

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

UNITED STATES OF AMERICA,

Plaintiff,

v.

F.E.B. CORP., a Florida
Corporation,

Defendant.

COMPLAINT

Plaintiff, the United States of America (United States), by and through the undersigned Assistant United States Attorney, hereby sues Defendant, F.E.B. Corp. (FEB), and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for declaratory judgment to resolve a title dispute between the parties.
2. Both parties claim title to the Subject Property, which constitutes approximately 39 (thirty-nine) acres of artificially created upland off the coast of Key West, Florida, with over 20 acres above sea level, and is now known as Wisteria Island (hereinafter referred to as the Subject Property or Wisteria Island).
3. The United States brings this suit to quiet title to the Subject Property.

JURISDICTION AND PARTIES

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1345 in order to issue a declaratory judgment pursuant to 28 U.S.C. § 2201 *et seq.*

5. The Plaintiff is the United States.

6. The Defendant is FEB, a Florida for-profit corporation with its principal place of business in Monroe County, Florida, such that the Court has personal jurisdiction over FEB.

VENUE

7. The Subject Property is situated in Monroe County, Florida, within the Southern District of Florida.

8. FEB's principal place of business is also located within the Southern District of Florida.

9. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

1819-1919: The United States Acquires the Subject Property and Reserves It for Naval Use.

10. In 1819, the United States and Spain entered into the Adams-Onis Treaty.

11. A true and correct copy of the Adams-Onis Treaty is attached as Exhibit 1 and incorporated by reference.

12. Under Article II of the Treaty, the United States acquired "full property," or allodial title, in all lands in East and West Florida "which are not private property."

13. The Subject Property is part of the territories then known as East and West Florida, and was not private property at the time of the Treaty.

14. The Treaty conveyed the Subject Property to the United States.

15. When the United States acquired the Subject Property, it was a shoal and submerged lands: the uplands now known as Wisteria Island did not exist at that time.

16. The Subject Property is in Frankfort Bank (a/k/a Frankford Bank) and is adjacent to Key West and Fleming Key.

17. On September 17, 1845, President James Polk issued an executive order in which he reserved from sale public lands described therein per a request by the War Department.

18. A true and correct copy of the September 17, 1845 Executive Order is attached as Exhibit 2 and incorporated by reference.

19. The September 17, 1845 Executive Order encompasses the Subject Property.

20. The Subject Property was reserved from disposition by the September 17, 1845 Executive Order.

21. A January 11, 1854 letter from the Secretary of the Treasury, and referring to requests made as early as March 21, 1845, confirms that the “shoals” of Key West and “Flemings” Key were reserved for “military purposes.”

22. A true and correct copy of the January 11, 1854 letter from the Secretary of the Treasury is attached as Exhibit 3 and incorporated by reference.

23. In a correspondence dated March 9, 1855, the Commissioner of the General Land Office of the United States expressly requested that Fleming Key and the adjacent shoals of Key West be reserved for military and naval purposes.

24. A true and correct copy of the March 9, 1855 letter from the General Land Office is attached as Exhibit 4 and incorporated by reference.

25. A correspondence from the Department of the Navy dated March 26, 1908, establishes that “Frankford Bank” and its adjacent shoals were reserved for the U.S. Navy.

26. A true and correct copy of the U.S. Navy's March 26, 1908 letter is attached as Exhibit 5 and incorporated by reference.

27. By correspondence dated April 14, 1908, the Commandant's Office for the U.S. Naval Station, Key West, once again established that "there is a definite claim by the Navy to Frankford Bank" and that "the shoals and Fleming Key are reserved for Military and Naval purposes."

28. A true and correct copy of the Naval Station's April 14, 1908 letter is attached as Exhibit 6 and incorporated by reference.

29. In the April 14, 1908 letter, the Commandant's Office established that the "Army" was in the process of, or was about to begin, a dredging project in Key West Harbor.

30. The Commandant's Office was seeking to obtain supervisory authority over the dredging project in order to protect the U.S. Navy's interests in, and ongoing use of, Fleming Key, Frankfort Bank, and the adjacent shoals:

Frankford Bank forms the Western edge of Man-of-War Harbor and channel, and its removal by dredgers may deprive that harbor of shelter. Man-of-War-Harbor is also designated as "Hurricane Harbor," because it is a smooth basin that affords perfect shelter during storms.

[] The indiscriminate removal of Frankford Bank by contractors will be likely to seriously impair the value of Man-of-War Harbor and Fleming Key as a torpedo depot.

1919-1924: The United States Creates a 3-Acre Spoil Island on the Subject Property During a 1920s Dredging Project in Key West Harbor.

31. U.S. Coast and Geodetic Survey (C&GS) charts of the area (Chart No. 584) from 1919 and 1923 establish that the Subject Property, which is located in the southern portion of Frankfort Bank, contained water depths of 3 to 7 feet and that the sea bottom was "sft" or soft.

32. True and correct copies of the 1919 and 1923 C&GS Chart No. 584 are attached as Exhibits 7 and 8 respectively and incorporated by reference.

33. On or about September 10, 1919, Key West was hit by a powerful hurricane.

34. As a result of the 1919 hurricane, a 150-foot ship named *Wisteria* ran aground on the Subject Property.

35. The Subject Property would eventually be named Wisteria Island in recognition of the *Wisteria* shipwreck.

36. From 1919-1923, the United States engaged in a dredging project in Key West Harbor.

37. The 1920s dredging project was paid for by the United States and was done for the benefit of, and use of, the U.S. Navy.

38. The project was effectively completed on December 15, 1923.

39. As a result of the 1920s dredging project, an approximately 3-acre spoil island was created on the Subject Property.

40. A correspondence from the Department of Commerce, Lighthouse Service to C&GS in April of 1924 includes a modified version of the 1923 C&GS Chart No.584 that has “spoil bank” written in and shows dry land on the Subject Property for the first time.

41. A true and correct copy of the Department of Commerce, Lighthouse Service’s April 1924 letter is attached as Exhibit 9 and incorporated by reference.

**1924-1939: Florida Attempts to Sell the Subject Property;
the U.S. Navy Objects and Renews Its Reservation.**

42. On or about April 5, 1924, Florida’s Trustees of the Internal Improvement Trust Fund (TIIF) issued the following notice of its intention to sell the improved Subject Property:

NOTICE is hereby given that [TIIF], will hold a meeting at 11 o'clock A. M., Tuesday, May 20th, 1924, for the purpose of considering the sale of a submerged tract of land in Monroe County, described as follows, to-wit:

An island in the vicinity of Key West Island, caused by the deposit of excavated material from the Ship Channel.

The deposit lies 1800 feet, more or less, in a Northwesterly direction from the Porter Docks, which are at the end of Fitzpatrick Street, City of Key West. It extends 400 feet, more or less, in a Northeasterly direction, 300 feet, more or less, in a Northwesterly direction, and contains approximately 2.8 acres. All in Section 6, Township 68 South, Range 25 East.

Exact description to be furnished with deed.

43. A true and correct copy of the relevant portion of the 1923-1924 TIIF minutes (Volume 15, p.191-92), evidencing TIIF's intention to sell the improved Subject Property, is attached as Exhibit 10 and incorporated by reference.

44. After TIIF advertised the Subject Property for sale in a newspaper published in the county where the Subject Property lies, the U.S. Navy filed objections to the proposed sale.

45. A true and correct copy of the relevant portion of the 1923-1924 TIIF minutes (Volume 15, p.210), evidencing TIIF's acknowledgment of the U.S. Navy's objection to the sale of the Subject Property, is attached as Exhibit 11 and incorporated by reference.

46. The U.S. Navy notified TIIF that the improved Subject Property was part of Frankfort Bank, was owned by the United States, was not considered tidal lands of the State, and, therefore, could not be sold by Florida.

47. On or about June 11, 1924, after the U.S. Navy objected to TIIF's intention to sell the improved Subject Property, TIIF withdrew the sale and rejected all bids.

48. A true and correct copy the relevant portion of the 1923-1924 TIIF minutes (Volume 15, p.215), evidencing TIIF's decision to withdraw the sale of the improved Subject Property, is attached as Exhibit 12 and incorporated by reference.

49. At or about the same time the U.S. Navy filed objections with TIIIF regarding the attempt to sell the improved Subject Property, the U.S. Navy sought to reserve for naval purposes all islands, keys, harbors, and shoals adjacent to, and in the vicinity of, Key West, Florida, including the Subject Property.

50. By correspondence dated July 23, 1924, the Secretary of the Navy wrote to the Secretary of the Interior regarding “a proposed draft of an executive order reserving for naval purposes certain islands, keys, harbors and shoals adjacent to and in the vicinity of the Island of Key West, Florida.”

51. A true and correct copy of the July 23, 1924 letter from the Secretary of the Navy is attached as Exhibit 13 and incorporated by reference.

52. In the July 23, 1924 letter, the Secretary expressly stated “[t]he Navy Department has for over thirty years held undisputed possession of Fleming Key and the adjacent shoals . . . together with all of the islands and shoals to the westward of Key West to and including the Marquesas.”

53. On August 9, 1924, the Secretary of the Navy sent the President a formal request for entry of an executive order to reserve for naval purposes “all the islands, keys, harbors and shoals adjacent to and in the vicinity of Key West, Florida . . . together with certain other lands known as Frankford Bank.”

54. A true and correct copy of the August 9, 1924 letter from the Secretary of the Navy is attached as Exhibit 14 and incorporated by reference.

55. Demonstrating the importance of the matter, on August 11, 1924, a mere two days later, President Calvin Coolidge issued Executive Order 4060.

56. A true and correct copy of Executive Order 4060 is attached as Exhibit 15 and incorporated by reference.

57. Executive Order 4060 reserves for naval use “all the islands, keys, harbors, and shoals adjacent to and in the vicinity of the Island of Key West, Florida.”

58. Executive Order 4060 encompasses the Subject Property.

59. Executive Order 4060 reserved the Subject Property for naval use.

60. A sketch of the Subject Property dated January 21, 1927, identifies a “timber wharf” and “shack” on the Subject Property.

61. A true and correct copy of the January 21, 1927 sketch is attached as Exhibit 16 and incorporated by reference.

62. On or about August 17, 1928, the United States, by and through the Secretary of the Navy, entered into a “Revocable License” with Lowe Fish Company for use of the Subject Property “for the purpose of carrying on certain processes of preparation of hides in connection with the shark fishing industry.”

63. A true and correct copy of the August 17, 1928 Revocable License is attached as Exhibit 17 and incorporated by reference.

1940-1950: the United States Creates Wisteria Island for Its Own Use During the 1940s Dredging Project in Key West Harbor.

64. In the early 1940s, while the United States was engaged in World War II, the U.S. Navy undertook a major dredging project, together with the Army Corps of Engineers, to further dredge the Key West Harbor channel and turning basin for naval use.

65. A true and correct copy of Army Corps of Engineer’s File #21-13.444 evidencing the specifications for the 1940s dredging project is attached as Exhibit 18 and incorporated by reference.

66. Funding from the U.S. Navy paid for the 1940s dredging project, and the project was undertaken for naval use.

67. The 1940s dredging project began on or about July 15, 1941 and was completed on or about April 5, 1943.

68. The 1940s dredging project had specific areas designated for the placement of spoil.

69. Army Corps File #21-13.444 identifies the Subject Property, which at that time included the 3-acre spoil island created during the 1920s dredging project, as “SPOIL AREA B.”

70. By June 1943, at the completion of the 1940s dredging project, the approximately 3-acre 1920s spoil island was expanded to over 20 acres above sea level with approximately 39 acres of total fill.

71. The enlarged island became known as Wisteria Island.

72. After World War II, the U.S. Navy maintained operational control over the Subject Property.

73. By letter dated December 7, 1945, the U.S. Navy denied a request by Shark Industries to use the Subject Property.

74. A true and correct copy of the December 7, 1945 letter is attached as Exhibit 19 and incorporated by reference.

75. On June 23, 1947, the Supreme Court issued its decision in United States v. California, 332 U.S. 19 (1947).

76. In California, the Supreme Court ruled that the United States, not the individual states, held “paramount rights and power over” the submerged lands within the three-mile belt off the coast of the United States, “an incident to which is full dominion over the resources of the soil under that water area.” Id. at 38-39.

77. In California, the Supreme Court confirmed that the United States, not Florida, owned the Subject Property.

**1951-1952: Florida Issues a Quitclaim Deed for
the Subject Property Over the United States' Objection.**

78. A "Plat" dated July 11, 1951 shows "proposed bay bottom land and spoil area to be acquired from State I. I. Board by Mr. Paul Sawyer."

79. A true and correct copy of the Plat dated July 11, 1951 is attached as Exhibit 20 and incorporated by reference.

80. The Plat depicts the Subject Property as the "proposed area to be acquired," labels it a "Spoil Island," and clearly delineates that it is encompassed within the boundary of "Frankford Bank."

81. On July 21, 1951, Paul E. Sawyer sent the Florida Department of Agriculture an "application" for the purchase of the "Spoil Area," and described the Spoil Area as land that "was dredged up out of the channel by the United States Government during World War I and is an island now sitting above sea level."

82. A true and correct copy of Sawyer's July 21, 1951 application is attached as Exhibit 21 and incorporated by reference.

83. Sawyer was serving as an agent for Bernie C. Papy in seeking to purchase the Subject Property from Florida.

84. Papy served as a State Representative in the Florida House of Representatives from 1935-1962.

85. On July 30, 1951, in response to Sawyer's application to purchase the Spoil Area, TIIF once again issued a notice of its intention to sell the Subject Property.

86. A true and correct copy of TIIF's July 30, 1951 notice is attached as Exhibit 22 and incorporated by reference.

87. On August 15, 1951, the U.S. Navy sent a "Navy Speed Letter" to the Chief of the Bureau of Yards and Docks seeking authority to object to TIIF's intended sale of the Subject Property.

88. A true and correct copy of the August 15, 1951 Navy Speed Letter is attached as Exhibit 23 and incorporated by reference.

89. The Navy Speed Letter states that the Subject Property proposed for sale by TIIF was a "result of dredging in the main ship channel at Key West, Florida, which was accomplished with the use of Navy funds in 1943" and that the Subject Property is encompassed within Executive Order 4060.

90. The Navy Speed Letter also establishes the following: "Due to the proximity of this spoil area to highly classified Naval activities . . . it is considered a dangerous security risk to allow this property to fall in the hands of private developers," and that "the strategic location of this spoil area makes its use for military purposes highly possible, and its use for a fuel storage area is now under consideration."

91. On September 27, 1951, the U.S. Navy sent TIIF a letter formally objecting to the proposed sale of the Subject Property.

92. A true and correct copy of the U.S. Navy's September 27, 1951 letter is attached as Exhibit 24 and incorporated by reference.

93. In the September 27, 1951 letter, the U.S. Navy gave TIIF notice of the following: "The spoil area proposed for sale by the State of Florida is located in Frankfort Bank and is included in the area which by Executive Order, dated September 17, 1845 was reserved from sale;"

it was “created by deposits of dredged material from the main ship channel at Key West, Florida and was accomplished by the use of Department of Navy funds;” and “the Navy considers Frankfort Bank, the shoals adjacent thereto and the spoil area in question as being the property of the United States.”

94. On January 7, 1952, Florida Attorney General Richard W. Ervin sent a letter to the Florida Department of Agriculture stating the following: “I am unable to state definitely whether or not the Navy’s claim is valid. However, I do think that the claim is debatable enough and so shrouded in antiquity that I think the best course would be for [TIIF] to complete the sale and explain the Navy’s claim to Mr. Papy and allow him to accept [TIIF’s] deed at his own risk.”

95. A true and correct copy of the January 7, 1952 letter is attached as Exhibit 25 and incorporated by reference.

96. On January 9, 1952, TIIF issued a deed without warranties (i.e., a quitclaim deed) to Paul E. Sawyer for the Subject Property.

97. A true and correct copy of the 1952 quitclaim deed is attached as Exhibit 26 and incorporated by reference.

98. When TIIF issued the quitclaim deed to Sawyer, Florida did not own the Subject Property.

99. Florida did not even have a colorable claim to title over the Subject Property on January 9, 1952.

100. FEB’s recorded title originates with, and is dependent upon, the 1952 quitclaim deed.

101. FEB’s interest in the Subject Property is limited to what TIIF conveyed through the 1952 quitclaim deed.

1953: In Response to California, Congress Passes the Submerged Lands Act, Which Conveyed Certain Submerged Lands to the Individual States While Excepting the Subject Property From That Conveyance.

102. In response to the 1947 California decision, there was a push by states and some members of Congress to convey to the individual states the three-mile belt off the coast of the United States.

103. By May 29, 1952, President Harry Truman had twice vetoed legislation that would have conveyed ownership of the submerged lands in the three-mile belt from the United States to the respective states.

104. Ownership and control over the submerged lands in the three-mile belt became an issue in the 1952 presidential election.

105. Dwight Eisenhower, whose platform favored state ownership of the submerged lands, won the election.

106. Eisenhower's election renewed efforts by Congress to pass legislation conveying the submerged lands in the three-mile belt to the individual states.

107. Prior to 1953, all versions of submerged lands legislation were rejected and did not address, much less reserve, lands filled in, built up, or otherwise reclaimed by the United States.

108. On February 24, 1953, Secretary of the Navy Robert Anderson testified before the Senate regarding the proposed legislation known as the Submerged Lands Act (SLA).

109. A true and correct copy of Secretary Anderson's testimony is attached as Exhibit 27 and incorporated by reference.

110. Secretary Anderson testified that any such legislation would need to confirm and reserve title with the United States to "filled in, made or reclaimed lands." Id. at 546.

111. Secretary Anderson produced a list of improvements made by the U.S. Navy that should be excepted from the proposed conveyance under legislative consideration.

112. The list identifies “Key West (naval station), Fla.” as one of the location containing such improvements and “fill” as one of the “improvements” that needed to be excepted from the SLA and retained for naval use. Id. at 550.

113. In 1953, the Subject Property was part of the naval station in Key West, Florida and was improved with fill.

114. Secretary Anderson’s list of improvements that should be excepted from conveyance under the SLA includes the Subject Property.

115. On or around March 2, 1953, Rear Admiral Ira Nunn appeared before the House of Representatives on behalf of Secretary Anderson to testify on submerged lands and the U.S. Navy’s interest in the same.

116. A true and correct copy of the Admiral Nunn’s testimony is attached here as Exhibit 28 and incorporated by reference.

117. In his testimony, Admiral Nunn stressed the need to reserve title in the United States to lands that the U.S. Navy had “improved by the erection of permanent buildings, quay walls, piers, and other structures, including filling in, at a cost to the Government of many millions of dollars.” Id. at 211.

118. In furtherance of his testimony, Admiral Nunn submitted a “Partial List of Naval Activities in Tidal Water Area Where Title of Record Has Not Been Acquired for Any Improvements Beyond the High Water Line.” Id. at 214.

119. The list identifies improvements the U.S. Navy sought to retain title to after the passage of the SLA where the U.S. Navy had not obtained record title to the activity prior to the passage of the SLA.

120. The list identifies both Naval Base, Key West, Fla. and Naval Air Station, Key West, Fla.

121. Admiral Nunn's list includes the Subject Property.

122. On March 2, 1953, Attorney General Herbert Brownell, Jr. testified before the Senate about the SLA.

123. A true and correct copy of Attorney General Brownell's testimony is attached as Exhibit 29 and incorporated by reference.

124. In response to a request from the Senate for language that would "clearly protect[] any installations the Federal Government might have, such as the ones that were mentioned the other day by the Secretary of the Navy," Attorney General Brownell offered the following language (in relevant part): "There is excepted from the operation of section 3 of this Joint Resolution: . . . all lands filled in, built up, or otherwise reclaimed by the United States for its own use" Id. at 935.

125. This is the first time the filled in, built up, or otherwise reclaimed land exception appears in the legislative history of the SLA.

126. This language was proposed in order to "make certain that all installations by the States on submerged, reclaimed, or filled or other lands inside the line, belong to the States" while correspondingly ensuring "that all installations and acquisitions of the Federal Government within such area belong to it." Id. at 926.

127. On May 22, 1953, President Eisenhower signed the SLA into law. 43 U.S.C. § 1301 *et seq.*

128. As enacted, the SLA excepted from the conveyance to the states “all lands filled in, built up, or otherwise reclaimed by the United States for its own use.” 43 U.S.C. § 1313(a).

129. This exception, which corresponds to the language proposed by Attorney General Brownell, demonstrates that Congress heeded the concerns of the U.S. Navy and the Attorney General.

**1953-2012: The United States Continues to Own
the Subject Property After the Passage of the SLA.**

130. On September 15, 1953, the U.S. Navy sent a letter to the Bureau of Land Management (BLM) asking the BLM to advise the U.S. Navy “on the validity of the Federal Government’s claim to ownership of the area,” including the Subject Property.

131. A true and correct copy of the September 15, 1953 letter is attached as Exhibit 30 and incorporated by reference.

132. In the letter, the U.S. Navy explained that “[f]or many years the Department of the Navy has considered of great strategic importance the Frankfort Bank, Key West, Florida, and those shoals in close proximity thereto” and that the U.S. Navy “has considered the ownership thereof to be in the United States.”

133. By letter dated October 27, 1954, the U.S. Navy again wrote to the BLM and established the following: “prior to 1953, no action had been taken by the United States to relinquish [] ownership” of the Subject Property; “the subject area has been successively reserved for Government purposes since the establishment of the Territory of Florida in 1822;” and “[i]nasmuch as the area is within the purview of the Submerged Lands Act of 1953, this

Department is prepared to show that if ownership was originally in the United States, it is excepted by Section 5 of that Act from any proprietary rights inuring to the State by reason of that Act.”

134. A true and correct copy of the October 27, 1954 letter is attached as Exhibit 31 and incorporated by reference.

135. In the 1960s, the Army Corps conducted another dredging project in Key West Harbor.

136. True and correct copies of the Army’s General and Detail Design Memorandum, Key West Harbor, Florida Project, Key West Bight, dated March 18, 1966 and the Army Corps of Engineer’s files from 1961-65, both evidencing the 1960s Key West Harbor dredging project, are attached as Exhibits 32 and 33 respectively and incorporated by reference.

137. The southern half of Wisteria Island was designated as a spoil area for the 1960s dredging project, and was used as such.

138. A map created by and for the Naval Air Station, Key West, which labels Navy properties, identifies the Subject Property as “HB Spoil Bank Wisteria Island.”

139. A true and correct copy of the Naval Air Station, Key West property map is attached as Exhibit 34 and incorporated by reference.

140. A January 10, 1974 Naval Air Station, Key West “Assignment of area identification codes” identifies that area code “HB” stands for “Spoil Area N of NAVSTA.”

141. A true and correct copy of the Naval Air Station, Key West 1974 assignment codes is attached as Exhibit 35 and incorporated by reference.

142. In a letter dated November 7, 2011, the BLM confirmed that a “Federal Interest Determination” conducted by the agency had determined that the Subject Property “is currently

under the management of the Department of Interior” and that “[l]egal title . . . would appear to be still vested in the United States.”

143. A true and correct copy of the BLM’s November 7, 2011 letter is attached as Exhibit 36 and incorporated by reference.

144. In a letter dated August 21, 2012, the BLM confirmed that it “continue[s] to conclude that [the Subject Property] is in federal ownership.”

145. A true and correct copy of the BLM’s August 21, 2012 letter is attached as Exhibit 37 and incorporated by reference.

2012-2016: FEB Asserts a Claim to the Subject Property Through a Lawsuit Filed Against the United States, Which Was Dismissed For Lack of Subject Matter Jurisdiction.

146. In 2012, FEB filed a lawsuit against the United States under the Quiet Title Act (QTA), 28 U.S.C. § 2409a, asserting ownership of the Subject Property. F.E.B. Corp. v. United States, Case No. 12-cv-10072-JEM.

147. The District Court dismissed the 2012 QTA action for lack of subject matter jurisdiction, concluding that FEB filed the action in violation of the QTA’s 12-year statute of limitations. F.E.B. Corp. v. United States, 2015 WL 3653162 (S.D. Fla. Mar. 25, 2015).

148. FEB appealed the District Court’s decision to the Eleventh Circuit Court of Appeals, which affirmed the dismissal. F.E.B. Corp. v. United States, 818 F.3d 681 (11th Cir. 2016).

149. The Court of Appeals rejected FEB’s statute of limitations argument, which was dependent upon the SLA, concluding that “the circumstances of Wisteria Island’s creation hew closely enough to the ‘for its own use’ exception to the SLA to preclude a finding that the SLA clearly and unequivocally abandoned the federal government’s interest in that island.” Id. at 689.

150. The Court of Appeals went on to state:

That conclusion comports with the Supreme Court’s only treatment of the [“for its own use”] exception. See California ex rel. State Lands Comm’n v. United States (California II), 457 U.S. 273, 287, 102 S.Ct. 2432, 73 L.Ed.2d 1 (1982). In California II, the Supreme Court stated in dicta that the SLA exception for land built up by the United States “for its own use” would apply to coastline that had slowly accreted after the United States constructed jetties nearby, even though the accretion was inadvertent, and the resulting coastline had remained barren and unused for the first eighty years of its existence. Id. at 275–76, 287, 102 S.Ct. 2432. That result, the Supreme Court reasoned, “follow[ed] from the congressional object to assure each sovereign the continuing benefit of landfill and like work performed by each.” Id. at 287, 102 S.Ct. 2432. **Wisteria Island surely was both created and used for a more functional purpose than the inadvertent accretions at issue in California II.**

Id. at 689–690 (emphasis added) (footnotes omitted).

151. The Eleventh Circuit also noted that “[t]he Navy specifically listed ‘fill’ as one of the ‘improvements’ at Key West Naval Station that it sought to shield from the SLA.” Id. at 689 n.9.

152. The United States comes before this Court to resolve the dispute between the United States and FEB over the ownership of the Subject Property, and to quiet title to the Subject Property in the United States.

COUNT I
(Declaratory Judgment to Quiet Title)

153. The United States re-alleges and incorporates the allegations of Paragraphs 1 through 152 of the Complaint as though fully set forth herein.

154. The United States acquired the Subject Property from Spain in 1819.

155. The United States has not disposed of the Subject Property since acquiring the Subject Property in 1819.

156. In the 1920s, the United States dredged Key West Harbor.

157. In the 1920s, the United States placed spoil on the Subject Property, thereby raising some of the Subject Property above sea level.

158. The United States filled in, built up, or otherwise reclaimed the Subject Property during the 1920s dredging of Key West Harbor.

159. The United States conducted the 1920s dredging project for the benefit and use of the United States.

160. In the 1940s, the United States dredged Key West Harbor.

161. In the 1940s, the United States placed spoil on the Subject Property, thereby raising some of the Subject Property above sea level.

162. The United States filled in, built up, or otherwise reclaimed the Subject Property during the 1940s dredging of Key West Harbor.

163. The United States conducted the 1940s dredging project for the benefit and use of the United States.

164. The United States filled in, built up, or otherwise reclaimed the Subject Property for its own use.

165. In 1947, the Supreme Court reaffirmed the United States' interest in the Subject Property in United States v. California, 332 U.S. 19 (1947).

166. The Property Clause of the U.S. Constitution reserves the sole power to dispose of property with Congress: "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" U.S. Const. art. IV, § 3, cl. 2.

167. When Congress passed the SLA in 1953, it contained language that excepted the Subject Property from conveyance under the SLA.

168. The United States did not dispose of the Subject Property by operation of the SLA: the Subject Property is excepted from the SLA pursuant to 43 U.S.C. § 1313(a).

169. Congress has never disposed of the Subject Property.

170. The United States is entitled to declaratory judgment quieting title to the Subject Property in the United States over the claim of FEB.

WHEREFORE, Plaintiff, the United States of America, respectfully prays:

1. That the Court enter a final declaratory judgment quieting title to the Subject Property in the United States; removing the cloud created by the quitclaim deed issued by Florida in 1952; and finding that FEB holds no ownership interest in the Subject Property.

2. That this Court award the United States its costs and fees in bringing this action, and for such other and further relief as this Court deems just and proper.

Dated: October 11, 2018

Respectfully submitted,

ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

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