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IN THE SUPREME COURT OF FLORIDA

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CASE NOS. 65,755
65,696

THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT FUND, and COASTAL PETROLEUM COMPANY,

Petitioners,

vs.

AMERICAN CYANAMID COMPANY, and ESTECH, INC.,

Respondents.

On Discretionary Review from the Second District Court of Appeal

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Julian Clarkson
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Note: The symbol "A" in this brief refers to the Trustees' appendix.

ANSWER BRIEF OF RESPONDENTS[1]

Introduction

Public officers are presumed to do their duty. The Court will, therefore, assume that the then trustees, before executing the deed to plaintiff's predecessor in title, made the findings necessary to make their acts legal.

The Supreme Court, almost a century ago, held that "common honesty is quite as respectable on the part of the State as in an individual, and hence the state will be honest and not repudiate." Cheney v. Jones, 14 Fla. 587 (610-611).

Applying this principle, the Court holds that the State must be honest with the plaintiff and not repudiate its solemn deed.

> If, perchance, the trustees have executed conveyances they should not have executed and divested the State of assets which the public interest now requires the State to own, the State has an adequate remedy. It may exercise the power of eminent domain and re-acquire the assets improvidently sold, thus protecting the integrity of the State and making whole the citizens who would otherwise be defrauded. . . .Askew v. Taylor, 299 So.2d 72, 74 (Fla. 1st DCA 1974)(Rawls, J., quoting from trial court opinion).

* * *

These consolidated cases represent the latest appellate chapter in the continuing efforts of Coastal and the Trustees to

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[1]This answer brief is filed in behalf of both respondents, American Cyanamid Company and Estech, Inc., and responds to the arguments presented by both petitioners, Coastal Petroleum Company (Coastal) and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Trustees).

find support for their multi-million dollar claims against various companies engaged in phosphate mining in central Florida.[2]

Although the Trustees' brief professes concern for the potential impact of the decision below on the public trust doctrine, it is significant that the trial court expressly limited its judgment in a manner not mentioned by the Trustees. The Estech judgment recited:

> This final judgment does not extinguish any rights of the public to use the waters of the Peace River or any other waterbody on the lands, if any exist, for boating, fishing, swimming, or other public purposes, nor does it establish any right in Estech. . .to prevent or interfere with any such public use. It is not necessary in this case to now decide how the deeds and other past conduct of the State affected public use or other governmental rights in any waterbody on the lands because Estech has excluded any such rights from the claims it has sued to remove, and because the State has not alleged that Estech has invaded such rights and has not sought affirmative relief from this Court (whose jurisdiction it denies) to declare or enforce such rights.[3]

Thus, these cases involve proprietary rights to minerals rather than governmental rights arising from the public

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[2]In addition to the reported decisions now on review, see also Board of Trustees of the Internal Improvement Trust Fund v. Mobil Oil Corporation, ___ So.2d ___, 9 F.L.W. 1503 (Fla. 2d DCA July 13, 1984); Mobil Oil Corporation v. Coastal Petroleum Company, 671 F.2d 419 (11th Cir.), cert. denied, 459 U.S. 970 (1982); and Coastal Petroleum Company v. U.S.S. Agri-Chemicals, 695 F.2d 1314 (11th Cir. 1983).

[3](A 34-35) (emphasis added). The Cyanamid judgment contains the same limiting language but refers to the Alafia River. (A 24-25).

trust doctrine.[4] It is their claims for money damages, and not any concern for public rights to use the Peace or Alafia Rivers, that motivate Coastal and the Trustees to continue their assault on the quiet title judgments entered below.[5]

The arguments now being made in this Court by the present Trustees represent a clear shifting of positions from those historically asserted by their predecessors. For example, in Burns v. Coastal Petroleum Company, 194 So.2d 71 (Fla. 1st DCA 1966), cert. denied, 201 So.2d 549 (Fla. 1967), cert. denied sub nom Coastal Petroleum Co. v. Kirk, 389 U.S. 913 (1967), the Trustees admitted that the portion of the Peace River they now claim to own was not considered sovereignty land.[6] And in Askew v.

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[4]For a comprehensive discussion of the difference between governmental and proprietary rights in this context, see Rosen, Public and Private Ownership Rights in Lands Under Navigable Waters: The Governmental/Proprietary Distinction, 34 U.Fla.L.Rev. 561 (1982).

[5]"That game [between the Trustees and Cyanamid] obviously is the several conversion actions brought by the Trustees and Coastal Petroleum Company against ACC and six other phosphate mining companies, now pending in the United States District Court for the Northern District of Florida. The Trustees there seek not governmental control of streams, but only money damages for the alleged conversion of phosphate rock from land in Polk County embraced in conveyances without reservations long ago executed by them." American Cyanamid Company v. State of Florida, 2 Fla.Supp. 2d 67, 82 (Fla. 10th Cir. Ct. 1981), aff'd, 421 So.2d 73 (Fla. 2d DCA 1982).

[6]"Where it is not meandered, we do not consider it sovereignty land because the waters were not separated from the uplands." Testimony of A. Rees Williams, chief cadastral surveyor of the Trustees of the Internal Improvement Fund. Based on the Trustees' contentions, the First District Court of Appeal found as follows: ". . .Peace River north of Township 38/39 is not meandered and does not belong to the State. That is, Peace River for a distance of 40 miles south of Lake Hancock is in private ownership." 194 So.2d at 74.

Sonson, 409 So.2d 7 (Fla. 1981), counsel for the Trustees candidly admitted to this Court that the Marketable Record Title Act would bar the State from asserting a claim such as the present one if there had been "an effort on the part of the State to convey those lands," even if void.[7] By their initial brief in these cases, the present Trustees seek to repudiate both prior positions.[8]

Although the Trustees characterize the current controversy as a contemporary issue, research of Florida jurisprudence reveals that the State pursued litigation against phosphate companies operating on the Peace River even before the turn of the century. In 1891, the State of Florida brought suit in DeSoto County Circuit Court to enjoin Charlotte Harbor Phosphate Company from removing phosphate rock from the bed of the Peace River below Arcadia, claiming that the river was a navigable stream owned by the State. The company removed the case to federal court, and the State's motion to remand was denied. After hearing evidence, U.S. District Judge James W. Locke ruled that the Peace River near Arcadia was not navigable and dismissed the complaint.

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[7]See discussion at pp. 38-39, infra.

[8]Unlike the Trustees, Coastal has been remarkably consistent in its litigation theory throughout all of these cases. Coastal argues that its rights under a mineral lease granted by the Trustees during the 1940s is superior to the rights of the various phosphate companies arising from 19th century deeds from the Trustees conveying the entire interest in the same lands, including minerals.

On appeal to the Fifth Circuit Court of Appeals, the State argued that the case was improperly removed. The Court of Appeals agreed without reaching the merits of the navigability issue and reversed Judge Locke's decree with instructions to remand the case to state court. State of Florida v. Charlotte Harbor Phosphate Co., 74 F. 578 (5th Cir. 1896). After remand, there was no further reported activity in the case.

The Charlotte Harbor Phosphate Co. case, like the present one, involved non-meandered portions of the Peace River. The point to be made at the outset of this answer brief is that the State has been on notice since before the turn of the century that phosphate producers have been mining rock from the beds of non-meandered watercourses universally presumed to be in the private domain. Under these circumstances, Odom v. Deltona Corporation[9] precludes the Trustees from their latter-day effort to impeach their prior deeds.

It should finally be noted that four different panels of the Second District Court of Appeal, called upon to review the precise title issues presented in this proceeding over a two-year period, have consistently and unanimously rejected the arguments of Coastal or the Trustees or both. One of those panels decided the cases now on review. The other decisions were in the following cases: Board of Trustees of Internal Improvement Trust Fund of State of Florida v. American Cyanamid Co., 421 So.2d 73 (Fla.

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[9]341 So.2d 977 (Fla. 1976).

2d DCA 1982);[10] Coastal Petroleum Co. v. U. S. Steel Corp. and Coastal Petroleum Co. v. W. R. Grace & Co, 443 So.2d 985 (Fla. 2d DCA 1983); and Board of Trustees of the Internal Improvement Trust Fund v. Mobil Oil Corporation, ___ So.2d ___, 9 F.L.W. 1503 (Fla. 2d DCA July 13, 1984). In addition to the foregoing appellate decisions, four other quiet title judgments resolving these same title issues against Coastal or the Trustees or both have become final without appellate review being sought. Mobil Oil Corp. v. Coastal Petroleum Co., Case No. GCG-81-2198 (Fla. 10th Cir. Ct. May 26, 1982), app. dismissed (on Coastal's notice of voluntary dismissal), 419 So.2d 1206 (Fla. 2d DCA 1982); Mobil Oil Corp. v. Coastal Petroleum Co. and the State of Florida, Case No. GCG-82-3250 (Fla. 10th Cir. Ct. May 24, 1983); International Minerals & Chemical Corp. v. Coastal Petroleum Co., Case No. GCG-81-2480 (Fla. 10th Cir. Ct. April 7, 1983); International Minerals & Chemical Corp. v. Coastal Petroleum Co., Case No. GCG-83-1002 (Fla. 10th Cir. Ct. June 30, 1983).

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[10]The trial court decision affirmed in the prior Cyanamid case is reported at 2 Fla.Supp. 2d 67.

STATEMENT OF THE FACTS

The trial court determined that respondents have good title to the lands in question based upon chains of title originating with patents from the United States or deeds from the State of Florida conveying the lands into private ownership.[11] The origin of title is crucial to the result reached below and requires some historical background that is not discussed in the briefs of either petitioner. For that reason, respondents present this supplemental statement.

In 1850 Congress enacted the Swamp Lands Act,[12] granting to the various states of the Union "those swamp and overflowed lands, made unfit thereby for cultivation", which included lands covered by nonnavigable waters.

Promptly after passage of the Swamp Lands Act, the Florida General Assembly enacted Chapter 332,[13] which authorized and directed the Governor of Florida to establish an administrative process by which swamp and overflowed lands were to be identified, secured and classified. The lands so classified were to be listed with the State Register of Public Lands and thereupon made subject to sale in accordance with previously enacted legislation.

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[11]Most of the lands involved in this case were conveyed into private ownership as swamp and overflowed lands.

[12]9 U.S.Stat. 519, Ch. 84 (Sept. 28, 1850), now codified at 43 U.S.C. §§981-84.

[13]Jan. 24, 1851.

The Swamp Lands Act directed the Secretary of the Interior to transmit lists and plats of the swamp and overflowed lands to the governor of each state and, at the request of the governor, to cause a federal patent containing a legal description of these lands to be issued in favor of the state.[14]

In 1855, the Florida General Assembly enacted Chapter 610, vesting the power of sale over swamp and overflowed lands in the Trustees of the Internal Improvement Fund.

The official government surveys of the lands in question did not show any navigable waterbodies and did not meander any of the streams located thereon.

All of the lands were conveyed to respondents' predecessors through federal patents or through deeds issued by the State during the late 1800s without recorded reservation of any ownership interest or public rights.

The sequence of events establishing priorities among the parties to these actions was summarily described by the district court. In 1857 federal patents for the lands were issued to the State of Florida under the Swamp Lands Act (A 38). In 1883 the Trustees deeded the lands as swamp and overflowed lands to respondents' predecessors in title (A 37). In 1946 the Trustees entered into a lease with Coastal, which Coastal asserts as the basis for its claim to a mineral interest in the lands (A

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[14]From both a state and a federal perspective, the governor's specific request on behalf of the state and the issuance of the patent by the federal government identified lands that were classed as swamp and overflowed lands.

38). In 1977 Coastal filed several federal suits in the Northern District of Florida seeking to recover damages for the alleged conversion of phosphate from these lands (A 38). In 1982 and 1983 respondents filed their quiet title suits in Polk County Circuit Court (A 39).

The final judgments quieting title in respondents' favor against the claims of the State and of Coastal do not extinguish rights of the public to use the waters of the Peace or Alafia Rivers for boating, fishing, swimming or other public purpose; nor do they interfere in any way with the State's continuing police power over the land.

ARGUMENT

I. THE LANDS INCLUDED IN THE JUDGMENT BELOW WERE DEEDED INTO PRIVATE OWNERSHIP BY PUBLIC OFFICIALS WHO MADE CONTEMPORANEOUS DETERMINATIONS THAT NO SOVEREIGNTY LANDS WERE BEING CONVEYED.

Respondents choose to present their argument under the issue as it was argued and decided in the district court. They do so because the question for which the Trustees asked certification is a misnomer.[15] There are no sovereignty lands involved in this case under the holding of the district court, which said that

> this state's unconditional conveyance of land to private individuals without reservation of public rights is a contemporaneous finding that the land is not sovereignty land. [Emphasis added]

Throughout their arguments, Coastal and the Trustees assume that an issue of sovereignty ownership is presented by their defenses because they are prepared to offer present-day evidence that the watercourses on or near respondents' lands were navigable in 1845. This misguided approach has been long fore-

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[15] In a separate "amicus" brief filed independently of the other Trustees in the Mobil case, supra note 2, the Governor and the Attorney General excoriated the district court of appeal for not having written an opinion in an earlier case involving Cyanamid so that the Trustees could seek discretionary review in this Court. Having made their point, they rejoined the Board of Trustees in asking certification of their appellate points against Cyanamid, Estech and Mobil, respectively. This bit of background perhaps best explains the district court's perfunctory certification of the questions exactly as phrased by the Trustees.

closed as a matter of law and is not aided by the cases cited by petitioners.

As detailed in the statement of facts contained in this brief, the State of Florida and the United States long ago determined that the lands were not sovereignty lands but were lands of a character and class that could lawfully be conveyed into private ownership. These lands have been classified as non-sovereign by acts of duly authorized state and federal officials based on an approved governmental survey[16] of the lands. The classification and determinations made by duly authorized government officials are binding and conclusive as a matter of law.[17]

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[16]As will be discussed later herein, only one of the cases relied on in the Trustees' brief (Br. 12-22) involved an attempt to impeach the showing made by the official government survey and the attempt was unsuccessful. In Broward v. Mabry, involving Lake Jackson, the riparian owner failed in an effort to refute the navigability of a meandered waterbody.

The Trustees' statement that the Gerbing case involved a nonmeandered river (Br. 29) is wrong. The Court's opinion refers to the Amelia River, an admittedly navigable river, as having a defined channel and does not even discuss meandering.

[17]The Trustees' suggestion (Br. 28) that the district court's decision under Point I is founded solely on "decisions by the government surveyors" is incorrect. The precise statement by the court was as follows: "The contemporaneous findings made by the Trustees when they executed their conveyances and the decisions by the government surveyors not to meander any of these watercourses are not now open to question." (Emphasized language was omitted from Trustees' brief.) Thus, the present Trustees, 125 years after the facts, seek to second-guess not only the government surveyors but also Governor Madison S. Perry, who requested federal patents covering these swamp and overflow lands, and Governor William D. Bloxham, who signed deeds conveying the lands into private ownership.

The trial court properly recognized that the Trustees' assertion of navigability now is legally irrelevant. In considering the Trustees' argument that the court must consider not what the government surveyors had done but what they should have done, the court quoted from Odom v. Deltona Corp., 341 So.2d 977, 987 (Fla. 1976):

> This Court is in a poor posture to evaluate the work of those surveyors of many decades past. It can only be accepted that they did their job as instructed and recorded what they found then, which may or may not be what appears now. Fresh water lakes and ponds do change rather significantly because of both natural and artificial alterations in the areas involved. It is to be observed that governmental conveyances were made in reliance on them and the grantees of such conveyances had the right to assume the U.S. government and the Trustees were acting lawfully.

The Trustees argue (Br. 25) that Odom does not deal with navigable waters and consequently does not support the decision in respondents' favor. Their argument is demonstrably incorrect for two reasons. First, this Court expressly applied its holding to navigable waters, concluding that

> the claims of the Trustees to beds underlying navigable waters previously conveyed are extinguished by the [Marketable Record Title] Act.

341 So.2d at 989 (emphasis added). Second, had the Court been affirming the trial court's decision in Odom on the basis that the waters involved there were nonnavigable, it would have been unnecessary to address the issues of legal estoppel, equitable estoppel and Marketable Record Title Act (MRTA). A determination

of nonnavigability would have ended the case by eliminating any claim of sovereignty ownership.[18]

This Court could not have been more explicit in stating that its Odom holding was addressing the problem of title to navigable water bottoms. The majority opinion noted at the beginning:

> The complex nature of the whole problem of navigable waters has created much doubt and controversy in attempting to determine what is or is not navigable water and sovereign land.

341 So.2d at 987. Thereafter, the concluding portion of the opinion stated:

> It should be reiterated that, as stated in Sawyer, supra, ancient conveyances of sovereign lands in existence for more than thirty years, when the State has made no effort of record to reclaim same, clearly vests marketable title in the grantees, their successors or assigns and the land may be recovered only by direct purchase or through eminent domain proceedings.

341 So.2d at 989-90 (emphasis added).

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[18]The dissenting justices in Odom recognized that the effect of the majority opinion was to apply MRTA to navigable waters. Over the Trustees' continuing protestations, the Third and Fifth District Courts of Appeal have subsequently applied MRTA to navigable waterbodies. See State Board of Trustees of the Internal Improvement Trust Fund v. Laney, 399 So.2d 408 (Fla. 3d DCA 1981); State Department of Natural Resources v. Contemporary Land Sales, Inc., 400 So.2d 488 (Fla. 5th DCA 1981); Board of Trustees of the Internal Improvement Trust Fund v. Paradise Fruit Company, Inc., 414 So.2d 10 (Fla. 5th DCA 1982), review denied, 432 So.2d 37 (Fla. 1983). The Second District has now joined the other district courts. The federal courts have also perceived Odom as holding that the MRTA applies to lands under navigable waters. See Starnes v. Marcon Investment Group, 571 F.2d 1369 (5th Cir. 1978).

In the present case, the trial court also cited Odom as support for the judgment in respondents' favor as to the conclusive presumption established by Section 197.228(2), Florida Statutes (1981), which provides:

> Navigable waters in this state shall not extend to any permanent or transient waters in the form of so-called lakes, ponds, swamps or overflowed lands, lying over and upon areas which have heretofore been conveyed to private individuals by the United States or by the State without reservation of public rights in and to said waters. [Emphasis added.]

The trial court judgment in Odom, republished by this Court in its opinion, noted that this statute[19] took pains to recognize the effectiveness of governmental conveyances purporting to transfer swamp and overflowed lands "unless the instrument makes a reservation of them." 341 So.2d at 982. There is no such reservation in any of the deeds in this case. Odom further construed Section 197.228(2) as establishing "certain conclusive presumptions and limitations of claims":

> There is a recognition in Section 197.228(2) that an unconditional conveyance by the state or national government of a described area to private ownership without a specific reservation is in itself a contemporaneous finding that such area is not sovereignty property and that such finding should not be questioned. The actions of duly constituted authority are recognized as entitled to be regarded as based on a proper exercise of powers conferred and not a usurpation or other illegal conduct.

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[19]The Trustees' argument (Br. 25) that the statute quoted above is limited in its application to lakes and ponds is incorrect. No Florida decision so limits the statute, which expressly covers "swamps or overflowed lands."

341 So.2d at 984.

The Trustees' criticism (Br. 28) of the conclusive presumption established by section 197.228(2) should be addressed to the legislature and not to the courts. Eight regular sessions of the legislature have convened since this Court's Odom decision, and the legislature has not seen fit to amend the statute in light of the construction placed upon it by this Court.

The law of Florida, embodied in Section 197.228(2) and in cases decided by the Florida appellate courts, effectively affirms and incorporates the corresponding federal doctrine that in the administration of the public land system factual determinations of the federal land department are final, including factual decisions as to the physical character of lands being "swamp and overflow lands." Odom v. Deltona Corp.; Pembroke v. Peninsular Terminal Co., 146 So. 249, 258-59 (Fla. 1933); see United States v. Chicago, Milwaukee & St. Paul Railway Company, 218 U.S. 233 (1910); McCormick v. Hayes, 159 U.S. 332 (1895); Heath v. Wallace, 138 U.S. 573 (1891); French v. Fyan, 93 U.S. 169 (1876); see also Johnson v. Drew, 171 U.S. 93 (1898).

Contemporaneous state and federal findings, concurred in by both sovereigns, go beyond the presumption of nonnavigability based on nonmeandering by the surveyor, and support application of the rule of law that the concurrent judgment of the State and the Secretary of the Interior as to the physical character of land is final and not subject to relitigation in the courts. In French v. Fyan, supra, the Supreme Court of the United States held:

> [I]t would be a departure from sound principle, and contrary to well considered judgments in this court and in others of high authority, to permit the validity of the patent to the State to be subjected to the test of the verdict of a jury on such oral testimony as might be brought before it. It would be substituting the jury, or the court sitting as a jury, for the tribunal which Congress had provided to determine the question, and would be making a patent of the United States a cheap and unstable reliance as a title for lands which it purported to convey.

93 U.S. at 169-73.

McCormick v. Hayes, supra, was an appeal from a state court. Following a survey of a section of land, the Secretary of the Interior had classified only a portion of the section as swamp and overflowed land at the request of the state governor, omitting the land in question from the classification. The Supreme Court held that the state court erred in admitting parol evidence in an attempt to overturn the Secretary's factual determination as to the character of the land. McCormick established that once the Secretary of the Interior, concurrently with the governor of the state, determined the character of the land, this finding was final and binding on all courts, including the state court:

> Upon the authority of former adjudications, as well as upon principle, it must be held that parol evidence is inadmissible to show, in opposition to the concurrent action of Federal and state officers, having authority in the premises, that the lands were in fact on the date of the Act of 1850, swamp and overflowed grounds. . . .

159 U.S. at 348. See also Heath v. Wallace, 138 U.S. 573, 585 (1891) ("[T]he decision of the Land Department on the question of

the actual physical character of certain lands is not subject to review by the courts").

This Court has adopted the same view in Pembroke v. Peninsular Terminal Co., supra. In that case a landowner's title was challenged on the ground that a Trustees' conveyance of submerged lands into private ownership "erroneously or falsely recited that the lands conveyed were lands 'upon which the water is not more than three feet deep at high tide'" and that the Trustees were without authority to deed the lands. Rejecting the challenge, the Court agreed with the trial court that "the title and ownership of the land in question should rest upon a grant, and not upon an evidentiary fact." 146 So. at 257.

The Trustees seek to avoid the basis for the lower court's holding in respondents' favor, as reviewed above, by arguing the line of this Court's decisions holding that prior to 1969 the Trustees were without authority to convey sovereignty lands. Aside from the point made above, that the lands here involved are swamp and overflowed lands, school lands or internal improvement lands as a matter of law, the Trustees' authorities all suffer from a common deficiency rendering them inapplicable in the present context: in none of them did the State seek to impeach the showing made by the official government survey as to navigability.

The Trustees' "notice of navigability" (Br. 20) argument has never been accepted in a case such as the present one in

which the government survey reflects no navigable waterbody.[20] In Odom the Court recognized that a "notice" doctrine applies to obviously navigable waterbodies, such as Lake Okeechobee, located on unsurveyed land at the time a deed is issued; but the Court further recognized that it would be "absurd" to apply this doctrine to small, nonmeandered lakes and ponds on surveyed land.

The trial court's judgment in the Estech case correctly read Martin v. Busch as follows:

> The Martin court stated, at 285:
>
> > Where sales and conveyances of unsurveyed swamp and overflowed lands are made by the trustees of the internal improvement fund, it is the duty of the state to survey the lands intended to be conveyed so that the location and boundaries thereof may be identified and established.
>
> By contrast, once an official government survey of land establishes no navigable watercourses on the land, and the land is subsequently acquired by the State and then conveyed by the trustees as swamp and overflow land without limitation of the full acreage shown by the survey, and with no reservation of state-owned sovereignty land, the land so conveyed is not subject to any "notice of navigability."

(A 30).

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[20]The Trustees trace their "notice of navigability" argument to Martin v. Busch, 93 Fla. 535, 112 So. 274 (1927), although the opinion in that case does not use the term, but says instead: "The grantee takes with notice that the conveyance of swamp and overflowed lands does not in law cover any sovereignty lands," i.e., lands within the borders of "a [surveyed] navigable lake." 112 So. at 286.

Under this point it should finally be noted that the Trustees' lengthy review of the nature and purpose of the "public trust doctrine" (Br. 12-22) is quite immaterial in view of the adjudication below. The lower court's decision avoids any questions that might arise concerning the public trust doctrine and the State's continuing police power over the land. The lower court included the following admonition in the Estech case:

> This final judgment does not extinguish any rights of the public to use the waters of the Peace River or any other waterbody on the lands, if any exist, for boating, fishing, swimming, or other public purposes, nor does it establish any right in Estech. . .to prevent or interfere with any such public use. It is not necessary in this case to now decide how the deeds and other past conduct of the State affected public use or other governmental rights in any waterbody on the lands because Estech has excluded any such rights from the claims it has sued to remove, and because the State has not alleged that Estech has invaded such rights and has not sought affirmative relief from this Court (whose jurisdiction it denies) to declare or enforce such rights.

Even if the watercourses involved here should be found navigable today, the foregoing adjudication amply serves the rule followed in Florida since the 1800s that the public trust is satisfied by a servitude impressed against each navigable watercourse, without regard to title to the underlying bottom. State v. Black River Phosphate Co., 13 So. 640 (Fla. 1893); see also Gies v. Fischer, 146 So.2d 361 (Fla. 1962) ("exercise of

retained power under the trust doctrine").[21] So far as the record in this case discloses, there has been no threat to the integrity of the waters of the Peace or Alafia rivers; the entire title dispute is over who has a right to the phosphate underneath the ground.

In conclusion under this point, the overriding reason for upholding the judgment below is that the record irrefutably shows that both the United States and the State of Florida have deeded the lands into private ownership. These governmental conveyances stood unchallenged for almost 125 years after the official surveys. The judgment quieting respondents' titles in no way impairs the exercise of any legitimate governmental power over the lands. The Trustees have not asserted any claims alleging trespass or seeking restoration of mined lands, but have limited their claim to one for money damages for alleged conversion of phosphate rock -- a claim that in no way involves the public trust doctrine.

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[21]"[P]rivate ownership of a bed of a navigable waterbody is not in itself inconsistent with public use of overlying waters. . . .

"[P]ublic rights to use of the water can be protected without necessarily invalidating those privately held deeds which may have already been granted to the bottomland. This result can be explained on the theory that the trust doctrine applies separately to the waters of a navigable waterbody, as well as to the beds when they are state owned. The waters and the rights to them are thus held in trust for the public, regardless of bed ownership." Maloney, Plager & Baldwin, Water Law and Administration, 1968, Ch. 12 at 402, citing Gies v. Fischer. The Trustees acknowledge the "credibility" of this treatise (Br. 30).

II. THE LOWER COURT CORRECTLY HELD THAT THE TRUSTEES ARE ESTOPPED BY THEIR DEEDS TO CHALLENGE RESPONDENTS' TITLES.

An alternative ground[22] relied upon by the trial court in upholding respondents' titles against the claims of Coastal and the Trustees was the doctrine of legal estoppel, or estoppel by deed. The Trustees challenge that ruling by arguing that none of the cases cited by the trial court[23] "applied legal estoppel to bar a Trustees' claim to sovereignty submerged lands which the Trustees were not empowered to alienate" (Br. 35) (emphasis in original). Analysis of the Lobean decision proves the Trustees wrong.

In Lobean the State had erroneously conveyed submerged lands lying in Gasparilla Sound to Lobean by a Murphy Act deed in 1946. Because the lands were sovereign, they were not subject to taxation and could not be conveyed under the Murphy Act. Subsequently, in 1956, the State over Lobean's objection sold the same lands under provisions of Section 253.12, Florida Statutes (1955). Upon suit against the State by Lobean, the trial court ruled in favor of the State because of the void assessment of

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[22]Should this Court agree with the district court's holding under point I, the judgment should be affirmed without regard to the other points on appeal. Similarly, the district court's ruling under Point III furnishes an independent basis for quieting respondents' titles against the claims of Coastal and the Trustees.

[23]Odom v. Deltona Corp., 341 So.2d 977 (Fla. 1976); Trustees of Internal Improvement Fund v. Lobean, 127 So.2d 98 (Fla. 1961); Daniell v. Sherrill, 48 So.2d 736 (Fla. 1950).

taxes against sovereignty lands not subject to taxation. The trial court expressly rejected Lobean's estoppel argument.

On appeal, both the First District Court Appeal[24] and this Court held that legal estoppel (estoppel by deed) operated against the State even though the Murphy Act deed was void. Lobean's title was confirmed.

Contrary to the Trustees' characterization of the decision, legal estoppel was applied to the facts in Lobean even though the Trustees were without authority to convey portions of the submerged tract at the time the Murphy Act deed was given in 1946. Prior to 1951, when Chapter 26776, Laws of Florida (1951), vested the Trustees with title to all sovereignty tidal water bottoms in the State (except lands in Dade and Palm Beach counties), the only authority for Trustee conveyances of tidal bottoms was that bestowed by Chapter 7304, Laws of Florida (1917). That enactment extended to "islands, sand bars and shallow banks upon which the water is not more than three feet deep at high tide and which are separated from the shore by a channel or channels, not less than five feet deep at high tide . . . ."

Some of the land deeded by the Trustees to Lobean -- "Government Lot 1, Section 11, Township 43 South, Range 20 East" -- did not fit within the statutory classification. The opinion of the First District Court of Appeal describes the physical characteristics of the land in question:

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[24]Opinion reported at 118 So.2d 226.

> The land is separated from the nearest dry land by an established channel at least six feet deep from the date of the tax deed to the present time.

118 So.2d at 227. The import of this Court's application of legal estoppel based upon those facts is that the Trustees were held estopped by their deed conveying water bottoms, some of which had a depth of not less than six feet and consequently were not within the statutory authority of the Trustees to convey.

If the 1984 Trustees do not understand this Court's holding in Lobean, the same cannot be said for their predecessors who were parties to the Lobean case. In their supplemental brief on file in this Court, the earlier Trustees urged the Court not to "adopt the doctrine of legal estoppel against the sovereign state of Florida"[25] as applied to sovereignty lands and further asked that the Court modify its prior holding in Daniell v. Sherrill, supra, to avoid any such result. The Court's opinion rejected both requests.

Manifestly, the holding in Lobean is applicable to State conveyances of sovereignty lands just as it is to other conveyances held void for lack of title or authority.

A significant facet of legal estoppel is the doctrine of "after-acquired title," which was defined in the case of Tucker v. Cole, 148 Fla. 214, 3 So.2d 875, 877 (1941):

> As a general rule, when a person conveys land in which he has no interest at the time, but afterwards acquires a title to the same land, he will not be permitted to claim in

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[25]Page 5, Trustees' Supplemental Brief (in support of petition for a writ of certiorari).

> opposition to his deed, from the grantee, or any person claiming title from the grantee.

Because the Trustees obtained statutory authority in 1951 to convey the deeper portions of the Lobean tract,[26] the result in Lobean is fully compatible with and supported by the doctrine of after-acquired title. The same doctrine is available to bolster respondents' titles, if need there be. Thus, even if the lands were sovereignty lands when respondents' predecessors obtained their deeds, so that title did not pass, fee simple ownership vested immediately in 1969 when the Trustees acquired title "to freshwater sovereignty lands" (Br. 14).

Moreover, the doctrine of after-acquired title completely demolishes Coastal's claim that its leasehold grant in the 1940s is paramount to respondents' titles emanating from Trustees' deeds delivered in 1883. Coastal necessarily contends that the Trustees possessed statutory authority to grant mineral interests in sovereignty lands at the time of the lease to Coastal and identifies a 1941 statute as conferring that authority. What Coastal overlooks is that the Trustees had already conveyed these minerals to respondents' predecessors in title, so that the Trustees' after-acquired authority -- in 1941 or any other year -- was sufficient to perfect title in the earlier grantees. Viewed from any perspective, Coastal's claim cannot possibly be superior to those of Cyanamid and Estech.

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[26]This Court cited "§253.12, Florida Statutes 1957" (emphasis added) as the Trustees' authority to sell the Lobean tract. 127 So.2d at 103. The breadth of that authority did not exist in 1946 when Lobean received his deed.

Fifteen years after Lobean, this Court again applied legal estoppel against the Trustees in Odom v. Deltona Corp., supra. The Court stated:

> Stability of titles expressly requires that, when lawfully executed land conveyances are made by public officials to private citizens without reservation of public rights in and to the waters located thereon, a change of personnel among elected state officials should not authorize the government to take from the grantee the rights which have been conveyed previously without appropriate justification and compensation. If the state has conveyed property rights which it now needs, these can be reacquired through eminent domain; otherwise, legal estoppel is applicable and bars the trustees' claim of ownership,[15] subject to rights specifically reserved in such conveyances.

[15]Trustees of Internal Improvement Fund v. Lobean, 127 So.2d 98, 104 (Fla. 1961).

341 So.2d at 989.

When the Court's application of the doctrine of legal estoppel is considered together with its statement in Odom that nonmeandered waterbodies are rebuttably presumed nonnavigable, the result seems obvious; under the facts of Odom -- and in respondents' cases as well -- the Trustees are estopped to rebut the presumption of nonnavigability, after the government survey has stood unimpeached for so many years, and are further estopped to challenge the authority of the earlier Trustees to convey in accordance with the recitations in their deeds.[27]

[27]Respondents have not overlooked Coastal's argument (Br. 26-27) that title to some of the lands involved in these cases is based upon federal patents rather than deeds from the Trustees. That distinction is of no significance in reviewing the propriety

III. THE FLORIDA MARKETABLE RECORD TITLE ACT HAS PERFECTED RESPONDENTS' TITLES AGAINST ANY CLAIM OF THE TRUSTEES OR COASTAL.

The Marketable Record Title Act (MRTA) has been considered in not less than six other reported cases involving title to Florida realty alleged to be sovereignty lands. Sawyer v. Modrall, 286 So.2d 610 (Fla. 4th DCA 1973), cert. denied, 297 So.2d 562 (Fla. 1974); Odom v. Deltona Corp., supra; Starnes v. Marcon Investment Group, 571 F.2d 1369 (5th Cir. 1978); State Board of Trustees of the Internal Improvement Trust Fund v. Laney, 399 So.2d 408 (Fla. 3d DCA 1981); State Department of Natural Resources v. Contemporary Land Sales, Inc., 400 So.2d 488 (Fla. 5th DCA 1981); and Board of Trustees of the Internal Improvement Trust Fund v. Paradise Fruit Co., Inc., 414 So.2d 10 (Fla. 5th DCA 1982), review denied, 432 So.2d 37 (Fla. 1983). In every one of these cases, title has been confirmed in the private party claiming under the MRTA against allegations that a sovereignty interest was preserved from extinguishment.[28]

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of the decisions below. Obviously the doctrine of legal estoppel does not apply to federal patent lands, but title to those lands was quieted in respondents based upon the legal points argued under Points I and III. The same situation existed in Odom v. Deltona Corp., which also involved some federal patent lands. 341 So.2d at 979.

The reason the district court's decision does not refer to federal patent lands is that neither Coastal nor the Trustees argued that point below. See appendix to this brief, containing the statement of issues as framed by the Trustees and also containing Coastal's entire substantive argument in the district court.

[28]Four of these cases -- Odom, Laney, Contemporary Land Sales and Paradise Fruit Co. -- were adjudicated by summary judgment.

Against this array of precedent, petitioners can cite no authority to support their position; no decision, state or federal, has ever held sovereignty lands to be exempt from the operation of Florida's MRTA, nor sustained the contention that a sovereignty claim is protected against extinction under Sections 712.03 or 712.04, Florida Statutes.

The Trustees attempt to finesse this Court's clear holding in Odom by quoting isolated language from two subsequent opinions by this Court: City of Miami v. St. Joe Paper Co., 364 So.2d 439 (Fla. 1978), and Askew v. Sonson, 409 So.2d 7 (Fla. 1981). Neither opinion represents any retreat from Odom. In each case the Court declined to extend its holding to announce the effect of the 1978 MRTA amendment[29] upon sovereignty claims otherwise time-barred prior to the date of the amendment -- a ruling not required by the facts of either case, although the issue was extensively briefed by the parties and multiple amici curiae. Indeed, the latter decision, Askew v. Sonson, cited Odom without any expression of disfavor.[30]

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[29]Chapter 78-288, § 1, Laws of Fla., effective June 15, 1978, now codified as § 712.03(7), excepting "[s]tate title to lands beneath navigable waters acquired by virtue of sovereignty."

[30]As noted earlier in this brief, this Court expressly applied its holding in Odom to navigable waters: "[T]he claims of the Trustees to beds underlying navigable waters previously conveyed are extinguished by the Act." 341 So.2d at 989.

Although the present Trustees refuse to recognize that Odom applied the Act to navigable waters and sovereign lands, their predecessors officially recognized the import of the case. A resolution of the 1978 Trustees recommending amendment of MRTA to exempt sovereignty lands stated that "certain recent court deci-

In the present cases, the district court agreed with the Fifth District's holding in Paradise Fruit that the 1978 amendment to MRTA excepting sovereignty lands from the reach of the Act may not be applied retroactively. The court said:

> (W)e align ourselves with the view recently expressed by the Fifth District Court of Appeal. There our sister court held that section 712.03(7) does not apply retroactively even where the Trustees themselves wrongfully issued a deed at the "root of title" prior to the initial passage of MRTA in 1963. Board of Trustees of the Internal Improvement Trust Fund. v. Paradise Fruit Co., 414 So.2d 10 (Fla. 5th DCA 1982), petition for review denied, 432 So.2d 37 (Fla. 1983). Here, as in Paradise Fruit Co., the Trustees executed the deeds, which are the plaintiffs' "root of title." § 712.01(2), Fla.Stat. (1981). Plaintiffs' titles under the 1883 deeds were perfected under MRTA, as enacted in 1963; therefore, retroactive construction of the amendment would unconstitutionally deprive them of rights vested in 1963. Paradise Fruit Co., 414 So.2d at 11.

The legislative history behind the 1978 MRTA amendment reflects an effort by the executive branch to obtain a legislative expression of retroactive application and a refusal by the legislature to accommodate such a purpose.

The subject matter of Chapter 78-288 did not surface during the early stages of the 1978 regular session of the Florida Legislature. On May 18, 1978, the Senate considered

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sions held that the Marketable Record Title Act, Chapter 712, Florida Statutes, could operate to extinguish state title to sovereignty lands, contrary to the public trust doctrine by which these lands are held . . . ." (A 68).

Committee Substitute for Senate Bill 970 as amended on third reading. Section 1 of the bill provided as follows:

> Section 1. (1) Legislative intent.-- The Legislature recognizes that sovereignty lands beneath the navigable waters of the state have throughout history been held in trust for the benefit of the citizens. It is therefore deemed contrary to this public trust relationship to allow recording acts and statutes of limitation to operate against the state's claims to sovereignty lands, nor has it ever been the intent of the Legislature to divest the state of title to sovereignty lands by these acts.
>
> (2) Rights of the state in lands beneath navigable waters owned by virtue of its sovereignty shall not be affected or extinguished by the Marketable Record Title Act, Chapter 712, Florida Statute.

On third reading, the bill was passed, ordered engrossed and certified to the House.[31]

One week later a motion to reconsider CS for SB 970 was adopted and a committee appointed to take testimony on the bill.[32]

On May 30, three days before the scheduled adjournment of the regular session, the Senate select committee "appointed to review the area of marketable property titles" met to hear testimony.[33] One of the multiple spokesmen for the state interests supporting the bill, former Justice B.K. Roberts, responded to a committee inquiry as follows:

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[31]Journal of the Senate, May 18, 1978, p. 433.

[32]Journal of the Senate, May 25, 1978, p. 511.

[33]These proceedings are available in transcript form.

> Senator, I think you're being asked to disapprove a court's construction that was put on a 1963 law in 1977. It's the construction of the law that we think's bad--the 4-3 construction. (Tr. 31)

The question whether the bill as proposed was intended to be retroactive in operation was put by committee members time and again. One of the state's representatives, Joe Cresse, first responded to that issue by saying:

> We're asking you to amend that law and send a message to the Supreme Court that this is the law of the state of Florida today. . . . (Tr. 56)

He later supplemented his comments to add:

> We don't say it was not the intent, we say "nor is it the intent of the Legislature to divest the state of title to sovereignty lands by this chapter." You're expressing your intent right now--we're not saying nor was it the intent. Now at one time, there was some language floating around that said "nor was it the intent" and the wiser heads took out was and said is. All we can do is get this Legislature to express their intent. (Tr. 69)

The next day, on reconsideration, the Senate bill failed to pass.[34] The regular session adjourned without having enacted an MRTA amendment.

Special Session

As reflected by the Trustees' appendix (A 67-68), the Governor convened a special session of the legislature the week after adjournment to consider "legislation for the protection of the State's lands." Senate Bill 4-D, ultimately to become law as

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[34]Journal of the Senate, May 31, 1978, p. 683.

Chapter 78-288, was debated on the Senate floor on June 7.[35] As introduced, the text of the bill was a model of simplicity, providing in relevant part:

> Subsection (7) is added to section 712.03, Florida Statutes, to read:
>
> 712.03 Exceptions to marketability.-- Such marketable record title shall not affect or extinguish the following rights:
>
> (7) State title to lands beneath navigable waters acquired by virtue of its sovereignty.

On the floor three amendments were offered in sequence, each directed to the issue of legislative intent concerning prospective or retrospective effect. The first included "intent" language similar to that included in CS for SB 970, the bill which failed of passage during the regular session.[36]

The proponent of the amendment, Senator Vogt, stated his purpose in part as follows:

> So what I'm trying to do is rather than just put a pure exception in the law as far as sovereignty lands are concerned, is to send a message that we, the legislature, the representatives of the people of Florida, believe in the public trust doctrine; and we're disturbed that the court departed from

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[35]The debate is available in transcript form.

[36]"The Legislature recognizes that sovereignty lands beneath the navigable waters of the state have throughout history been held in trust for the beneit (sic) of the citizens. It is therefore deemed contrary to this public trust relationship to allow this chapter to operate against the state's claims to sovereignty lands, nor is it the intent of the Legislature to divest the state of title to sovereignty lands by this chapter."

> the public trust doctrine in the Odom versus Deltona case and that we, therefore, wish to explicitly express that public trust doctrine is alive and well in Florida and should be used to protect sovereignty lands. That's why I want to put this intent language in there. (Tr. 13)

This amendment failed on voice vote.

The second amendment added the following language to the bill:

> The provisions of s. 713.03(7), Florida Statutes, shall not operate retrospectively to any lands which are not presently beneath navigable waters and which have been specifically conveyed by the State of Florida.

During the debate on the amendment the following exchanges occurred:

> SENATOR MYERS: Senator Hair, aren't you concerned that if this amendment is defeated that there might be considered to be a statement of legislative intent by defeating the amendment that this act might apply retroactively to divest some people of title they've already acquired in fill lands or otherwise, that was originally submerged?
>
> SENATOR HAIR: We have not spoken to the issue of whether or not it's retrospective or prospective. That issue, in my opinion, has got to be determined by the courts. (Tr. 24)
>
> * * *
>
> SENATOR HAIR: The amendment implies here that it acts retroactively, and we have not spoken to that issue here and this bill and we purposely didn't do that. And we are merely making a State policy at this time as to how we feel the Record Marketable Record Title Act applies as far as State sovereignty land is concerned. . . . (Tr. 37)

On roll call the second amendment received 18 yeas and 18 nays and failed of adoption.

A third amendment, which failed by voice vote, would have added an "effective date and applicability" of July 1, 1978.

With no further amendments to be considered, the Senate passed SB 4-D by a roll call vote of 25-13.[37] The next day the House also passed the bill and it was subsequently approved by the Governor and became law.

The foregoing chronology clearly establishes that the legislature was requested to express its intent concerning the prospective or retrospective application of the MRTA amendment and declined to do so. This being so, it is next pertinent to examine prior decisions determining when a statute will be given retroactive effect.

The most cogent discussion of this topic is set forth in the majority opinion in Trustees of Tufts College v. Triple R. Ranch, Inc., 275 So.2d 521 (Fla. 1973), saying in relevant part:

> Historically, courts have indulged in the presumption that the Legislature intended a statute to have prospective effect only. The bias against retroactive legislation is deeply rooted in the Anglo-American law.[1] Coke established the maxim, "Nova constitutio furturis forman imponere debet non praeteritas." (A new state of law ought to affect the future, not the past). Blackstone wrote that it was a matter of justice that statutes should operate in futuro.[2] A statute will be construed as prospective only unless the intention of the Legislature to give it a retroactive effect is expressed in language to (sic) clear and explicit to admit of reasonable doubt.[3] (Citations in footnotes omitted.)

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[37]Journal of the Senate, June 7, 1978, p. 7. After roll call two senators changed their votes from nay to yea.

Cited in footnote 3 in support of the last sentence quoted are nine Florida appellate decisions spanning the period of time from 1887 to 1966.[38] Consequently, the Florida rule on this subject appears to be of long duration and clearly rooted in the law.

In a somewhat related context, the Second District previously rejected a request by the Trustees that retroactive application be given a statute to the detriment of a riparian owner. In Board of Trustees of the Internal Improvement Trust Fund v. Medeira Beach Nominee, Inc., 272 So.2d 209, 214 (Fla. 2d DCA 1973), the Court stated:

> Statutes are presumed to be prospectively applied unless legislative intent to the contrary clearly appears (citations omitted). Retroactive statutes may be invalid where they impair vested rights.

The Trustees' arguments (Br. 43-46) that MRTA is unconstitutional require no extended response. The constitutionality of the Act has been expressly upheld. City of Miami v. St. Joe Paper Co., supra, at 443.

The Trustees' remaining argument (Br. 42) that "the recording of the lease between the Trustees and Coastal is a valid 'title transaction' for purposes of MRTA" is likewise

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[38]Since Triple R. Ranch was decided in 1973, the Court has consistently applied its rationale: Keystone Water Co., Inc., v. Bevis, 278 So.2d 606 (Fla. 1973); Yamaha Parts Distributors Inc. v. Ehrman, 316 So.2d 557 (Fla. 1975); Foley v. Morris, 339 So.2d 215 (Fla. 1976); Fleeman v. Case, 342 So.2d 815, 817 (Fla. 1976) ("[W]e insist that a declaration of retroactive application be made expressly in the legislation under review [e.s.]."; Walker & La Berge, Inc., v. Halligan, 344 So.2d 239 (Fla. 1977); Avila South Condominium Assn., Inc., v. Kappa Corp., 347 So.2d 599 (Fla. 1977).

unsound for numerous reasons. First, the Trustees' sovereignty claim does not arise out of the lease as required by Section 712.03(4). Next, the lease refers only to the Peace and Alafia rivers and contains no description sufficient to identify the land claimed.[39] Finally, as the trial court held, the recordation of an unexecuted, printed and conformed copy of the lease as an attachment to a royalty deed from Coastal to a third party is not the recordation of a "title transaction" as contemplated by the Act. Consequently, neither Coastal nor the Trustees can derive any benefit from the recording of Coastal's lease.

Coastal argues (Br. 34-42) that recordings of its lease and a copy of the Collins decision[40] were sufficient to preserve its interest under the lease.[41] The principal deficiency of both the Collins decision and Coastal's lease which prevents them from qualifying as title transactions under the MRTA is the lack of a sufficiently definite legal description of the lands. The Collins decision contains no reference to any lands whatsoever, but merely alludes to the kind of lands purportedly covered by

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[39]In Paradise Fruit Co., supra, the Fifth District Court of Appeal held that reference to the "St. Johns River" in recorded consent decrees involving Coastal's lease from the Trustees "is too vague to describe lands sufficiently to identify its (sic) location and boundaries."

[40]118 So.2d 769 (Fla. 1st DCA 1960).

[41]Coastal did not argue this point in the district court, so it is not properly preserved for appellate review. See appendix to this brief, reproducing Coastal's entire argument on the title issues in the district court. Nonetheless, because the point is meritless, brief response is made here.

Coastal's lease. The lease itself purports to convey an exploration and production interest in lands described only as "the bottoms of and water bottoms adjacent to" certain named rivers, "together with all connecting sloughs, arms and overflow lands located in such waters." As a legal description, these phrases are too vague and indefinite as a matter of law to convey any interest in real property, even apart from the specificity requirement of section 712.01(3),[42] because the submerged lands purportedly described thereby cannot be located and identified with certainty by a competent surveyor using standard surveying techniques. Deering v. Martin, 95 Fla. 224, 116 So. 54, 63-64 (1928); Paradise Fruit Co, supra.

In Paradise Fruit Co., 414 So.2d at 11 n. 2, the Fifth District Court of Appeal specifically held that the Trustees' asserted sovereignty interest in an allegedly navigable lake was not preserved from extinguishment under the MRTA by reference to a recorded consent decree that incorporated the similar land

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[42]Coastal's contention that the 1981 legislative amendment which added the sufficiency of description requirement to the definition of title transaction "came too late" to affect this case must be rejected because (a) these quiet title suits were filed after the effective date of the 1981 amendment; (b) in any event, the legislature's enactment of a "savings clause" in conjunction with the 1981 amendment (unlike the 1978 amendment exempting sovereignty lands) clearly signifies an intention that it be given retrospective effect and eliminates any potential constitutional impediment to such retroactive application, e.g., City of Miami, supra, 364 So.2d at 443, and Triple R. Ranch, supra, 275 So.2d at 526-27; and (c) even if not expressed in the statute, a specific identification of the property is inherently essential to put others on notice of the interest purportedly conveyed by the instrument, and was required by Florida courts applying the MRTA even before the 1981 amendment. See Whaley v. Wotring, 225 So.2d 177, 180 (Fla. 1st DCA 1969).

description from Coastal's Lease 248, because "the general reference. . .to 'all the water bottom lying within the boundaries of the following lakes: St. Johns River' is too vague to describe lands sufficiently to identify its [sic] location and boundaries. . . ." That the inadequate description in Coastal's lease makes a definite identification of the leased lands impossible is perhaps best evidenced by the fact that Coastal, the Trustees, and the various phosphate companies defending conversion suits have spent millions of dollars on scientific and historical studies to resolve the navigability issue and to ascertain the alleged boundary (ordinary high water line) of one 12-mile stretch of the Peace River; yet there is still no agreement as to the location of that boundary or the extent of the leasehold insofar as it purports to include "sloughs, arms and overflow lands." Such a legal description is manifestly insufficient to put the public on notice of Coastal's alleged leasehold interest, and thus the lease -- if valid at all -- certainly does not meet the requirements of a "title transaction."

In addition to the lack of an adequate land description, the lease as recorded in Polk County in 1954 fails to qualify as a "title transaction" because it did not have a proper acknowledgment, but merely a printed form copy of an acknowledgment which was not signed or notarized. In Florida, the recording of an unacknowledged instrument involving a land transaction is ineffective and legally insufficient to create even a cloud on the title of the record owner. Lassiter v. Curtiss-Bright Co., 129 Fla. 728, 177 So. 201, 203 (1937). It

has been specifically held that "[t]itle to the property is not affected by the record" of an instrument which "was not under seal, and was not acknowledged." Leatherman v. Schwab, 98 Fla. 885, 124 So. 459, 460 (1929). Since an instrument cannot qualify as a "title transaction" unless it "affects" title, at least to the extent of creating a cloud, Marshall v. Hollywood, Inc., 224 So.2d 743, 747 (Fla. 4th DCA 1969), cert. discharged, 236 So.2d 114 (Fla. 1970), lack of a proper acknowledgment and seal on the copy of Coastal's lease as recorded in Polk County in 1954 renders the instrument ineffectual as a matter of law for any purpose under the MRTA.

In considering the Trustees' argument on this appeal that MRTA does not foreclose their claims of title to sovereignty lands, the Court should be made aware that the Trustees have taken an entirely different position in this Court in Askew v. Sonson, supra. There counsel for the Trustees candidly admitted that MRTA would bar such claims by the State if there had been a conveyance of the land in question, even if void. The point was made both in the Trustees' Motion for Rehearing[43] and at oral argument.[44] It

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[43]"Once public domain lands are conveyed by the sovereign by deed they cease to be a part of the public domain and record title would be founded in the appropriate county where they are located; and this title is of course subject to the operation of the Marketable Record Title Act." Page 3, Motion for Rehearing served August 7, 1981.

[44]"JUSTICE BOYD: [Y]ou would take back all those motels and hotels and everything around the edge of Florida that's built out on this sovereignty land that they shouldn't have gotten to at all -- and not even pay the people for it."

"MR. WEISS: Justice Boyd, if there had been an effort on the

was perhaps for this reason that Justice Overton, one of the dissenting justices in Odom v. Deltona Corp., receded from his earlier position in a separate opinion in the Sonson case:

> I agree that the act applies to lands that the state previously conveyed, even if it did so erroneously, such as swamp and overflow lands or Murphy Act Deed properties. See, e.g., Odom v. Deltona Corp., 341 So.2d 977 (Fla. 1977); Sawyer v. Modrall, 286 So.2d 610 (Fla. 4th DCA 1973). I cannot agree, however, that the legislature in any manner intended that MRTA apply to lands which the state never conveyed. . . .

409 So.2d at 16 (emphasis in original).

No reason has been given why this Court should recede from its prior holdings in the Odom and Sawyer cases. As the Court emphasized in Askew v. Sonson:

> Substantive rules governing the law of real property are peculiarly subject to the principles of stare decisis. United States v. Title Insurance and Trust Company, 265 U.S. 472, 44 S.Ct. 621, 68 L.Ed. 1110 (1924); Alta-Cliff Co. v. Spurway, 113 Fla. 633, 152 So. 731 (Fla. 1933).

409 So.2d at 15.

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part of the State to convey those lands, and there was no fraud connected with it, I would say, no, the State, like any other citizen, would be required to do equity. Now, counsel for appellee and I both agreed that there were no equitable arguments to argue before this Court."

Transcript of oral argument, November 5, 1979 (emphasis added).

CONCLUSION

The lower courts correctly applied controlling precedents in adjudicating respondents' titles to be superior to any sovereignty claim of the Trustees and to Coastal's lease.

The United States and the State of Florida made contemporaneous official determinations more than 100 years ago that the lands involved in this case were swamp and overflowed lands subject to transfer from the United States to the State of Florida. After the State applied for and received federal patents covering these lands, they were lawfully conveyed by the Trustees into private ownership. These official acts are not subject to challenge by either the Trustees or Coastal under a claim first asserted during the 1970s.

Florida's appellate courts have uniformly held that the Trustees are estopped to assert a claim of title under the facts of this case and that the Florida Marketable Record Title Act has perfected the record owners' titles against a sovereignty claim.

The certified questions should be answered accordingly, and the district court's opinion and decision should be approved.

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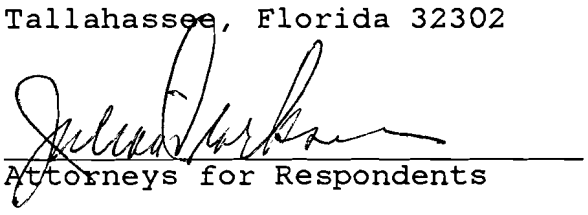

Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing have been served by United States Mail on Jim Smith, Attorney General of Florida, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32302; Robert J. Beckham, Beckham & McAliley, P.A., 3131 Independent Square, Jacksonville, Florida 32202; James R. Hubbard, 1250 AmeriFirst Building, One Southeast Third Avenue, Miami, Florida 33131; William C. Crenshaw, Valdes-Fauli, Cobb & Petrey, P.A., 1400 AmeriFirst Building, Miami, Florida 33131; Robert J. Angerer, Post Office Box 10468, Tallahassee, Florida 32304; Joseph C. Jacobs, Esquire, Ervin, Varn, Jacobs, Odom & Kitchen, Post Office Box 1170, Tallahassee, Florida 32302; and C. Dean Reasoner, Reasoner, Davis & Vinson, 800-27th Street, N.W., Washington, D.C. 20006; this 15th day of October, 1984.

Attorney