# SUPREME COURT OF THE UNITED STATES

No. 00–189

IDAHO, PETITIONER *v.* UNITED STATES ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2001]

JUSTICE SOUTER delivered the opinion of the Court.

The United States brought this quiet title action against the State of Idaho. The question is whether the National Government holds title, in trust for the Coeur d'Alene Tribe, to lands underlying portions of Lake Coeur d'Alene and the St. Joe River. We hold that it does.

## I

The Coeur d'Alene Tribe once inhabited more than 3.5 million acres in what is now northern Idaho and northeastern Washington, including the area of Lake Coeur d'Alene and the St. Joe River. 95 F. Supp. 2d 1094, 1095–1096, 1099–1100 (Idaho 1998).[1] Tribal members traditionally used the lake and its related waterways for food, fiber, transportation, recreation, and cultural activities. *Id.*, at 1099–1102. The Tribe depended on submerged lands for everything from water potatoes harvested from the lake to fish weirs and traps anchored in riverbeds and banks. *Id.*, at 1100.

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[1] Petitioner, the State of Idaho, did not challenge the District Court's factual findings on appeal. See 210 F. 3d 1067, 1070 (CA9 2000).

Under an 1846 treaty with Great Britain, the United States acquired title to the region of Lake Coeur d'Alene, see Treaty in Regard to Limits Westward of the Rocky Mountains, 9 Stat. 869, subject to the aboriginal right of possession held by resident tribes, see generally *Oneida Indian Nation of N. Y.* v. *County of Oneida,* 414 U. S. 661, 667 (1974); F. Cohen, Handbook of Federal Indian Law 486–493 (1982 ed.). In 1867, in the face of immigration into the Tribe's aboriginal territory, 95 F. Supp. 2d, at 1102, President Johnson issued an Executive Order setting aside a reservation of comparatively modest size, although the Tribe was apparently unaware of this action until at least 1871, when it petitioned the Government to set aside a reservation, *id.*, at 1102–1103. The Tribe found the 1867 boundaries unsatisfactory, due in part to their failure to make adequate provision for fishing and other uses of important waterways. When the Tribe petitioned the Commissioner of Indian Affairs a second time, it insisted on a reservation that included key river valleys because "we are not as yet quite up to living on farming" and "for a while yet we need have some hunting and fishing." App. 27.

Following further negotiations, the Tribe in 1873 agreed to relinquish (for compensation) all claims to its aboriginal lands outside the bounds of a more substantial reservation that negotiators for the United States agreed to "set apart and secure" "for the exclusive use of the Coeur d'Alene Indians, and to protect . . . from settlement or occupancy by other persons." *Id.,* at 33. The reservation boundaries described in the agreement covered part of the St. Joe River (then called the St. Joseph), and all of Lake Coeur d'Alene except a sliver cut off by the northern boundary. *Id.,* at 33–34; 95 F. Supp. 2d, at 1095–1096.

Although by its own terms the agreement was not binding without congressional approval, App. 36–37, later in 1873 President Grant issued an Executive Order di-

recting that the reservation specified in the agreement be "withdrawn from sale and set apart as a reservation for the Cœur d'Alène Indians." Exec. Order of Nov. 8, 1873, reprinted in 1 C. Kapler, Indian Affairs: Laws and Treaties 837 (1904). The 1873 Executive Order set the northern boundary of the reservation directly across Lake Coeur d'Alene, which, the District Court found, was contrary "to the usual practice of meandering a survey line along the mean high water mark." 95 F. Supp. 2d, at 1108; App. 14, 20 (expert trial testimony).[2] An 1883 Government survey fixed the reservation's total area at 598,499.85 acres, which the District Court found necessarily "included submerged lands within the reservation boundaries." 95 F. Supp. 2d, at 1108.

As of 1885, Congress had neither ratified the 1873 agreement nor compensated the Tribe. This inaction prompted the Tribe to petition the Government again, to "make with us a proper treaty of peace and friendship . . . by which your petitioners may be properly and fully compensated for such portion of their lands not now reserved to them; [and] that their present reserve may be confirmed to them." App. 350–351. In response, Congress authorized new negotiations to obtain the Tribe's agreement to cede land outside the borders of the 1873 reservation. Act of May 15, 1886, ch. 333, 24 Stat. 44. In 1887, the Tribe

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[2] Although the State did not challenge the District Court's factual findings below, it claims in its reply brief to us that is was "commonplace" for reservation boundaries to cross navigable waters. Reply Brief for Petitioner 9. Ultimately, this factual dispute is of little consequence; the District Court found that the boundary and acreage calculations showed the understanding of the Government and the Tribe that submerged lands were included, 95 F. Supp. 2d, at 1108, and the State conceded on appeal that "[c]ertainly, . . . by 1888, the executive branch had construed the 1873 Coeur d'Alene Reservation as including submerged lands." Opening Brief for Appellant in No. 98–35831 (CA9), p. 17.

agreed to cede

> "all right, title, and claim which they now have, or ever had, to all lands in said Territories [Washington, Idaho, and Montana] and elsewhere, except the portion of land within the boundaries of their present reservation in the Territory of Idaho, known as the Coeur d'Alene Reservation." App. 378.

The Government, in return, promised to compensate the Tribe, and agreed that

> "[i]n consideration of the foregoing cession and agreements . . . the Coeur d'Alene Reservation shall be held forever as Indian land and as homes for the Coeur d'Alene Indians . . . and no part of said reservation shall ever be sold, occupied, open to white settlement, or otherwise disposed of without the consent of the Indians residing on said reservation." *Id.,* at 379.

As before, the agreement was not binding on either party until ratified by Congress. *Id.,* at 382.

In January 1888, not having as yet ratified any agreement with the Tribe, the Senate expressed uncertainty about the extent of the Tribe's reservation and adopted a resolution directing the Secretary of the Interior to "inform the Senate as to the extent of the present area and boundaries of the Coeur d'Alene Indian Reservation in the Territory of Idaho," and specifically, "whether such area includes any portion, and if so, about how much of the navigable waters of Lake Coeur d'Alene, and of Coeur d'Alene and St. Joseph Rivers." S. Misc. Doc. No. 36, 50th Cong., 1st Sess., 1 (1888). The Secretary responded in February 1888 with a report of the Commissioner of Indian Affairs, stating that "the reservation appears to embrace all the navigable waters of Lake Coeur d'Alene, except a very small fragment cut off by the north boundary of the reservation," and that "[t]he St. Joseph River

also flows through the reservation." S. Exec. Doc. No. 76, 50th Cong., 1st Sess., 3 (1888). Based largely, it appears, on this report, Idaho conceded in the Court of Appeals (as it does here) that the 1873 Executive Order reservation included submerged lands. See Opening Brief for Appellant in No. 98–35831 (CA9), p. 17 ("Certainly, the State concedes that by 1888, the executive branch had construed the 1873 Coeur d'Alene Reservation as including submerged lands"); Brief for Petitioner 17.

In May 1888, shortly after receiving the Secretary's report, Congress passed an Act granting a right-of-way to the Washington and Idaho Railroad Company "for the extension of its railroad through the lands in Idaho Territory set apart for the use of the Coeur d'Alene Indians by executive order, commonly known as the Coeur d'Alene Indian Reservation." Act of May 30, 1888, ch. 336, §1, 25 Stat. 160. Notably, the Act directed that the Tribe's consent be obtained and that the Tribe alone (no one else being mentioned) be compensated for the right-of-way, a part of which crossed over navigable waters within the reservation. *Id.*, §3, 25 Stat. 161; see also Reply Brief for Petitioner 16.

Congress was not prepared to ratify the 1887 agreement, however, owing to a growing desire to obtain for the public not only any interest of the Tribe in land outside the 1873 reservation, but certain portions of the reservation itself. The House Committee on Indian Affairs later recalled that the 1887 agreement was not promptly ratified for

> "sundry reasons, among which was a desire on the part of the United States to acquire an additional area, to wit, a certain valuable portion of the reservation specially dedicated to the exclusive use of said Indians under an Executive order of 1873, and which portions of said lands, situate[d] on the northern end

> of said reservation, is valuable and necessary to the citizens of the United States for sundry reasons. It contains numerous, extensive, and valuable mineral ledges. It contains large bodies of valuable timber. . . . It contains a magnificent sheet of water, the Coeur d'Alene Lake . . . ." H. R. Rep. No. 1109, 51st Cong., 1st Sess., 4 (1890).

But Congress did not simply alter the 1873 boundaries unilaterally. Instead, the Tribe was understood to be entitled beneficially to the reservation as then defined, and the 1889 Indian Appropriations Act included a provision directing the Secretary of the Interior "to negotiate with the Coeur d'Alene tribe of Indians," and, specifically, to negotiate "for the purchase and release by said tribe of such portions of its reservation not agricultural and valuable chiefly for minerals and timber as such tribe shall consent to sell." Act of Mar. 2, 1889, ch. 412, §4, 25 Stat. 1002. Later that year, the Tribe and Government negotiators reached a new agreement under which the Tribe would cede the northern portion of the reservation, including approximately two-thirds of Lake Coeur d'Alene, in exchange for $500,000. App. 198; see also 95 F. Supp. 2d, at 1113. The new boundary line, like the old one, ran across the lake, and General Simpson, a negotiator for the United States, reassured the Tribe that "you still have the St. Joseph River and the lower part of the lake." App. 183. And, again, the agreement was not to be binding on either party until both it and the 1887 agreement were ratified by Congress. *Id.,* at 199.

On June 7, 1890, the Senate passed a bill ratifying both the 1887 and 1889 agreements. S. 2828, 51st Cong., 1st Sess. (1890); 21 Cong. Rec. 5769–5770 (1890). On June 10, the Senate bill was referred to the House, where a parallel bill had already been reported by the House Committee on Indian Affairs. H. R. Rep. No. 1109, 51st Cong., 1st Sess.

(1890); see 21 Cong. Rec. 2775 (1890).

On July 3, 1890, while the Senate bill was under consideration by the House Committee on Indian Affairs, Congress passed the Idaho Statehood Act, admitting Idaho into the Union "on an equal footing with the original States," Act of July 3, 1890, ch. 656, 26 Stat. 215. The Statehood Act "accepted, ratified, and confirmed" the Idaho Constitution, *ibid.*, which "forever disclaim[ed] all right and title to . . . all lands lying within [Idaho] owned or held by any Indians or Indian tribes" and provided that "until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States," Idaho Const., Art. XXI, §19 (1890).

A little over a month later, on August 19, 1890, the House Committee on Indian Affairs reported that the Senate bill ratifying the 1887 and 1889 agreements was identical to the House bill that it had already recommended. H. R. Rep. No. 2988, 51st Cong., 1st Sess. (1890). On March 3, 1891, Congress "accepted, ratified, and confirmed" both the 1887 and 1889 agreements with the Tribe. Act of Mar. 3, 1891, ch. 543, §§19, 20, 26 Stat. 1027, 1029. The Act also directed the Secretary of the Interior to convey to one Frederick Post a "portion of [the] reservation," *id.*, at 1031, that the Tribe had purported to sell to Post in 1871.[3] The property, located on the Spokane River and known as Post Falls, was described as "all three of the river channels and islands, with enough land on the north and south shores for water-power and improvements." *Ibid.*

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[3] See generally, *e.g.*, *Oneida Indian Nation of N. Y.* v. *County of Oneida,* 44 U. S. 661, 667–668 (1974) (under common law and various Nonintercourse Acts, Indian title can only be extinguished with federal consent).

In 1894, Congress approved yet another agreement with the Tribe, this time for the cession of a lakeside townsite called Harrison, within the boundary of the ratified reservation. Act of Aug. 15, 1894, ch. 290, 28 Stat. 322, agreement reprinted in App. 389; see also 95 F. Supp. 2d, at 1117. The agreement with the Tribe described the cession as covering "all the land" embraced within a tract that included a portion of the lake. App. 392. Like the earlier railroad cession, this one was subject to compensation to the Tribe and no one else.

The United States, acting in its own capacity and as trustee for the Tribe, initiated this action against the State of Idaho to quiet title (in the United States, to be held for the use and benefit of the Tribe) to the submerged lands within the exterior boundaries of the Tribe's current reservation, which encompass the lower third of Lake Coeur d'Alene and part of the St. Joe River.[4] The Tribe intervened to assert its interest in the submerged lands, and Idaho counterclaimed, seeking to quiet title in its own favor. *Ibid.* Following a 9-day trial, the District Court quieted title "in favor of the United States, as trustee, and the Coeur d'Alene Tribe of Idaho, as the beneficially interested party of the trusteeship, to the bed and banks of the Coeur d'Alene Lake and the St. Joe River lying within the current boundaries of the Coeur d'Alene Indian Reservation." 95 F. Supp. 2d, at 1117. The Court of Appeals for

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[4]Because this action was brought by the United States, it does not implicate the Eleventh Amendment bar raised when the Tribe pressed its own claim to the submerged lands in *Idaho* v. *Coeur d'Alene Tribe of Idaho,* 521 U. S. 261 (1997). See *Arizona* v. *California*, 460 U. S. 605, 614 (1983).

The United States's complaint was apparently motivated by Idaho's issuance of permits for the construction of "docks, piers, floats, pilings, breakwaters, boat ramps and other such aids to navigation within the southern one-third of Coeur d'Alene Lake." Complaint in CIV94–0328–N–EJL (D. Idaho), pp. 6–7.

the Ninth Circuit affirmed. 210 F. 3d 1067 (2000). We granted certiorari, 531 U. S. 1050 (2000), and we now affirm.

II

Due to the public importance of navigable waterways, ownership of the land underlying such waters is "strongly identified with the sovereign power of government." *Montana* v. *United States,* 450 U. S. 544, 552 (1981). See generally *Idaho* v. *Coeur d'Alene Tribe of Idaho,* 521 U. S. 261, 284 (1997); *United States* v. *Alaska,* 521 U. S. 1, 5 (1997). In order to allow new States to enter the Union on an "equal footing" with the original States with regard to this important interest, "the United States early adopted and constantly has adhered to the policy of regarding lands under navigable waters in acquired territory . . . as held for the ultimate benefit of future States." *United States* v. *Holt State Bank,* 270 U. S. 49, 55 (1926); see also *Shively* v. *Bowlby,* 152 U. S. 1, 48–50 (1894). Therefore, in contrast to the law governing surface land held by the United States, see *Scott* v. *Lattig,* 227 U. S. 229, 244 (1913), the default rule is that title to land under navigable waters passes from the United States to a newly admitted State. *Shively*, *supra,* at 26–50. Specifically, although Congress has the power before statehood to convey land beneath navigable waters, and to reserve such land for the United States, "[a] court deciding a question of title to the bed of navigable water must . . . begin with a strong presumption 'against defeat of a State's title." *Alaska, supra,* at 34 (quoting *Montana, supra,* at 552).

Armed with that presumption, we have looked to Congress's declarations and intent when we have had to resolve conflicts over submerged lands claimed to have been reserved or conveyed by the United States before statehood. *Alaska*, *supra,* at 36 ("Whether title to submerged lands rests with a State, of course, is ultimately a matter

of federal intent"); *Utah Div. of State Lands* v. *United States,* 482 U. S. 193, 201–202 (1987); *Montana*, *supra*, at 550–557; *Holt State Bank*, *supra*, at 57–59; *Alaska Pacific Fisheries* v. *United States,* 248 U. S. 78, 87–90 (1918); *Shively*, *supra*, at 48–51.

The issue of congressional intent is refined somewhat when submerged lands are located within a tract that the National Government has dealt with in some special way before statehood, as by reserving lands for a particular national purpose such as a wildlife refuge or, as here, an Indian reservation. Because reserving submerged lands does not necessarily imply the intent "to defeat a future State's title to the land," *Utah Div. of State Lands*, *supra*, at 202, we undertake a two-step enquiry in reservation cases. We ask whether Congress intended to include land under navigable waters within the federal reservation and, if so, whether Congress intended to defeat the future State's title to the submerged lands. *Alaska*, *supra*, at 36; *Utah*, *supra*, at 202.

Our most recent case of this sort, *United States* v. *Alaska*, *supra*, addressed two parcels of land initially reserved not by Congress but, as here, by the Executive Branch. We explained that the two-step test of congressional intent is satisfied when an Executive reservation clearly includes submerged lands, and Congress recognizes the reservation in a way that demonstrates an intent to defeat state title. *Id.*, at 41–46, 55–61. We considered whether Congress was on notice that the Executive reservation included submerged lands, see *id.*, at 42, 45, 56, and whether the purpose of the reservation would have been compromised if the submerged lands had passed to the State, *id.*, at 42–43, 45–46, 58. Where the purpose would have been undermined, we explained, "[i]t is simply not plausible that the United States sought to reserve only the upland portions of the area," *id.*, at 39–40.

Here, Idaho has conceded that "the executive branch

had intended, or by 1888 had interpreted, the 1873 Executive Order Reservation to include submerged lands." Brief for Petitioner 17. The concession is a sound one. A right to control the lakebed and adjacent waters was traditionally important to the Tribe, which emphasized in its petition to the Government that it continued to depend on fishing. Cf. *Montana*, *supra*, at 556 (finding no intent to include submerged lands within a reservation where the tribe did not depend on fishing or use of navigable water). The District Court found that the acreage determination of the reserved area in 1883 necessarily included the area of the lakebed within the unusual boundary line crossing the lake from east to west. Cf. *Alaska*, *supra*, at 39 (concluding that a boundary following the ocean side of offshore islands necessarily embraced submerged lands shoreward of the islands). In light of those findings and Idaho's concession, the parties here concentrate on the second question, of Congress's intent to defeat Idaho's title to the submerged lands.[5]

In the Court of Appeals, Idaho also conceded one point covered in this second part of the enquiry. It agreed that after the Secretary of Interior's 1888 report that the reservation embraced nearly "all the navigable water of Lake

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[5] The District Court and Court of Appeals accepted the United States's position that it had reserved the submerged lands, and that Congress intended that reservation to defeat Idaho's title. They did not reach the Tribe's alternative theory that, notwithstanding the scope of any reservation, the Tribe retained aboriginal title to the submerged lands, which cannot be extinguished without explicit action by Congress, see *Oneida Indian Nation,* 414 U. S., at 667–668; cf. *United States* v. *Winans*, 198 U. S. 371, 381 (1905) (explaining that a treaty ceding some aboriginal lands to the United States and setting apart other lands as a reservation "was not a grant of rights to the Indians, but a grant of rights from them– a reservation of those not granted"). The Tribe does not press its unextinguished-aboriginal-title argument here. See Brief for Respondent Coeur d'Alene Tribe 25, n. 12.

Coeur d'Alene," S. Exec. Doc. No. 76, 50th Cong., 1st Sess., at 3, Congress was on notice that the Executive Order reservation included submerged lands. Opening Brief for Appellant in No. 98–35831 (CA9), at 11 ("[Congress was] informed that the Coeur d'Alene Reservation embraced submerged lands"). Again, Idaho's concession was prudent in light of the District Court's findings of facts. 95 F. Supp. 2d, at 1114 ("The evidence shows that prior to Idaho's statehood, Congress was on notice that the Executive Order of 1873 reserved for the benefit of the Tribe the submerged lands within the boundaries of the Coeur d'Alene Reservation").

The District Court did not merely impute to Congress knowledge of the land survey, but also explained how the submerged lands and related water rights had been continuously important to the Tribe throughout the period prior to congressional action confirming the reservation and granting Idaho statehood. And the District Court made the following findings about the period preceding negotiations authorized by Congress:

> "The facts demonstrate that an influx of non-Indians into the Tribe's aboriginal territory prompted the Federal Government to negotiate with the Coeur d'Alenes in an attempt to confine the Tribe to a reservation and to obtain the Tribe's release of its aboriginal lands for settlement. Before it would agree to these conditions, however, the Tribe demanded an enlarged reservation that included the Lakes and rivers. Thus, the Federal Government could only achieve its goals of promoting settlement, avoiding hostilities and extinguishing aboriginal title by agreeing to a reservation that included the submerged lands." *Id.*,

at 1107.[6]

This, in summary, was the background for the 1873 Executive Order's inclusion of submerged lands, which in turn were the subject of the 1888 request by the Senate to the Secretary of the Interior for advice about the Tribe's rights over the "navigable waters of Lake Coeur d'Alene and the Coeur d'Alene and St. Joseph Rivers," S. Mis. Doc. No. 36, 50th Cong., 1st Sess., at 1. As noted, the Secretary answered in the affirmative, S. Exec. Doc. No. 76, 50th Cong., 1st Sess., at 3, consistently with the survey indicating that the submerged lands were within the reservation. Thus, the District Court remarked that it would be difficult to imagine circumstances that could have made it more plain to Congress that submerged lands were within the reservation. 95 F. Supp. 2d, at 1114.

The manner in which Congress then proceeded to deal with the Tribe shows clearly that preservation of the land within the reservation, absent contrary agreement with the Tribe, was central to Congress's complementary objectives of dealing with pressures of white settlement and establishing the reservation by permanent legislation. The Tribe had shown its readiness to fight to preserve its land rights when in 1858 it defeated a force of the United States military, which it misunderstood as intending to take aboriginal lands. See H. R. Rep. No. 1109, 51st Cong., 1st Sess., at 2–3. The concern with hostility arose again in 1873 before the reservation boundaries were

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[6] See also Commissioner of Indian Affairs, Annual Report (1873), reprinted in App. 45 (explaining that Tribe was dissatisfied with a previous reservation and that the 1873 agreement was required "[f]or the purpose of extinguishing [the Tribe's] claim to all the tract of country claimed by them"). See generally *Montana* v. *United States,* 450 U. S. 544, 556 (1981) (creation of Indian reservation is appropriate public purpose justifying defeat of state title to submerged lands).

established, when a surveyor on the scene had warned the Surveyor General that "[s]hould the fisheries be excluded there will in my opinion be trouble with these Indians." App. 30.

Hence, although the goal of extinguishing aboriginal title could have been achieved by congressional fiat, see *Tee-Hit-Ton Indians* v. *United States*, 348 U. S. 272, 279–282 (1955), and Congress was free to define the reservation boundaries however it saw fit, the goal of avoiding hostility seemingly could not have been attained without the agreement of the Tribe. Congress in any event made it expressly plain that its object was to obtain tribal interests only by tribal consent. When in 1886 Congress took steps toward extinguishing aboriginal title to all lands outside the 1873 boundaries, it did so by authorizing negotiation of agreements ceding title for compensation. Soon after that, when Congress decided to seek a reduction in the size of the 1873 reservation itself, the Secretary of Interior advised the Senate against fiddling with the scope of the reservation without the Tribe's agreement. The report of February 1888 likewise urged that any move to diminish the reservation "should be done, if done at all, with the full and free consent of the Indians, and they should, of course, receive proper compensation for any land so taken." App. 129. Accordingly, after receiving the Secretary's report, Congress undertook in the 1889 Act to authorize negotiation with the Tribe for the consensual, compensated cession of such portions of the Tribe's reservation "as such tribe shall consent to sell," Act of Mar. 2, 1889, ch. 412, §4, 25 Stat. 1002. In the meantime it honored the reservation's recently clarified boundaries by requiring that the Tribe be compensated for the Washington and Idaho Railroad Company right-of-way, Act of May 30, 1888, ch. 336, §1, 25 Stat. 160.

The facts, including the provisions of Acts of Congress in 1886, 1888, and 1889, thus demonstrate that Congress

understood its objective as turning on the Tribe's agreement to the abrogation of any land claim it might have and to any reduction of the 1873 reservation's boundaries. The explicit statutory provisions requiring agreement of the Tribe were unchanged right through to the point of Congress's final 1891 ratification of the reservation, in an Act that of course contained no cession by the Tribe of submerged lands within the reservation's outer boundaries. Nor, it should be added, is there any hint in the evidence that delay in final passage of the ratifying Act was meant to pull a fast one by allowing the reservation's submerged lands to pass to Idaho under a legal presumption, by virtue of the Statehood Act approved eight months before Congress took final action on the reservation. There is no evidence that the Act confirming the reservation was delayed for any reason but comparison of the respective House and Senate bills, to assure that they were identical prior to the House's passage of the Senate version.[7]

The record thus answers the State's argument that, because the 1889 Act indicates that Congress sought to obtain portions of the reservation "valuable chiefly for minerals and timber," Congress was not necessarily thinking one thing or another about the balance of the reservation land. Reply Brief for Petitioner 6–7; see also Tr. of Oral Arg. 12–13. The argument simply ignores the evidence that Congress did know that the reservation included submerged lands, and that it authorized the

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[7] Given the preceding discussion of, among other things, the earlier congressional Acts, it should go without saying that this reference to the fact that the Senate passed the ratification Act before statehood is not intended to suggest that the Senate action constituted the enactment of an expression of intent on behalf of the whole Congress, let alone that it was sufficient of itself to defeat Idaho's title to the submerged lands. But cf. *post*, at 5.

reservation's modification solely by agreement. The intent, in other words, was that anything not consensually ceded by the Tribe would remain for the Tribe's benefit, an objective flatly at odds with Idaho's view that Congress meant to transfer the balance of submerged lands to the State in what would have amounted to an act of bad faith accomplished by unspoken operation of law. Indeed, the implausibility of the State's current position is underscored by the fact that it made a contrary argument in the Court of Appeals, where it emphasized the District Court's finding that the 1889 Act was an authorization "to negotiate with the Tribe for a release of the submerged lands," and recognized that "[Congress was] informed that the Coeur d'Alene Reservation embraced submerged lands." Opening Brief for Appellant in No. 98–35831 (CA9), at 11, 31.

Idaho's position is at odds not only with evidence of congressional intent before statehood, but also with later congressional understanding that statehood had not affected the submerged lands in question. Eight months after passing the Statehood Act, Congress ratified the 1887 and 1889 agreements in their entireties (including language in the 1887 agreement that "the Coeur d'Alene Reservation shall be held forever as Indian land"), with no signal that some of the land over which the parties to those agreements had negotiated had passed in the interim to Idaho. The ratification Act suggested in a further way Congress's understanding that the 1873 reservation's submerged lands had not passed to the State, by including a provision confirming the Tribe's sale of river channels to Frederick Post. Confirmation would have been beyond Congress's power if title to the submerged riverbed had already passed to the State.[8] Finally, the Act of Congress

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[8] The State says that the conveyance to Post included land that was outside the boundary of the 1873 reservation. Reply Brief for Petitioner

ceding the portion of reservation land for the townsite of Harrison confirms Congress's understanding that the lakebed within the reservation's boundaries was part of the reservation. Only three years after the Act confirming the reservation, the townsite cession was treated just as the right-of-way for the railroad had been treated before statehood. The Tribe (and no one else) was compensated for a cession whose bounds suggested inclusion of submerged lands; the boundary lines did not stop at the water's edge and meander the entire shore, but continued into the area of the lake to encompass submerged territory that the National Government simply could not have conveyed if it had passed to Idaho at the time of statehood.[9]

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18. That merely suggests the possibility that Congress intended to defeat the State's title to even more territory than the United States is claiming here.

The State also hypothesizes that the relevant portions of the Spokane River may not have been considered navigable at the time of the conveyance, *ibid.*, in which case the equal footing doctrine would not apply and the conveyance would say nothing about Congress's intent with regard to submerged lands underlying navigable waters. We need not resolve this factual question, which was not addressed below. Suffice it to say that Congress's actions in 1891 were consistent with an understanding that the State did not have title to the riverbeds conveyed to Post, which, along with the later Harrison cession of part of the concededly navigable lake, is consistent with an understanding that no submerged lands within the reservation's stated boundaries had passed to Idaho.

[9] Here, we agree with the dissent, *post*, at 4, that Congress cannot, after statehood, reserve or convey submerged lands that "ha[ve] already been bestowed" upon a State. See *Shively* v. *Bowlby,* 152 U. S. 1, 26–28 (1894) (citing *Lessee of Pollard* v. *Hagan,* 3 How. 212 (1845)). Our point in mentioning Congress's actions after statehood is merely to confirm what Congress's prestatehood actions already make clear: that the lands at issue here were not bestowed upon Idaho at statehood, because Congress intended that they remain tribal reservation lands barring agreement to the contrary.

In sum, Congress undertook to negotiate with the Coeur d'Alene Tribe for reduction in the territory of an Executive Order reservation that Idaho concedes included the submerged lands at issue here. Congress was aware that the submerged lands were included and clearly intended to redefine the area of the reservation that covered them only by consensual transfer, in exchange for the guarantee that the Tribe would retain the remainder. There is no indication that Congress ever modified its objective of negotiated consensual transfer, which would have been defeated if Congress had let parts of the reservation pass to the State before the agreements with the Tribe were final. Any imputation to Congress either of bad faith or of secrecy in dropping its express objective of consensual dealing with the Tribe is at odds with the evidence. We therefore think the negotiating history, not to mention subsequent events, "ma[k]e [it] very plain," *Holt State Bank*, 270 U. S., at 55, that Congress recognized the full extent of the Executive Order reservation lying within the stated boundaries it ultimately confirmed, and intended to bar passage to Idaho of title to the submerged lands at issue here.

The judgment of the Court of Appeals is affirmed.

*It is so ordered.*