No. 01-1799

In the Supreme Court of the United States

CENTRAL PINES LAND COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

In the 1930s, the United States acquired lands in Louisiana for the Kisatchie National Forest. At the time of acquisition, the lands were burdened by a mineral servitude that, under state law, was subject to prescription for non-use. In 1940, the Louisiana legislature enacted Act 315 to eliminate the rule of prescription for servitudes on land acquired or held by the United States.

The question presented is whether the court of appeals erred in holding, under choice-of-law principles, that the pre-existing Louisiana law of prescription, rather than Act 315, governed prescription of mineral servitudes on federal lands purchased in Louisiana prior to the passage of Act 315.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 274 F.3d 881. The opinions of the district court (Pet. App. 27a-51a, 52a-78a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 28, 2001. A petition for rehearing was denied March 8, 2002 (Pet. App. 79a-80a). The petition for writ of certiorari was filed on June 6, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners Central Pines Land Company, et al. brought this quiet title action to obtain a declaration of ownership of mineral servitudes on federal lands in Louisiana comprising portions of the Kisatchie National Forest and the Fort Polk Army Base. In asserting ownership of those servitudes, petitioners relied on Louisiana Act 315 of 1940 (La. Rev. Stat. Ann. § 31:149 (West 2000)), which purported to render mineral servitudes on federal land exempt from the longstanding Louisiana rule of prescription for non-use. The district court held under choice-of-law principles that Act 315 could be applied prospectively to servitudes on the Fort Polk land that were created after enactment of Act 315, but could not be applied retroactively to the servitude on the Kisatchie National Forest land created before the passage of the Act. The court of appeals affirmed.

1. Under Louisiana law, ownership of minerals on real property cannot be held as an estate separate from the land, but the right to enter the land and extract minerals can be held separately in the form of a mineral servitude. *Frost-Johnson Lumber Co.* v. *Salling's Heirs*, 91 So. 207, 243-245 (La. 1920); La. Rev. Stat. Ann. § 31:21 (West 2000). Under Louisiana law, rights of servitude ordinarily prescribe (*i.e.*, revert to the landowner) if not used for a period of ten years. *Frost-Johnson Lumber*, 91 So. at 243-245; La. Rev. Stat. Ann § 31:27 (West 2000).

2. The land at issue in this case was originally part of a 100,000-acre tract owned by the Gulf Lumber Company. In 1929, Gulf Lumber sold mineral rights in the tract to S.H. Fullerton, creating a mineral servitude. In 1937, Fullerton conveyed the servitude to William T. Burton, who subsequently transferred his

interests to Burton Industries. Pet. App. 4a. In 1988, petitioners acquired from Burton Industries any rights remaining in the 1929 servitude. Gov't C.A. Br. 11-12.

The lands at issue here comprise a portion of the Kisatchie National Forest. The United States acquired the lands pursuant to the Act of Mar. 1, 1911 (Weeks Forestry Act), ch. 186, 36 Stat. 961 (codified at 16 U.S.C. 480, 500, 515-519, 521, 552, 563), in a series of four transactions between 1933 and 1938. Gulf Lumber Company sold the United States approximately 36,000 acres in two transactions in 1933 and 1936. The United States acquired an additional 161 acres through a stipulated sale and a judgment of condemnation in 1938.[1] Gov't C.A. Br. 12.

All four of the transactions were expressly subject to the outstanding mineral servitude then held by Fullerton, and reflected the parties' recognition that the mineral servitude was subject to prescription for non-use. An appraisal report prepared prior to the 1933 sale stated that the minerals on the land were "reserved for a period of 10 years." See Gov't C.A. Br. 13. In accord with Forest Service appraisal guidelines, the appraised value of the land ($1.50 per acre) was reduced 10 cents per acre, or 1 cent per acre for each year of the servitude. *Ibid.* The instruments of transfer for the three 1936 and 1938 conveyances also contained provisions acknowledging that the 1929 mineral servitude was subject to prescription. Specifically, the instruments contained mineral reservations in favor of seller Gulf Lumber that would become effective only upon

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[1] The United States acquired additional tracts of lands from Burton in a series of transactions between 1942 and 1981 that comprise a portion of the Fort Polk Army Base. Title to mineral servitudes on those lands is not at issue before this Court.

prescription of the 1929 servitude, and that contained their own detailed terms of prescription for non-use. *Id.* at 13-14.

3. In 1940, the Louisiana legislature enacted Act 315, which provides that when land acquired by the United States is subject to a mineral servitude, that servitude is "imprescriptible" for non-use. The asserted purpose of the Act was to facilitate the United States' acquisition of land for national forests and parks and military installations by permitting reluctant sellers to avoid losing any retained mineral rights through prescription. See *United States* v. *Little Lake Misere Land Co.*, 412 U.S. 580, 599 & n.16 (1973). Act 315 also served Louisiana's interest in taxing and regulating minerals on federal land by preventing ownership of minerals from reverting to the United States. See *id.* at 599-600. The Louisiana Supreme Court has held that Act 315 is "retrospective in its operation," and applies to mineral servitudes in existence at the time of its passage. *Leiter Minerals, Inc.* v. *California Co.*, 132 So.2d 845, 854 (1961).

4. In *United States* v. *Little Lake Misere Land Co.*, *supra*, this Court invoked the choice-of-law doctrine outlined in *Clearfield Trust Co.* v. *United States*, 318 U.S. 363 (1943), to hold that Louisiana's Act 315 could not be applied retroactively to mineral reservations on lands acquired by the United States under the Migratory Bird Conservation Act. 412 U.S. at 602-603. In two transactions completed in the 1930s, the United States granted mineral reservations to the vendor of the land, subject to a contractual provision calling for the servitudes to expire if not used in a particular fashion for a period of ten years. Because Act 315 would deprive the United States of "bargained-for contractual interests" by abrogating the terms of the

acquisition instruments relating to prescription, the Court held that the Act was "plainly hostile to the interests of the United States" and could not be "borrowed" as the rule of decision. *Id.* at 597. This Court held that the appropriate rule of decision was to be supplied by either federal common law or "residual" state law (*i.e.*, Louisiana state law without Act 315), both of which would give effect to the contract terms. *Id.* at 604.

5. In 1992, the U.S. Bureau of Land Management began granting mineral leases for minerals under some Kisatchie Forest lands that had been subject to the 1929 servitude. Respondents Texaco Exploration and Production, Inc., Swift Energy Company, Chesapeake Operating, Inc., C.H.C. Gerard, and RME Petroleum Company are the current lessees of those mineral rights. Petitioners filed suit seeking to quiet title to the mineral servitudes on the lands within Kisatchie Forest and Fort Polk and a declaration that leases granted by the United States were invalid. Both parties moved for summary judgment.

The district court granted summary judgment to the government with respect to the Kisatchie Forest lands. Pet. App. 27a-52a. Citing this Court's decision in *Little Lake Misere Land Co.*, *supra*, the court held that Act 315 could not be applied retroactively to render the 1929 servitude imprescriptible. Pet. App. 33a-38a. The court noted the detailed and specific provisions of the contracts with respect to mineral reservations and concluded that they were "inconsistent with [an] * * * expectation that the reservations would be subject to modification by retroactive application of state law." *Id.* at 36a-37a. The court held that the otherwise-prevailing Louisiana law of prescription would apply, and that the servitudes on the Kisatchie Forest lands

had prescribed for non-use for ten years.[2] *Id.* at 38a. The district court granted petitioners summary judgment with respect to the Fort Polk lands, holding that Act 315 could be applied prospectively to render mineral servitudes on those lands imprescriptible. *Id.* at 38a-43a.

6. The court of appeals affirmed (Pet. App. 1a-26a). The court began with the proposition that "state law should supply the federal rule unless there is an expression of legislative intent to the contrary, or * * * a showing that state law conflicts significantly with any federal interests or policies present in this case." Pet. App. 10a (footnote omitted). The court held that Act 315 could not be borrowed as the rule of decision because, as in *Little Lake Misere*, it was hostile to the United States' interest in "obtaining the mineral rights via the default rule of prescription in place before Act 315." *Id.* at 11a. Although the government itself contracted over the terms of the mineral servitudes in *Little Lake Misere* and merely succeeded to the servient estate in this case, the court of appeals held that distinction immaterial because in both cases "the acquisition subject to the existing servitude created a federal interest in the potential prescription of the mineral servitude * * * via the rule of prescription in place at the time of contract." *Id.* at 8a. The court concluded that the "state interest in the retroactive application of Act 315 does not outweigh the federal

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[2] After additional proceedings, the district court also held (Pet. App. 52a-78a) that a mineral moratorium instituted by the government between 1950 and 1978 did not suspend prescription because it did not cover all of the land subject to the servitude. *Id.* at 66a-69a. In addition, the court held that there was no suspension of prescription by obstacle after the moratorium ended in 1978. *Id.* at 69a-72a.

interest in this case" (*id.* at 12a), because the "main justification" for Act 315, the facilitation of federal land acquisitions, "has no bearing" on property already acquired. *Ibid.* The court held that the 10-year prescriptive period of "residual Louisiana law" should govern the case, and concluded that petitioners' servitude on the Kisatchie Forest lands had prescribed for nonuse.[3] *Id.* at 12a-13a, 15a-18a.

ARGUMENT

The court of appeals correctly applied the choice-of-law analysis of *United States* v. *Little Lake Misere Land Co.*, 412 U.S. 580 (1973), to the "fundamental[ly] similar[]" (Pet. App. 9a) circumstances of this case. Its decision does not conflict with any decision of this Court or of any other court of appeals. The court of appeals' factbound choice-of-law ruling, which applies only to mineral servitudes on real property acquired by the United States in Louisiana before 1940, does not warrant this Court's review.

1. Petitioners contend (Pet. 12-17) that there is no significant conflict between a federal interest and the application of state law so as to justify the application of a federal rule of decision. Petitioners do not contend that the court of appeals applied incorrect choice-of-law principles, but simply claim that the court misapplied established principles to the particular facts of this

[3] Although the court was "sympathetic to the Government's argument" that prospective application of Act 315 to the mineral servitudes on the Fort Polk lands constituted unconstitutional discrimination against the United States, it held that claim was foreclosed by binding circuit precedent. Pet. App. 13a. Accordingly, it held that Act 315 rendered the servitudes on the Fort Polk lands imprescriptible.

case. That claim is without merit, and in any event does not warrant further review.

The court of appeals' decision was a straightforward application of the established principle, followed in *Little Lake Misere*, that federal courts may fashion a federal rule of decision when application of state law would significantly conflict with a federal policy or interest. See *O'Melveny & Myers* v. *FDIC*, 512 U.S. 79, 87 (1994). The court of appeals correctly determined that retroactive application of Act 315 would significantly conflict with the valid federal interest in the "application of default legal rules in place at the time of contract." Pet. App. 11a. As the court observed, the "federal interest in the potential prescription of the mineral servitude * * * via the rule of prescription in place at the time of contract" was "evidenced by the bargaining" that occurred at the time of the transactions. *Id.* at 8a. As discussed above, the purchase price for the land acquired in the 1933 transaction reflected the parties' understanding that the servitude would expire, and in the other three transactions, the United States expressly granted Gulf Lumber additional reversionary mineral interests that would vest upon prescription of the 1929 servitude, and which themselves would revert to the United States subject to explicit contractual terms of prescription. The court of appeals correctly recognized that Louisiana does not have an overriding interest in the application of Act 315 in this case. While petitioners insist that "Act 315 was passed to assist the United States" (Pet. 14), as this Court stated in *Little Lake Misere*, the Act "cannot 'facilitate' transactions already consummated." 412 U.S. at 599.

Petitioners err in suggesting that adherence to the default rules on which contractual negotiations were

based is little more than an illegitimate "interest in always winning law suits." Pet. 12. As petitioners concede (Pet. 13), default rules do not necessarily favor the United States. This Court has recognized, however, that there is a legitimate federal interest in ensuring that the terms of land acquisitions are not changed after the fact. As the Court wrote in *Little Lake Misere*, "[c]ertainty and finality are indispensable in any land transaction," and "are especially critical when, as here, the federal officials carrying out the mandate of Congress [to acquire lands] irrevocably commit scarce funds" (412 U.S. at 597) based on the law then in existence.[4]

The value of the reversionary rights in the present case is self-evident. The rule of prescription in place at the time of acquisition allows the United States to control the terms of any future mineral exploration or extraction on the lands after reversion and to conduct long-term planning for the Kisatchie National Forest without the need to accommodate persons who may in the future attempt to exercise rights under long-dormant mineral servitudes. Petitioners' claim that Act 315 cannot conflict with a federal interest because its reversionary interest in acquiring the minerals is

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[4] Petitioners suggest that before a federal rule of decision can be created, there must be a showing that "continued private ownership of minerals on lands acquired by it under the Weeks Forestry Act somehow interfered with or undermined the implementation of federal policies relating to the use or management for which the lands were acquired." Pet. 13; see Pet. 16. However, this Court undertook no such detailed inquiry in *Little Lake Misere*, and instead focused on the general importance of certainty and finality under land acquisition programs, including the Migratory Bird Conservation Act at issue there. 412 U.S. at 597-598.

"only a hope or expectancy * * * which cannot be legally bought or sold" and which would not be a property right to "[a]ny other land purchaser" (Pet. 8-9) is squarely foreclosed by *Little Lake Misere*. There, the Court held that "whether Louisiana recognizes the interests at stake here as transferable interests in real property, as such, has no bearing on our conclusion" that retroactive application of Act 315 "would be adverse to the United States." 412 U.S. at 601-602.

2. Petitioners' attempts to distinguish *Little Lake Misere* are unavailing.

a. Petitioners contend (Pet. 8-12) that federal law should not determine the rule of decision in this case because in contrast to *Little Lake Misere*, the servitude in this case was created not by the land acquisition agreement with the government, but rather the 1929 deed between Gulf Lumber and S.H. Fullerton. Petitioners argue that because the government was not a party to the contract creating the servitude, there is no federal right in determining the circumstances under which that servitude is subject to prescription. Pet. 9. The court of appeals correctly rejected that argument, noting the "fundamental similarit[y]" between "the federal interest at stake in *Little Lake [Misere]*" and here. Pet. App. 9a. As the court of appeals explained, "[t]he Government's contract 'right' [in *Little Lake Misere*] was to obtain the mineral rights after the *contractual* prescriptive period had elapsed. Similarly, in this case the Government's right is to obtain the mineral rights after the *default* prescriptive period has elapsed." *Ibid.* The underlying right of reversion is the same, and "[t]his right, as in *Little Lake [Misere]*, is federal." *Ibid.*

This Court's decision in *United States* v. *Standard Oil Co.*, 332 U.S. 301 (1947) (see Pet. 6, 9), is not to the

contrary. There, the Court held that federal law, rather than state tort law, governed adjudication of a suit by the United States for injuries to a soldier caused by the negligent operation of a truck. The Court suggested in *dicta* that federal policy would not be implicated "where the Government has simply substituted itself for others as successor to rights governed by state law." 332 U.S. at 309. Here, however, the government has not simply been substituted as a successor to rights governed by state law—if that were the case, there is no question that the transaction would be governed by generally applicable Louisiana law requiring prescription for non-use after 10 years. After the substitution in this case, however, the state passed a law retroactively altering the mineral interests of only a single landowner—the United States. Nothing in *Standard Oil* requires that federal courts must, through choice-of-law decisions, give retroactive effect to legislation altering the rights of the United States.[5]

b. Petitioners' claim (Pet. 10) that the Weeks Forestry Act does not "explicit[ly] authoriz[e]" the United States to acquire minerals when acquiring National Forest land. That feature does not distinguish the Weeks Forestry Act from the Migratory Bird Conservation Act at issue in *Little Lake Misere*. As the Court explained there, the relevant consideration is whether the statute explicitly authorized the underlying

[5] Petitioners err in suggesting that the government is seeking to be put in a "better position than other Louisiana landowners." Pet. 10. Rather, the government has sought the application of the neutral rules of law that applied to all landowners at the time it purchased the land at issue. It is petitioners who are seeking to use the substitution of the United States to obtain an enhanced mineral interest—a perpetual mineral servitude unknown to the law of Louisiana at the time of contract.

purchase of land through the "land acquisition agreement." 412 U.S. at 594. There is no question the Weeks Forestry Act satisfies that requirement.[6] See 16 U.S.C. 515. Petitioners' claim that the transactions here do not "aris[e] from and bear[] heavily upon a federal regulatory program" (Pet. 10 (quoting *Little Lake Misere*, 412 U.S. at 592)) fails for similar reasons. When this Court described the acquisition in *Little Lake Misere* as one "arising from and bearing heavily upon a federal regulatory program," 412 U.S. at 592, the Court did not refer to any particular aspect of the federal regulatory program under the Migratory Bird Conservation Act that is not also present in this case. The regulatory program involved in acquiring land for and operating a wildlife refuge is manifestly similar to the program involved in acquiring land for and operating a National Forest, and petitioners offer no basis for distinguishing the two programs.[7]

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[6] Moreover, the Secretary's power to acquire mineral interests along with land, even if not "explicit" in the Weeks Forestry Act, is very clearly implied by it. The Weeks Forestry Act gave the Secretary of Agriculture discretion to allow mineral reservations on lands acquired by the United States for National Forests. See ch. 186, § 9, 36 Stat. 962 (*reprinted* at Pet. App. 89a). Discretion to allow mineral reservations necessarily implies the exercise of discretion *not* to allow such reservations, *i.e.*, to acquire ownership rights in minerals.

[7] Petitioners' citation (Pet. 11) to *United States* v. *Burnison*, 339 U.S. 87 (1950), is inapposite. There, the Court upheld the constitutionality of a California probate law prohibiting residents from making testamentary gifts to entities other than ones specified by statute, which did not include the United States. The Court held that the statute was not unconstitutionally discriminatory because it acted "upon the power of its domiciliary to give and not on the United States' power to receive." *Id.* at 91. *Burnison* did not involve a choice-of-law determination or the retroactive application

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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of a law to a completed transaction, nor was there any suggestion that the law interfered with a federal program.