No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

ON THE REPORT OF THE SPECIAL MASTER

EXCEPTION OF THE UNITED STATES AND MEMORANDUM IN SUPPORT OF EXCEPTION

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EXCEPTION OF THE UNITED STATES

The United States respectfully excepts to the Report of the Special Master insofar as he recommends overruling its objections to the accounting filed by the State of Louisiana and excusing the State from accounting for or paying over to the United States monies collected by the State since June 5, 1950 (other than severance taxes and administration fees) derived from or attributable to submerged lands adjudicated to be within the exclusive domain of the United States.

WADE H. MCCREE, JR.
Solicitor General

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STATE OF LOUISIANA, ET AL.

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MEMORANDUM FOR THE UNITED STATES IN SUPPORT OF ITS EXCEPTION

STATEMENT

This is the final chapter in the litigation initiated in 1948 between the United States and the State of Louisiana over the right to exploit the valuable mineral resources of the seabed off the coast of that State. See *United States* v. *Louisiana*, 339 U.S. 699. At length, the territorial dispute was resolved, the boundary between federal and state submerged lands

was fixed,[1] and each party was directed to account for revenues derived from areas adjudicated to the other sovereign. Decree of June 16, 1975, paras. 5-7, 422 U.S. 13, 15-17. In due course, such accountings were filed, but objections were interposed and the matter was referred by the Court to its Special Master. 423 U.S. 909 (1975). The Master held hearings and has now filed his Report.

1. During the proceedings before the Special Master three issues emerged, which are addressed by the Report now before the Court. The first is whether the United States owes Louisiana "interest," or some like sum, in respect of the revenues derived from areas ultimately adjudicated to the State, which revenues were "impounded" in the Federal Treasury under a 1956 Agreement before being paid over to Louisiana in 1975. The Master having rejected the State's claim on this score (Report 4-15), we have no occasion to address it at this stage. If (as we anticipate) Louisiana excepts to the Master's ruling, we shall of course respond.

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[1] The Decree of June 16, 1975 (422 U.S. 13, 13-14, 19-34) defined the Louisiana "coastline"—the baseline from which the three-mile belt of submerged lands granted to the State by the Submerged Lands Act of 1953 (43 U.S.C. 1301-1315) is measured—rather than the boundary between state and federal lands. However, as directed by paragraph 11 of that Decree (422 U.S. at 18), the parties have established the boundary line (three geographical miles seaward) and the description of that line was filed with the Special Master. In due course, the Court will be invited to enter a supplemental decree incorporating that description.

The remaining issues relate to the State's denial of any obligation to turn over to the United States monies paid to Louisiana by oil and gas lessees since 1950 in respect of areas now determined to belong—and to have belonged since before 1950—to the United States. Although the State, in its filed accounts, has admitted receipt of substantial sums so attributable (some $23 million), it asserts a right permanently to retain these monies. In larger part, the payments in question represent rents, royalties and bonuses; in lesser part, severance taxes collected by the State from the same operators. In both instances, the Master has recommended sustaining the State's position (Report 15-21).

For a variety of reasons—including a reluctance to burden the Court with an esoteric and complex question of no recurring importance—we are not excepting to the Master's conclusion with respect to the State's obligation to pay over to the United States the severance taxes attributable to the extraction of minerals beyond State jurisdiction. But we cannot similarly acquiesce in the holding that Louisiana is also excused from accounting for some $19 million received in oil and gas revenues derived from federal lands in what is termed "Zone 1." On this matter, we except. The present brief is limited to that issue.

2. The question we address here arises because some of the areas ultimately adjudicated as beyond the Submerged Lands Act grant to Louisiana, and there-

fore within federal ownership,[2] were, over the last three decades, administered by the State, which received and retained mineral revenues from the operators there. Before October 1956, Louisiana was acting unilaterally in leasing these areas and collecting rents and royalties; after that date, the State was acting with the acquiescence of the United States, given by the Interim Agreement of October 12, 1956.

The areas involved are portions of "Zone 1", the most shoreward belt of submerged lands defined by the 1956 Interim Agreement. The Agreement assigned the administration of that Zone to Louisiana pending a final adjudication. It is now settled that this assignment did not foreclose federal claims within the Zone and, indeed, the present issue arises because some Zone 1 lands were ultimately decreed to belong to the United States. But the State argues, and the Special Master held, that, by permitting Louisiana to administer all of Zone 1, the United States waived its right to demand an accounting and payment with respect to revenues derived from its lands in the Zone, both during the life of the Agreement and earlier.

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[2] As a matter of convenience, we speak of federal "ownership" and "title," and characterize submerged lands as "belonging" to the United States. Strictly speaking, that may not be correct usage. See 339 U.S. at 724 and n.* (opinion of Frankfurter, J.). But it is of course immaterial to the issues now before the Court whether the "paramount" and exclusive right of the United States to exploit the resources of a portion of the seabed be characterized as "proprietary" or otherwise.

The Special Master believed this result was compelled by a provision of the Outer Continental Shelf Lands Act, 43 U.S.C. 1336, which he read as foreclosing any federal claim to monies paid to a State pursuant to a working agreement. Report 16-17. Although the Report does not specifically focus on revenues collected by Louisiana between June 5, 1950, and the execution of the Interim Agreement on October 12, 1956—which would not appear to qualify as payments made to the State by lessees "pursuant to [an] agreement"—we understand the Master to have excused Louisiana from accounting for these sums as well.[3]

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[3] At one point in the present phase of the proceedings, Louisiana appeared to be admitting an obligation to account for unimpounded funds it collected from federal lands *outside Zone 1* before the Interim Agreement of 1956. According to the State, the total of such revenues, after deducting sums "accounted for" (albeit neither paid nor offset) in 1966, was just over $1 million. *First Accounting of the State of Louisiana Required by the Supplemental Decree Rendered on June 16, 1975* (Aug. 1975), at 1-2, 8-14. In light of our initial unimpounded fund accounting indicating revenues of some $2.8 million that should be paid over to Louisiana (subject to offsets), the State claimed payment of $1.75 million as an "undisputed net balance" under paragraph 6(c) of the 1975 Decree. *Objections by State of Louisiana to Accountings and Payments by the United States Under the Supplemental Decree of June 16, 1975 and Brief in Support Thereof* (Oct. 1975), at 2-3. However, the United States contested the adequacy of Louisiana's accounting, including the denial of any liability with respect to Zone 1 monies, *Objections of the United States to the State of Louisiana's Accounting of August 15, 1975* (Oct. 1975), at 2-3, and there is, accordingly, no undisputed net balance due the State. Louisiana has now withdrawn its admission of liability in respect of revenues

ARGUMENT

A. Introduction And Summary

1. Several factors have influenced our decision to except to the Master's recommendation that Louisiana be excused from accounting for revenues collected from federal lands in Zone 1. Not least is a belief that the Zone 1 ruling unjustly rewards a litigation strategy that, over three decades, has included any and every argument, however far-fetched, apparently put forward in the hope of appealing to the judicial reluctance to reject *all* the submissions of any party and in the knowledge that, at all events, the final day of reckoning would thereby be postponed.[4]

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from federal lands outside Zone 1. *Composite and Summary of Significance of Accounting Data from Prior Louisiana Accountings* (filed with the Special Master, Aug. 1978), at 3, 6-7. The Special Master did not address this last minute change of position by the State.

[4] We do not exaggerate. On the procedural side, Louisiana has repeatedly challenged the Court's jurisdiction, urging the overruling of *United States* v. *Texas*, 143 U.S. 621 (1892), and *United States* v. *California*, 332 U.S. 19 (1947), and all intervening precedents. See 337 U.S. 902 (1949); 339 U.S. 699, 701 (1950). The State has moved for trial by jury, see 339 U.S. at 703, for leave to take depositions, see 352 U.S. 979 (1957), 363 U.S. 1, 84 (1960), for transfer of the case to a district court, see 363 U.S. at 85 n.143, and for dismissal, see 338 U.S. 806 (1949), 352 U.S. 812 (1956). Dilatory tactics by Louisiana have repeatedly led the Court to direct the State to answer on the merits. *E.g.*, 337 U.S. 928 (1949); 338 U.S. 806 (1949); 352 U.S. 812 (1956); 355 U.S. 876 (1957).

Nor has Louisiana been less extravagant when arguing on the merits. It has asserted a special exemption from the principles settled in both the first and second *California* de-

In our view, Louisiana's latest claim, advanced for the first time in late 1975, is wholly without merit. Its acceptance would merely confirm the value of delay. Indeed, under the Master's ruling, Louisiana keeps a larger sum because its strategy prevented resolution of the territorial dispute until 1975.[5] And even the sustaining of our exception by this Court will not affect Louisiana's retention of the severance taxes it has collected during this extended period.

We stress, also, that the single question we bring to the Court is not primarily an issue of fact. The answer turns on the true construction of a formal written Agreement, Decrees of this Court, and an Act of Congress. Indeed, the Master relied entirely on the statute for his conclusion, without purporting to resolve any factual dispute (Report 15-19). At all

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cisions (332 U.S. 19 (1947); 381 U.S. 139 (1965)). See 339 U.S. at 705; 363 U.S. at 78; 394 U.S. 11, 21, 32-33, 72-73 (1969). And, at various times, the State has claimed submerged lands extending 27 miles from shore, see 339 U.S. at 703, 705; or to the 27th parallel, at all point well seaward of the continental shelf, see 363 U.S. at 71; or to the edge of a belt 3 or 9 miles from the "Coast Guard Line," itself sometimes 30 miles from shore, see 363 U.S. at 79; 394 U.S. at 19, map opposite 78; or 3 miles from the seaward end of dredged channels, some jutting 20 miles into the Gulf, see 394 U.S. at 36-40.

[5] Nor is it clear that Louisiana accepts the date of the Decree effectively resolving the boundary question—June 16, 1975—as the cut-off point for its alleged right to retain revenues received from federal lands. On the contrary, after the case had been finally submitted to the Special Master, the State indicated that its claim for exemption is continuing. We asked the Master to address this contention, but Louisiana objected and the Master declined to reach it. Of course, if our exception is sustained, this further issue will be mooted.

events, there is no suggestion that the result depends on the appraisal of witnesses or the weighing of evidence introduced in the hearings. Accordingly, the Court is under no disability in reviewing the Master's determination.

In these circumstances, and given the substantial sum at stake and the potentially inhibiting reading given to the Outer Continental Shelf Lands Act, we ask the Court to decide the question anew.

2. The Special Master has recommended that the State of Louisiana be excused from paying over to the United States all revenues received by the State during the pendency of this controversy since 1950 from submerged lands now finally determined to have at all relevant times belonged to the United States (Report 15-19). According to the Master, this admittedly extraordinary result—at odds with every decree of the Court governing the case and never suggested by the State itself until 1975—is required because, in 1956, the United States agreed that payments from the area in question ("Zone 1") might continue to be made to Louisiana *pendente lite*. The Master does not suggest that anyone in 1956—or for the next two decades—understood that allowing the State to enjoy these revenues would foreclose a later accounting. But the consequence is said to follow as a matter of law under the Outer Continental Shelf Lands Act. We respectfully disagree.

Although, in deference to the Special Master, we pursue it at some length, our argument is straightforward.

a. We begin by stressing the ground rules of the litigation, laid down in 1950. At that time, this Court held that the United States, rather than Louisiana, was entitled to the mineral resources of the seabed beyond the State's coastline and that Louisiana must account for and pay over to the United States all mineral revenues derived since June 5, 1950 from areas seaward of that line. Our submission is that the State's accounting obligation, although postponed, remains unchanged, except only that the Federal-State boundary was moved three miles seaward.

b. The seaward shift of the dividing line was accomplished three years later by the Submerged Lands Act of 1953. But this Court, in its 1960 decision, definitively settled that the Act had no other effect. Although Louisiana was granted a three-mile belt of submerged lands from its coastline and was forgiven any duty to account for monies earlier collected from that belt, the State remained liable for all revenues derived from more seaward areas since June 1950.

c. Nor did the Interim Agreement of 1956 release that debt. On its face, the Agreement was no more than an interim working arrangement, intended to permit operations—which this Court had enjoined—to resume, without any abandonment of rights on either side. Indeed, far from impliedly waiving federal monetary claims in the area where Louisiana's administration was permitted to continue for the time being—"Zone 1"—the Agreement expressly reserved all rights and claims of both parties. There is, more-

over, no rational explanation for such a one-sided concession by the United States.

d. Reliance on the Outer Continental Shelf Lands Act as foreclosing any federal claim in respect of revenues paid by agreement to Louisiana is, we submit, wholly misplaced. That statute releases the *lessee* who paid the State pursuant to an agreement between the sovereigns from being required to make duplicate payments to the United States. It is not clear whether this is a permanent waiver of the lessee's obligation, or a mere postponement until the title dispute is resolved. But, however that may be, there is no basis whatever for reading into the Outer Continental Shelf Lands Act a bar to the federal claim against a *State* that has collected rentals and royalties properly payable, as it turns out, to the United States.

e. Finally, we note that never before late 1975 did Louisiana assert exemption from an accounting obligation with respect to Zone 1. Indeed, in 1960 and 1965 the State expressly joined in submissions, and the Court entered decrees, that carried forward, unchanged, the requirement that the State account for, and pay over, all monies collected from federal lands, wherever situated. And that principle is explicitly confirmed by the Court's most recent decree in June, 1975.

In sum, Louisiana's present argument contradicts the avowed understanding of the parties repeatedly confirmed by the Court. An idea so long hidden from view and brought forward for the first time on the

eve of the day of reckoning—delayed three decades—does not commend itself. Seldom can a creature so conceived survive exposure to the probing elements. This instance, we submit, is not such an exception.

B. The Ground Rules Of The Litigation

Since the very beginning, one object of this litigation has been to require Louisiana to account for, and pay over to the United States, revenues earlier derived by the State from federal submerged lands. When Louisiana and Texas made clear their refusal to be bound by this Court's decision in *United States* v. *California*, 332 U.S. 19 (1947), the United States sought and obtained leave to initiate separate suits against those States. See 337 U.S. 902 (1949); 337 U.S. 928 (1949). At that time, we sought an accounting for monies collected by the States from the claimed area since June 23, 1947, the date of the *California* decision. See 339 U.S. 699, 701 (1950); 339 U.S. 707, 709 (1950). The Court agreed, although, in deference to the States, the starting date for the accounting was changed to June 5, 1950, the day of the Court's decision in the *Louisiana* and *Texas* cases. 340 U.S. 899, 900 (1950); 340 U.S. 900, 901 (1950). That ruling, announced in December 1950, itself required the States to account for past receipts. But, more important, it fixed the accounting date for all future proceedings.

In sum, the first decree of this Court, almost three decades ago, established the law of the case: mineral

revenues belong to the owner of the submerged lands that produced them—regardless which party granted the lease, administered the area or received the payments from the lessee—and those monies must ultimately be accounted for and paid over to the true owner. Significantly, that principle was laid down quite independently of the Submerged Lands Act and the Outer Continental Shelf Lands Act, not yet enacted. The right of the United States to enjoy the revenues from submerged lands beyond the line of State ownership, and to require the State to pay over receipts from more seaward areas, simply derived from the holding of the *California* case, now made applicable to Louisiana and Texas. We submit that remains the governing rule.

In March 1951, with a view to implementing the Decree of December 1950, the United States proposed a line of demarcation between federal and state submerged lands off the Louisiana coast. This was the so-called "Chapman Line," later used as a basis for defining "Zone 1" in the Interim Agreement of 1956. Four months later, the State, although disputing the correctness of the line, submitted an accounting of its oil and gas receipts seaward of that line. See Hearings on S.J. Res. 13 Before the Senate Committee on Interior and Insular Affairs, 83d Cong., 1st Sess. 271-272 (1953). The matter was not pursued, however, because legislative proposals leading to the Submerged Lands Act of 1953 were pending before the Congress.

C. The Submerged Lands Act Of 1953

One might suppose that the Submerged Lands Act of 1953 (ch. 65, 67 Stat. 29, 43 U.S.C. 1301-1315) had entirely changed the ground rules. It did not. To be sure, the Act had important effects on the litigation. It granted—or "confirmed"—to the coastal States a three-mile belt (or up to nine miles for the Gulf States if a more seaward "historic" boundary could be shown) and "release[d] and relinquishe[d] all claims of the United States * * * for money * * * arising out of [past] operations" within that belt. 43 U.S.C. 1311(b)(1). But, for areas beyond the State's territorial waters, the obligation to account and pay over remained unchanged.

This is not to say that Louisiana immediately accepted the limited scope of the Submerged Lands Act. On the contrary, the State for some time argued that the Act had wiped the slate entirely clean and, at the same time, it redefined its "boundary" very expansively as a line nine miles beyond the "Inland Water Line" promulgated by the Coast Guard. La. Act 33 of 1954. Nor was the question resolved for some years. After our motion to modify the old decree in light of these intervening events was denied, 350 U.S. 812 (1955), the United States sought and obtained leave to file a fresh original complaint. 350 U.S. 990 (1956). Louisiana, as well as some of its subdivisions and lessees, exhausted every expedient to block or delay resolution of the dispute in this Court. See, *e.g.*, 351 U.S. 978 (1956); 352 U.S. 812 (1956); 352 U.S. 885 (1956); 352 U.S. 979 (1957); 353 U.S.

903 (1957); 353 U.S. 928 (1957). The matter was first argued in April 1957, but the Court ordered the case expanded to include the other Gulf States, 354 U.S. 515 (1957), and there were further delays and postponements. See 355 U.S. 859 (1957); 355 U.S. 876 (1957); 355 U.S. 945 (1958); 356 U.S. 928 (1958); 358 U.S. 902 (1958); 359 U.S. 901 (1959). At length, the case was re-argued in October 1959. Even then, further briefing was allowed, see 361 U.S. 802, 872 (1959), and the decision was not announced until May 31, 1960. 363 U.S. 1.

When it came, however, the ruling was unambiguous. The Court left no doubt as to the continued vitality of the original ground rules. 363 U.S. at 7, 83. Indeed, on the question of accounting for the past, the opinion was at pains to be very clear (363 U.S. at 83 n.140):

> On June 5, 1950, the date of this Court's decision in the *Louisiana* and *Texas* cases, all coastal States were put on notice that the United States was possessed of paramount rights in submerged lands lying seaward of their respective coasts. The Submerged Lands Act, passed in 1953, by which parts of those lands were relinquished to the States, also forgave any monetary claims arising out of the States' prior use of the lands so relinquished. But the United States remains entitled to an accounting for all sums derived since June 5, 1950, from lands not so relinquished.

In a moment, we shall have occasion to stress the date of this decision—four years *after* the United States is said to waived any claim to revenues from some of its lands in Zone 1—and the failure of the Special Master to explain how that circumstance tallies with his ruling. But, at this point, we invoke the 1960 decision only as settling that the Submerged Lands Act itself in no way modified the State's obligation to account for, and pay over to the United States, revenues from areas beyond the congressional grant, wherever that boundary might be determined to be. We now turn to the Interim Agreement of 1956 which is said to have changed the rules.

D. The Interim Agreement Of 1956

1. We have already noted that shortly after the enactment of the Submerged Lands Act of 1953—granting the Gulf States a belt of submerged lands extending a minimum of three and a maximum of nine miles from the "coastline"—Louisiana, by statute, adopted as its "coastline" the "Inland Water Line" drawn by the Coast Guard well out at sea. La. Act 33 of 1954; see 394 U.S., map opposite p. 78. Accordingly, the State felt authorized to grant mineral leases and collect revenues in an area viewed by the United States as far beyond the Submerged Lands Act grant and subject to federal leasing. This conflict, as we have indicated, led to the renewal of the litigation in 1955. The United States returned to this Court, see 350 U.S. 812; 350 U.S. 990, while Louisiana sought a ruling in its own courts. In May 1956

—after this Court had granted the United States leave to file a new complaint—the State courts enjoined a federal leasing offer and Louisiana was itself offering leases in the disputed area. We applied for relief in this Court, see 351 U.S. 946, and, on June 11, 1956, the Court enjoined all new leasing and drilling in the contested zone "unless by agreement of the parties." 351 U.S. 978.

This injunction created an urgent situation. According to the State, the economy of southern Louisiana was threatened. Oil companies had substantial investment in offshore operations and were forced to severely curtail their activities. This, and personnel layoffs, had an immediate effect on the State. Both the oil companies and citizens of Louisiana demanded that an agreement be reached, as authorized by the Court, which would permit continued offshore operations.

In theory, the parties might promptly have compromised their differences and settled the entire controversy. But, in the climate of the time, that was not practical. Other obstacles aside, there was too much at stake. The State was then claiming all the area between its shores and a line nine miles seaward of the Coast Guard "Inland Water Line"—a zone forty miles wide in some places—whereas the United States construed the Submerged Lands Act as granting Louisiana only a three-mile belt measured from shore or the closing lines of relatively small bays. Nor, considering the complexity of the issues tendered by Louisiana, was it anticipated that a final judicial

resolution of the dispute was imminent. Accordingly, negotiations focussed on a working arrangement that would allow resumption of drilling, without prejudicing the claims of either party. The Interim Agreement of October 12, 1956 resulted. Appendix, *infra*.

2. The Agreement divided the submerged lands off the coast of Louisiana into four zones. Para. 2, App. *infra*, 4a-5a. Zone 1, the nearest to shore, was to be administered by the State. Para. 6, App. *infra*, 8a. Zones 2, 3 and 4, farther offshore, would be administered by the United States, except for certain leases already granted by Louisiana in Zone 2 and the requirement of State concurrence for any new leasing in the same Zone. Paras. 6, 13, App. *infra*, 8a, 20a-23a. Receipts from Zones 2 and 3 were to be "impounded" by whichever government received them, but no such obligation was imposed on the United States with respect to Zone 4 or upon Louisiana with respect to Zone 1. Para. 7, App. *infra*, 8a-12a. Therein lies the problem.

For, as it turned out, the seaward boundary of Louisiana's submerged lands as finally determined does not coincide with the line dividing Zones 1 and 2. The line that separates Federal and State rights meanders back and forth across the old Agreement line between Zones 1 and 2, with some substantial "bulges" on both sides.[6] Louisiana has been successful

[6] Thus, East Bay and Ascension Bay, large portions of which are now deemed inland water, were not so treated by the baseline used in the Agreement. On the other hand, most of Caillou Bay was enclosed by that line, but is no longer recognized as inland water.

in some of its claims to lands within Zone 2 and the United States has accounted for, and paid over, monies received from such areas. But the State denies any obligation similarly to account for, and pay over, revenues it received from those portions of Zone 1 which the United States successfully claimed.

Of course, surprising as it seems on its face, that result is proper if it is what the Agreement provides. There is, however, no basis in the text of the document for any such conclusion. Although authority to do so has been questioned,[7] we may assume that the United States might have permanently relinquished *all* claims to Zone 1 in 1956. But it is firmly settled that it did not do so, see 394 U.S. at 73-74 n.97,[8] and Louisiana does not now make that argument. Instead, while conceding that Zone 1 remained an area

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[7] Mr. George Swarth, one of the principal negotiators on the part of the United States, whose deposition was introduced in the proceedings before the Special Master, believed the Executive Branch officials who signed the Agreement had no authority to waive the revenues from Zone 1. See U.S. Exh. 104 at 59, 79-80. Even if erroneous, his view is of course relevant to the intention of the parties in 1956.

[8] In its submission to the Court in 1968, Louisiana was *not* asserting that the Interim Agreement constituted a waiver of rights in Zone 1. Rather, it was arguing that earlier representations by the United States to this Court foreclosed the claim to Chandeleur Sound and Caillou Bay, both in Zone 1. See *Brief of the State of Louisiana in Support of Its Motion for Entry of Supplemental Decree No. 2, etc.* (Aug. 1968), Part II, at 133-136, 166-168, 295-297; *Reply Brief of the State of Louisiana to the Brief of the United States on Cross-Motions for the Entry of Supplemental Decree No. 2, etc.* (Sept. 1968), at 57-60 and n.72, 121-122.

in dispute,[9] the State asserts that the United States impliedly restricted its claim there to a declaration of its title and *future* revenues after the boundary was finally established, abandoning its right to revenues from the Zone during the life of the Agreement—as well as for the past (1950-1956).

We say "impliedly" advisedly. There is no word of the Agreement that can be pointed to as accomplishing this waiver. To be sure, Paragraph 6 (App. *infra*, 8a) granted Louisiana "exclusive supervision and administration" of Zone 1 and the State was not required to impound revenues derived from that area. Nor did the Agreement itself provide for eventual repayment of any such revenues derived from portions of Zone 1 ultimately adjudicated to the United States. But this is hardly enough to accomplish a waiver of rights existing quite independently of the Agreement under the Decree entered by this Court in 1950. At all events, the Agreement itself very clearly forecloses any assertion of implied waiver.

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[9] Thus, no argument can be premised on the fact that, for its own purposes, the Agreement defined the "disputed area" as encompassing only Zones 2 and 3. Para. 3, App. *infra*, 5a. If read as a binding waiver of federal claims in Zone 1 and State claims in Zone 4, that definition would prove too much. It would have prevented the adjudication of Caillou Bay to the United States and would have foreclosed, without more, those of Louisiana's "dredged channel" arguments that extended into Zone 4. See 394 U.S. at 36-40. Plainly, the term "disputed area" was mere shorthand, reflecting the focus of the Interim Agreement on Zones 2 and 3—which were, indeed, the *primary* areas in dispute.

As the Court has itself noted, "[t]he Interim Agreement of 1956 specifically recognized that neither party would be bound by its positions." 394 U.S. at 73 n.97. Indeed, the very first substantive paragraph of the Interim Agreement stipulates that nothing in the document shall affect the rights of the parties to Zones 2 and 3 and adds: "nor shall any provision hereof be the basis for questioning, prejudicing or *waiving* in any manner *any right, interest, claim or demand whatsoever* of either party now pending in the proceedings above referred to, *or otherwise.*" Para. 1, App. *infra*, 3a (emphasis added). In like vein, the next paragraph (para. 2, App. *infra*, 4a) explains that the baseline used in drawing the zones [10] was "the so-called 'Chapman-Line'," and then goes on expressly to caution:

> No inference or conclusion of fact or law from the said use of the so-called "Chapman-Line" or any other boundary of said zones is to be drawn to the benefit or prejudice of any party hereto or of any third party. It is recognized that the so-called "Chapman-Line" has not been actually surveyed and that while the limits of each zone as reflected on the [annexed] Exhibit "A" shall be binding upon the parties for the purposes hereof, said specific limits remain to be finally fixed and determined either by agreement of the parties or otherwise.

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[10] Actually, only Zones 1 and 2 were based on the "Chapman Line." Zones 3 and 4 are related to the Coast Guard "Inland Water Line."

These provisions, we submit, leave no doubt that both parties were reserving any monetary claims they might have outside Zones 2 and 3.

3. There is, in our view, no occasion to go beyond the words of the Interim Agreement. But if we do so, all the pointers lead to the same conclusion. At least one witness for the State conceded that no complete waiver—as opposed to a postponement—of accounting claims in respect of Zone 1 was intended in 1956. See, *e.g.*, Tr. 646. The federal negotiator whose deposition was introduced in evidence (Mr. George Swarth) was clear that such a result was not thought of. U.S. Exh. 104 at 79-80. Accordingly, it is not surprising to find the Master eschewing reliance on any contemporary evidence outside the Agreement. The case for a waiver is no better, however, if we attempt to reconstruct the past for ourselves, without consulting any witnesses. The unanswered question remains why the United States should have entered into such a one-sided arrangement—especially when, as Louisiana reminds us, it was the State negotiators, rather than those representing the federal government, who were under urgent pressure to reach an agreement.

That the waiver as to Zone 1 would have been entirely one-sided is clear enough. Louisiana now suggests that the counterpart was its agreement to claim no accounting in respect of Zone 4. The surface symmetry is wholly illusory. Zone 4 was the area more than nine miles seaward of the "Inland Water Line," officially adopted as the State "coastline," and therefore wholly beyond the most expansive

claim then advanced under the Submerged Lands Act.[11] Any concession affecting Zone 4 was meaning-

[11] It appears that Louisiana was still nominally claiming the whole of the continental shelf independently of the Submerged Lands Act, presumably on the basis of LaSalle's obvious error in mislocating the 27th parallel. See 363 U.S. at 71. But we cannot suppose that anyone took that claim seriously. It was inconsistent with the boundary fixed by the State Legislature, required overruling the *California, Louisiana* and *Texas* cases, and rendered the Outer Continental Shelf Lands Act inoperative off the coast of Louisiana. The demise of that unrealistic contention is told by the State itself (*Brief of the State of Louisiana in Opposition to Motion for Judgment on Amended Complaint by the United States* (Aug. 1958), at 1-2):

> When Louisiana presented its case in April, 1957, it had the view that a divided court having rendered the California decision, which a divided Court followed in the original Texas decision, and the Congress of the United States having disagreed with its conclusions, this Court might well reconsider the entire matter. On such a reconsideration the State of Louisiana, we thought, would prevail. When the case was argued on April 8, 1957, several Justices, including those who had been in the minority in two of the original cases, made it very clear that reconsideration of the original California, Louisiana and Texas cases would not be given. It thus appears that vindication of Louisiana's right to a seaward boundary three leagues from its coast depends upon the interpretation of the Submerged Lands Act, which we think is wholly sufficient therefor (but not for the larger claims heretofore made by Louisiana for the entire continental shelf) and our present argument shall therefore be restricted to the rights which Louisiana acquired from Congress and the President by the enactment of the Submerged Lands Act.

So far as we are aware, the only other basis for a State claim reaching into portions of Zone 4 was that based on "dredged channels." See note 2, *supra*. The birth of that theory, however, appears to have been a decade in the future.

less. By contrast, Zone 1 might well include some federal lands. As paragraph 1 of the Agreement recited, Zone 1 was defined by reference to the unsurveyed "Chapman Line," which, some years earlier, had been hastily drawn with a view to winning agreement. Now that no overall settlement seemed possible, the United States would wish to locate the line more carefully before binding itself.

No doubt, it was expected that most of Zone 1 would ultimately be adjudicated to Louisiana. That is why it was deemed appropriate to permit the State to enjoy, for the time being, the revenues of the area. As Mr. Swarth explained (U.S. Exh. 104 at 22-23):

> It was understood on both sides that Louisiana would certainly recover much of the major part of Zone 1 and we felt that it would be unfair and unnecessary to require them to impound receipts from that area to protect whatever right the Federal Government might ultimately have to a very small part of those receipts. Louisiana needed the income from that area in the meantime and the Federal Government didn't want to deprive it of that current income.

Yet, even then, it was thought probable that an actual survey would disclose inaccuracies in the Zone 1 boundary that would produce, *inter alia*, valuable slivers of federal land within the Zone. For that reason, in the absence of any equivalent concession by Louisiana, the United States was unwilling to abandon its "title" rights within Zone 1. There is no reason to suppose it was any more willing to relinquish its monetary claims there.

To relinquish the revenues while preserving the right to claim title to lands in Zone 1 would not simplify the law suit or hasten its resolution. On the contrary, such an arrangement would give the State every incentive to delay a final adjudication with respect to Zone 1. Enjoying full administrative control and all revenues from the area without any repayment obligation, Louisiana would gain nothing more by a formal declaration of its title. On the other hand, once it became clear the United States might succeed with respect to some part of Zone 1, the State's interest would be to postpone the final adjudication so as to continue enjoying the revenues as long as possible.[12] It would be most extraordinary if we had deliberately created such an impetus for delay.

The obvious answer is that the United States undertook no such waiver of Zone 1 rights. In entering the Interim Agreement of 1956 neither party did more than was necessary to achieve a *modus vivendi* pending judicial resolution of the dispute. No claims were abandoned, no rights were relinquished, on either

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[12] Thus, for instance, when, in 1969, the Court effectively sustained the federal claim to those portions of Caillou Bay lying more than 3 miles off the shore of the mainland and outside the 3-mile belt around the Isles Dernieres, 394 U.S. at 66-67 and nn.87-88, 73-74 n.97, the State—under its present submission—had every reason to postpone a final decree covering that area. In fact, the matter was not formally resolved until 6 years later, and Louisiana asserts the right to retain the revenues received during that period. We had not supposed that this delay would prejudice the amount the United States would ultimately recover from Caillou Bay.

side. In sum, the Interim Agreement left undisturbed the State's obligation to account for and pay over mineral revenues collected from federal lands in Zone 1, whether before 1956 or afterwards.[13]

E. The Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act of 1953, ch. 345, 67 Stat. 462, 43 U.S.C. 1331-1343, was the complement of the Submerged Lands Act, providing in detail for the administration of federal submerged lands beyond those granted to the coastal States. Among other things, the statute authorized agreements with a State "respecting operations under existing mineral leases" and the issuance of new leases "pending the settlement or adjudication" of "a controversy between the United States and a State as to whether or not [submerged] lands" are within federal or State domain. Section 7, 43 U.S.C. 1336.[14] It is

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[13] Neither the State nor the Special Master has sought to explain how the Interim Agreement of 1956 released the debt already accrued in respect of Zone 1 federal lands since mid-1950.

[14] In relevant part, the provision is as follows:

> In the event of a controversy between the United States and a State as to whether or not lands are subject to the provisions of this subchapter, the Secretary is authorized, notwithstanding the provisions of section 1335 (a) and (b) of this title and with the concurrence of the Attorney General of the United States, to negotiate and enter into agreements with the State, its political subdivison or grantee or a lessee thereof, respecting operations under existing mineral leases and payment and impounding of rents, royalties, and other sums pay-

this provision that is recited in the Interim Agreement of 1956 as the authority for the federal signatories. That, we thought, was the only relevance of the Outer Continental Shelf Lands Act to the case. But the Special Master has made much more of it and we must examine the statute more closely.

The Master notes that the Interim Agreement impliedly allowed Louisiana "to collect rents from mineral leases" in Zone 1 and "to expend the funds so collected without impoundment." Report 19.[15] This, of course, is undisputed. The Master then notices Section 7 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1336—which we have quoted in part—and focuses on the provision to the effect that—

> Payments made pursuant to such agreement, or pursuant to any stipulation between the United States and a State, shall be considered as compliance with section 1335(a)(4) of this title.

Viewing the payments made by Louisiana's lessees in Zone 1 as governed by this language, the Master concludes that any federal claim with respect to such payments is foreclosed. In this final leap we cannot join.

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able thereunder, or with the State, its political subdivision or grantee, respecting the issuance or nonissuance of new mineral leases pending the settlement or adjudication of the controversy.

[15] Elsewhere, the Master speaks of "the right to collect and retain those rentals." Report 17. This is, of course, ambiguous: it can mean "retain for the time being, subject to eventual accounting," or "retain unconditionally."

The Master reads far too much into the words just quoted. In specifying that payments to the State pursuant to an interim agreement "comply" with the Outer Continental Shelf Lands Act, the provision means no more than that the lessee is not in default so long as the agreement remains in effect and he makes the payments required by it. There is no permanent waiver of any claim for monies that are due to the United States. It is not clear that the lessee himself is excused from later making up payments that, as it turns out, should have gone to the Secretary of the Interior. Indeed, the very next sentence of 43 U.S.C. 1336 suggests that the lessee has merely postponed his obligation:

> Upon the termination of such agreement or stipulation by reason of the final settlement or adjudication of such controversy, if the lands subject to any mineral lease are determined to be in whole or in part lands subject to the provisions of this subchapter [*i.e.*, federal, rather than state, lands], the lessee, if he has not already done so, shall comply with the requirements of section 1335(a) of this title [which includes, in subsection (4), the requirement of paying to the Secretary of the Interior all lease payments due since June 5, 1950].

But, however that may be, there is no basis for reading into Section 1336 a waiver of the State's independent duty to account. Even if Section 1336 entirely forgives the *lessee* from paying to the United States sums already paid to the State under a working agreement, it would hardly follow that the *State* itself

is released from its obligation to turn over to the United States so much of such payments as appertains to federal lands. The State's debt, we stress, does not derive from the Outer Continental Shelf Lands Act and is not affected by that statute. Louisiana's duty to account was imposed by this Court's 1950 Decree; it was not waived by the Interim Agreement of 1956; and it cannot be excused by a provision of the Outer Continental Shelf Lands Act that deals only with the duties of the lessee.[16]

F. Subsequent Positions And Decrees

Putting aside the Outer Continental Shelf Lands Act—truly a red herring—we return to the funda-

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[16] The Special Master makes the further point that "Louisiana apparently anticipated the possibility that some portions of the areas in Zone 1 upon which it granted leases * * * might ultimately be adjudged to belong to the United States" —witness the insertion of limiting language in all but two leases confining the effective area described in the lease to lands "belonging to" or "owned by" the State. Report 18. Obviously, such no-warranty clauses (as Louisiana would characterize them) tend to *negative*, rather than support, the State's claim to revenues derived from the federal lands within these leases. Nor is the alternative argument premised on these clauses any sounder: that the rentals paid to the State were only "on account" of what turned out to be Louisiana lands, notwithstanding the lease description encompassed also, or indeed primarily, areas ultimately adjudicated to the United States. We are concerned only with leases in Zone 1; the whole of which Zone was claimed as part of the State both by formal legislative act and by solemn representations to this Court, and was, by agreement, reserved exclusively to State leasing. In these circumstances, to say that the Zone 1 federal lands within the lease description were not effectively leased is disingenuous.

mental question whether the Interim Agreement of 1956 excused Louisiana's accounting obligation with respect to Zone 1, focussing now on subsequent events to see what the actions of the parties and the Court over two decades indicate was the common understanding. The answer is not in doubt: until August 1975 it was accepted that Louisiana's duty eventually to account for, and pay over, revenues derived from federal lands in Zone 1 remained unchanged—albeit the day of reckoning had been postponed and the State was not to be viewed as a trespasser until the true boundary was finally adjudicated.

1. We have already noticed that the Opinion handed down May 31, 1960 expressly confirmed the continuing obligation of Louisiana—and the other Gulf States—to account to the United States for revenues derived from areas beyond the limits of the Submerged Lands Act grant, making no exception for Zone 1 administered by Louisiana under the four-year-old Agreement. See 363 U.S. at 83 and n.140. Although neither the Special Master nor the State has sought to explain the Court's failure to exempt Zone 1 from the general rule, we assume it would be put down to an oversight. But, plainly, no such claim can be advanced in respect of the Decree entered some six months later. 364 U.S. 502 (1960).

The Court had invited the parties to prepare a form of decree, see 363 U.S. at 85, and the United States undertook the task. After minor alterations, a draft decree we prepared was accepted by all the defendant States, except, in two respects, by Louisi-

ana. See *Decree Proposed by the United States and Memorandum in Support of Proposed Decree* (Nov. 1960), at 5-9. Significantly, however, that State did not contest its obligation with respect to Zone 1 revenues. It merely objected to the entry of "a money judgment at this time." *Id.* at 8.

This was made perfectly clear a few days later when Louisiana submitted (by telegram) its own proposal for an accounting provision. See *Memorandum for the United States Regarding Louisiana's Suggested Revision of Paragraph 3 of the Proposed Decree* (Nov. 1960), at 6-7. Primarily, the State wished to postpone any repayment obligation until the whole of the Louisiana coastline had been settled and, incidentally, it asked the Court to recognize the 1956 Interim Agreement (which had been filed here but had not been approved). But Louisiana's proposal, on its face, related the Interim Agreement to "the allocation withdrawal and payment of impounded funds" only, expressly conceding the continuing obligation of the State to account for and pay over—subject only to offsets—"all sums of money derived by such state since June 5, 1950 * * * from or on account of any of the lands or resources * * * which lie seaward from the actual boundary of the state." *Ibid.* Presumably, Louisiana was concerned to avoid the political and financial embarrassment of a legislative appropriation in the event a partial adjudication at some future time left the State a net debtor on the interim accounting date, although, in the long run, it would be a creditor.

The decree ultimately entered, 364 U.S. 502, reflects this understanding. In effect, the Court accepted Louisiana's submission in opposition to piecemeal adjudications and mooted the issue of interim payments. The Interim Agreement is referred to, but it is made to control the distribution of *impounded funds* only. With respect to any other sums derived from federal lands, Louisiana, like the other Gulf States, is required promptly to account once the coastline is determined and, "after said account has been rendered and filed with and approved by the Court," it is provided that the State "shall promptly pay to the United States a sum equal to such amounts shown by said account as so derived * * *." Para. 3, 364 U.S. at 503.

There is no possible ambiguity. On the occasion of the first decision entered after the execution of the Interim Agreement, Louisiana itself acknowledged its continued indebtedness in respect of any revenues derived from federal lands in Zone 1 and, in language the State suggested, the Court confirmed that rule in a formal decree. Nor was this the last time the Court and the parties endorsed the principle.

2. The first actual accounting was rendered in 1966, after a partial adjudication. The year before, the parties had effectively agreed upon certain segments of the coastline, with a view to an interim distribution of funds. At the time, the State expressly acknowledged that the federal claim to submerged lands lying more than three miles from the Louisiana coast "and the money accumulated from that area"

was "a logical application of the decree." *Answer of the State of Louisiana to the Motion of the United States for Entry of a Supplemental Decree (No. 1), and Memorandum Accompanying Answer* (Nov. 1965), at 8. No reservation was made in respect of lands within Zone 1 or revenues that had not been impounded.

To be sure, the decree entered on December 13, 1965, does distinguish between impounded and unimpounded monies. Para. 7, 382 U.S. 288, 293. But only the *time of payment* is different: there is no waiver of any debt relating to receipts that were not impounded. Para. 8, 382 U.S. at 294. And, in its subsequent accounting, Louisiana expressly admitted that almost half-a-million dollars of revenues derived from federal lands but not impounded eventually would have to be offset against sums due the State. *Accounting of the State of Louisiana Pursuant to the Supplemental Decree Rendered December 13, 1965* (Feb. 1966), at 2-3.[17] This included receipts from four leases "thought to be within Zone 1" and therefore not impounded. *Id.* at 1, 9.

3. Nor was the present contention advanced during the proceedings at the 1968 Term of Court which led to the major decision of March 3, 1969. 394 U.S. 11. At that time, Louisiana was arguing that the United States was barred from disputing the inland water status of Chandeleur Sound and Caillou Bay,

[17] In sharp contrast, Louisiana did then object to paying to the United States severance taxes collected in respect of federal lands. *Id.* at 3.

both in Zone 1. But the submission then made had no connection with the present argument. The State was then asserting *title* to these areas, not merely a right to retain receipts. And, the merits aside, Louisiana was claiming that *estoppel* based on a 1960 concession—not the Interim Agreement of 1956—precluded any federal challenge to the areas. *Brief of the State of Louisiana in Support of its Motion for Entry of Supplemental Decree No. 2, etc.* (Aug. 1968), Part II, at 133-136, 166-168, 295-297; *Reply Brief of the State of Louisiana to the Brief of the United States on Cross-Motions for the Entry of Supplemental Decree No. 2, etc.* (Sept. 1968), at 57-60 and n.72, 121-122.

The Court rejected the "estoppel" argument. 394 U.S. at 66-67 n.87, 73-74 n.97. Even then, however, Louisiana did not advance its present position that the Interim Agreement effectively waived any claim to revenues from federal lands in Zone 1. At no point during the proceedings before the Special Master from 1969 to 1974, or those before the Court itself in 1974 and 1975 (see 419 U.S. 814, 990; 420 U.S. 529, 904; 421 U.S. 972), was the point raised. On the contrary (as we elaborate in a moment), the decree agreed to by the parties and entered by the Court on June 16, 1975, expressly required the State to account for unimpounded revenues, which (at least since 1956) necessarily derived from lands adjudicated to the United States in Zone 1.

4. The Decree of June 16, 1975, 422 U.S. 13, implements the Court's decision three months earlier,

420 U.S. 529, approving the Special Master's recommendation in locating Louisiana's Submerged Lands Act "coastline." Although the full description was yet to be formally entered, see 422 U.S. at 19-34, the decision of March 17 itself determined that the true limit of Louisiana's submerged lands was, in some places, seaward of the Zone 1 line, and, in other places, shoreward of that line. As already noted, one major area within Zone 1 adjudicated to the United States was Caillou Bay (beyond three miles from shore). Accordingly, the accounting obligation of the State with respect to Zone 1 was now immediately involved.

As is its usual practice, the Court directed the parties to prepare a decree. See 420 U.S. at 530. The parties agreed on the form of the decree and it was submitted to the Court in a joint motion, signed by the Attorney General of Louisiana and the Solicitor General of the United States. *Joint Motion For Entry of Supplemental Decree, Proposed Supplemental Decree, and Memorandum in Support of Motion* (June 1975). The court adopted the decree as proposed. 422 U.S. 13. In these circumstances, it is hardly open to Louisiana to allege inadvertent error. Yet, it seems plain the 1975 Decree leaves the State no escape from its duty to account for, and pay over, Zone 1 monies derived from federal lands.

Paragraphs 1 and 3 of the Decree declare the rights of the respective sovereigns as divided by a boundary "three geographical miles seaward of the line described in [the detailed description of the coastline attached as] Exhibit A," a boundary which, as noted,

does not in many places correspond with the edge of Zone 1. With the exception of two areas (see para. 10 and Exh. B), it is expressly provided that the coastline described in the decree is to be taken as "the past and present coastline", para. 9, "for all relevant times and purposes," para. 10. Applying these definitions, paragraph 5 requires each party to account for and pay over revenues it had impounded under the Interim Agreement which are attributable to lands adjudicated to the other sovereign.[18] This, according to the State's present submission, is the end of the accounting obligation, save for impounded sums derived from certain split leases, para. 7, and an unresolved claim for "interest" on impounded monies, para. 8.[19] However, the Decree contains the following additional provision (para. 6):

> Within 60 days after the entry of this Decree—
>
> (a) The State of Louisiana shall render to the United States and file with the Court a true, full, accurate and appropriate account of any and all other sums of money derived by the State of Louisiana since June 5, 1950, either by sale,

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[18] As is happens, Louisiana had impounded no monies attributable to federal lands. In accordance with paragraph 5(b), the United States accounted for, and actually paid to Louisiana, some $136 million in impounded funds on September 15, 1975.

[19] Perhaps Louisiana also would require the United States to account (as it has done) in respect of monies derived from State lands before the 1956 Agreement and not impounded, while denying its own obligation to account even for that period.

leasing, licensing, exploitation or otherwise from or on account of any of the lands, minerals or resources described in paragraph 1 hereof;

(b) The United States shall render to the State of Louisiana and file with the Court a true, full, accurate and appropriate account of any and all other sums of money derived by the United States either by sale, leasing, licensing, exploitation or otherwise from or on account of the lands, minerals or resources described in paragraph 3 hereof;

(c) Within 60 days after receiving the account provided for by paragraph 6(a) or 6(b) hereof, a party may serve on the other and file with the Court its objections thereto. Thereafter either party may file such motion or motions at such time as may be appropriate to have the account settled in conjunction with the issues concerning the areas still in dispute. If neither party files such an objection within 60 days, then each party shall forthwith pay to any third person any amount shown by such accounts to be payable by it to such person, and the party whose obligation to the other party is shown by such accounts to be greater shall forthwith pay to the other party the net balance so shown to be due. If objections are filed but any undisputed net balance is shown which will be due from one party to the other party or to any third person regardless of what may be the ultimate ruling on the objections, the party so shown to be under any such obligation shall forthwith pay each such undisputed balance to the other party or other person so shown to be entitled thereto. The payments directed by paragraphs

> 5(a) and 5(b) hereof shall be made irrespective of the accountings provided for by paragraphs 6(a) and 6(b).

In light of paragraph 5 dealing with impounded funds, it is obvious that the reference in paragraph 6(a) to "all *other* sums of money derived by the State of Louisiana since June 5, 1950" from federal lands encompasses, and since 1956 reaches only, Zone 1 revenues. Thus far, at least, the State has not claimed otherwise. Instead, Louisiana has suggested that the Zone 1 accounting required by paragraph 6(a) is "for information only," that actual payment or offset under paragraph 6(c) is subject to "objection," and that paragraph 13, reserving rights under the Interim Agreement, effectively cancels paragraph 6 insofar as it runs against the State. Although the Special Master has apparently accepted this explanation (Report 18),[20] we must own that these responses surpass all previous examples of Louisiana's unabashed advocacy.

Paragraph 6(c) speaks of "objections" to the adequacy or correctness of the account filed by the other party. It does not contemplate an objection to accounting at all by the party required to do so, or an objection to payment of the amounts reported, except as it is claimed to be offset by monies due from the other party. As for paragraph 13, it expressly preserves "rights and obligations" under the Interim Agreement only insofar as they are "not inconsistent

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[20] At the cited page, the Report quotes from paragraph 6, but inadvertently attributes the language to "Paragraph 7."

with this Decree." [21] But, more fundamentally, it was plain nonsense to require an accounting with respect to Zone 1 if, since two decades earlier, the Interim Agreement had forgiven all payments in respect of that area. It is perfectly obvious that those who submitted the June 1975 Decree—not to mention the Court itself—believed the accounting provided for by paragraph 6(a) did not impose a pointless burden, but, rather, carried out the continuing obligation of the State to pay over to the United States, subject only to offsets, monies collected from federal lands, whether in Zone 1 or elsewhere.

We do not plead *res judicata* or estoppel. But we do suggest great caution in accepting a submission that contradicts the repeatedly expressed understanding of both parties and of the Court for two decades after the execution of the Agreement invoked in support. Only the strongest showing would justify upsetting formal decrees and explicit concessions in order to vindicate a new argument interposed on the eve of the day of reckoning. Louisiana has not remotely satisfied that burden here.

Nor is there any hardship in adhering to the rule that has governed the litigation from the outset. Un-

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[21] In relevant part, paragraph 13 provides:

> Nor shall anything in this Decree prejudice or modify the rights and obligations under any contracts or agreements, not inconsistent with this Decree, between the parties or between a party and a third party, especially, but not limited to, the Interim Agreement of October 12, 1956, as amended, which Agreement remains in effect except as explicitly modified hereby.

less the State was deceiving us and the Court, it must have anticipated—at least until mid-1975—a potential liability for receipts from areas claimed by the United States. Offsets, fixed by 1956 and not thereafter increasing,[22] would reduce the debt by some $5 million. But, as time passed, it became increasingly probable that the State's indebtedness would exceed that amount. Yet, the net balance now due is a modest sum compared to the amounts already paid to the State from the monies impounded in the federal Treasury—some $34 million in 1966, some $136 million in late 1975. Although we were not permitted to withhold from these payments the amounts now due by Louisiana, nothing prevented the State itself from "putting by" a sufficient part of those large sums for the day that has finally arrived.

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[22] With only trivial exceptions (totalling less than $5,000), the United States impounded all revenues from areas potentially within State ownership collected after the execution of the Interim Agreement in October 1956, and, indeed, impounded substantial sums collected before that date. After 1956, the only mineral revenues of importance collected by the United States off the Louisiana coast and not impounded were from Zone 4, no part of which was, or was ever seriously expected to be, adjudicated to the State. See *Accounting by the United States as Required by Paragraph 6(b) of the Decree of June 16, 1975* (Aug. 1975), at 7-30. Since, under paragraph 14 of the 1956 Agreement (App. *infra*, 22a) impounded funds could not be offset against unimpounded monies due, it was clear, as of 1956, that the only offsets that would ever be available to reduce Louisiana's unimpounded liability to the United States were the unimpounded sums the Department of the Interior had by then collected from State lands.

Louisiana can hardly complain that, having enjoyed for many years what were properly federal revenues, it is now asked to make repayment in depreciated dollars, without interest. There would be no harshness in that result even if, because of its own improvidence, it were now necessary to appropriate fresh monies in order to satisfy the debt. But, as it happens, that will not be necessary. As we have disclosed to the State—although the accounting is not yet due (see para. 7 of the Decree of June 16, 1975, 422 U.S. at 16-17)—accummulated impounded receipts attributable to State lands from "split leases" exceed the sum we claim from Louisiana. While paragraph 6(c) of the 1975 Decree requires the State to pay over the net balance resulting from the unimpounded fund accountings as soon as objections are disposed of—without offsetting any impounded monies —we are content to defer Louisiana's payment until the split lease impounded fund accounting is settled and to waive the benefit of the "no offset" provision if the State will do likewise. The upshot would be that Louisiana need make no call on its own treasury.[23]

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[23] To avoid any misunderstanding, leading to further litigation, we now detail the precise effect of sustaining our objections to Louisiana's accountings.

(1) We assert that Louisiana is presently indebted to the United States in the following amounts disclosed in the document filed with the Special Master in August 1978 entitled

CONCLUSION

For the reasons stated, the foregoing exception of the United States to the Special Master's Report should be sustained and the State of Louisiana should be directed promptly to account for, and pay over to

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Composite and Summary of Significance of Accounting Data from Prior Louisiana Accountings:

In respect of Exhibit A thereof	$ 1,509,367.26
In respect of Exhibit B thereof	822,129.16
In respect of Exhibit I(A) thereof	1,977,655.01
In respect of Exhibit II thereof	2,794,232.91
In respect of Exhibit III thereof	11,854,339.49
Total	$18,957,723.83

(2) We admit that the amounts reported in the consolidated *Accounting of the United States as Required by the Decree of June 16, 1975* filed with the Special Master in August 1978 as unimpounded monies received by the United States from Louisiana submerged lands is a proper offset against the indebtedness recited above.

Total ..... $ 5,424,536.07

(3) Thus, the net balance due and payable by the State to the United States under paragraph 6 of the Decree of June 16, 1975 is:

$13,533,187.76

(4) Notwithstanding the provisions of the 1975 Decree, the United States would, if the State agrees, defer payment of this balance and offset this amount against the larger sum that will be due to the State from the impounded fund when the impounded split lease accounting is settled.

(5) In addition to the net balance recited in paragraph (3) above, the State will be required to account for and pay over to the United States, in due course, any monies collected by the State after June 16, 1975 and not yet included in any filed account that falls within the categories of the August 1978 accounting specified in paragraph (1) above.

the United States, subject only to offsets reflected in the final unimpounded accounting of the United States,[24] all monies, other than severance taxes and administration fees, collected by it since June 5, 1950, and derived from or attributable to submerged lands now adjudicated to the United States.

Respectfully submitted.

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NOVEMBER 1979

[24] But see the conditioned offer of postponement and further offset, *supra*, p. 40.

APPENDIX

AGREEMENT BETWEEN UNITED STATES OF AMERICA AND STATE OF LOUISIANA PURSUANT TO SECTION 7 OF THE OUTER CONTINENTAL SHELF LANDS ACT AND ACT 38 OF THE LOUISIANA LEGISLATURE OF 1956

WHEREAS, there is a controversy between the United States of America, hereinafter referred to as the United States, and the State of Louisiana, hereinafter referred to as the State, as to whether certain submerged lands in the Gulf of Mexico are owned by the State of Louisiana or whether such submerged lands are owned by the United States; and

WHEREAS, on June 11, 1956, the Supreme Court of the United States issued an order in the case entitled *United States of America* v. *State of Louisiana*, Original No. 15, October Term 1955, which provided among other things as follows:

> "It is further ordered that the State of Louisiana and the United States of America are enjoined from leasing or beginning the drilling of new wells in the disputed tidelands area pending further order of this court unless by agreement of the parties filed here."

and,

WHEREAS, Section 7 of the Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 462), hereinafter referred to as the Act, authorizes the Secretary of the Interior, with the concurrence of the Attorney General of the United States, to negotiate

and enter into agreements with the States respecting operations under existing mineral leases and payment and impounding of rents, royalties and other sums payable thereunder, and respecting the issuance or non-issuance of new mineral leases pending the settlement or adjudication of the controversy; and

WHEREAS, the State of Louisiana, in Act 38 of the Louisiana Legislature of 1956, in recognition of the existence of the aforesaid controversy and of the said action of the Supreme Court of the United States, confers authority on the State Mineral Board, with the concurrence of the Attorney General of Louisiana, to negotiate and enter into agreements or stipulations for and on behalf of the State with the United States, respecting operations under any present or future mineral leases on the area in controversy, or the deposit in escrow or impounding of bonuses, rents, royalties and other sums payable thereunder pending the settlement or adjudication of the controversy; said act also providing for the ratification by the State of Louisiana of any mineral lease covered by any agreement entered into pursuant to its provisions, subject to compliance with its requirements; and

WHEREAS, the parties hereto agree that it is to the best interest of the United States and the State of Louisiana that the drilling of new wells be commenced and that, in certain instances, provision for leasing be made in the disputed area; and

WHEREAS, the United States of America and the State of Louisiana desire to provide for the impound-

ment of certain bonuses, rentals, royalties and other sums heretofore or hereafter payable under mineral leases in the disputed area, pending the final settlement or adjudication of the said controversy, and thereafter for the validation or recognition of outstanding leases issued by either party,

NOW, THEREFORE, the United States of America and the State of Louisiana, by and through the Secretary of the Interior and the State Mineral Board, respectively, and with the concurrence of the Attorneys General of the United States and of the State of Louisiana, stipulate and agree as follows:

1.

No definition, agreement or provision hereof shall be construed to waive or prejudice in any way any right or claim which either party now has or may hereafter be determined to have in and to any or all of the area referred to herein as the area in dispute, nor shall any provision hereof be the basis for questioning, prejudicing or waiving in any manner any right, interest, claim or demand whatsoever of either party now pending in the proceedings above referred to, or otherwise; and as to the State of Louisiana, nothing herein contained shall be construed in any manner as affecting the claim of the State of Louisiana to its historic boundaries as redefined in Act 33 of the Louisiana Legislature of 1954, or as otherwise fixed or defined, or the claim of the State of Louisiana to property and mineral rights within its historic boundaries.

2.

The submerged lands in the Gulf of Mexico are divided for the purposes hereof into four zones as shown on the plat annexed hereto as Exhibit "A", which reflects as a base line the so-called "Chapman-Line". No inference or conclusion of fact or law from the said use of the so-called "Chapman-Line" or any other boundary of said zones is to be drawn to the benefit or prejudice of any party hereto or of any third party. It is recognized that the so-called "Chapman-Line" has not been actually surveyed and that while the limits of each zone as reflected on the announced Exhibit "A" shall be binding upon the parties for the purposes hereof, said specific limits remain to be finally fixed and determined either by agreement of the parties or otherwise. The aforesaid zones are as follows:

(a) Zone No. 1 comprises the area lying seaward of and within three (3) geographical miles of the so-called "Chapman-Line".

(b) Zone No. 2 comprises the area which is bounded landward by the seaward boundary of Zone No. 1 and which is bounded seaward by a line three (3) Marine Leagues from the so-called "Chapman-Line".

(c) Zone No. 3 comprises the area bounded landward by the seaward boundary of Zone No. 2 and bounded seaward by the seaward boundary line of the State of Louisiana as fixed and redefined by Act 33 of the Louisiana Legislature of 1954.

(d) Zone No. 4 comprises all that portion of the Continental Shelf lying seaward from the seaward line of Zone No. 3.

3.

Notwithstanding the existence of a dispute or controversy as to any other area, the disputed area as hereinafter referred to, sometimes referred to as the disputed tidelands area, or the area affected by the aforesaid controversy, is defined, for the purposes of this agreement, to be the area comprising Zones 2 and 3, as above defined and shown on the Exhibit "A".

4.

As to any leases heretofore granted by either party, this agreement shall be applicable only to any oil, gas or other mineral lease which was on June 11, 1956, and is on the effective date hereof in full force and effect, either by virtue of its terms or as the result of a suspension or extension as hereinafter referred to in Paragraph 11(b)(1) and (3), either as to the United States, the State, or both, as to oil, gas or other minerals, insofar as any such lease relates to lands within the disputed area. This agreement shall also be applicable to any lease as to which, on the effective date hereof, all requirements for the validation thereof under Section 6 of the Act have been complied with, but which has not yet been validated under said Section 6.

5.

The United States and the State of Louisiana hereby consent to the drilling of new wells in the disputed

area on any lease or part thereof to which this agreement is applicable, by the lessee or approved operator of such leases, provided that the lessee shall have complied with the following requirements:

(a) Such lessee shall have executed the waiver and consent agreement annexed hereto as Exhibit "B", in which it shall waive (under certain conditions set forth therein) as to such lease or part thereof, any claim based on ownership of the leased area by the State of Louisiana to a refund of any sums impounded by the United States under Paragraph 7 hereof, which it has or may have during the life of this agreement against the United States under Section 10 of the Act, or under any agreement entered into under Section 7 of the Act, and in which such lessee consents to the provisions of this agreement with respect to the impoundment and release of impounded funds.

(b) Such lessee shall also have entered into a separate agreement with the State of Louisiana on one of the six forms annexed hereto as Exhibits "C", "D", "E", "F", "G" and "H". Exhibit "C" is applicable to any producing lease or lease containing shut-in wells granted originally by the State and validated under Section 6 of the Act. Exhibit "D" is applicable to any of the same type of producing and shut-in well leases granted by the United States under Section 8 of the Act. Exhibit "E" is applicable to any non-productive lease granted originally by the State of Louisiana and validated under Section 6 of the Act. Exhibit "F" is applicable to any non-

productive lease granted originally by the United States under Section 8 of the Act. Exhibit "G" is applicable to any of the leases granted by the State since May 22, 1953. Exhibit "H" is applicable to any lease granted originally by the State of Louisiana under which payments have been made both to the United States and the State of Louisiana, so as to maintain the lease in effect as to both parties. If there is a need for variation to meet a factual situation relating to any lease which, in the opinion of both the State of Louisiana and the lessee, requires the insertion of special provisions in the form of agreement otherwise applicable to said lease, such special provisions may be inserted in said agreement by mutual consent of the State and the lessee; provided that said agreement otherwise incorporates the same basic requirements of the lessee. As to the leases affected by the two unitization agreements specifically listed in paragraph 12(b) and as to the leases affected by the agreements referred to in paragraph 11(b)(3), the form of agreement otherwise applicable to such leases shall be amended so as to refer specifically to such agreement and give recognition thereto.

The waiver and consent agreement and executed copies of the separate agreement with the State of Louisiana shall be filed in duplicate with the United States Oil and Gas Supervisor, United States Geological Survey, in New Orleans, Louisiana, and in duplicate with the Secretary of the State Mineral Board, State Capitol, Baton Rouge, Louisiana; and upon such

filing, the consent to drill herein granted shall, without further action by any of the parties be effective. However, the consent to the drilling of new wells contained in this Paragraph 5 shall not relieve any lessee of the obligation to comply with all regulatory provisions relating to drilling and production.

The drilling of any wells on a unitized area will not be permitted until the waiver and consent agreement and a separate agreement with the State, as hereinabove provided for, shall have been executed by the lessee for each lease committed to that unit.

6.

Notwithstanding any adverse claims by the other party hereto, the State of Louisiana as to any area in Zone No. 1, and the United States as to any area in Zone No. 4, shall have exclusive supervision and administration, and may issue new leases and authorize the drilling of new wells and other operations without notice to or obtaining the consent of the other party.

7.

(a) Subject to the exclusions of subparagraph (d) hereof, the United States agrees to impound in a separate fund in the Treasury of the United States a sum equal to all bonuses, rentals, royalties and other payments heretofore or hereafter paid to it for and on account of each lease, or part thereof, in Zones 2 and 3, being the disputed area, if, as and when each such lease is made subject to the provisions of this agreement by the lessee thereof complying with the provisions of Paragraph 5 hereof.

(b) The State of Louisiana, since May 22, 1953, has granted certain mineral leases which affect submerged lands located in the disputed area. The parties take cognizance that, under the laws of the State of Louisiana, the State of Louisiana cannot impound sums heretofore paid to it with respect to such leases. Accordingly, in order that any lessee desirous of obtaining consent for the drilling of a well on any such lease may satisfy the requirement of the United States that such payments be impounded, the State of Louisiana agrees, with respect to any such lease, and as provided in Exhibit G hereof, (1) to require of any lessee seeking a drilling permit to drill any portion of the leased premises lying within the disputed area to deposit in a separate fund for impoundment in the Treasury of the State of Louisiana a sum equal to all bonuses, rentals, royalties and other payments applicable to the disputed area theretofore paid to the State by the lessee, and to hold the amount so deposited as an impounded fund in its treasury, subject to the provisions hereof, and (2) to impound all payments hereafter received by it from the lessees of any of the said leases issued by the State in the disputed area since May 22, 1953, which are made subject to this agreement.

(c) As to any lease granted originally by the State of Louisiana under which payments have been made both to the United States and the State of Louisiana, so as to maintain the lease in effect as to both parties, it is agreed that (a) as to any such lease which is not now producing oil, gas or other minerals, lessee shall

be required to continue, until further agreement of the parties, or until the final settlement or adjudication of the controversy, to make such dual rental payments, including payments based on shut-in wells; but in the event production of minerals is commenced, lessee shall deposit single royalty payments based upon such production for impoundment as provided for in sub-paragraph (e) hereof; (b) with respect to any well or wells now producing minerals from any such lease with respect to which royalty has been paid both to the State of Louisiana and to the United States, the lessee shall be required to continue, until further agreement of the parties, or until final settlement or adjudication of the controversy, to make such dual royalty payments under the terms of the applicable leases, subject to the provisions of any applicable agreement heretofore entered into between such lessee and the State of Louisiana, or between such lessee and the United States. No such royalty paid to the State of Louisiana on oil, gas and other minerals produced from any such well shall be subject to impoundment as herein provided for. However, in the event production is obtained from any additional well or wells which are not now producing minerals, single royalty payments based upon the production from any such well or wells shall be deposited for impoundment as provided for in subparagraph (e) hereof.

(d) There shall be excluded from the obligations of the parties in this paragraph 7 to impound separately (1) the dual rental payments, including pay-

ments based on shut-in wells, and dual royalty payments referred to in sub-paragraph (c) hereof, made under any lease, including such dual payments made under any agreement entered into under Section 7 of the Act, and (2) any rentals paid to the United States for that portion of the submerged lands affected by any lease granted originally by and valid as to the State of Louisiana extending into the disputed area when production is being obtained from that portion of the leased premises lying in Zone No. 1.

(e) All sums subject to impoundment which are payable hereafter under the terms of the leases granted by the State of Louisiana, as referred to in sub-paragraph (b) hereof, shall be paid by the lessee to the State of Louisiana for impoundment as hereinabove provided. All sums subject to impoundment which may hereafter be payable by any lessee under the terms of any other lease made subject to the provisions hereof shall be paid by the lessee to the United States for impoundment as herein provided for.

Such payments to the State of Louisiana shall be made to the Register, State Land Office, or the official or agency then designated by Louisiana law to receive such payments, and deposited in a separate fund for impoundment in the Treasury of the State of Louisiana.

Such payments to the United States shall be made to the Oil and Gas Supervisor, United States Geological Survey, New Orleans, Louisiana, or the official or agency then designated by the law of the United

States to receive such payments, for impoundment in a separate fund in the Treasury of the United States.

(f) In the event that only a part of a lease is within the disputed area, the sums to be impounded under this paragraph 7 shall be determined on a pro-rata basis as hereinafter provided for in Paragraph 10.

(g) The United States and the State of Louisiana agree that all such payments made pursuant to subparagraph (e) above, if otherwise made in accordance with the provisions of each such lease and this agreement, shall, subject to the provisions of Paragraph 11(a) hereof, be considered as payments in compliance with the lease affected.

8.

Each of the portions, promptly after the effective date hereof, and in any event within 90 days from such effective date, shall furnish to the other party a statement of all sums which are subject to impoundment by each party under the terms hereof. Such statement shall be made separately with respect to each lease or portion thereof within the disputed area and shall reflect the amounts theretofore received and the nature and source of the funds so received. Thereafter the parties shall cooperate in making available to each other on a monthly basis a statement with respect to each such lease, so that each party shall have a current record of the amounts received with respect to each such lease and the nature and source thereof.

9.

Except as to claims under Section 10 of the Act with respect to sums which would not be due to the State of Louisiana even if the question of ownership of the leased land is determined in the State's favor, the impounded funds provided for herein shall be held intact, in a separate account for each lease or portion thereof affected, by each party until title to the area affected is determined. Whereupon, except as otherwise herein provided:

(a) Any funds derived from an area finally determined to be the property of the United States shall be taken from the separate and impounded fund in the Treasury of Louisiana provided for herein and paid to and received in the Treasury of the United States as provided by law.

(b) Any funds derived from an area finally determined to be owned by the State of Louisiana (except the funds referred to in subparagraph (c) hereof) shall be taken from the separate and impounded fund in the Treasury of the United States provided for herein, paid to the Register, State Land Office, State of Louisiana, or the official or agency then designated by Louisiana law to receive such payments, and shall thereafter be received in the Treasury of the State of Louisiana, as provided by law.

If, with respect to any lease, the lessee shall have paid the State of Louisiana all or any part of the amount of the impounded fund, prior to the payment of such impounded fund to the State of Louisiana by the United States, the amount of such pay-

ment so made by the lessee shall not be paid to the State, but shall be subject to the provisions of subparagraph (d) hereof.

(c) Any funds representing additional royalty paid to the United States under Section 6(a)(9) of the Act which are impounded pursuant to Paragraph 7(a) hereof, shall, on determination that such funds are derived from an area determined to be owned by the State of Louisiana, be taken from the separate and impounded fund in the Treasury of the United States provided for herein and paid to the Collector of Revenue of the State of Louisiana, or the official or agency then designated by Louisiana law to receive such payments, and shall be credited by the State only against taxes which may be due and payable and not theretofore paid to the State under the terms of the agreement between the State and the lessee of such lease or leases from which such funds were derived; and any of such funds in excess of the credit required to make the State whole in respect to such taxes shall be released by the State to such lessee or lessees.

(d) In these cases (1) where the lessees have not complied with Paragraph 5 of this agreement, or (2) where dual payments have been made both to the United States and the State of Louisiana, including such dual payments made under any agreement entered into under Section 7 of the Act, or (3) where the lessee shall have made payments to the State of Louisiana under any lease of all or any part of the impounded funds prior to the time that the im-

pounded funds are paid by the United States to the State of Louisiana, or (4) where rentals have been paid to the United States during the period that production is being obtained on that part of the same lease granted by and valid as to the State of Louisiana, and lying in Zone No. 1, or (5) finally as to any lease or part thereof determined to be owned by the United States, where sums have been paid for impoundment in excess of the amount that lessee was lawfully required to pay under such lease, refunds, if any, from the United States shall be made to the lessees pursuant to applicable law.

(e) Payments of impounded funds hereunder shall be made in full within seventy-five (75) days after the date of the applicable determination, unless by agreement of the parties a later date is specified.

(f) The provisions of this paragraph shall apply separately to each lease or that portion thereof in the disputed area.

10.

In the event only a portion of the area affected by any lease lies within the disputed area, then until the final settlement or adjudication of the controversy, all sums which are to be impounded by any party under the terms hereof shall be pro-rated on an acreage basis as to bonuses and rentals; and as to royalties, the amount shall be computed by attributing to the area in dispute royalties from each well bottomed under the area in dispute. If, however, in connection with royalty payments, any well or wells are bottomed under a unit theretofore validly estab-

lished which includes submerged lands lying within the area of dispute, the royalty from such well or wells shall be allocated to each lease or portion thereof lying within the area of dispute, in the proportion that the number of acres covered by such lease and participating in the production from any such well or wells, in accordance with the terms of the unit agreement, bears to the total number of acres so participating in such production.

However, as to the unit for oil and gas dated October 27, 1954, approved December 22, 1954, of which Continental Oil Company is the operator, comprising 51,579.78 acres, including Blocks 38 through 41, 46 through 49, 51, 52, and the west half of 53 in the Grand Isle area, and the unit for oil and gas dated November 21, 1955, approved January 16, 1956, of which Continental Oil Company is the operator, comprising 27,997.605 acres, including Blocks 42, 43, the north half of 44, the south half of 32, 69, 70, the south half of 67, and the south half of 68, in the West Delta-Grand Isle area, until such time as the United States and the State shall agree on another method of allocation, the allocation provisions of the two said unit agreements shall be disregarded, and there shall be attributed to each lease or portion thereof in the disputed area the royalties from the well or wells bottomed under such lease or portion thereof.

In the event of a final determination that either party hereto owns only a portion of the area affected by any lease or leases, the impounded funds shall be pro-rated on the same basis as just hereinabove provided for, and payments shall be made accordingly.

11.

(a) Upon the final settlement or adjudication of the aforesaid controversy, as to any area affected by a lease or portion thereof to which this agreement is applicable, the successful party, upon receipt of the impounded funds, shall validate and give recognition to such lease or portion thereof, and shall grant to the lessee all of the rights authorized or provided for by the laws of the successful party. It is provided, however, that the ratification and validation of any lease by the State of Louisiana shall be subject to the full compliance by the lessee under said lease with Act 38 of the Louisiana Legislature of 1956, and shall be in accordance with and subject to compliance with the terms of the separate agreement to be made by such lessee with the State of Louisiana as herein provided for.

(b) Nothing herein contained shall obligate the United States or the State to recognize or give effect to any conventional agreement executed, or any order, determination or regulation issued by the other subsequent to June 11, 1956, amending, modifying, or otherwise changing any lease subject to the provisions of this agreement, except that the successful party in the controversy shall recognize and give effect to the following, even though subsequent to June 11, 1956:

(1) An agreement, order or determination recognizing that the running of the period during which any lease may be maintained in effect without drilling or producing operations or without payment of

shut-in rental or royalty on the basis of a well capable of producing oil, gas or other minerals, insofar as it relates to land affected by the aforesaid controversy, has been and shall be suspended during the period or periods of time that the right to drill has been enjoined by order of court;

(2) The pooling and unitization agreements as provided for and as described in paragraph 12(b) hereof;

(3) The suspension or extension of the necessity for producing from oil or gas wells, and the recognition of the continuance of the leases affected during such suspension or extension, provided such suspension or extension is on any one of the following bases: (a) An extension of the period formerly provided within which to make payments of shut-in gas rental or royalty; (b) The abutting in of a well when necessary or desirable for the prevention of waste, or as a matter of operational safety, such as during the drilling of another well from the same platform; (c) The abutting in of a well for such period or periods as may be reasonably necessary to permit installation of producing and transporting facilities; (d) Under Section 12 of the Act.

Neither party shall, without the consent of the other, enter into any agreement reducing rentals or royalties payable under any lease made subject to the terms hereof.

(c) Any lessee shall have the right to elect not to maintain in force and effect any lease brought under the terms hereof, but any such election or any

failure of a lessee to maintain a lease in effect shall not relieve that lessee of the obligation to pay to the State of Louisiana or to the United States, with respect to such lease, all bonuses, rentals, royalties and other considerations (and with respect to the State of Louisiana all licenses, taxes and fees) which have become due prior to the termination or forfeiture of said lease. Also, this agreement as between the United States and the State of Louisiana, shall continue in effect as to the payments made with respect to such lease.

(d) The provisions of this Paragraph 11 shall apply separately to each lease or that portion thereof in the disputed area.

12.

(a) The parties hereto agree to consult and cooperate with respect to the approval of pooling or drilling agreements relating to leases lying partly within and partly without the disputed area.

(d) It is agreed that, for the purpose of ratification and validation of each separate lease or portion thereof included therein, as provided for in Paragraph 11(a) above, any unit validly established by agreement of either party prior to June 11, 1956, shall be given effect in accordance with its terms and the law, regulation or order under which it was established; provided that neither this provision nor any other provision of this agreement, or of the unit agreement, shall limit the right of the party finally determined to own the area or portion thereof affected by such unit, if not the party by whom or with whose

consent such unit was established, from taking, subsequent to such final determination, such action with respect to any such unit as may be authorized by and consistent with its then laws or policies. Any lessee affected by such action shall be given a reasonable time within which to comply with the then laws or policies and to safeguard the terms of its lease. Notwithstanding their establishment subsequent to June 11, 1956, the provisions of this paragraph 12(b) shall also be applicable to the following described unitized areas and unit agreements in the same manner as though they had been established prior to June 11, 1956, same being all such which were approved subsequent to said date and prior to October 9, 1965:

1. The unit for oil and gas dated December 9, 1955, and approved June 29, 1956, of which Magnolia Petroleum Company is the operator, comprising 17,250 acres in the Ship Shoal Area, lying in Block 63, west half of 64, west half of 71, 72, east half of 73, and north half of 87.

2. The oil and gas unit dated May 25, 1956, which was approved on June 28, 1956, of which Kerr-McGee Oil Industries, Inc. is the operator, comprising 30,000 acres in the Ship Shoal Area lying in Blocks 27, 28, 29, 34, 35 and 36.

13.

No new leases shall be granted by either party in that part of the disputed area lying in Zone No. 2, except that when the Secretary of the Interior and the State Mineral Board of Louisiana shall jointly

determine new leases are necessary to prevent drainage of unleased lands, the Secretary of the Interior may grant such new leases which shall be subject to the terms of this agreement. Otherwise, the injunction against new leasing shall continue to be effective as to that area.

Beginning one year from the effective date hereof, the Secretary of the Interior, or his delegate, may grant new mineral leases in Zone No. 3, being the remainder of the disputed area.

All leasing pursuant to this Paragraph 13 shall be done by the Department of the Interior in accordance with and subject to its then regulations and practices under the Act, including the determination of when lease sales shall be held and what land shall be offered, the method of advertising, the date and time of the opening of bids, and the awarding, execution and form of leases, *Provided* that the minimum royalty, bonus and rental for any such lease shall not be less than the minimums provided in the proposed letting of May 15, 1956, and the maximum acreage in any lease and the term thereof shall be as provided for in said proposed letting; *Provided, further,* that there shall be a joint committee of six, three members of which shall be designated or appointed by the Secretary of the Interior or his delegate, and three members of which shall be designated or appointed by the State Mineral Board of the State of Louisiana, whose duties and functions shall relate solely to a consideration of adequacy of the bids. The Director of the Bureau of Land Management shall promptly furnish

to this committee full information as to all bids received, designating specifically these which he proposes to accept or reject. The committee shall accept the decision of the Director with respect to the bid or bids on any block, tract or portion thereof unless four members thereof shall cast an opposing vote in which case the decision of the committee shall prevail and the Director shall act in accordance with such recommendation. The committee shall be allowed no more than 10 days within which to consider and act on the information submitted to it.

All sums payable under the terms of any lease granted pursuant to this Paragraph 13 shall, notwithstanding any other provision of this agreement, be paid to the United States for impoundment and release as provided for in Paragraphs 7 and 9 above, and any such lease shall be subject to all of the terms and provisions of this agreement, including, but not limited to the consent to drill and the validation provisions hereof.

14.

Any sums required to be impounded by either party hereto, or to be paid over or released to the other party by any party hereto, shall be impounded, paid or released without reference to, limitation by, or effect against any claim against or liability or obligation of the other party, but nothing herein contained shall limit such right as either party may have to assert separately any other claim which it may have against the other party, or any third party.

This stipulation and agreement shall terminate as to any area, upon the final settlement or determination of the aforesaid controversy with respect to such area; and thereafter the successful party shall have exclusive jurisdiction and control over the area so determined to be owned by it to the extent fixed by the decision in the final adjudication. In the event of the final settlement or determination of the controversy, with respect to a part or parts of the disputed area, leaving another part or other parts still in dispute, this agreement shall be deemed to continue to apply to all areas still in dispute; and if the area still in dispute divides a lease now lying wholly within the disputed area, or divides a portion of a lease lying within the disputed area, this agreement shall continue to apply to that portion of such divided lease lying within the area still in dispute. It is provided, however, that notwithstanding the termination of this stipulation as to any area, the parties shall nevertheless comply with all of the provisions hereof relating to the payment or release of impounded funds and the validation or ratification of the lease or leases affected by such termination.

Upon the final settlement or adjudication of the controversy as to all of the submerged lands within the disputed area, this stipulation shall finally terminate, subject only to the release of payments and the validation and ratification requirements hereof.

Annexed hereto as Exhibits I and II, respectively, are certified copies of Act 38 of the Louisiana Legis-

lature of 1956 and Act 33 of the Louisiana Legislature of 1954, hereinabove referred to.

THUS MADE AND EXECUTED effective this 12th day of October, 1956.

UNITED STATES OF AMERICA

By (Sgd) Fred A. Seaton
Secretary of the Interior

Concurred in by:

(Sgd) Herbert Brownell, Jr.
Attorney General of the
United States

STATE MINERAL BOARD ON BEHALF OF THE STATE OF LOUISIANA

By (Sgd) William G. Helis, Jr.
Chairman

Concurred in by:

(Sgd) Jack P. F. Gremillion
Attorney General of the
State of Louisiana

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