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## No. 9, Original

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IN THE

### Supreme Court of the United States

OCTOBER TERM, 1990

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UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

STATE OF LOUISIANA, *et al.*,

*Defendants.*

(Alabama and Mississippi Boundary Case)

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**ADDITIONAL SUPPLEMENTAL REPORT OF  
WALTER P. ARMSTRONG, JR., SPECIAL MASTER**

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### **ADDITIONAL SUPPLEMENTAL REPORT OF WALTER P. ARMSTRONG, JR., SPECIAL MASTER**

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In an earlier opinion (470 U.S. 93) the Court held that Mississippi Sound is a historic bay within the meaning of Article 7(b) of the Convention on the Territorial Sea and the Contiguous Zone (1965), 15 U.S.T. (Pt.2) 1607, T.I.A.S. No. 5639 and that the waters thereof are therefore inland waters. The Court therefor concluded:

Under this view, the coastline of the States consists of the lines of ordinary low water along the southern coasts of the barrier islands together with appropriate lines connecting the barrier islands. These latter lines mark the seaward limit of Mississippi Sound.

(470 U.S. at p. 96)

The Court therefore ordered:

The parties are directed promptly to submit to the Special Master a proposed appropriate decree for this Court's consideration; if the parties are unable to agree upon the form of the decree, each shall submit its proposal to the Master for his consideration and recommendation.

(470 U.S. at p. 115)

The parties were unable to agree, and accordingly each filed with me a form of proposed decree, which differed only in two respects, both involving only the coast line of Mississippi. The first was the westward terminus of a line between Petit Bois Island and Horn Island. The second was a line extending southward from a point upon Ship Island to the Mississippi-Louisiana boundary, which each party proposed but in a different fashion. Neither of these latter proposed lines would be "along the southern coasts of the Barrier Islands."

On March 16, 1987 after extensive evidentiary hearings, I filed a Supplemental Report recommending that the proposal of the United States as to Mississippi's seaward boundary between Petit Bois Island and Horn Island be adopted. No exception was taken to that portion of the report, which was subsequently confirmed by the Court's decision.

As to the second point, my report reads:

I therefore conclude that for the reasons stated above the decree proposed by Mississippi should not be entered and that in the absence of a stipulation or the adoption of a straight baseline the acceptance of the line proposed by the United States would amount to a modification of the Court's opinion of February 26, 1985 which would be beyond the scope of the reference to me as a Special Master.

Exception to this portion of the report was taken by the State of Mississippi only. The matter was briefed and argued before

the Court, which rendered an opinion March 1, 1988 (485 U.S. 88), in which it said:

The specific proceeding that culminated in this Court's opinion of February 26, 1985, reported at 470 U.S. 93, [84 L. Ed. 2d 73, 105 S. Ct. 1074,] concerned, we thought, only Mississippi Sound and its boundary. See *id.*, at 94; [84 L. Ed. 2d 73, 105 S. Ct. 1074;] Tr. of Oral Arg. 3. The Special Master's Report and his stated reservation as to the scope of the reference to him also appear to reflect that understanding. But in its argument to the Master and in its present exceptions, Mississippi seeks to extend the scope of this litigation to include its interest in seabed south of Mississippi Sound. The State's current arguments bear little relation to earlier proceedings unless one engrafts upon our 1985 opinion, and upon our direction therein for a proposed decree fixing the southern boundary of Mississippi Sound, an implication that Mississippi's rights, if any, *south* of that Sound's boundary are to be definitively determined in this phase of the litigation.

(485 U.S. at p. 91)

The Court, however, rejected that implication, saying:

Because Mississippi's exceptions to the Special Master's Supplemental Report do not relate at all to Mississippi Sound, and do not contest the validity of that Sound's closing lines recommended by the Master, we are left with a situation where all parties are in agreement as to that Sound and its boundary.

(485 U.S. at p. 92)

The Court therefore overruled Mississippi's exception and again directed the parties promptly to submit to the Special Master a proposed appropriate decree defining the claims of Alabama and Mississippi with respect to Mississippi Sound. The parties have now agreed upon the form of such a proposed

decree, a copy of which is attached hereto as Appendix A, which delimits the coastlines of Alabama and Mississippi by salient points lying along the southern coast of the Barrier Islands together with appropriate lines connecting those islands, up to a point upon Ship Island which coincides with the northern terminus of a line which is the subject of litigation in another suit, *Mississippi v. United States*, No. 113 Original. The stipulation reflecting the consent of the parties is attached as Appendix B.

I therefore recommend that the decree be entered as proposed.

WALTER P. ARMSTRONG JR.  
Special Master

October 1, 1990

## **APPENDIX**





**APPENDIX A**  
**JOINT PROPOSED SUPPLEMENTAL DECREE**  
**SUPREME COURT OF THE UNITED STATES**

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**No. 9, Original**

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**UNITED STATES, PLAINTIFF**

**v.**

**STATE OF LOUISIANA, ET AL.**  
**(ALABAMA AND MISSISSIPPI BOUNDARY CASE)**

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**SUPPLEMENTAL DECREE**

By its decision of February 26, 1985, the Court overruled the exception of the United States to the Report of its Special Master herein insofar as it challenged the Master's determination that the whole Mississippi Sound constitutes historic inland waters, and, to this extent, adopted the Master's recommendations and confirmed his Report.

On March 1, 1988, the Court resolved the disagreement between the United States and Mississippi as to that portion of the Mississippi coastline at issue in the above-captioned litigation and directed the parties to submit to the Special Master a proposed appropriate decree defining the claims of Alabama and Mississippi with respect to Mississippi Sound. The parties have agreed on and submitted to the Special Master a proposed decree in accordance with the Court's decision of March 1, 1988.

**Accordingly,**

**IT IS ORDERED, ADJUDGED AND DECREED as follows:**

1. For the purposes of the Court's Decree herein dated December 12, 1960, 364 U.S. 502 (defining the boundary line between the submerged lands of the United States and the submerged lands of the States bordering the Gulf of Mexico), the coastline of the States of Alabama and Mississippi shall be determined on the basis that the whole of Mississippi Sound constitutes state inland waters;

2. For the purposes of said Decree of December 12, 1960, the coastline of Alabama includes a straight line from a point on the western tip of Dauphin Island where  $X = 238690$  and  $Y = 84050$  in the Alabama plane coordinate system, west zone, and  $X = 659783.79$  and  $Y = 204674.56$  in the Mississippi plane coordinate system, east zone, to a point on the eastern tip of Petit Bois Island where  $X = 215985$  and  $Y = 77920$  in the Alabama plane coordinate system, west zone, and  $X = 637152.89$  and  $Y = 198279.25$  in the Mississippi plane coordinate system, east zone, so far as said line lies on the Alabama side of the Alabama-Mississippi boundary.

3. For the purposes of said Decree of December 12, 1960, the coastline of Mississippi includes the following:

- (a) That portion of the straight line described in paragraph 2, above, lying on the Mississippi side of Alabama-Mississippi boundary;
- (b) The baseline delimiting Petit Bois Island determined by the following points in the Mississippi plane coordinate system, east zone:

	E. COORD.	N. COORD.
	X	Y
A POINT AT	636103.06	197409.43
A POINT AT	635730.88	197167.57
A POINT AT	635197.10	196848.81

	E. COORD.	N. COORD.
	X	Y
A POINT AT	634824.92	196606.95
A POINT AT	634494.81	196403.07
A LINE FROM	634116.89	196223.65
THROUGH	633487.70	195977.80
THROUGH	632600.10	195607.60
THROUGH	631541.99	195143.47
THROUGH	630508.20	194904.30
THROUGH	629479.90	194591.90
THROUGH	628525.00	194321.70
THROUGH	628401.73	194306.69
THROUGH	628036.92	194289.93
THROUGH	627476.60	194182.00
THROUGH	626488.60	193948.10
THROUGH	625932.59	193802.79
THROUGH	625516.00	193766.90
THROUGH	623861.36	193478.53
THROUGH	622820.50	193454.10
THROUGH	621823.80	193356.00
THROUGH	620825.20	193257.90
THROUGH	619847.89	193131.55
THROUGH	618538.77	193268.72
THROUGH	617735.69	193531.82
THROUGH	616497.05	194054.83
THROUGH	615577.50	194348.40
THROUGH	614799.01	194527.45
THROUGH	613600.50	194763.40
THROUGH	612681.90	194895.50
THROUGH	611818.33	195012.55
THROUGH	611021.34	195183.22
THROUGH	610184.77	195530.92
THROUGH	609391.80	195685.30
THROUGH	608419.90	195927.80

	E. COORD.	N. COORD.
	X	Y
THROUGH	607720.29	196127.06
THROUGH	607475.00	196239.30
THROUGH	606247.30	196809.81
THROUGH	605675.10	197160.10
THROUGH	604270.15	197849.15
THROUGH	603527.87	198470.45
TO	603006.58	199221.84;

- (c) A straight line from a point on the western tip of Petit Bois Island from  $X = 602984.74$  and  $Y = 199379.08$  in the Mississippi plane coordinate system, east zone, to a point on the eastern tip of Horn Island where  $X = 586698.88$  and  $Y = 203743.22$  in the same coordinate system;
- (d) The baseline delimiting Horn Island determined by the following points in the Mississippi plane coordinate system, east zone:

	E. COORD.	N. COORD.
	X	Y
A POINT AT	586085.00	203413.20
A POINT AT	585408.00	202870.40
A LINE FROM	584539.17	202442.95
THROUGH	583521.30	202226.50
THROUGH	582523.70	201911.10
THROUGH	581217.11	201559.05
THROUGH	580172.00	201476.80
THROUGH	578707.40	201327.16
THROUGH	577716.60	201360.70
THROUGH	576762.47	201326.88

	E. COORD.	N. COORD.
	X	Y
THROUGH	575057.04	201581.88
THROUGH	573405.12	201965.02
THROUGH	571199.22	202261.66
THROUGH	568628.38	202769.01
THROUGH	566917.90	203142.60
THROUGH	564973.10	203501.30
THROUGH	563121.32	203819.44
THROUGH	560958.00	204028.60
THROUGH	558940.70	204238.50
THROUGH	557048.68	204283.26
THROUGH	554930.20	204403.10
TO	553435.61	204348.41
A LINE FROM	55197.97	204538.74
THROUGH	551379.95	204841.79
THROUGH	550663.93	205145.88
THROUGH	549562.53	205270.46
THROUGH	547945.52	205663.99
THROUGH	546875.90	206276.41
THROUGH	545696.10	206670.80
THROUGH	544396.00	207134.79
THROUGH	542861.16	207556.77
THROUGH	540851.48	208393.15
THROUGH	539596.30	208786.30
TO	538818	209086.77
A LINE FROM	536831.40	209354.10
THROUGH	535469.11	209055.01
THROUGH	533599.69	208590.63
THROUGH	532440.54	208312.06
THROUGH	530361.80	207949.10
THROUGH	528785.77	207676.76
THROUGH	527430.00	207570.30
THROUGH	526475.92	207467.20

	E. COORD.	N. COORD.
	X	Y
THROUGH	525672.63	207540.27
THROUGH	522928.20	208196.10
THROUGH	521336.78	208496.86
THROUGH	520062.60	208576.80
THROUGH	519137.96	208626.07
TO	518074.58	209136.06;

- (e) A straight line from a point on the western tip of Horn Island where  $X = 517785.04$  and  $Y = 209525.13$  in the same coordinate system to a point on the eastern tip of the most easterly segment of Ship Island where  $X = 486293.70$  and  $Y = 208216.03$  in the same coordinate system;
- (f) The baseline delimiting the most easterly segment of Ship Island determined by the following points in the Mississippi plane coordinate system, east zone:

	E. COORD.	N. COORD.
	X	Y
A LINE FROM	485802.92	207647.85
THROUGH	484179.80	206426.60
THROUGH	482568.66	205272.72
THROUGH	480844.60	204246.60
THROUGH	479440.58	203436.29
THROUGH	478229.70	202788.30
THROUGH	476458.71	201921.54
THROUGH	475542.00	201634.30
TO	475218.46	201529.55;

- (g) A straight line from a point on the western tip of the easterly segment of Ship Island where  $X = 474673.81$  and  $Y = 201505.68$  in the same coordinate system to

a point on the eastern end of the westerly segment of Ship Island where  $X = 469644.55$  and  $Y = 200646.86$  in the same coordinate system;

- (h) The baseline delimiting the most westerly segment of Ship Island determined by the following points in the Mississippi plane coordinate system, east zone:

	E. COORD.	N. COORD.
	X	Y
A LINE FROM	468942.08	200226.18
THROUGH	468023.27	199707.98
THROUGH	466932.10	198967.80
THROUGH	465591.05	198219.69
THROUGH	464163.11	197420.58
TO	463004.481	196885.896;

4. That portion of the Mississippi baseline west of the westerly segment of Ship Island determined above is the subject of a separate decree resolving *Mississippi v. United States*, Original No. 113.

5. The baseline described in Paragraphs 2 and 3 above shall be, pursuant to stipulation of the parties, fixed as of the date of this decree, and shall from that date no longer be ambulatory.

6. The parties shall bear their own costs of these proceedings; the actual expenses of the Special Master herein and the compensation due him shall be borne half by the United States and half by Mississippi.

7. After his final accounting has been approved and any balance due him has been paid, the Special Master shall be deemed discharged with the thanks of the Court.

8. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as

from time to time may be deemed necessary or advisable to effectuate and supplement the decree and the rights of the respective parties.

/s/ Kenneth W. Starr  
KENNETH W. STARR  
Solicitor General  
Department of Justice  
Washington, D.C. 20530

Date: July 23, 1990

/s/ Mike Moore  
MIKE MOORE  
Attorney General  
State of Mississippi  
Carroll Gartin Justice Building  
Jackson, Mississippi 39205-0220

Date: August 7, 1990

/s/ Don Siegelman  
DON SIEGELMAN  
Attorney General  
State of Alabama  
State House  
Montgomery, Alabama 36130

Date: 8-14-90

Filed 8/17/90

/s/ Walter P. Armstrong, Jr.  
Special Master



**APPENDIX B**  
**SUPREME COURT OF THE UNITED STATES**

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**No. 9, Original**

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**UNITED STATES, PLAINTIFF**

**v.**

**STATE OF LOUISIANA, ET AL.**  
**(ALABAMA AND MISSISSIPPI BOUNDARY CASE)**

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**STIPULATION**

For the purpose of expediting the resolution of the above captioned action and in order to facilitate administration of the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, the parties hereto agree by this stipulation that the baseline described in the joint proposed supplemental decree submitted to the Special Master in the above captioned action shall be fixed as of the date of the entry of that decree by the Court, and from that date shall no longer be ambulatory.

/s/ Kenneth W. Starr  
KENNETH W. STARR  
Solicitor General  
Department of Justice  
Washington, D.C. 20530

Date: July 23, 1990

/s/ Mike Moore  
MIKE MOORE  
Attorney General  
State of Mississippi  
Carroll Gartin Justice Building  
Jackson, Mississippi 39205-0220

Date: August 7, 1990

/s/ Don Siegelman  
DON SIEGELMAN  
Attorney General  
State of Alabama  
State House  
Montgomery, Alabama 36130

Date: 8-14-90

Filed 8/17/90  
/s/ Walter P. Armstrong, Jr.  
Special Master

