch. 21.

removed from the area to properly understand the scope of the issue. Also, because of this centralization, the tidelanders' rights and privileges could vary from day to day at the discretion of some department head in Washington.

Senator Long further stated that the tideland worker would make his home in Louisiana. Perhaps he would even purchase a home there. His children would attend Louisiana schools and be cared for in Louisiana hospitals. The state would also furnish the tideland worker and the companies with highways and police protection. And, in old age, would provide him with social security. All these things would be furnished by the state without any federal support. Therefore, he argued that the state should receive just compensation for the services rendered.

Senator Long declared that all previous federal activities in any state had been compensated for by mineral revenues or payments in lieu of taxes. He substantiated his claim by pointing out that the western states received 37.5 per cent of all mineral revenue from their public lands; 52.5 per cent of the remainder is placed in a reclamation fund, all of which is used within the state. The federal government receives only 10 per cent of the revenue and this is used to cover the cost of administration. Further, he stated, the Tennessee Valley Authority pays four million dollars annually for the replacement of taxes which are lost because of the Authority's operation. The flood control laws provide that 75 per cent of all the income derived from flood control reservoirs be returned to the states to replace the taxes lost.

Why, therefore, he contended, should not the State of Louisiana be reimbursed for the services rendered to the tideland worker and his company?
Certainly some type of working agreement should be made to equalize the added responsibility.

Texas

In the Texas case before the Supreme Court the first contention was that the federal government had no case against the state. In the first place, it was argued, the Attorney General was not the authorized person to bring the suit since it should have been instituted in a District Court. Secondly, it contended that it had not consented to be sued; therefore, the court had no right of original jurisdiction.

Texas further stated that the federal government had never been the owner of the lands or minerals underlying the Gulf of Mexico nor had it ever possessed the "paramount rights" in or full dominion over such lands and minerals. The only paramount power the United States had in the area, Texas claimed, was the right to control, to improve, and to regulate navigation, which rights are stipulated in the commerce clause. Texas claimed that it was the owner of the disputed land and had the right to take, to use, and to lease these properties.

"As an affirmative defense Texas asserted that, as an independent nation, the Republic of Texas had open, adverse, and exclusive possession and exercised jurisdiction and control over the lands and minerals underlying that part of the Gulf of Mexico within her boundaries." These boundaries, Texas asserted, were established by the first Congress and acquiesced in by the United States. Texas further claimed that these


2Ibid.
rights were recognized by the United States as retained by the state when it entered the Union. Furthermore, Texas claimed that, as a state, it had continued to control these lands and minerals unchallenged; therefore, under the doctrine of prescription it had established title to these lands and minerals.

Secondly, Texas stated that there had been an agreement between the United States and the Republic of Texas when the state entered the Union that such lands and minerals would be retained by the state. These included that part of the Gulf of Mexico within the original boundaries of the Republic.

The third affirmative defense against the United States, as presented by Texas, was that the United States had "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."¹

Texas also claimed that it had entered the Union under different circumstances than those of the rest of the states; when it entered the Union it retained dominion over the marginal seas which it had earlier acquired, and passed to the federal government only powers of sovereignty or imperium over the marginal seas.

This brought Texas to elaborate on several chapters of its early history.

The Republic of Texas was proclaimed by a convention on March 2, 1836. The United States and other nations formally recognized it. The Congress of Texas, on December 19, 1836, passed an act defining the boundaries of the Republic. 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. Texas was admitted to the Union in 1845 on an equal footing with the original States in all respects whatsoever. 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. ... 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 of sub-soil of the marginal sea vis-a-vis other nations. Texas acquired during that period the same interest in its marginal seas 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.  

Remarks on the Rights of the States to Tideland Oil

Stripping aside the legal terminology used in the Supreme Court cases it is found that the States of California, Louisiana, and Texas based their cases on fundamentally the same facts.

First, their Constitutions, the states argued, clearly defined their boundaries. These boundaries had been set up by their first legislature and had been accepted by the federal government when they entered the Union. These boundaries definitely included, they declared, the marginal lands three leagues from shore.

Secondly, California and Louisiana pleaded that they had received title to the tidelands when they entered the Union, since it was believed that title to the marginal land passed to the states when they won their independence. And, since California and Louisiana entered the Union on an equal footing with the original states in all respects whatsoever, they were given title when they entered the Union. Texas stated that it entered the Union under different circumstances than the rest of the states in that it had kept its public lands. And, upon entry into the Union, had passed only

\[1\text{Tbid.}\]
the right of sovereignty or imperium over the marginal seas, retaining title in the marginal lands herself.

Third, all three states maintained that they had controlled the marginal lands for a sufficient period of time to establish title. Not only had they controlled the lands but the federal government had accepted the fact that the states owned them. This was substantiated by the earlier actions of the Secretary of Interior, and the fact the federal government leased lighthouse lands and harbor facilities. Therefore, the states pleaded, since they had controlled the marginal lands for such a long period of time undisturbed, why should not they continue to do so unmolested?
CHAPTER III

THE SUPREME COURT'S ANALYSIS OF THE ISSUE

In presenting its case before the Supreme Court the State of California presented the following four issues: that there was no case or controversy under Article III, § 2, of the Constitution; that the Attorney General had not been granted the power to prosecute; that the federal government was not the possessor of paramount rights and power; and that the federal government had lost its paramount rights by the conduct of its agents.

In reply to the contention that the federal government had no case at issue with the State of California in regard to the tidelands, the court held that the issue was whether the state or federal government had paramount rights in and dominion over the several thousand square miles of land laying off the coast of California. The court stated that such a disagreement could be settled only by agreement, arbitration, force, or legal action. The court agreed that the federal government had used the best means available, that of legal action.

The State of California further argued that the subject matter

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2In reference to where in the tidelands the state land stopped and the federal land began.
was impossible to identify; therefore, a decision was rendered impossible.
The court replied that the State of California's reasoning was erroneous.
In all previous cases, the court stated, after a decision had been rendered
hearings were usually held to determine the boundaries of the disputed
territory.

To the state's contention that the Attorney General had no power to
prosecute the case, the court replied that Congress had not amended the
Attorney General's authority to protect the interest of the federal government
through the courts. Nor had there been any attempt by Congress to strip the
Attorney General of these powers. Therefore, it must be accepted that he has
every right and power to prosecute such cases before the court as pertain to
the interest of the federal government.

First, it stated that the question was one of whether the state or
federal government had paramount rights, and the power to determine what
agencies, foreign or domestic, should have the right to exploit the natural
resources of the marginal seas.

The federal government had asserted that it possessed such right in
two capacities. One, that it was responsible for the security of the nation,
which was a federal responsibility in any nation located adjacent to the
sea. Secondly, that, as a member of a family of nations, it was responsible
for the making of agreements between the United States and other nations.
These agreements, the federal government contended, should be unencumbered
by state commitments.

The State of California claimed that it had come into the Union on
an "equal footing" with all other states and that these states owned the
tidelands. This point of ownership had been decided in the Pollard
The court replied that the Pollard case did stipulate that the states possessed the inland waters; also, that the Pollard case had made no ruling on the ownership of the three mile belt. Also, the court stated that it could not find any evidence that the original states became owners of the tidelands when they won their independence.

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. 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. Neither the English charters granted to this nation's settlers, nor the treaty of peace with England, 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. 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.  

The court then stated that shortly after this country became a nation certain of its statesmen attempted to establish a dominion over the marginal seas. Moreover, even as late as 1876, 3 there was no settled dominion over the marginal sea. However, due to the fact that the federal government in the past had exercised broad dominion and control over the three mile marginal belt, the court would follow that rule.

The court stated its reasoning in recognizing the three mile rule:


3 The Queen v. Keyn, 2 Ex. D. 63.
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 people from wars raged on or too near its coast. . . . 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. The very oil about which the state and nation here content might well become the subject of international dispute and settlement.  

The court further stated that the state governments were not equipped to protect their interests in the seas. Since the seas are of such vital consequences to the nation, the power of dominion should be vested in the federal government. The state's power of dominion runs shoreward to the low water mark and the national dominion runs seaward in the three mile belt. 

The court then stated its final decision in these words:

California is not owner of the three mile marginal belt along its coasts, 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. 

The fourth contention which California made was that the federal government had lost its right to ownership by the reason of conduct of its agents. The court replied that the government which holds in trust the interest of all the people could not be deprived of these interests by the ordinary court nor by the actions of its agents, nor could the agents, who have no authority to dispose of property by their actions, cause the government to lose its property by an action of acquiescence, laches, or failure to act.


2Ibid.
In summarizing, the Supreme Court ruled that the federal government possessed paramount rights and powers in the marginal seas. The Supreme Court denied the four contentions made by California with the following reasoning. In reply to the contention that there was no case at issue, the court replied that it was one clearly of whether the state or the federal government possessed title to the tidelands. In reply to the argument that the Attorney General had no power to prosecute the case against the State of California, the court replied that the Attorney General had possessed the power previous to the litigation to prosecute all cases incident to the interest of the United States and, since Congress had not amended that power, the Attorney General still possessed that power. To the third contention which raised the question of ownership by the state or federal government, the court replied that it could find no evidence in the Pollard case to substantiate the fact that title to the tidelands had passed to the states when they won their independence. The fourth and last contention that the federal government had lost its right to ownership by action of its agents, the court replied that the federal government could not lose its right of ownership by the action of a group of people who did not have the power to dispose of that right.

**Louisiana**

The contention was made by Louisiana in its case against the United States over the tidelands that it (Louisiana) had not consented to be sued by the United States as was stipulated in Article III, § 2, of the Constitution, which provides a state shall be a party in all cases brought by the United States against a state. Second, Louisiana moved for dismissal on
grounds that the lessees were indispensable parties to the litigation and were not included. Third, Louisiana moved for dismissal on grounds that there had been no law passed by Congress claiming the tidelands for the federal government; therefore, there was no disagreement. Fourth, Louisiana moved for a trial by jury stating that, since the ownership of the tidelands was essentially an action at law, the Seventh Amendment and 62 Stat. 953, 28 U.S. C § 1872 required a trial by jury.¹

The Supreme Court decided that the Louisiana case was essentially the same as California's and, therefore, gave the same ruling. The court stated that in the California case it had found that California, like the original thirteen colonies, had never acquired ownership to the marginal sea. The court stated that ownership of the marginal seas had first been asserted by the national government and this ownership of the tidelands was a necessity since the protection and control of the area was a vital function to the nation's external sovereignty. The marginal sea, therefore, was a national concern and not a state's. The court stated its ruling in this manner:

National interests, national 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.²

The court further stated that it had checked the claims of Louisiana

¹The Seventh Amendment provided: "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 the jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

and could find them no different from those of California. Also, it held that the national responsibility off the coast of Louisiana was certainly as great as that off the coast of California. Also, it held that the pre-admission or post-admission history of Louisiana presented no stronger arguments than did that of California. Louisiana certainly had no stronger claim to the area than the original thirteen colonies or California. The court further declared that the national domain had not been ceded to either of these parties. Therefore, the federal government acting through the Attorney General had every right to assert its ownership in the marginal seas and claim its paramount rights.

The only difference the court could find between the California and Louisiana cases was that Louisiana had extended its boundary twenty-four miles past the three mile marginal belt. The court did not rule on whether a state has the power to extend its boundaries. The court contended that this fact had no bearing on the case. But, the court stated, it had been decided in the California case that the three mile belt was a national domain rather than a state domain. Therefore, it followed that, if the nation owned the area to the three mile limit, it also owned that beyond, since the ocean beyond was even more directly related to the national defense. In the words of the court:

... 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.¹

In summarizing the Supreme Court ruling the court closely followed its previous decision in the California case, stating that Louisiana had no

stronger claim than California or the colonies in the disputed tideland area. The Supreme Court further stated it could find no evidence of the fact that the State of California or the colonies had possessed ownership of the tidelands. The court further stated that the federal government possessed and had always possessed title to the tidelands. Therefore, the federal government had every right to act through its Attorney General and claim ownership of the tidelands.

Texas

In the Texas case the court recognized that there was a difference in the circumstances under which Texas entered the Union. Texas on its admission into the Union retained all the vacant and unappropriated lands within its territory. Texas also claimed that between 1836 and 1845 it had become vested with the rights of dominium (ownership or proprietary rights) and imperium (governmental powers of regulation and control) as a separate and independent nation. Likewise, Texas contended that it had entered the Union on an "equal footing" with the rest of the states in all respects whatsoever.

The court defined "equal footing" as referring only to political rights and sovereignty. Equal footing, the court held, was never meant to mean economic stature or standing. As stated by the court:

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.¹

With respect to the fact that Texas possessed the rights of dominium

and imperium as an independent nation, the court held that this was true prior to its admission to the Union. However, the court ruled that upon entering the Union Texas ceased to be an independent nation. It then became a sister state in a family of states and was placed on an equal footing with the rest of the states in the Union. Therefore, upon entering into the Union all rights of sovereignty were relinquished by Texas. In the words of the court:

The United States then took her (Texas) 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.¹

The court then decided that, since property which lies seaward of low water was a national responsibility, it was also a national domain. This was the same rationale as was used by the court in the California and Louisiana cases and thus applied here, also. The "equal footing" clause also applied here as in the California and Louisiana cases. As stated by the court:

The 'equal footing' clause prevents extension of the sovereignty of a state into a dominion of political and sovereignty powers of the United States from which the other states have been excluded just as it prevents a contraction of sovereignty which could produce inequality among the states. For equality of states means that they are not less or greater, or different in dignity or power.²

**Summarizing the Supreme Court Decisions**

Fundamentally there was but one decision made by the Supreme Court


²Ibid.
in the tideland oil controversy; that was the California v. United States case. The other two cases, those presented by Louisiana and Texas, were merely modifications of the California case to fit the circumstances of the cases presented by Louisiana and Texas.

Aside from the legal angles presented by the states, the decision of the Supreme Court was determined by two major arguments presented by the federal government. The first, that a nation adjacent to the sea must be capable of protecting its shores. Here the court elaborated on the fact that it is a nation's responsibility to protect its shores by force in times of emergency and by diplomacy during times of peace. This responsibility of the federal government, the court stated, should be unencumbered by any state commitments. This decision made originally in the California case was later carried through and used in deciding the Louisiana and Texas cases.

The second point of reasoning used by the Supreme Court was the "equal footing" clause of the Enabling Acts which brought these states into the Union. First, the court discredited the supposition made by the states that title to the tidelands had passed to the thirteen original states when they won their independence. The court stated that it could find no conclusive evidence that title passed or was meant to pass to these states. After this point had been established, the court then stated that, if the colonist had never possessed title to the tidelands, California could not have received title to the tidelands when it entered the Union on an equal footing with the rest of the states. The court followed the ruling of the California case in deciding that Louisiana had no greater right than California.
With regard to Texas the court stated its decision a little differently. The court accepted the fact that Texas had possessed the right of ownership of the tidelands before it entered the Union, but maintained that Texas, in order to facilitate its entrance into the Union on an equal footing with the rest of the states, had relinquished its right of ownership of the tidelands at the time it entered the Union.

These two basic principles, the right of protection and the equal footing clause, represented the reasoning set forth in the California case which the court used to establish the rulings for the Louisiana and Texas cases.
CHAPTER IV

RECENT DEVELOPMENTS IN THE TIDELANDS

Following the Supreme Court ruling on the Texas and Louisiana cases the tideland issue was discussed by a few journalists, economists, and lawyers, but there seemed to be little action on the issue. However, this could be interpreted as the lull before the storm. During this time the states were preparing to pursue their cause by a different means. This new plan was that of voting into power those who were most favorable to state ownership. The Republican party since 1932 had generally been accepted as favoring state rights over federal centralization, the likelihood was that the states would rally to the Republican side. This is verified by the chronology of events during and subsequent to the presidential campaign of 1952.

The Tideland Issue in the Campaign of 1952

Dwight D. Eisenhower, the Republican presidential candidate, indicated his stand on the tideland issue early in the campaign. He remarked at his Denver, Colorado headquarters that he was in favor of state control of the tidelands, but at the same time admitted that he did not realize that the Supreme Court had ruled on the issue. He further indicated this belief when, in reply to a letter from H. J. Porter of Houston, Texas, he
remarked that he "could see no conflict in the responsibility\(^1\) which interferes with the vesting of title to the tidelands in the states."\(^2\)

When the Democratic presidential candidate, Adlai Stevenson, was asked to remark upon the tidelands he said that he was opposed to state titles.\(^3\) This statement had definite repercussions in the southern states, especially in those states having a direct interest in state ownership.

The Republican National Convention in Chicago accepted the tidelands problem as an issue in the campaign. On July 3, Senator Nixon of California requested that the Republican platform favor state's rights.\(^4\) On July 11 the states' rights issue was drafted into the Republican platform as follows: \(^5\) "We favor restoration to the States of their rights to all lands and resources beneath navigable inland and offshore waters within their historic boundaries."\(^6\) With the subsequent acceptance of this platform on July 11,\(^7\) and the final selection of Dwight D. Eisenhower as the Republican candidate for President, the Republican party was openly committed in favor of the states' rights to the tidelands.

\(^1\)Responsibility in regard to the federal right of treaty making and defense with the state ownership of the tideland.


\(^3\)New York Times, July 1, 1952.


\(^6\)Republican Platform of 1952 as drafted in Chicago, Illinois.

Following the Republican convention the Democratic party held its
convention in Chicago and selected Adlai Stevenson as the presidential can-
didate with Senator Sparkman as the Vice-Presidential candidate. Immediately
following their nomination the Texas Democratic County Convention solicited
the Stevenson-Sparkman view on the tideland issue.\(^1\) In reply to this inquiry
on August 5, Stevenson replied that he was uncertain that the tidelands were
in the national domain.\(^2\)

On August 19, 1952, the Attorneys General Association asked Stevenson
to state his position on the tideland issue.\(^3\) The Attorneys General wished
something a little more concrete than his previous statements. After a talk
with Governor Shivers of Texas on August 21, this declaration was forth-
coming.\(^4\) Stevenson declared at that time that he was in favor of federal
ownership and deplored the legislative stalemate. As a result of this talk
with Stevenson, Governor Shivers, on August 21, declared that he could not
support Stevenson in the presidential campaign. In reply, Stevenson stated
that he would maintain his stand regardless of the political effect.\(^5\) After
conferring with Stevenson, Senator Sparkman stated that he also held the
belief expressed by Stevenson. In response to Stevenson’s statement,
Attorney General Daniels of Texas proposed a revolt against Stevenson and
any other Democratic leader who might favor federal ownership of the tide-
lands. This stand taken by Governor Shivers and reinforced by Attorney

\(^1\) New York Times, August 5, 1952.
\(^3\) New York Times, August 19, 1952.
General Daniels was hailed by the Republican party of Texas as an endorsement of their party by the Democrats.

Repercussions on the Stevenson declaration were felt in Louisiana where four Louisiana Electors resigned because of Stevenson's stand on the issue. On August 29, President Truman came to the assistance of Stevenson by stating reassuringly that he could see no harm done to the election outlook by Stevenson's statement of policy. Stevenson's views were therefore seen to be close to that of the Truman administration.

On September 7, Louisiana Governor Kennan declared his support of Eisenhower because of his support of state ownership. With regard to this Senator Sparkman remarked that Stevenson's stand might cost the Democratic party votes in the South.

Stevenson's stand also was credited with the support of the Eisenhower-Nixon ticket by the Texas Democratic Convention. In order to divert some of the criticism, Stevenson remarked that Eisenhower was advocating the private exploitation of the rich tidelands. But this attempt at diversion appears to have failed since the Florida Democratic caucus on September 14 declared it could not support Stevenson unless he changed his views on the tidelands issue.

Senator Nixon further emphasized the Republican stand on the tideland

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issue when, at Amarillo, Texas on September 12, he stated that he backed state ownership.\(^1\) In attempting to nullify the Republican gains Speaker Rayburn of Texas stated that Stevenson still might modify his stand on the tideland issue.\(^2\) Stevenson attempted to appease both sides of the controversy by a statement on October 11 at New Orleans.\(^3\) He stated that the next president should not go beyond the Supreme Court decision previously rendered. He further stated that he would back any legislation that would promote fair administration and division of proceeds. This was a modification of his previous stand that the tidelands and their proceeds belonged entirely to the federal government. Perhaps this modification of his view attributed to the fact that he at this late date realized the Democratic party was losing votes because of his stand on the tideland issue.

Eisenhower answered the Stevenson statement at New Orleans three days later.\(^4\) He remarked that he was in favor of state ownership of the tidelands and had held that opinion since 1948. He further stated that had he been president he would have approved the legislation which President Truman had vetoed in regard to the tidelands. Also, he declared that the federal claim to the tidelands was an attempted power grab. He furthermore called Stevenson's proposal that the states share revenue a "Shoddy Deal." At Houston, Texas on October 15, Eisenhower again reaffirmed his stand and on the following day he further elaborated on his views at Fort Worth, Texas

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and Shreveport, Louisiana. 1

In reply to these accusations made by Eisenhower, President Truman at Hartford, Connecticut, quoted Senator Morse of Oregon in charging a compromise by the Republican party. 2 Stevenson further elaborated on this statement by declaring that Eisenhower and Governor Shivers had confused the tideland issue for political purposes. 3 At Dallas, Texas on October 18, Stevenson reaffirmed his views on the tideland issue and cited reports that Texans had not heard his full statements on the issue involved. 4 He elaborated further by citing a letter written in 1949 by Governor Shivers in which he expressed his respect for the Supreme Court decisions and urged some compromise involving the sharing of revenues. This was the position taken by Stevenson on October 11 at New Orleans. At Houston, Texas, Stevenson urged that Texans keep the tideland issue in the proper perspective and not be led by biased minds. 5

On October 26, the Texas Scientific Study Group reported that it could predict upwards of eighty billion dollars of minerals in the tideland area. 6 The Group further stated that this amount would be lost to the Texas Educational Fund if allowed to remain under federal ownership.

In an eleventh hour speech at Hibbing, Minnesota, President Truman claimed that Eisenhower and the Republican party was catering to the special

interests with direct insinuation that he was catering to the oilmen of the South.\(^1\) Further charges were made at Lansing, Michigan that Eisenhower had made a deal in the South to gain votes.\(^2\)

With these claims and counter claims, accusations and counter accusations made by both parties, the voters went to the polls in November. The results of the election are now a matter of history. The Republican party was swept into office by an overwhelming majority. The Republican party carried a large part of the South with all four of the tideland states, Florida, Louisiana, Texas, and California, being counted in the Republican column. To what extent the tideland issue was a factor in bringing some southern states into the Republican column shall never be known. But it can be said that perhaps one of the main contributing factors which placed Florida, Louisiana, Texas, and California on the Republican side was the tideland issue.

**Eisenhower Move to Give Title to States**

Shortly after taking office in 1953 President Eisenhower started implementation of the Republican party platform. On May 22, 1953, he signed into law the "Submerged Lands Act" and with the signing of this act made the following statement:

> I am pleased to sign this measure into law recognizing the ancient rights of the States in the submerged lands within their historic boundaries. As I have said many times I deplore and I will always resist Federal encroachment upon rights and affairs of the States. Recognizing the States' claim to these lands is in keeping with basic principles of honesty and fair play. This measure also

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\(^1\) *New York Times*, October 29, 1952.

recognizes the interest of the Federal Government in the submerged lands outside of the historic boundaries of the States. Such lands should be administered by the Federal Government and income therefrom should go into the Federal Treasury.¹

With the return of the tidelands to the states, the Republican party had carried out its pre-election promise, but the issue was not dead. It was later to appear before the Supreme Court in a new form.

Alabama and Rhode Island Suits

In the 1953 October term of the Supreme Court, the States of Alabama and Rhode Island filed a case against the States of Louisiana, Florida, Texas, and California to receive their share of the revenue received from the tidelands. The States of Alabama and Rhode Island claimed that the United States held in trust the tidelands for all states and, since all the states owned the tidelands, the revenue received should be divided on an "equal footing" among all states. The States of Alabama and Rhode Island alleged that the previously decided Supreme Court cases against Louisiana, Texas, and California stated that:

The 'paramount rights' in the United States decreed by the Court arose from the sovereignty of the United States and the duty to provide for the common defense. Further, they urged that the rights are held in trust for all the states as a federal responsibility and to cede them to individual states would take away the 'equal footing' among states by extending state power into the domain of national responsibility.²


On March 15, 1954, the Supreme Court of the United States handed down its decision in the Alabama and Rhode Island cases. It declared that Congress had the legislative power to dispose of the public domain as it felt proper to do. It further stated that the powers of Congress over the public lands were without limitation, and it was not the duty of the Court to determine how this public trust should be administered. The Per Curiam of the Supreme Court in the decision of these two cases reads as follows:

The motion for leave to file these complaints are denied.

Article IV, § 3, Cl. 2, United States Constitution. United States v. Gratiot, 14 Pet. 526, 537: The powers of Congress to dispose of any kind of property belonging to the United States 'is vested in Congress without limitation.' United States v. Midwest Oil Company, 236 U.S. 459, 474: 'For it must be borne in mind that Congress not only has a legislative power over the public domain, but it also exercises the powers of the proprietor therein. Congress may deal with such lands precisely as a private individual may deal with his farming property. It may sell or withhold them from sale.' Camfield v. United States, 167 U.S. 524; Light v. United States, 220 U.S. 533. United States v. San Francisco, 310 U.S. 16-29-30: Article IV, § 3, Cl. 2 of the Constitution provides that: 'The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory and other property belonging to the United States.' The power over the public land thus entrusted to Congress is without limitation. 'And it is not for the courts to say how that trust shall be administered. That is for Congress to determine.' United States v. California, 332 U.S. 19, 27: We have said that the constitutional power of Congress (under Article IV, § 3, Cl. 2) is without limitation. United States v. San Francisco, 310 U.S. 16, 29-30.

With the rendering of the Alabama and Rhode Island decisions by the Supreme Court the tideland oil issue appears to be resolved, at least for the time being. Whether further litigations will be forthcoming on other points at issue still remains to be seen. Perhaps a different

administration might attempt to shift the ownership of the tidelands back to the federal government, but three things have been solved. It has been determined by the Supreme Court that the United States had paramount rights and title to the tidelands, the states were given the title to the tidelands within the three mile limit by an action of Congress, and the federal government retains title of the tidelands beyond the three mile limit by an act of legislature.

An Interpretation of the Submerged Lands Act

The passage of the tidelands within the three mile limit to the states is not to be interpreted as a reversal of the earlier Supreme Court decision. The Supreme Court decision that the United States had "paramount rights and powers" over the tidelands is still in effect. The passage of the tidelands to the states was an act of legislature. This move could be interpreted as a political move by the Republican party to fulfill its political commitments.

In ruling on the Alabama and Rhode Island cases, the Supreme Court did not state that it had erred in its earlier decision. Instead it ruled that Congress had the right to give the tidelands to the states if it desired. The public domain is held in trust by Congress and it may dispose of the public domain as an individual may his private property.

The Supreme Court still maintains that the tidelands from low water mark are part and parcel the possession of the United States. However, the


Supreme Court at the same time allows the United States Congress to dispose of this property as it may desire because the tidelands are a part of the public domain and the public domain is entrusted to the Congress for its administration.
CHAPTER V

AN INTERPRETATION OF THE TIDELAND CONTROVERSY

The States of California, Louisiana, and Texas were finally able, by an act of Congress, to secure ownership of the tidelands. This action by Congress now allows the states to lease these lands to private individuals or corporations for the exploitation of the mineral deposits beneath the tidelands. Included in these minerals are natural gas and sulfur which perhaps will be found in volume. A conservative estimated value of the tideland oils has been placed at fifty billion dollars.¹ However, with the inclusion of Alaskan oil reserve and Texas sulfur, a more realistic value has been placed at 186 billion dollars.² This is the total value which was turned over by Congress to the states. What are the results that may be caused directly by this action?

First, came the action of Alabama and Rhode Island to obtain their share of the revenues lost to the individual states by the action of Congress. Alabama and Rhode Island brought law suits in order to obtain their just share of the royalties to be received. They lost their cases in the Supreme Court, not by the fact that the Court did not believe they were entitled to such compensation, but because Congress holds the public domain


²Ibid.
in trust and may dispose of it as it sees proper to do.

The royalties to be received from the tidelands in the individual states are earmarked for schools, parks and playgrounds, and other things of interest to the public. But should just a few states be picked from the many and be shown special favor by blessing them with royalties? It was the states' belief that they should not. The Supreme Court has said in its ruling that all states entered the Union on an "equal footing."

Therefore, the royalties from the tidelands belong to all the states. There is no sound reason why a state, which by no action of its own and which suddenly finds the tidelands which adjoin its shores possess a hitherto unknown fortune, should receive benefit by its location.

The disposition of the tidelands raises a similar question with respect to other natural resources. The United States has tried to conserve natural resources so that future generations will have an adequate supply. There are many lobbies in Washington sponsoring legislation which will allow them free use of natural resources.

One of these natural resources controlled by the federal government is the forest lands of our country. There are 160 million acres of national forest in the continental United States and an additional twenty million acres in Alaska. This constitutes about one-fourth of all the forest lands today. Instead of the policies previously followed which cut forests down to one-fourth, today the government has instituted regulations to protect forests by reforestation. As trees are cut down they are replanted. Besides reforestation the federal government has built access roads into the forest which permit the small companies to enter into the cutting. The government receives its compensation by fees. Without government help the small
companies would not be allowed to compete with larger companies.

Another natural resource controlled by the federal government is the grazing lands. The federal government has under its control some 230 million acres which serve for crop grazing. The government has passed legislation which stipulates the number of animals that may graze on these lands for continued good grazing. Also, through constant rehabilitation, erosion and drought control, and other safeguards, the lands are maintained in good order for the benefit of both large and small cattlemen.

Also, the government has attempted to protect mineral resources. Thanks to President William Howard Taft, the government intervened to establish the Bureau of Mines in the early part of the century and withdrew from public sale large areas of timberland, coal, and oil. Today it has been reasonably estimated that the federal government owns "1,111 trillion cubic feet of gas, 324 billion tons of coal, 4 billion barrels of oil, and 130 billion barrels of oil in the form of shale."¹

Also, the federal government has engaged in the development of a vast power program, the most famous being the Tennessee Valley Authority. The federal government spent 600 million dollars on this one project to build facilities for power irrigation. The advantage to the country has been:

... millions of acres of productive farmland, reclaimed grazing land, hundreds of millions of dollars' worth of productive decentralized private industrial enterprise have resulted from these great projects that no private wealth could have underwritten. The all important 'Preference Clause' assures the widespread distribution of these public investments by giving the first chance to the

organizations that serve the public, such as municipalities, Navy installations, rural coops. The great atomic plants at Hanford and Oak Ridge were possible only with the power made available by public projects.\footnote{\textit{Ibid.}}

These resources owned by the federal government are held in trust by the government to assure the people of the country that they will be used to benefit society in general and not any special interest groups. There are many special interest groups in Washington today promoting legislation to free these natural resources for private enterprise. The electric power companies are leading an attack against the "Preference Clause." They have even contended that the T.V.A. should be sold to private enterprise. This would place control of the T.V.A. in the hands of profit making organizations such as banks, corporations, and insurance companies. It would then follow that they could set their own rates and choose their own customers. The T.V.A. would then serve to make a profit for its investors, instead of serving the public for which purpose it was originally intended.

The Chamber of Commerce has associated itself with the large wool-growers and cattle grazers in seeking to free the rangelands from federal regulation. They contend that these regulations discriminate against the large sheep and cattle grazers. A step in this direction would squeeze out the small businessman and leave the field open only to sheep and cattle grazers.

Legislation has been brought before the Senate proposing that all mineral rights owned by the United States be turned over to individual states. This would pass a valuable resource into the hands of the many,
instead of maintaining it in one. There would be various and sundry regulations varying from one state to another and would end in the exploitation of our mineral resources. The states made a poor showing of controls in the early part of the century with oil. The government does not want a reenactment of the same type of controls.

Private forest interests are attacking the governmental policy on forestation, claiming that the high price of lumber today has been brought about by a timber shortage. They propose that they should be permitted to cut more freely from existing forest to satisfy the demand.

Perhaps the passage of the tidelands to the states by legislation will be the lobbies' answer on how to obtain the federally controlled natural resources. Perhaps, by its action, Congress has laid the country open to future "give away" legislation which will end all attempts at conservation of natural resources.

The tidelands should have remained in the hands of the federal government, since the Supreme Court had decided that it had always possessed ownership. As pointed out by the Court, it is the duty of the federal government to protect our shores from aggression during time of war. Also, it is the duty of the federal government to make all treaties relative to this area without hindrance from the state. These three things, paramount ownership, protectorate, and the treaty making power point to the fact that it is best for the country to have title vested in the federal government.

Under the dual sovereignty form of government there are certain powers delegated by the states to the federal government. Therefore, the rights which the federal government possesses should be exercised in serving
all the states, not just a few. Although not in line with the history of the case, it is my belief that the best interest of the country could have been served if the federal government had retained ownership of the tidelands.
APPENDIX I

The United States v. California

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 party, the Supreme Court shall have original jurisdiction.' The complaint alleges that the United States 'is the owner in a fee simple of, or possessed of paramount rights in the power 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 bounding 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. 1849, Art. XII; 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

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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.

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.

(1) 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 and gas underneath that land, much 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, U.S. v. State of West Virginia ..., does not support its contention. For here there is a claim by the U.S., admitted by California, that California has invaded the title or paramount rights asserted by the U.S. to a large area of land and that California has converted to its own use oil which was extracted from that land. 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 ...

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 seas begin, 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 action 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. . . . 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. . . . Such practices are commonplace in actions similar to this which are in the nature of equitable proceedings. . . . California contention concerning the insuperable obstacle to the exercise of the highly important jurisdiction conferred on us by Article III of the constitution.

(4) 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 litigations in order to establish and safeguard government rights and properties. 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 a 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.

(5) 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 U. S.' We have said that the constitutional power of Congress in this respect is without limitation. U.S. v. City and County of San Francisco. 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 status which imposes on the Attorney General the authority and the duty to protect the Government's interests through the courts. That Congress twice failed to grant the Attorney General specific authority to file suit against California 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 quit-claiming 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. This joint resolution was vetoed by the President. His veto was sustained. 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 other 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 U. S. 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 U. S. 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 U. S. 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. 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 the other resources of the soil of the marginal sea known as 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, § 1; 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. 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 granted was sustained as valid against that of a claimant holding under a U. S. grant made subsequent to Alabama's admission as a state.

The Government does not deny that under the Pollard rule, as explained in later cases, California has a qualified ownership of lands under inland navigable waters 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. 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 references 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, even if they did acquire elements of the sovereignty of the English Crown by their revolution against it.

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 right to fish in prescribed areas. 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. Neither the English Charters granted to this nation's settlers, nor the treaty of peace with England, showed a purpose to set apart a three mile
belt for colonial or state ownership. Those who settled this country were interested in land upon which to live, and waters upon which to fish and soil; there is no substantiated 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.

(11) It did happen that shortly after we became a nation dominion over a definite marginal zone to protect our neutrality. Largely as a result of their efforts, the idea of a definite 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, although as late as 1876 there was still considerable doubt in England about its scope and even its existence. See the Queen v. Keyn, L.R. 2 Exch. Div. 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, ... And this assertion of national dominion over the three mile belt is binding upon this court ... (12,13) 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 sovereignty ... The belief that local interests are so predominant as constitutionally to require state dominion over lands under its landlocked 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 seas, at least so long as the national Government's power to exercise control consistently with what ever international undertaking or commitments it may see fit to assume in the national interest is unencumbered. ... 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 its 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 obligation. ... The very oil about which the state and nation here contend might well become the subject of international dispute and settlement.
(11) 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. . . . 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, 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 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 . . .

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 navigable waters within their territorial jurisdiction, whether inland or not. All of these statements were, however, merely paraphrases or off-shoots 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. Commonwealth of Massachusetts, 139 U.S. 210, 11 S. Ct. 559, 35 L. Ed. 159. That case involved only the power of Massachusetts to regulate fishing. Moreover, the illegal fishing charged was in Buzzard 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, State of Louisiana v. State of Mississippi, 202 U.S. 1, 26, 52, 26, S. Ct. 100, 422, 50 L. Ed. 913, 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 government. 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. 202 U.S. at page 52, 26 S. Ct. at page 122, 50 L. Ed. 913. The third case is the Abby Dodge, 223 U.S. 166, 32 S. Ct. 310, 56 L. Ed. 390. 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 rights 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. State of Florida . . . where we had 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).

(15) 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. 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. . . . 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 incident to which in full dominion over the resources of the soil under that water area, including oil.
APPENDIX II

United States v. Louisiana

Original suit by the United States against the State of Louisiana for a decree declaring the rights of the United States against Louisiana in lands 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 miles and bounded on the east and west, respectively, by the eastern and western boundaries of Louisiana, and enjoining Louisiana and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the U.S., and requiring Louisiana to account for the money derived by it from the area. Judgment in favor of the United States.

Mr. Justice Douglas delivered the opinion of the Court.

The U.S. 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 a Party, the Supreme Court shall have original jurisdiction.'

The complaint alleges that the U.S. 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 U.S., 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 lessee have recognized the rights of the U.S. 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 U.S., and

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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 U. S. v. Texas ... which held that Art. III, § 2, Cl. 2 of the Constitution, granting this Court original jurisdiction in cases 'in which a State shall be a party,' includes cases brought by the U. S. against a State should be overruled. We heard argument on the motion for leave to file and thereafter granted it ...

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 U. S. and for a bill of particulars. The U. S. moved for judgment. The demurrer was overruled, Louisiana's motions denied, Louisiana being given 30 days in which to file an answer ...

In her answer Louisiana admits that 'the U. S. 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 U. S.,' 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 U. S. 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 U. S. has a fee simple title to the lands, minerals, and other things underlying the Gulf of Mexico. As affirmative defense Louisiana asserts that she is the holder of fee simple title to all the land, minerals, and other things in controversy; and that since she was admitted into the Union in 1812, she has exercised continuous, undisputed, and unchallenged sovereignty and possession over the property in question ...

The territory out of which Louisiana was created was purchased by the U. S. from France for $15,000,000 under the Treaty of April 30, 1803, 8 Stat 200. In (March 3) 1804 the area thus acquired was divided into two territories, one being designated as the Territory of Orleans ... By the Enabling Act of February 20, 1811, 2 Stat 641, ch 21, the inhabitants of the Territory of Orleans were authorized to form a constitution and a state government. By the Act of April 9, 1812, 2 Stat 701, 703, ch. 50, 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.' In 1938 Louisiana by statute declared its southern boundary to be twenty-seven marine miles from the shore line.
We think U. S. v. California, 332 U. S. 19, 91 L. Ed. 1889, 67 S. Ct 1658, controls this case and that there must be a decree for the complainant.

We lay aside such cases as Toomer v. Witsell ... 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 U. S. 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 U. S. seeks to assert over the area in question. We also put to one side New Orleans v. U. S., U. S. 10 Pet 622, 9 L. Ed. 573, 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 U. S. under the treaty of cession but remained in the city. Such cases, like those involving ownership of the land under the inland waters are irrelevant here. As we pointed out in U. S. 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., 31-34, 91 L. Ed. 1895, 1896, 67 S. Ct 1658. The marginal sea is a national, not a state concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defenses, relations with other powers, war and peace, focus there. National rights must therefore be paramount in that area.

That is the rationale of U. S. 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 pre-admission 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 U. S. acting through its Attorney General who has authority to assert claims of this character and to invoke our jurisdiction in a federal-state controversy (U. S. v. California, 332 U. S. 26-29, 91 L. Ed. 1892-1894, 67 S. Ct 1658) now claims its paramount right in this domain.

There is one difference, however, between Louisiana's claim and California's. The latter claimed rights in the three mile belt. We need not 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 U. S. 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 U. S. to this part of the ocean and the resources of the soil under that area, including oil.
This suit, like its companion, U. S. v. Louisiana, 339 U. S. 699, Ante. 1216, 70 S. Ct 914, 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 the low water mark off the shores of Texas.

The complaint alleges that the U. S. 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 U. S. 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 U. S. as against Texas and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the U. S., requiring Texas to account to the U. S. 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 had 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, 338 U. S. 902, Ante. 555, 70 S. Ct 301. 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 an extension of the time to answer. The U. S. then moved for judgment. These various motions were denied and Texas was granted thirty days to file an answer.

Texas in her answer, as later amended, renews her objection that this case is not one which the Court has original jurisdiction;

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denies that the U. S. is or ever has been the owner of the lands, minerals, etc., underlying the Gulf of Mexico within the disputed area; denies that the U. S. 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 U. S. has over lands beneath all navigable waters and except the same dominion and paramount power which the U. S. has over uplands within the U. S., whether privately or state owned; denies that these or any other paramount powers or rights of the U. S. including 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 U. S. 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 the claims, rights, title, and interest 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 lessee but denies that the U. S. is entitled to any of them; and denies that she has no title to or interest in any of the lands in 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 U. S. and other major nations; that when Texas was annexed to the U. S. 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 U. S.; that the U. S. has recognized and acquiesced in this claim and these rights; that Texas under the doctrine or 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 U. S. and the Republic of Texas that upon annexation Texas would not cede to the U. S. 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 U. S. 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 dispositions of specified aged persons respecting 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 U. S. 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... 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 pre-admission 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... The status of Texas, it is said, is different; Texas, when she came into the Union, reclaimed 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, passed an act defining the boundaries of the Republic. 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.' Texas was admitted to the Union in 1845 'on an equal footing with the original States in all respects whatever.' 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 U. S. 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 subsoil of the marginal sea vis-a-vis other nations. Texas claims that the Republic of Texas acquired during that period the same interest in its marginal sea as the U. S. acquired in the marginal sea off California when it purchased from Mexico in 1848 the territory from which California was later formed. This the U. S. contests.
The Joint Resolution annexing Texas provided in part: 'Said State, when admitted into the Union, after ceding into the U. S., all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards; docks, magazines, arms, armaments, and other property and means pertaining to the public defense 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 U. S.'

The U. S. contends that the inclusion of fortification, 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 defense.' It argues that possession by the U. S. in the lands underlying the marginal sea is a defense necessity. Texas maintains that the construction of the Resolution both by the U. S. and Texas has been restricted to properties which the Republic actually used at the time in the public defense.

The U. S. 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 U. S. 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... 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... If there were a dispute as to the meaning of the documents and the answer was to be found in diplomatic correspondence, contemporary construction, 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, 45 L. Ed. 162, 174, 21 S. Ct. 73. 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. . . . 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 di­
versities 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 U. S. but reserved them to themselves. . . . The theory
of these decisions was aptly summarized by Mr. Justice Stone speaking
for the Court in U. S. v. Oregon, 295 U.S. 1, 14, 79, L. Ed. 1267,
1273, 55 S. Ct 610, as follows:

'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 in­
dulged, 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 U. S. to the
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 U. S. 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 U. S. 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 U. S. now
claims. When Texas came into the Union, she ceased to be an inde­
pendent nation. She then became a sister State on an 'equal footing'
with all the other States. That act concededly entailed a re­
linquishment of some of her sovereignty. The U. S. 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 U. S. became the sole and exclusive spokesman for the transfer of
the sovereignty, any claim that Texas may have had to the marginal sea
was relinquished to the U. S.
We stated the reasons for this in *U.S. v. California*, 332 U.S. supra p. 35, 91 L. Ed. 1897, 67 S. Ct. 1658, 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 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 *U.S. v. Belmont*, 301 U.S. 324, 331, 332. The very oil about which the states 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 subordonate 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 *U.S. 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 U. S. on admission, there is or may be in practical effect a substraction in favor of Texas from the national sovereignty of the U. S. Yet neither the original thirteen States... 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 U. S. from which the other States have been excluded, just as it prevents a contraction of sovereignty which would produce unequality among the States. For equality of States means that they are not 'less or greater or different in dignity or power.' 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. And in 1947 she put the extended boundary to the outer edge of these acts to the issue before us had been adequately answered in U. S. v. Louisiana. The other contentions of Texas need not be detailed. They have been foreclosed by U. S. v. California and U. S. v. Louisiana.
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