

MR. RAINVILLE

ROBOTYPE TIDELANDS

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United States Senate

COMMITTEE ON
RULES AND ADMINISTRATION

March .., 1952

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Dear ...:

In response to your communication, you may be interested in the observations I made on the Senate floor on March 10 with respect to tide-lands proposal. I am grateful for your message.

Sincerely,

Everett McKinley Dirksen

Enclosure

WASHINGTON, MONDAY, MARCH 10, 1952

THE MOON CREATES AN ISSUE, OR WHO OWNS THE TIDELANDS AND THEIR RESOURCES?

Mr. DIRKSEN. Mr. President, perhaps it is the moon that raised the issue before the Senate.

Its gravitational pull on the earth accounts for the tides. Shorelands are submerged when the moon pulls the waters up and are laid bare when the pull ceases and the waters ebb. It is these land areas surrounding our country—the tidelands—and their resources, which are in issue. In addition, there is the well fortified opinion that the lands under the navigable lakes and water courses might also be involved.

Their ownership is important. These land areas are cluttered with oil wells, industries, facilities, improvements placed on them because they yield oil, minerals, materials, and many conceivably contain important resources not yet discovered.

Who owns and controls these areas, at least out to that elusive line known as the 3-mile limit?

There seems to have been an almost unanimous belief, fortified by court decisions and expert legal opinion, and running back to the time when our country was founded, that the States owned these areas. Was that a legal delusion, or a fact?

In at least one case four members of the Supreme Court thought it was a delusion. When Federal officials raised the issue in the case brought against California in 1947, the Court held that the United States had paramount rights in and full dominion over the lands, minerals, and other things underlying the Pacific within the 3-mile limit. The decision of the Court in the cases involving Louisiana and Texas had about the same effect.

Here then is proof that the ceaseless pull of the moon and the never-ending ebb and flow of the tides may be immutable, but the beliefs and decisions of men are not.

While the Court decisions involved only coastal States, many well-informed persons including a substantial number of attorneys general from the various States, believe that the decision casts some doubt on the title of the inland States to the land and resources beneath the navigable rivers and lakes. If so, it would involve title to an area of some 106,000 square miles, which is four times as large as the whole tidelands area which lies within the 3-mile belt around the Nation.

Of course we know that neither the moon nor the ancient bootlegger who in other days found sanctuary beyond the 3-mile limit raised this issue. It was raised by oil. The fields already being worked and the new fields discovered in

the last few years are estimated to contain hundreds of millions of barrels. Oil is black gold. Oil is the stuff of peace and war. Oil is wealth. Oil and other resources raise the issue. If there were no oil in the tidelands, there would today be no bills before the Senate dealing with this issue. . . .

I do not deem it very important whether former Secretary Ickes or any other person changed his mind within the space of six short months as to whether the States or the Federal Government owns these areas.

The important questions are these: Should the disposition of the revenues which might be derived from these tideland areas obscure the real issue? What is the real issue? Does Congress have power to deal with it?

On the first of these questions, it should be observed that bills are now before us to validate the claim of the Federal Government to these areas and to earmark some part of the revenues for education. I am not insensible of the fact that that proposal has great appeal. They start with an assumption. In the March issue of Harper's the Senator from Alabama [Mr. HILL] puts it very naively. He says:

I do not believe the American people want the Congress to overrule the Supreme Court and give away their \$50,000,000,000.

That statement completely begs the question. If, in fact, the Federal Government has no valid claim to these areas, does he contend that Uncle Sam should still play Robin Hood and despoil the States of their rights, because the enrichment, no matter how wrong or unjust, will be devoted to a noble and laudable purpose? If this is the philosophy of the new day, America is in a bad way, indeed. . . .

Do these land areas belong to the States or to the Federal Government? Four men on the Court joined in the decision which asserted the power and dominion of the Federal Government over the ownership of areas within the 3-mile limit. Three Justices dissented.

But the dissenters are in good and substantial company. Since 1948, all the Governors, virtually all of the attorneys general of the States, and a substantial number of individuals, legal experts, and organizations have endorsed legislation by Congress to quitclaim ownership of these lands to the States. A host of Court decisions asserting the rights of the States in and to these lands goes back for 90 years or more. A number of legislatures, including New York, Massachusetts, Virginia, have memorialized Congress to enact legislation to secure the title in these lands. Not until 1937

did Federal officials challenge the rights of the States to these land areas, and the challenge sprang from applications for the issuance of Federal oil leases by persons who insisted that the Federal Government owned these land areas. Not only the record but the equities in this controversy are in my judgment on the side of the States. To despoil them of that right and to obscure the issue by coupling it with a laudable purpose such as the allocation of all or a part of the revenues to the States for educational purposes would be unjustifiable.

Whether Congress has authority to deal with this problem is abundantly clear from the decision of the Supreme Court and also from the Constitution, because section 3 of article IV clearly empowers Congress to make all needful rules and regulations respecting the Territory or other property belonging to the United States. Under this authority, the Congress should act to secure to the States the rights which they have uninterruptedly enjoyed so long.

The State of Illinois is not without an interest in this matter. Underlying the inland waters are nearly 300,000 acres, together with nearly 1,000,000 acres under Lake Michigan. In 1892 in the case of the Illinois Central Railroad Co. against The State of Illinois, the Supreme Court of the United States held that the State exercises dominion, sovereignty, and ownership over the submerged lands of the Great Lakes by the same doctrine by which other States hold dominion, sovereignty, and ownership over tidewater lands. I feel certain that the people of Illinois would not want me to alien away those rights nor to permit a decision of the Supreme Court to stand under which those rights, would be usurped by the Federal Government.

There remains one question, and that is whether Congress should reverse a doctrine laid down by the Supreme Court can I think best be answered by one observation from history. It is fortunate that Lincoln did not accept the doctrine laid down by that court in the Dred Scott case many decades ago. I wonder where we would have been if he had done so.

So, Mr. President, notwithstanding all the constitutional and legal prolixities which have been uttered, and which somehow surround the issue before us, the equities seem abundantly clear to me. I intend fully to support the bill which had been introduced by the distinguished Senator from Florida [Mr. HOLLAND], Senate bill 904, because I think it not only represents the thinking of the people of my State, but reveals my own conviction in the matter. I think it would be a resolution on the side of right in this issue.

MR. RAINVILLE

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United States Senate

COMMITTEE ON
THE DISTRICT OF COLUMBIA

April .., 1952

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Dear ...:

I appreciate the observations in your communication with respect to the action taken by the Senate on the so-called tidelands issue.

For nearly one hundred years federal courts and governmental agencies alike have uniformly recognized the rights of the states to the land and resources beneath the navigable waters within their borders. This would apply to both inland or coastal waters.

Thus the assertion of a new viewpoint by the present Supreme Court in which it took the position that the Federal Government had paramount power and dominion over these resources flies in the face of an unbroken line of decisions, and, in my judgment, does not mean that the decision of the present court is right.

To this one might add the observation that nothing in the decision of the court would preclude Congress from dealing with this problem.

It appears to me that the basic issue involved in this matter is the question of who owns these resources and perhaps who should properly own and exploit them, and the answer to that in my judgment is that they are the proper property of the states. If this conclusion is sound, then obviously Congress would have no right to appropriate the revenues in these resources and very notably oil, and dispose them, even for so laudible a purpose as education.

I want to make it clear that I have full respect for the court but I do not agree with it because in reality it amounts to the nationalization of a basic resource which for more than a century has been deemed to be the property of the states.

Sincerely,

Everett McKinley Dirksen

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United States Senate

COMMITTEE ON
RULES AND ADMINISTRATION

June .., 1952

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Dear ...:

I appreciate your note concerning the possible presidential veto of the tidelands bill. I can assure you that the veto message will have careful consideration.

Sincerely,

Everett McKinley Dirksen

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TIDELANDS (6/16)

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June .., 1952

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Dear ...:

The President's veto message on the tidelands proposal was sent to the Senate and you may be assured this will receive very good attention when action is taken on the Senate floor.

With every good wish,

Everett McKinley Dirksen