

In the Supreme Court of the United States

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STATE OF ALASKA, PLAINTIFF

*v.*

UNITED STATES OF AMERICA

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ON BILL OF COMPLAINT

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**JOINT MOTION FOR ENTRY OF DECREE,  
MEMORANDUM IN SUPPORT OF JOINT MOTION,  
AND PROPOSED DECREE**

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No. 128, Original  
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## **JOINT MOTION FOR ENTRY OF DECREE**

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The United States of America and the State of Alaska jointly move for entry of a decree in the form and manner of the attached proposed decree. The basis for this motion is explained in the memorandum that follows.

Respectfully submitted.

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DECEMBER 2005



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## **MEMORANDUM IN SUPPORT OF JOINT MOTION FOR ENTRY OF DECREE**

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### ***I. Introduction.***

This motion arises from an original action between the United States of America and the State of Alaska involving title to submerged lands. On June 12, 2000, the Court granted the State of Alaska leave to file a bill of complaint to quiet title relating to certain marine submerged lands in Southeast Alaska. 530 U.S. 1228. The Court appointed a Special Master to direct subsequent proceedings and to submit such reports as he deemed appropriate. 531 U.S. 941 (2000). On January 8, 2001, the Court granted the State of Alaska leave to file an amended complaint. 531 U.S. 1066.

On March 5, 2001, the Court referred Alaska's amended complaint and the United States' answer to the Master. 532 U.S. 902. From 2001 to 2004, the Master oversaw extensive briefing of motions for summary judgment relating to the various counts of the amended complaint. On January 14, 2002, the Court received and ordered filed the Report of the Special

Master on the Motion of Frank H. James *et al.* for Leave to Intervene, and the Court denied the motion for intervention. 534 U.S. 1103.

On April 26, 2004, the Court received and ordered filed the Report of the Special Master on Six Motions for Partial Summary Judgment and One Motion for Confirmation of a Disclaimer of Title (March 2004) (hereinafter “Summary Judgment Report”). 541 U.S. 1008. On June 6, 2005, this Court overruled Alaska’s exceptions and directed the parties to prepare and submit an appropriate decree to the Master for the Court’s consideration. 125 S. Ct. 2137, 2161. The parties have prepared the attached proposed decree, and request that the Special Master recommend its approval. The proposed decree consists of four paragraphs, which are summarized below.

## **II. *Summary of Proposed Decree.***

Paragraph 1 of the proposed decree addresses the Court’s resolution of count I of Alaska’s amended complaint. As a general matter, the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, grants to each State coastal submerged lands within the limits of the State’s seaward boundary, which, in the case of Alaska, extends to a line three geographical miles distant from its coast line. See 43 U.S.C. 1311, 1312. Alaska alleged in count I that the waters associated with the Alexander Archipelago constitute historic inland waters and that the coast line associated with those waters should be determined on that basis. The United States disagreed with Alaska’s contention. The Master recommended that the Court grant summary judgment to the United States and that Alaska should take nothing on count I of the Amended Complaint. See Summary Judgment Report 137-138, 294. The Court adopted the Master’s recommendation, overruling Alaska’s exception. See 125 S. Ct. at 2151. Paragraph 1 of the proposed decree

incorporates that disposition and quiets the United States' title to the marine submerged lands that Alaska's historic inland waters contention had placed in dispute.

Paragraph 1 of the proposed decree also addresses the Court's resolution of count II of Alaska's amended complaint, which also placed at issue the location of the coast line in southeastern Alaska. In count II, Alaska alleged that waters that it designated as "North Southeast Bay" and "South Southeast Bay," as well as Sitka Sound and Cordova Bay, constitute juridical bays and, consequently, inland waters. The United States disagreed with Alaska's contention. The Master recommended that the Court grant summary judgment to the United States and that Alaska should take nothing on count II of the amended complaint. See Summary Judgment Report 226, 294. The Court adopted the Master's recommendation, overruling Alaska's exception. See 125 S. Ct. at 2153. Paragraph 1 of the proposed decree incorporates that disposition and quiets the United States' title to the marine submerged lands that Alaska's juridical bays contention had placed in dispute.

Paragraph 2 of the proposed decree addresses count IV of Alaska's amended complaint, which called into question whether the United States had retained title to the marine submerged lands within Glacier Bay National Monument as that monument existed on the date of Alaska's admission to the Union. Although submerged lands within a State normally pass to the State at the time of its admission, the United States may retain submerged lands if it adequately expresses the requisite intent in accordance with the Court's decisions. See 125 S. Ct. at 2155. The parties disagreed on whether the United States had retained the marine submerged lands within Glacier Bay National Monument. The Master recommended that the Court grant

summary judgment to the United States that the United States did retain the marine submerged lands in Glacier Bay National Monument and that Alaska should take nothing on count IV of the amended complaint. Summary Judgment Report 276, 294. The Court adopted the Master's recommendation, overruling Alaska's exceptions. 125 S. Ct. at 2153, 2161. Paragraph 2 of the proposed decree incorporates that disposition and quiets the United States' title to the marine submerged lands that Alaska's Glacier Bay contention had placed in dispute.

Paragraph 3 of the proposed decree addresses count III of Alaska's amended complaint, which called into question whether the United States had retained title to the marine submerged lands within the Tongass National Forest. The United States filed a disclaimer, pursuant to 28 U.S.C. 2409a(e), respecting the lands at issue in count III. The Master recommended that the Court confirm that disclaimer pursuant to 28 U.S.C. 2409a(e), dismiss Alaska's motion for summary judgment on count III as moot, and dismiss count III for lack of jurisdiction. Summary Judgment Report 277, 294. No party excepted to the Master's recommendation, and the Court accepted the proposed disclaimer. 125 S. Ct. at 2161. Paragraph 3 of the proposed decree incorporates that disposition and sets out the disclaimer, which includes several non-substantive alterations.

Paragraph 4 of the proposed decree provides that the Court retains jurisdiction to entertain further proceedings, enter such orders, and issue such writs as may from time to time be deemed necessary or advisable to effectuate and supplement the decree and the rights of the respective parties and that, in all other respects, the decree is final. That provision is identical to a provision in the Court's decree in *United States v. Alaska*, 530 U.S. 1021, 1026 (2000), and similar to pro-



visions routinely found in the Court's decrees in other original actions, see, *e.g.*, *United States v. California*, 432 U.S. 40, 42 (1977).

**III. Conclusion.**

The proposed decree properly effectuates this Court's decision in this original action. For the foregoing reasons, the Master should recommend that the Court enter the proposed decree.

Respectfully submitted.

DAVID W. MÁRQUEZ  
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PAUL D. CLEMENT  
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JOANNE GRACE\*  
*Assistant Attorney General*  
*State of Alaska*

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## **PROPOSED DECREE**

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On June 12, 2000, the Court granted the State of Alaska leave to file a bill of complaint to quiet title relating to certain marine submerged lands in Southeast Alaska. 530 U.S. 1228. The Court appointed a Special Master to direct subsequent proceedings and to submit such reports as he deemed appropriate. 531 U.S. 941 (2000). On January 8, 2001, the Court granted the State of Alaska leave to file an amended complaint. 531 U.S. 1066. On March 5, 2001, the Court referred the State of Alaska's amended complaint and the United States' answer to the Master. 532 U.S. 902. From 2001 to 2004, the Special Master oversaw extensive briefing of motions for summary judgment relating to the various counts of the amended complaint. On April 26, 2004, the Court received and ordered filed the Report of the Special Master on Six Motions for Partial Summary Judgment and One Motion for Confirmation of a Disclaimer of Title (March 2004). 541 U.S. 1008. On June 6, 2005, this Court overruled the State of Alaska's exceptions and directed the parties to prepare and

submit an appropriate decree to the Master for the Court's consideration. 545 U.S. at \_\_\_\_ [125 S. Ct. 2137, 2161]. The parties have prepared a proposed decree, and the Master recommends its approval.

Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED

1. On counts I and II of the amended complaint of the State of Alaska, judgment is granted to the United States, and the State of Alaska shall take nothing. As between the State of Alaska and the United States, the United States has title to the marine submerged lands underlying the pockets and enclaves of water at issue in counts I and II of the State of Alaska's amended complaint, which are those marine submerged lands that are more than three geographical miles from every point on the coast line of the mainland or of any individual island of the Alexander Archipelago. See *Alaska v. United States*, 545 U.S. at \_\_\_\_, \_\_\_\_ [125 S. Ct. at 2144, 2161]. For purposes of determining the United States' title:

(a) the term "marine submerged lands" means all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide (Submerged Lands Act, ch. 65, Tit. I, § 2(a)(2), 67 Stat. 29 (43 U.S.C. 1301(a)(2));

(b) the term "coast line" means "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters," as defined in Section 2(c) of the Submerged Lands Act, ch. 65, Tit. I, 67 Stat. 29 (43 U.S.C. 1301(c)); and

(c) the line marking the seaward limit of inland waters shall be determined in accordance with the Court's rulings that: (i) the waters of the Alexander

Archipelago do not constitute historic inland waters; and (ii) “North Bay,” “South Bay,” Sitka Sound, and Cordova Bay, as designated in this action, do not constitute juridical bays. See *Alaska v. United States*, 545 U.S. at \_\_\_\_-\_\_\_\_ [125 S. Ct. at 2144-2153].

2. On count IV of the amended complaint of the State of Alaska, judgment is granted to the United States, and the State of Alaska shall take nothing. As between the State of Alaska and the United States, the United States has title to the marine submerged lands within the exterior boundaries of Glacier Bay National Monument as those boundaries existed on the date of the State of Alaska’s admission to the Union. See *Alaska v. United States*, 545 U.S. at \_\_\_\_ [125 S. Ct. at 2161]. For purposes of determining the United States’ title, the term “marine submerged lands” means all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide (Submerged Lands Act, ch. 65, Tit. I, § 2(a)(2), 67 Stat. 29 (43 U.S.C. 1301(a)(2))).

3. The motion of the State of Alaska for summary judgment on count III is dismissed as moot, and count III is dismissed for lack of jurisdiction. In accordance with 28 U.S.C. 2409a(e), the following disclaimer of the United States is confirmed:

**Disclaimer**

- (1) Pursuant to the Quiet Title Act, 28 U.S.C. 2409a(e), and subject to the exceptions set out in paragraph (2), the United States disclaims any real property interest in the marine submerged lands within the exterior boundaries of the Tongass National Forest, as those boundaries existed on the date of Alaska Statehood.

- (2) The disclaimer set out in paragraph (1) does not disclaim:
  - (a) any submerged lands that are subject to the exceptions set out in Section 5 of the Submerged Lands Act, ch. 65, Tit. II, 67 Stat. 32 (43 U.S.C. 1313);
  - (b) any submerged lands that are more than three geographic miles seaward of the coast line;
  - (c) any submerged lands that were under the jurisdiction of an agency other than the United States Department of Agriculture on the date of the filing of the complaint in this action;
  - (d) any submerged lands that were held for military, naval, Air Force, or Coast Guard purposes on the date that Alaska entered the Union.
- (3) For purposes of this disclaimer:
  - (a) The term “coast line” means “the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters,” as defined in Section 2(c) of the Submerged Lands Act, ch. 65, Tit. I, 67 Stat. 29 (43 U.S.C. 1301(c)).
  - (b) The term “submerged lands” means “lands beneath navigable waters” as defined in Section 2(a) of the Submerged Lands Act, ch. 65, Tit. I, 67 Stat. 29 (43 U.S.C. 1301(a)).

- (c) The term “marine submerged lands” means “all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide.” See Submerged Lands Act, ch. 65, Tit. I, § 2(a)(2), 67 Stat. 29 (43 U.S.C. 1301(a)(2)).
- (d) The term “jurisdiction” has the meaning of that word in the Quiet Title Act, 28 U.S.C. 2409a(m).
- (e) The exception set out in Section 5(a) of the Submerged Lands Act, ch. 65, Tit. II, 67 Stat. 32 (43 U.S.C. 1313(a)), for lands “expressly retained by or ceded to the United States when the State entered the Union” does not include lands under the jurisdiction of the Department of Agriculture unless, on the date Alaska entered the Union, that land was:
  - (i) withdrawn pursuant to act of Congress, presidential proclamation, executive order, or public land order of the Secretary of Interior, other than the presidential proclamation of August 20, 1902 (32 Stat. 2025), which established the Alexander Archipelago Forest Reserve; the presidential proclamation of September 10, 1907 (35 Stat. 2152), which created the Tongass National Forest; or the presidential proclamations of February 16, 1909 (35 Stat. 2226) and June 10, 1925 (44 Stat. 2578), which expanded the Tongass National Forest; or

- (ii) subject to one or more of the following pending applications for withdrawal pursuant to 43 C.F.R. Part 295 (1954 & Supp. 1958), designated by Bureau of Land Management serial numbers: AKA 022828; AKA 026916; AKA 029820; AKA 031178; AKA 032449; AKA 033871; AKA 034383; AKJ 010461; AKJ 010598; AKJ 010761; AKJ 011157; AKJ 011168; AKJ 011203; AKJ 011210; AKJ 011212; AKJ 011213; AKJ 011291.

4. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as from time to time may be deemed necessary or advisable to effectuate and supplement this Decree and the rights of the respective parties. In all other respects, this Decree is final.