IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,913

THE BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST FUND,

Petitioner,

vs.

MOBIL OIL CORPORATION,

Respondent.

On Discretionary Review from the
Second District Court of Appeal

ANSWER BRIEF OF RESPONDENT MOBIL OIL CORPORATION

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"AA" for appendix to this brief

ANSWER BRIEF OF RESPONDENT
MOBIL OIL CORPORATION

Introduction

> 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, subject to rights specifically reserved in such conveyances.
>
> Odom v. Deltona Corporation, 341 So.2d 977, 989 (Fla. 1976)(Boyd, J.).

Like the American Cyanamid and Estech cases,[1] this case represents another appellate chapter in the continuing efforts of Coastal Petroleum Company (Coastal) and the Trustees of the Internal Improvement Trust Fund (Trustees) to extract scores of millions of dollars from companies engaged in phosphate mining in central Florida.[2]

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[1]Board of Trustees of the Internal Improvement Fund and Coastal Petroleum Company v. American Cyanamid Company and Estech, Inc., Case Nos. 65,755 and 65,696.

[2]This case can be better understood after reviewing the earlier reported decisions in 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).

The Trustees[3] characterize the trial court's decision as adversely affecting the public trust doctrine. Their brief decries the "wholesale abolition of sovereignty lands from the public trust that is accomplished by the decision below" and asks reversal so that the lands involved here "will remain open for fishing, boating, and recreation, and the preservation of their environmental integrity will be insured" (Br. 60). They conclude that the trial court's decision "results in the divestiture from the public trust of sovereignty riverbeds -- a result never before reached by statute or case law in Florida" (Br. 61).[4]

The Trustees are wrong. The Cyanamid, Estech and Mobil cases involve proprietary rights to minerals rather than governmental rights arising from the public trust doctrine.[5] It is their claims for money damages, seeking to recover the value of

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[3]This answer brief will respond to the initial brief of the Trustees only. Because most of the brief filed by Coastal as amicus curiae addresses matters other than those involved in this case, it does not merit a response. The Court should note that Coastal did not perfect an appeal from the judgment of the trial court.

[4]The Trustees protest too much. In Board of Trustees of the Internal Improvement Trust Fund v. Paradise Fruit Company, Inc., 414 So.2d 10 (Fla. 5th DCA 1982), pet. for rev. denied, 432 So.2d 37 (Fla. 1983), the district court affirmed a judgment quieting title in a private landowner to that portion of the St. Johns River flowing through Lake Poinsett in Brevard County. See also Odom v. Deltona Corporation, supra, involving a chain of lakes known as the "Butler chain", 341 So.2d at 986, rather than isolated waterbodies.

[5]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).

phosphate ore mined years ago, and not any concern for public rights to use the Peace and Alafia Rivers, that motivate Coastal and the Trustees to continue their assault on the quiet title judgments entered below. Indeed, the trial court expressly limited its judgment to ensure that any public trust interest would be preserved and protected:

> (e) This final judgment does not extinguish any rights of the public to use the waters of the Peace or Alafia Rivers for boating, fishing, swimming, or other public purposes, nor does it establish any right in Mobil, or those claiming by, through, or under it, 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 the Peace and Alafia Rivers because Mobil has excluded any such rights from the clouds it has sued to remove, and because the State has not alleged that Mobil has invaded such rights and has not sought affirmative relief from this Court (whose jurisdiction it denies) to declare or enforce such rights.
>
> (f) This Court does not by this final judgment intend to interfere in any way with the lawful rights of the State, or any agency thereof, to exercise its environmental and other governmental powers over any waterbodies flowing through said lands, or to regulate those waterbodies for drainage, irrigation, pollution control, navigation, fishing, or other public purposes. This final judgment is also not intended to affect the rights of other riparian owners who are not parties to this action or of the public to the continued use of presently existing public rights of way on the lands.

(A 29) (emphasis added).

In view of the limiting language underscored above, the Trustees' argument that the judgment in Mobil's favor adversely affects the public trust doctrine is totally lacking in credibil-

ity. Nowhere in their 61-page brief do the Trustees acknowledge the precise holding of the trial court or explain how it harms any legitimate interest the Trustees are trying to protect.[6] Mobil challenges the Trustees to provide the missing explanation in their reply brief.

Nor do the Trustees advise the Court that the lands at issue in this case, having been classified as swamp and overflowed lands by their 19th century predecessors, have never been reclassified as sovereignty lands by subsequent state officials with power to act. The present day contentions that the lands are sovereignty lands are positions asserted by the Trustees' lawyers seeking to recover money damages, not reclassifications under color of law. The reason the present Trustees have never sought to reclassify the lands seems obvious; any such official action, a century after the lands had been deeded into private ownership, would constitute a taking of private property without compensation in violation of the state and federal constitutions.

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

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[6]The Trustees' argument that the judgment of the trial court will allow "fences, like that which crosses the Wakulla" (Br. 60) obviously is misplaced and has no application to this case. The trial judge correctly noted that Mobil had invaded no public rights and that the Trustees had sought no affirmative relief to protect such rights.

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.[7]

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 (AA 26-27). (Mobil requests the Court to take judicial notice of Judge Locke's order.)

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

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[7]"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. That 40-mile stretch encompasses all of the lands involved in the present case.

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 nonmeandered 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 nonmeandered watercourses universally presumed to be in the private domain. Under these circumstances, Odom v. Deltona Corporation[8] and other decisions of this Court preclude the Trustees from their latter-day effort to impeach their prior deeds.

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[8]341 So.2d 977 (Fla. 1976).

STATEMENT OF THE FACTS

The trial court determined that Mobil has good title to the lands in question based upon chains of title originating with patents from the United States to the State of Florida and subsequent deeds by the State conveying the lands into private ownership under the classification either of swamp and overflowed lands, school lands or internal improvement lands.[9] The origin of Mobil's title is crucial to the result reached below and requires some historical background that is not discussed in the Trustees' brief.

In 1850 Congress enacted the Swamp Lands Act,[10] granting to the various states of the Union "those swamp and overflowed lands, made unfit thereby for cultivation" (AA 16). Promptly after passage of the Swamp Lands Act, the Florida General Assembly enacted Chapter 332,[11] 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 (AA 17-18). 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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[9]Most of the lands involved in this case were conveyed into private ownership as swamp and overflowed lands. As noted by the trial court (A 25-26), the principles that sustain Mobil's ownership of swamp and overflowed lands are equally applicable to lands conveyed by the State as school lands or internal improvement lands.

[10]9 U.S.Stat. 519 (Sept. 28, 1850).

[11]Jan. 24, 1851.

(AA 18). 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 (AA 20).[12]

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 (AA 22). When Chapter 610 was enacted, the identification and classification of lands committed to the Internal Improvement Fund was largely incomplete. Translation of the federal swamp land grants into legal descriptions by reference to the state selection lists and federal patents required 40 years and more. State and federal legislation had, however, established a concurrent administrative process through which these lands could be identified and classified in order to establish a reliable root of title to the lands (AA 22).

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 (A 22).

All of the lands were conveyed to Mobil's predecessors through deeds issued by the State -- either through the Trustees

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[12]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 (AA 22).

or through the Board of Education -- during the late 1800s and early 1900s without recorded reservation of any ownership interest or public rights (A 21).

Former Dean Joseph R. Julin of the University of Florida College of Law testified by affidavit that the titles in question

> are based upon the classification process involving the concurrent action of duly authorized state and federal officials. To allow at this late date re-examination of the factual determinations that underlie these classifications would seriously undermine the stability of land titles in Florida. State deeds, which form the root of titles to vast areas of Florida real estate, would become "a cheap and unstable reliance as a title for lands which it purported to convey." [Affidavit of Joseph R. Julin (AA 23-24).]

The final judgment quieting title in Mobil's favor against the claims of the State and of Coastal Petroleum Company

> does not extinguish any rights of the public to use the waters of the Peace or Alafia Rivers for boating, fishing, swimming or other public purposes, nor does it establish any right in Mobil. . .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 the Peace and Alafia Rivers because Mobil has excluded any such rights from the clouds it has sued to remove, and because the State has not alleged that Mobil has invaded such rights and has not sought affirmative relief from this Court. . .to declare or enforce such rights [A 29].

Introduction to Argument

> [T]he title and ownership of the land in question should rest upon a grant, and not upon an evidentiary fact. Pembroke v. Peninsular Terminal Co., 146 So. 249, 257 (Fla. 1933)

> [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. French v. Fyan, 93 U.S. at 109-173 (1876)

> These titles...are based upon the classification process involving the concurrent action of duly authorized state and federal officials. To allow at this late date re-examination of the factual determinations that underlie these classifications would seriously undermine the stability of land titles in Florida. [Affidavit of Joseph R. Julin (AA 23).]

ARGUMENT

I. DO THE 1883 SWAMP AND OVERFLOWED LANDS DEEDS ISSUED BY THE TRUSTEES INCLUDE SOVEREIGNTY LANDS BELOW THE ORDINARY HIGH-WATER MARK OF NAVIGABLE RIVERS?

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.

Mobil chooses to present argument under the issue as it was argued and decided in the district court, because the ques-

tion for which the Trustees asked certification is a misnomer. 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 argument, 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 Mobil's lands were navigable in 1845. This misguided approach has been long foreclosed as a matter of law and is not aided by the cases cited by the Trustees.

As detailed in the statement of facts 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[13] of the lands. The classification

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[13]Only one of the cases relied on by the Trustees (Br. 14-23) involved an attempt to impeach the official government survey, and the attempt did not succeed. In Broward v. Mabry, involving Lake Jackson in Leon County, the riparian owner failed in an effort to refute the navigability of a meandered waterbody.

The Trustees' argument (Br. 30) that the Gerbing case involved a surveyed watercourse -- the Amelia River -- is still another example of their failure to look at their own records. To prove the point, Mobil has reproduced the official government township plat depicting the Amelia River in the appendix to this

and determinations made by these officials are binding and conclusive as a matter of law.

The Trustees' suggestion (Br. 29) 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.)[14] This is one more instance in which the Trustees have misstated the actual holding below.

The law of Florida, discussed hereafter, effectively affirms and incorporates the corresponding federal doctrine that in the administration of the public land system factual determi-

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brief (AA 25) and asks the Court to take judicial notice of this document obtained from the Trustees' public records. The plat shows that the federal surveyors did not survey the Amelia River or its bordering marshlands. Consequently, the Gerbing holding offers no more than the later decision in Martin v. Busch: private ownership of unsurveyed lands bounded by an obviously navigable waterbody extends only to the ordinary high water line. As the Court doubtless knows, the Amelia River is a part of the intracoastal waterway bordering the east coast of Florida and is spanned by a high-level bridge affording access to Amelia Island from the mainland of Florida.

The Trustees can point to no Florida precedent authorizing impeachment of a government survey a century after the fact in order to overturn a deed based upon the survey. Thus, it is the Trustees, not Mobil, who seek to change existing Florida law.

[14]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.

nations 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 judgments of the State and the Secretary of the Interior as to the physical character of land are final and not subject to reliti-gation 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, this 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 trial court properly recognized that the Trustees' assertion of navigability now is legally irrelevant. In rejecting the Trustees' argument that the court should 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 Mobil's 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.[15]

This Court could not have been more explicit in stating that its Odom holding was addressed to 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.

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[15]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), pet. for rev. 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).

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

In the present case, the trial court also cited Odom as support for the judgment in Mobil's 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[16] took pains to recognize the effectiveness of governmental conveyances purporting to transfer all lands classified as 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

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[16]The Trustees' argument (Br. 26) 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."

> 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.

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 Trustees seek to undermine the basis for the lower court's holding in Mobil's favor by arguing that prior to 1969 the Trustees were without authority to convey freshwater 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 the character of the lands.

The Trustees' "notice of navigability" (Br. 22) argument has never been accepted in a case such as the present one in

which the government survey reflects no navigable waterbody.[17] 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 waterbodies on surveyed land.

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

> (b) Martin v. Busch, 112 So. 274 (Fla. 1927), established the concept that a grantee of unsurveyed land bordering on an obviously navigable waterbody takes with notice that a conveyance of this land does not include the sovereignty land underlying the waterbody. This concept does not apply in the present case, where the land was surveyed before it was acquired by the State and conveyed by the State to the original grantee. Pierce v. Warren, 47 So.2d 857, 860 (Fla. 1950); Odom v. Deltona Corp, 341 So.2d 977, 988-89 (Fla. 1976).

(A 23) (emphasis in original).

Under this point it should finally be noted that the Trustees' lengthy review of the nature and purpose of the "public trust doctrine" (Br. 14-23) is quite immaterial in view of the adjudication below. The trial court's decision avoids any questions that might arise concerning the public trust doctrine

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[17]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.

and the State's continuing police power over the land. The judgment provided:

> (e) This final judgment does not extinguish any rights of the public to use the waters of the Peace or Alafia Rivers for boating, fishing, swimming, or other public purposes, nor does it establish any right in Mobil, or those claiming by, through, or under it, 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 the public use or other governmental rights in the Peace and Alafia Rivers because Mobil has excluded any such rights from the clouds it has sued to remove, and because the State has not alleged that Mobil 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").[18] So far as the

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[18]"[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

record in this case discloses, there has been no threat to the integrity of the waters of the Peace River; 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 Mobil's title 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.

The present record portrays Mobil as the remote grantee of the State of Florida. Mobil's present adversaries, the 1984 Trustees, argue that the deeds in Mobil's chain of title were ineffectual to convey the estates warranted in the deeds. These Trustees would be better advised to follow the advice of a Florida judicial decision reported 10 years ago, quoted as follows:

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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. 31).

> 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).
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> 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)

Although this Court need not reach the federal constitutional question that would arise if the Trustees were correct in their arguments, the point should be stated: for the State of Florida to reclassify lands a century after their conveyance into private ownership would be a clear taking of private property by the State without due process of law in violation of the Fifth Amendment to the United States Constitution if the result is to impair Mobil's title. Kaiser Aetna v. United States, 444 U.S. 164 (1979); Leo Sheep Co. v. United States, 440 U.S. 668 (1979); Hughes v. Washington, 389 U.S. 290 (1967); United States v. Title Insurance & Trust Co., 265 U.S. 472 (1924).

II. DOES THE DOCTRINE OF LEGAL ESTOPPEL OR ESTOPPEL BY DEED APPLY TO 1883 SWAMP AND OVERFLOWED DEEDS BARRING THE TRUSTEES' ASSERTION OF TITLE TO SOVEREIGNTY LANDS?

The district court of appeal correctly answered the second certified question[19] in the affirmative, stating in part:

> Even assuming, arguendo, that the lands were sovereignty as opposed to swamp and overflowed lands, titles acquired by defendants to these lands after their conveyance to the plaintiffs inured to the benefit of the plaintiffs as grantees.

Cyanamid-Estech slip opinion at 7 (A 53). This holding is fully compatible with this Court's prior decisions in Odom v. Deltona Corp., supra, and Trustees of Internal Improvement Fund v. Lobean, 127 So.2d 98 (Fla. 1961).

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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[19]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. Each of the three points certified furnishes an independent basis for affirming the judgment of the trial court.

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[20] 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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[20]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"[21] as applied to sovereignty lands and further asked that the Court modify its prior holding in Daniell v. Sherrill, 48 So.2d 736 (Fla. 1950), 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 claimed to be 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):

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

> 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 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,[22] the result in Lobean is fully compatible with and supported by the doctrine of after-acquired title. The same doctrine is available to bolster Mobil's title, if need there be. Thus, even if the lands were sovereignty lands when Mobil's 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. 15).

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

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[22]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.

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 Mobil's case 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.

The doctrine of after-acquired title also demolishes the claim of Coastal that its leasehold grant in the 1940s is paramount to Mobil's title emanating from Trustees' deeds delivered in 1883. Although Coastal identifies a 1941 statute[23] as conferring the authority supporting its lease, the Trustees had earlier acquired statutory authority to sell or lease mineral interests in 1923[24] and again in 1929.[25] Consequently, when the Trustees acquired title to or authority over these mineral inter-

[23]Ch. 20680, Laws of Fla. (1941).

[24]Ch. 9289, Laws of Fla. (1923).

[25]Ch. 13670, Laws of Fla. (1929).

ests by act of the legislature, their after-acquired authority was sufficient to perfect title in the grantees under their 1883 deeds.[26] Viewed from any perspective, Coastal's claim cannot possibly be superior to Mobil's rights originating in 1883.

III. DOES THE MARKETABLE RECORD TITLE ACT, CHAPTER 712, FLORIDA STATUTES, OPERATE TO DIVEST THE TRUSTEES OF TITLE TO SOVEREIGNTY LANDS BELOW THE ORDINARY HIGH-WATER MARK OF NAVIGABLE RIVERS?

Driven by their purpose to join the efforts of Coastal to recover money damages measured by the value of tons of phosphate ore mined in central Florida during the 1940s, 1950s, 1960s and 1970s, the Trustees resurrect the third certified question for the third time during the past eight years. As will be shown, the question was answered in the affirmative in 1973, and this Court has thrice ratified the affirmative answer.

Sawyer v. Modrall

The first Florida appellate decision applying the Marketable Record Title Act (MRTA) to sovereignty lands was Sawyer v. Modrall, 286 So.2d 610 (Fla. 4th DCA 1973), cert. denied, 297 So.2d 562 (Fla. 1974). The Trustees were not a party to that litigation, but the Trustees' remote grantee successfully

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[26]A lesser property interest than fee simple can constitute property within the rule of estoppel as to after-acquired property. Spencer v. Weigert, 117 So.2d 221, 226 (Fla. 2d DCA 1959), cert. denied, 122 So.2d 406 (Fla. 1960). Thus, Mobil's predecessors had long before acquired title to the mineral interests involved in this case when the Trustees purported to lease them to Coastal during the 1940s.

argued that MRTA was effective to perfect the title of a private landowner to sovereignty lands underlying the intracoastal waterway in Palm Beach County. The Fourth District Court of Appeal noted that MRTA expressly barred all claims not excepted, whether "private or governmental." 286 So.2d at 613.

The Trustees' brief (Br. 40) misrepresents the Sawyer holding. They contend:

> Sawyer v. Modrall is a clear example of sovereignty lands that were previously lawfully conveyed, and thus it and Odom are entirely consistent. The lands in issue in Sawyer were tidal sovereignty lands along the intracoastal waterway in Boca Raton that the Trustees were required to convey to the riparian landowner by Florida's early bulkhead laws. 286 So.2d at 613. Sawyer thus involved an intentional, lawful conveyance of sovereignty land that is not an appropriate subject of the protection of the public trust doctrine.

(Emphasis in original)

Except for the correct statement that the lands involved in Sawyer were tidal sovereignty lands along the intracoastal waterway in Boca Raton, everything asserted in the foregoing quotation is wrong. The Trustees have repeatedly argued, as the very foundation of their claim in this case, that they had no power to convey sovereignty lands before 1917. The Sawyer opinion expressly states that the Trustees' deed there involved was an 1890 deed.[27] This Court's 1974 denial of certiorari in

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[27]The statutes relied on as authority for the 1890 deed were not "early bulkhead laws" as urged in the Trustees' brief. See Chapter 3641, Laws of Florida 1885, and Chapter 3995, Laws of Florida 1889.

Sawyer was the first refusal to adopt the argument now being made by the Trustees.

Odom v. Deltona Corporation

As noted earlier in this brief, p. 15, supra, this Court expressly applied its holding in Odom v. Deltona Corporation 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 decision. A resolution of the 1978 Trustees recommending amendment of MRTA to exempt sovereignty lands stated that "certain recent court decisions 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 79).

Odom v. Deltona Corporation, decided in 1976, was this Court's second rejection of the argument now being made by the Trustees.

Paradise Fruit Company

In Board of Trustees v. Paradise Fruit Company, supra, this Court in 1983 for the third time rejected the MRTA argument now being asserted by the Trustees. In that case the Fifth District Court of Appeal affirmed a trial court judgment confirming a private landowner's title to a segment of the St. John's River flowing through Lake Poinsett in Brevard County. The Trus-

tees sought review here on the precise legal grounds now urged in support of their third point on appeal. This Court denied review.

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.[28]

In considering the Trustees' argument that MRTA does not foreclose their claims of title to sovereignty lands, the

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[28]The legislative history is detailed in the brief filed by Cyanamid and Estech in the other cases involving these three certified questions.

Court should be made aware that the Trustees have taken an entirely different position in this Court in Askew v. Sonson, 409 So.2d 7 (Fla. 1981). 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[29] and at oral argument.[30] It 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

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[29]"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.

[30]"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 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).

> 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.[31] 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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[31]The Trustees' contentions that the MRTA, if construed to encompass sovereignty lands, would be unconstitutional as a conveyance of sovereignty lands in violation of the public trust doctrine and would amount to a taking without just compensation are demonstrably meritless. Until article X, section 11 was added to the Florida Constitution in 1969, it is clear that "[t]here [was] no provision in the Constitution of this state expressly or impliedly forbidding the Legislature to dispose of submerged lands. . . ." State ex rel. Buford v. City of Tampa, 88 Fla. 196, 102 So. 336, 340 (1924). Because the title to sovereignty lands not previously alienated is in the state, the fact that the legislature in 1969 reposed that title in the Trustees by statute did not prevent the legislature in 1963 from making its own claims subject to the MRTA, and certainly does not mean that the Trustees are entitled to be compensated for the legislature's "taking" of the state's own lands.

IV. FLORIDA FOLLOWS THE LOCAL ACTION RULE. TITLE TO LANDS MUST BE TRIED IN THE COUNTY WHERE THE LANDS ARE LOCATED.

The Trustees' final argument is that the district court of appeal committed error in its holding that "the Leon County Circuit Court lacks jurisdiction of the subject matter of Mobil's reply counterclaim for the reason that the counterclaim is in rem in nature and local to the Polk County Circuit Court" (A 44).[32] They introduce their argument by accusing Mobil of "blatant forum shopping and improper relitigation in a sister circuit" and add the following charge (Br. 12):

> Mobil lost the title question in Mobil I before the Leon County Circuit Court, and the United States District Court, and after remand of Mobil I to Leon County Circuit Court, sought a third bite at the apple by instituting the title suit below.

It was the Trustees, not Mobil, who sought to avoid a ruling by the judge who denied Mobil's summary judgment motion filed early in the litigation. "On January 29, 1979, the State. . .and Coastal jointly filed an application for recusal of the trial judge based on statements the trial judge had made regarding the issues left to be tried (i.e., the phosphate conversion claims)." Coastal Petroleum Co. v. Mobil Oil Corp., 378 So.2d 336, 337 (Fla. 1st DCA 1980). The Trustees' second

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[32]This holding was not certified to this Court along with the title issues. However, it is the precise issue that was resolved against the Trustees' position by this Court in Board of Trustees v. Ott, 440 So.2d 351 (Fla. 1983).

escape effort was their improvident removal of the case to federal court -- a mistake rectified more than two years later by the Eleventh Circuit Court of Appeals.[33]

The Trustees' characterization of Judge Miner's denial in 1978 of Mobil's motion for summary judgment -- "Mobil lost the title question" -- is absurd. Manifestly, denial of a motion for summary judgment is not an adjudication of anything except that summary judgment will not be ordered at that stage of the proceedings.[34] The additional reference to an interim ruling by the federal district court is meaningless; that court had no jurisdiction.[35]

The records made in the multiple actions between these parties do clearly reflect the disparate preferences of the parties for choice of forum. Mobil has consistently sought to litigate state law issues in state courts and to resolve land title disputes in the court having territorial jurisdiction over

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[33]See Mobil Oil Corporation v. Coastal Petroleum Company, 671 F.2d 419 (11th Cir.), cert. denied, 459 U.S. 970 (1982).

[34]In Florida, a trial court has inherent authority to control its interlocutory orders, which may be modified or rescinded at any time before final judgment. See Holman v. Ford Motor Co., 239 So.2d 40, 43 (Fla. 1st DCA 1970); see also Alabama Hotel Co. v. J. L. Mott Iron Works, 86 Fla. 608, 98 So. 825, 826 (1924). It is noteworthy that, in denying Mobil's motion, Judge Miner did not address the merits of the title issues, but so clearly indicated his inclination to rule in Mobil's favor that the Trustees promptly sought his disqualification. See text, supra.

[35]Note 32, supra.

the lands at issue. The Trustees and Coastal, on the other hand, have consistently elected to litigate state law issues in the federal courts[36] and have attempted to avoid resolution of land title disputes by the court having territorial jurisdiction. So viewed, the Trustees' accusation that Mobil has engaged in forum-shopping is preposterous.

In their argument dealing with the local action rule, the Trustees have ignored -- indeed, have failed to cite -- the decision of this Court that is controlling here. The holding in Lakeland Ideal Farm & Drainage District v. Mitchell, 97 Fla. 890, 122 So. 515, 518-19 (Fla. 1929), is squarely dispositive of the issue presented in this case. There the Court stated in relevant part:

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[36]Coastal removed two earlier quiet title suits filed by Mobil to the U.S. District Court for the Middle District of Florida. District Judge Ben Krentzman remanded both cases to Polk County Circuit Court because no federal question was involved. The Trustees removed the first quiet title suit brought by Cyanamid to the Middle District of Florida; that suit was remanded by District Judge George Carr on the same ground.

In 1981 Coastal obtained an injunction from the U.S. District Court for the Northern District of Florida enjoining Mobil from proceeding with quiet title suits in any other court. The injunction was subsequently extended to Cyanamid, Estech and three other phosphate companies; and, at the Trustees' request, was made applicable to their own appeal pending in the Second District Court of Appeal from a quiet title judgment in favor of Cyanamid. The effect of all these obstructive tactics was to delay resolution of the title issues for approximately one year. The state courts were allowed to exercise their lawful jurisdiction when the Eleventh Circuit Court of Appeals ruled that the federal court in the Northern District had no jurisdiction over the Mobil case and that all the phosphate companies had been unlawfully enjoined from prosecuting their quiet title suits. See note 2, supra.

> The statutes last mentioned [the predecessors of §§47.011, et. seq., Fla. Stat.] affect only the venue of actions. The authority of the statute...necessarily presupposes that the court in which the action is brought possesses jurisdiction of the subject-matter of the action as well as the parties. Those statutes do not purport to confer generally extraterritorial jurisdiction as to subject-matter located in another county, nor to change existing rules with reference to the locality of actions which in their essential nature are local and therefore must be brought in a court having jurisdiction of the subject-matter as well as of the parties.
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> * * *
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> In Columbia Sand Dredging Co. v. Morton, supra, it said: "It follows, therefore, that an action for trespass upon the land, involving necessarily and chiefly the question of its title, is local, and could only be brought in the jurisdiction wherein the land is situated. On the other hand, an action to recover the value of the sand and gravel severed from the land and removed therefrom, though incidentally made to involve the question of title, could be maintained in the District of Columbia against parties found therein and personally served with process.
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> * * *
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> A decree purely in personam would not be effective under the facts of this case, because the land lies beyond the jurisdiction of the court. . . . Under the circumstances stated, the action is local, and the principle announced in Columbia Sand Dredging Co. v. Morton is controlling. . . .

122 So. at 519 (emphasis by the Court).

The case upon which the Trustees principally rely -- Mabie v. Garden Street Management Corp., 397 So.2d 920

(Fla 1981)[37] -- has no application whatsoever to the issue presented on this appeal. This Court's opinion expressly recited the distinction:

> The controversy in each case involved how much of its stock Garden Street must issue to Mabie pursuant to his agreement with Rood, the corporation's promoter.

397 So.2d at 921 (emphasis added). Both actions were personal as well as transitory. The local action rule was not involved. This Court held that both courts involved in Mabie had jurisdiction over the subject matter.

The separate proceedings in Polk County and Leon County that cover the same land involve nothing more than the following causes of action:

> Leon County -- Claims by Coastal and the Trustees against Mobil for alleged conversion of minerals, seeking money damages exceeding $2.4 billion (transitory action)
>
> Polk County -- Suits by Mobil seeking to quiet its title to Polk County lands against claims of Coastal and the Trustees (local action)

The real argument of the Trustees, although not fairly stated in their brief, is that the prior acquisition of jurisdiction by the Leon County Circuit Court to try the conversion

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[37] Mabie presented the classical example of a race to the courthouse. Lefferts Mabie sued Edward Rood in Escambia County but did not immediately perfect service of process. Rood's corporation then sued Mabie in Hillsborough County and perfected service on Mabie. Confronted with decisions of the First and Second District Courts of Appeal reaching opposite results as to priority, this Court broke the tie and held that "jurisdiction lies in the circuit where service of process is first perfected."

claims has ousted the Polk County Circuit Court of jurisdiction to quiet title to lands lying in Polk County, including lands as to which there are no conversion claims (i.e., lands from which no phosphate has been mined). That question has been laid to rest in the Lakeland Ideal Farm case; a suit to quiet title can only be brought in the county where at least part of the land lies.

Should this Court undertake to pass upon the Trustees' "venue" argument as ancillary to the certified questions, the well-reasoned opinion and decision of the district court on that issue should be approved. Indeed, this Court has already reached that same result by denying the Trustees' petition for an extraordinary writ in Board of Trustees v. Ott. See note 31, supra.

CONCLUSION

The district court of appeal correctly applied controlling precedents in adjudicating Mobil's title to be superior to any sovereignty claim of the Trustees and to Coastal's lease.

The first certified question should be answered in the negiative because the classification of the lands involved by state and federal officials is binding and conclusive as a matter of law under authority of French v. Fyan and Pembroke v. Peninsular Terminal Co.. There are no sovereignty lands involved in this case.

The second certified question should be answered in the affirmative under authority of Trustees of Internal Improvement Fund v. Lobean and Odom v. Deltona Corporation.

The third certified question should be answered in the affirmative under authority of Sawyer v. Modrall, Odom v. Deltona Corporation and Board of Trustees v. Paradise Fruit Company.

The decision of the district court of appeal affirming the judgment of the trial court is correct and should be approved.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by United States Mail to Robert J. Angerer, Esquire, Post Office Box 10468, Tallahassee, Florida 32302; Joseph C. Jacobs, Esquire, Post Office Box 1170, Tallahassee, Florida 32302; C. Dean Reasoner, Esquire, 888 - 17th Street, N.W., Washington, D.C. 20006; Jim Smith, Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32301; Robert J. Beckham, Esquire, 3131 Independent Square, Jacksonville, Florida 32202; James R. Hubbard, Esquire, 1250 AmeriFirst Building, One Southeast Third Avenue, Miami, Florida 33131; and William C. Crenshaw, Esquire, 1400 AmeriFirst Building, Miami, Florida 33131, this 12th day of November, 1984.

Julian Clarkson