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.,

Defendants.

REPLY BRIEF OF THE STATE OF LOUISIANA IN OPPOSITION TO THE EXCEPTION OF THE UNITED STATES TO THE REPORT OF THE SPECIAL MASTER

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SUMMARY OF THE ARGUMENT

1. In answer to the Exceptions to the Report of the Special Master filed by the Government, the State of Louisiana contends that the Government's argument does not address the basic fact question of whether there are any revenues "from or on account of" federal area in Zone 1. All but two of the leases negotiated by Louisiana in Zone 1 contained language which limited the leases to only such area and interest within a general metes and bounds description as Louisiana might be held to own. The Government utterly failed to meet its burden of proving that the source of the claimed monies was from the lease of federal lands.

2. Louisiana also asserts that, even if the Master had found that the claimed revenues were derived from State leases of federal land, Louisiana would not be required to refund such revenues, due to paragraph 13 of the June 16, 1975 Decree, reserving Interim Agreement rights, which contract rights include the right to retain Zone 1 revenue.

3. Under the Interim Agreement, four zones were established as a working arrangement for leasing offshore, for the purpose of lifting the prior injunction on such leasing. Zones 1 (a 3 mile area shoreward of the disputed area) and 4 (on the outer continental shelf seaward of disputed areas) set up exclusive rights in the State and federal government respectively, *pendente lite*. By contrast, the arrangement for Zones 2 and 3, the intervening disputed areas, imposed joint administration on leasing and strict impoundment restraints on all disputed zone

revenues, *pendente lite*. Particular provisions of this Agreement suggest that the parties did not contemplate that boundary rulings would retroactively abrogate Zone 1 and Zone 4 contract rights.

4. Testimony of negotiation witnesses and other evidence as to the intent of the parties support both the Master's finding that Louisiana did not lease federal land in Zone 1 and that the Agreement provided only for prospective revision of contract rights on the continental shelf upon a final boundary determination.

5. In response to particular Government arguments, Louisiana has shown various reasons why the several boundary decrees and authorities governing permanent property rights which are relied upon by the United States do not sustain the Government's accounting and contract claims.

6. The June 16, 1975 Decree provisions, relied upon by the Government, not only protect Louisiana's Zone 1 contract rights, but also support Louisiana's Exception related to the financial benefits or sums derived by the Government from Louisiana's land.

7. The record, evidence and law support Louisiana's positions and provide the Court with ample bases for reaching an equitable final resolution by granting Louisiana fair recompense for federal use of Louisiana's oil lands.

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STATEMENT OF THE CASE

The United States excepted to the Special Master's finding that Louisiana has the right under the Interim Agreement of 1956[1] to retain revenues derived from sub-

[1] "Agreement between the United States of America and the State of Louisiana pursuant to Section 7 of the Outer Continental Shelf Lands Act and Act 38 of the Louisiana Legislature of 1956," executed October 12, 1956. This Interim Agreement, introduced in evidence in hearings before the Special Master as La. Exh. 1-LPI 1, formed part of a formal stipulation leading to a lifting of the Court's injunction and was lodged in the record of this case in earlier proceedings. It will hereafter be referred to without

merged lands designated as "Zone 1" in that Agreement. In the accountings related to Zone 1 stemming from the Court's Decree of June 16, 1975 (422 U.S. 13),[2] the Special Master considered contract rights reserved by that Decree under the Interim Agreement.[3] This arose because of a factually and legally erroneous claim by the Government that it is entitled to money allegedly derived from federal area in Zone 1. In truth, this money was generally derived from State areas in Zone 1, (see Figure 1), but even if it had been derived on account of federal area, it was by virtue of State contract rights granted by the United States.

Before getting into necessary masses of detail that might obscure a simple verity, let us first note the unreasonableness of the Government's posture on Zone 1 and the decrees, by quoting an important background fact: some language from paragraph 15 of the Interim Agreement, to wit:

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reference to the exhibit number it was given in the Special Master proceedings as "Interim Agreement" or simply "Agreement." The complete Interim Agreement with Amendment is set out in Appendices 2 and 3.

[2] This decree which *inter alia* set up the framework for accountings, objections, and payment by the parties, encompasses the accounting matters that were referred to the Special Master in 420 U.S. 529 (1975). Since it forms the foundation for all the exceptions and arguments now before the Court, it will usually be referred to hereinafter as the June 16, 1975 Decree, or simply the Decree, without repetitive citation.

[3] "Supplemental Report of Walter P. Armstrong, Jr., Special Master" dated August 27, 1979, hereinafter referred to as "Report," at 16-19.

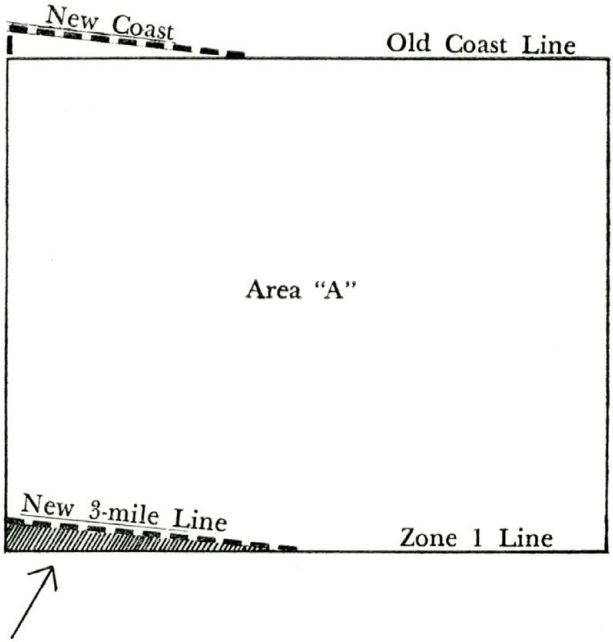

Figure 1. **Typical Zone 1 Government claim**

Due to general boundary uncertainties in eroding areas, Louisiana used technical "tract descriptions" (Areas A and B in the illustration), when leasing wetlands to outline a vicinity wherein those *parts* of the tract *owned by* Louisiana were leased. Parts *not* owned or *not* belonging to Louisiana (Area B) were not leased and not covered by the lease payments. Report pp. 18-19. The Government Zone 1 claim is that it is entitled to part of the payments made for leasing Louisiana land (Area A) merely because Government land (Area B) was in the vicinity map or vicinity description. Only two of the approximately two hundred leases did not present this situation. See Appendix 1 for details of lease descriptions.

> 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. . . . [Emphasis added.]

Also, in paragraph 11, Interim Agreement, it is said:

> This agreement as between the United States and the State of Louisiana shall continue in effect as to payments made. . . . (See fuller quotation and argument on paragraph 11 *infra*, under Arguments.)

This quotation's importance stems from the fact that as found by the Master, the Interim Agreement conferred *pendente lite* rights upon Louisiana with respect to Zone 1.

The Interim Agreement of 1956 employed four zones for the leasing and revenue purposes of the agreement. Zones 2 and 3 were disputed. Zones 1 and 4 were not disputed, although there was to be no prejudice as to claims not related to the purposes of the Agreement, such as permanent boundary claims, which could be prospectively asserted. However, the Agreement was unquestionably binding for its leasing and revenue collection purposes. In paragraph 6, the Agreement recognized that each government, until a final decision, was to have exclusive leasing powers over its undisputed Zone (Zone 1 for Louisiana and Zone 4 for the United States). Due to intervening changes of law and coast line erosion, the United States won minute slivers of Zone 1, involving comparatively petty (to it) sums.[4] The United States claimed

[4] To give the Court a relative idea of the parsimoniousness of the Government in its long pursuit of its strained claims to Zone 1

money received by Louisiana from leases that had not purported to lease any federal areas, simply because state leases, in describing areas "owned by Louisiana" within larger Zone 1 sectors had merely referred to the State portion of larger tracts in which the State and federal Government had possible claims of territory. See Report pp. 18-19 and Figure 1. This money was long ago expended with the concurrence of the United States. The leases are nearly all long dead.[5] There are even contract provisions giving Louisiana a federally recognized right to collect any monies oil companies owed under the leases, after the case is over, as to rentals arising before decision of the case.[6] The State was paid only for areas it owned and only leased the areas it owned, in all but two of the hundreds of old mineral leases. The United States claims $18 million of these Zone 1 revenues merely because the vicinity maps attached to the leases, or vicinity descriptions (depicting larger areas than the area actually leased) contained fed-

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revenues, roughly $18 million of decades old, long expended funds are involved, compared to some $10 billion or more enjoyed to date by the United States from the vast areas it won outside of Zone 1.

[5] The testimony of Vernon Helms in the hearings before the Special Master summarized the information contained in La. Exh. 8 concerning more than 118 lapsed or cancelled leases in Zone 1. Tr. 749-751.

[6] This provision is set out in paragraph 11 (c) of the Interim Agreement which is applicable to any lease to which the Agreement is applicable pursuant to paragraph 11 (a). The Agreement is applicable to Zone 1 leases in that the exclusive supervision and administration of these leases is granted to Louisiana in paragraph 6 of the Agreement until the Agreement is finally terminated. *See* specific language of the relevant paragraphs in Appendix 2 *infra*.

eral area. The written descriptions of the actual granting clauses purported to lease only such portions of the vicinity areas as were owned by Louisiana. From these facts, the Government claims Louisiana derived money from Government property and should pay it the money received. The Master rejected the claims, principally on the ground Louisiana was entitled to lease Zone 1 areas prior to final decision and retain the revenues collected but, even if this were not true, the lease descriptions negated the Government claim.

As found by the Special Master (Report pp. 15-19), the Zone 1 matter presents a case of Louisiana being entitled to retain Zone 1 lease revenues generated prior to a final decree, by reason, *inter alia,* of contract rights derived from the United States. The extensive evidentiary record supports his factual findings that practice and context clearly confirmed these rights. The Master fully considered all relevant history and prior decrees in reaching his conclusion that the contract rights relied upon were reserved to Louisiana in paragraph 13 of the Decree of June 16, 1975.

The prefatory remarks of the Special Master (Report pp. 1-4) contain a succinct summary of the important recent decrees, events and issues which governed his decisions. Much of the discussion of the impact of former opinions and decrees now selectively excerpted and argued by the Government was manifestly not germane to a trier of fact familiar with the issues and the total record. Therefore, the Special Master did not clutter the Report with the out-of-context irrelevancies that are artfully woven together in the Government's arguments to form kaleidoscopes of

error. This puts Louisiana in the unfortunate position of having to burden the Court with a more fair and accurate background review to correct a mass of innuendo, charges and factual liberties.

The Zone 1 matter is one of the last of countless accounting problems, large and small, heretofore contested or not agreed to by the United States. *See* Report pp. 2-3, notes 1 and 3, itemizing the many accounting filings by both parties. Those pleadings involved the accumulation and presentation of masses of technical information and the formulation, negotiation and pleading of many legal questions.[7] The Special Master greatly aided the parties in reducing innumerable items of controversy to the simpler proportions now viewed by the Court.[8] Familiar with the

[7] There were thousands of wells, hundreds of leases, scores of pooling or unit agreements, hundreds of miles of civil engineering calculations (ascertaining the completion or draining points of countless wells in relation to the three-mile line) computer engineering studies to project and describe three-mile lines and arcs, analyses of hundreds of pipeline agreements, pipeline apportionment and escrow arrangements with scores of companies, investigation into the severance tax records of various agencies and oil companies, negotiations and controversy on dual payment problems . . . and these are but a few of the minutiae on which the Special Master led the parties into agreement—or at least non-contest—after many, many conferences.

[8] Similar successes in narrowing or eliminating the potential for technical controversy were achieved, in major part due to the Special Master's able and diligent work in narrowing coast line controversy, in the pre-1975 Decree phase of this matter. Seeing only his splendidly concise reports on the issues that survived his long and successful efforts to narrow the controversies, the Court cannot fully appreciate the injustice to Mr. Armstrong of the Government's implication that a Special Master of this Court tolerated bad faith delaying tactics. His diligence and effectiveness

whole record and the array of facts and history connected with it, he first caused the parties to amass their information and led them into ultimate agreement on innumerable matters that were either potentially contestable or formerly actively in contest. The severance tax matter is but the most recent of claims vigorously asserted or preserved by the United States initially, which were subsequently abandoned as proof became amassed against them.[9]

Much of the Government's argument touts pre-1975 decrees to challenge the Zone 1 contract rights reserved to Louisiana under the 1975 Decree's accounting provisions. It does not, however, pause to inform the Court very much about the subject matter of these decrees. If that is done, the Court may perceive the utter illogic of the Government posture. That posture is grounded in several self-contradictory premises: (1) that decrees which *did not* adjudicate Zone 1 areas and therefore made no exceptions as to Zone 1 somehow control over a decree which *did* adjudicate Zone I matters;[10] (2) that earlier decrees, in which the Court reserved the power to issue further am-

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in simplifying and resolving complex legal contentions and factual controversy prior to hearings and filings particularly deserve compliment. His Reports, of course, do not show this work by him and the parties, as they treated only the surviving controversies.

[9] *E.g.*, Claims that it should be paid the same funds by companies and Louisiana; the long failure to concur in payment to companies of pipeline escrow funds owed to companies; claiming that the Government should be paid twice for the same rights; and many other claims no longer asserted, as well as innumerable coast line contentions.

[10] The decrees and opinions relied upon by the Government all preceded the June 16, 1975 Decree.

plifying or qualifying decrees,[11] somehow control over qualifying language of later decrees; (3) that general provisions control over specific exceptions;[12] (4) that a failure to urge arguments related to the final accounting phase of the case until the final accounting phase is somehow an omission that is a proof of the invalidity of State arguments.[13] While these premises may not be explicitly stated

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[11] *See, e.g.*, paragraph 5 of the decree at 404 U.S. 388 (1971) which stated: "The Court retains jurisdiction to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to its previous orders or decrees herein or to this decree or to effectuate the rights of the parties in the premises." A like provision was in each of the other post-Interim Agreement decrees preceding the 1975 Decree.

[12] Paragraph 1 of the June 16, 1975 accounting Decree awarding territory is of course general, whereas specific exceptions are made in paragraph 13. It is interesting also to note that the *tense* of paragraph 1 (which lies at the root of the Government's claim) is that "the United States *has* exclusive rights to explore." It did not say "has and has had." Prior Interim Agreement rights of others were reserved under paragraph 13.

[13] *See* the language of paragraph 1 of the 1972 decree, 409 U.S. 17 (1972), which passingly noted the deliberate deferral of accounting matters to a later phase, pending resolution of larger problems between the parties which would affect the accounting tasks. The only decree specifically dealing with accountings prior to the June 16, 1975 Decree was the 1965 Supplemental Decree (382 U.S. 288) which did not award any Zone 1 area to the United States and provided in paragraph 10:

> Nothing in this supplemental decree or the proceedings leading to it shall prejudice any rights, claims or defenses of the United States or of the State of Louisiana with respect to the remainder of the disputed area or past or future payments derived therefrom or attributable thereto or the operation of the Interim Agreement of October 12, 1956, as amended, with respect to such area payments.

by the Government, they are implicit in its arguments and would be the results attained if the Court accepted those arguments. A correct general review of the history of former decrees is presented below. Specific correction of Government misstatements and innuendos is presented later in the argument.

After the first state offshore oil and gas operations under state leases in the 1920's,[14] the Government took more than twenty years to bring the suit which resulted in the first Tidelands decision in 1947.[15] (Now it complains that the complex litigation took thirty years . . . during twenty-three of which it used Louisiana's revenues.) The first Louisiana Tidelands decision, on June 5, 1950,[16] was rendered prior to the Submerged Lands and Outer Continental Shelf Lands Acts of 1953.[17] Zone 1 did not exist at the time of the Court's early 1947 California and 1950 Louisiana decisions nor in 1953. It was a creature of the 1956 Interim Agreement. The first cases in 1947 and 1950 held that the United States, not the states, owned seaward of the coast line.[18] However, these cases did not actually

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[14] 1. Shalowitz, *Shore and Sea Boundaries* (1962), at 3.

[15] United States v. California, 332 U.S. 19 (1947).

[16] United States v. Louisiana, 339 U.S. 699 (1950).

[17] Submerged Lands Act, 67 Stat. 29, 43 U.S.C. § 1301, *et seq.* (1953), Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. §1331 *et seq.* (1953), [hereinafter OCS Lands Act].

[18] The opinion in the first California case was rendered on June 23, 1947, 332 U.S. 19, and after motion for rehearing was denied, the order and decree were rendered on October 27, 1947, 332 U.S. 804. The opinion in the first Louisiana case was rendered on June 5, 1950, 339 U.S. 699, and the decree followed on December 11, 1950, 340 U.S. 899.

demark the coast line on maps, but only gave broad considerations or standards to be used in defining the coast line.[19] In 1950, Secretary of the Interior Chapman marked a line on maps representing the federal position to show the federal coast line claims.[20] On a relatively small scale

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[19] The California decree declared that the United States was "possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean lying seaward of the ordinary low water mark on the Coast of California, *and outside of inland waters*. . . ." [Emphasis added.] 332 U.S. at 805. The decree in the first Louisiana case declared that the United States was "possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Gulf of Mexico, lying seaward of the *ordinary low-water mark on the coast of Louisiana and outside of the inland waters*. . . ." [Emphasis added.] 340 U.S. 899. Of course, after the Submerged Lands Act, the exact delineation of the ordinary low-water mark on the coast and the seaward limit of inland water *was* the issue because it was from that line that the extent of state jurisdiction was to be measured.

[20] This Chapman Line was discussed in 1. Shalowitz, *Shore and Sea Boundaries* (published by the U.S. Government Printing Office for the Coast and Geodetic Survey, Department of Commerce in 1962) at 108-109: "The Chapman Line was intended to represent graphically the ordinary low-water mark and the seaward limits of inland waters along the Louisiana coast. Its description and plotting on the charts represented an effort to apply, as accurately as possible, the principles of delimitation advocated by the United States in the proceeding before the Special Master. It was not a definitive line because the charts were based for the most part on 1933 surveys. It was understood at the time that in general the line was being promulgated as the most landward line that the Government would claim for the federal-state boundary, but subject to modification, landward or seaward, in areas where the lack of up-to-date surveys prevented an accurate map delineation, and subject also to interpretive criteria to be developed in the California case." The proceedings before the Special Master referred to did not involve Louisiana but were proceedings involving matters

map, without engineering precision, this line merely grossly delimited the particular closing lines or other coast line positions of the United States to show where the United States based its position upon the ordinary low water mark and where it recognized inland water bodies, or other features constituting coast line points or segments.

When Congress adopted the Submerged Lands Act and the Outer Continental Shelf Lands Act in 1953, it also defined the coast line with the vague description of the outer limit of inland waters and ordinary low water line.[21] As in the 1947 and 1950 decisions, this vague definition did not provide precise rules for the determination of the extent of inland waters. The vast array of geographic complexities associated with islands, low water elevations, bays, sounds, harbor works, other artificial extensions, and so forth, were simply left to the Court to work out in the context of a myriad of complex factual minutiae along the Louisiana coastal area.[22]

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of controversy between the United States and California. The Government waited fourteen years to have this report approved by the Court in United States v. California, 381 U.S. 139 (1965). The three-mile quit claim of the Submerged Lands Act extended beyond the then range of offshore drilling technology of the 1950's. Not until the 1960's did technology become economic for further deeper drilling. So coast line matters were, for a time, moot.

[21] "The term 'coast line' means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301 (c).

[22] The latitude left to the Court by Congress in enacting the Submerged Lands Act was discussed by the Court in the 1965 California decision, United States v. California, 381 U.S. 139. There, the Court, in discussing the legislative history of the Sub-

However, in 1953, the Congress had quitclaimed areas and rights won by Government in the 1947 and 1950 decisions. This confirmation extended not only from an uncertain base line (the coast line), but it also extended seaward to an uncertain boundary as to the Gulf Coast states. The boundary was to be either three miles or three leagues, depending upon the resolution of historic boundary factual and legal problems.[23]

The present litigation is not in fact a continuation of the suit filed by the Government that resulted in the 1950 decree.[24] Louisiana had filed a suit after the 1950 decision, and after the 1953 Submerged Lands Act, in a District Court where the trial of factual matters might have been more expeditiously attained.[25] The Government foreclosed expeditious fact adjudication by blocking that District Court action with an injunction from this Court, in proceedings filed in *United States v. Louisiana,* No. 15, Origi-

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merged Lands Act, said: "By deleting the original definition of 'inland waters' Congress made plain its intent to leave the meaning of the term to be elaborated by the courts, independently of the Submerged Lands Act." 381 U.S. at 150-151.

[23] 67 Stat. 29, 43 U.S.C. 1301 (b): "The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 1312 of this title but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than . . . three marine leagues into the Gulf of Mexico."

[24] United States v. Louisiana, 339 U.S. 699 (1950).

[25] State of Louisiana v. Anderson Prichard Oil Corp. et al., No. 38780, 14th Judicial District Court, Parish of Calcasieu, State of Louisiana (1956).

nal.[26] The injunction by this Court had halted operations in offshore Louisiana. That injunction led to the 1956 Interim Agreement whereunder the parties agreed to a lifting of the injunction in consideration of various arrangements therein made. It was in that 1956 Interim Agreement that Zones 1 and 4 were created. Zones 1 and 4 were a part of a system of four zones employing the Chapman Line of 1950 as a base line for projecting a three-mile line. The area within three miles of the coast line then claimed by the Government was designated Zone 1 and recognized as Louisiana's to administer and lease.[27] Practice and contemporaneous construction, plus the context of the Agreement, confirmed the understanding that this included the right to receive and retain lease revenues from Zone 1.[28] Doubtlessly, it must have then been

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[26] United States v. Louisiana, 351 U.S. 978 (1956). The full text of this injunction is reprinted in the "Appendix to the Brief in Support of Exceptions of the State of Louisiana to the First Issue in the Supplemental Report of the Special Master filed August 27, 1979" which was filed on November 15, 1979 at p. 2.

[27] Paragraph 6 of the Interim Agreement provides: "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." The "claims" referred to were boundary claims, not claims inconsistent with the leasing and lease revenue purpose of the agreement. *See* Louisiana Boundary Case 394 U.S. 11, 73, n.97 (1969), which distinguished between non-binding effects for boundary purposes compared to binding effects for lease purposes.

[28] After hearing evidence on this point, the Special Master found that this was in fact the understanding of the parties. Report at 17. *See* discussion of this point *infra* at 29-33.

anticipated that only petty future claims might be urged by the Government as to any future areas within that three-mile line forming the outer limit of Zone 1.[29] Only map accuracy or erosion problems might have been contemplated then as raising possible future claims in Zone 1, not claims inconsistent with the purpose of the agreement. *See* the testimony of negotiators of the Interim Agreement, discussed *infra* at 51-68.

Zones 2 and 3 were labeled "disputed zones," clearly implying the generally undisputed rights of each government in Zone 1 and 4.[30] Zone 4 was the more outward of the four zones treated in the Interim Agreement. In Zones 4 and 1, the Government and Louisiana were respectively recognized as having exclusive rights to lease and retain revenues. Report pp. 17-19.

Just as the Government later made claims inside of Zone 1 as its studies and investigation resulted in the development of new legal postures, Louisiana also made later claims with regard to Zone 4, *e.g.*, the dredged channel contention. However, in 1956 neither the Government's 1967 island-sound posture nor Louisiana's dredged channel posture, which respectively intruded into Zones 1 and 4, had developed.

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[29] *See, e.g.*, the discussion of lease ratification provisions, *infra* at 47 - 48, and other evidence that was considered by the Special Master.

[30] The language of paragraph 3 of the Interim Agreement, Appendix 2 *infra*, clearly implies the undisputed nature of Zone 1 and 4 rights *pendente lite* although the ultimate determination of the boundary might change the rights *prospectively* after the Interim Agreement terminated.

Not until 1958, preceded by many long years of international negotiations and conferences, did the Geneva Conference on the Law of the Sea adopt certain proposed Conventions.[31] Years of surveys of thousands of miles of Louisiana tidal shoreline preceded more years of amicable *joint* studies seeking agreement on applying the Convention. The negotiations in fact succeeded in partial amicable resolution embodied in the 1965 Louisiana decree, 382 U.S. 288. The Convention on the Territorial Sea and Contiguous Zone was approved by the Senate of the United States and ratified by the President only shortly before this Court's 1965 decision in *United States v. California*,[32] which had passed upon a *1952* Special Master's Report. Delay of that case until the Convention's approval benefited the Government. This was the lead test case on boundary rules as it was the first "tidelands" case that had already been the subject of a Special Master's Report. It offered the best hope of getting rules to use in Louisiana, but the Government sat on that Report twelve years before asking the Court to pass upon it.

In the meantime, in 1960 this Court had decided the three league problems of Gulf Coast States favorably to

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[31] Convention on the Territorial Sea and Contiguous Zone, U.N. Doc. A/Conf. 13/L. 52; Convention on the Continental Shelf, U.N. Doc. A/Conf. 13/L. 55; Convention on the High Seas, U.N. Doc. A/Conf. 13/L. 53; Convention on Fishing and Conservation of the Living Resources of the High Seas, U.N. Doc. A/Conf. 13/L. 54.

[32] 381 U.S. 139 (1965). In that case, this Court adopted the provisions of the Convention on the Territorial Sea and Contiguous Zone [1964] 15 U.S.T. (Pt. 2) 1607 T.I.A.S. No. 5639, for purposes of the Submerged Lands Act. 381 U.S. at 165.

Texas and Florida but unfavorably to Louisiana, Alabama and Mississippi.[33] As suggested by the vigorous dissents of Mr. Justice Douglas and Mr. Justice Black,[34] one could hardly malign the good faith of three defeated Gulf coast states for their contentions without maligning the good faith and rationality of preeminent dissenting members of this Court.

Similarly, when this Court decided some of the issues involving the coast line in *United States v. Louisiana,* 394 U.S. 11 (1969), the major position on the coast line then lost by Louisiana again received the endorsement of the dissenting opinions of Mr. Justice Douglas and Mr. Justice Black.[35] The points not then won by the United States nor by Louisiana were deemed by the Court to warrant the more detailed scrutiny of a Special Master and full evidentiary hearings largely because of their complex facts. Ultimately Louisiana prevailed on most of the scores of legal geographic issues the Master had to consider.

In the 1969 decision of this Court[36] as well as the coast

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[33] United States v. Louisiana, 363 U.S. 1 (1960).

[34] 363 U.S. at 101 and 85, respectively (1960).

[35] 394 U.S. 11, at 78 (1969). In writing his dissenting opinion with which Mr. Justice Douglas joined, Mr. Justice Black stated:

> . . . it is difficult to understand why the Federal Government is subjecting the State of Louisiana and this Court to a long series of technical and wasteful lawsuits. When all of them are over the United States will have little more undersea land than it already had. The only practical difference that I can see at the moment if the Federal Government wins is that it, instead of the State, will have power to lease the land to some oil company. 394 U.S. 11 at 85 n.2.

[36] United States v. Louisiana, 394 U.S. 11 (1969).

line report of the Special Master,[37] both governments lost many arguments of fact and law. No one ever cast aspersions on either party for having made a good fight on lost causes. These hotly contested issues involving potentially enormous oil and gas reserves required both State and federal counsel to put forth the utmost zeal in developing and advocating their respective governments' legal positions on vital issues. With such sums at stake, the Government tenaciously argued many points ultimately lost or abandoned,[38] just as Louisiana did. Such zeal on both sides ultimately resulted in Court recognition of many points that seemed novel or suspect when first suggested.

It was only after the 1975 decision[39] that a total accounting became appropriate. While prior piecemeal adjudications had led to partial accountings as to areas outside of Zone 1,[40] never before had there been an accounting required in connection with the adjudication of Zone 1 territory to the United States. Consider each decree. The June 5, 1950 decision[41] was prior to the Submerged Lands Act grant and prior to the Zone 1 agreement in 1956. It was even prior to the commencement of the litigation now

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[37] United States v. Louisiana, No. 9, Original, Report of the Special Master filed July 31, 1974.

[38] *E.g.*, dozens of headland, bay, water area measurement and other geographic arguments, the rejected harbor works claim denying effect to jetties, low water elevations rules, false survey positions and many other rejected positions.

[39] United States v. Louisiana, 420 U.S. 529 (1975).

[40] United States v. Louisiana, 382 U.S. 288 (1965); United States v. Louisiana, 404 U.S. 388 (1971); United States v. Louisiana, 409 U.S. 17 (1972).

[41] United States v. Louisiana, 339 U.S. 699 (1950). Of course, the decree effectuating this decision, 340 U.S. 899, was also prior to the Submerged Lands Act.

at bar. The 1960 rulings of the Supreme Court[42] dealt with the question of whether Louisiana was entitled to a three league boundary claim and explicitly reserved Interim Agreement rights. The December 13, 1965 decree[43] was to implement the Court's 1960 decree by clearing federal title to certain Zone 4 areas beyond three leagues from the State's outermost coast line claims and also for the purpose of recognizing State title to territory *outside* Zone 1 in what were originally disputed areas. Again, this was not an adjudication of any Zone 1 areas, and certainly was not an adjudication of areas involved in the coast line controversy, which were not resolved in that decree. Similarly on December 20, 1971,[44] when the United States obtained a decree implementing aspects of the 1969 decision, this too was generally as to areas at more outward locations, and was not for accounting purposes except for certain impounded funds that were released. (The Zone 1 matter does *not* relate to impounded monies.) Likewise, nothing in the 1972 decree[45] (favoring Louisiana) required an accounting. It certainly did not pertain to Zone 1 money and specially noted the deferral of accounting matters. All decrees reserved the right of the Court to order further more particular decrees.

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[42] United States v. Louisiana, et al., 363 U.S. 1 (1960), United States v. Louisiana, et al., 364 U.S. 502 (1960) providing in part: that as to the State of Louisiana the allocation, withdrawal and payment of any funds now impounded under the Interim Agreement between the United States and the State of Louisiana, dated October 12, 1956, shall subject to the terms hereof, be made in accordance with the appropriate provisions of said Agreement.

[43] United States v. Louisiana, 382 U.S. 288 (1965).

[44] United States v. Louisiana, 404 U.S. 388 (1971).

[45] United States v. Louisiana, 409 U.S. 17 (1972).

So it was that in the principal Decree governing the Master's report (the Decree of June 16, 1975, 422 U.S. 13), for the first time the full grant of accounting problems and the resolution of Zone 1 accounting matters arose.

In this context, the Special Master had before him a basic question: whether Louisiana was obliged to pay back or suffer offset for money the United States had contractually agreed should be paid to Louisiana, notwithstanding the outcome of the boundary controversy. Having resolved that question favorably to Louisiana, the Special Master did not have to explore the full import of his finding of fact that the bulk of the lease revenue claimed by the United States, although from Zone 1, had not been proven to be derived from or on account of areas won by the United States as required by the Decree. Report pp. 15-19. But his findings affirmed the fact that the lease bonus and rental revenue claimed by the United States related only to areas owned by Louisiana by explicit provisions of nearly all of the leases. Report pp. 18-19. Ignoring the fact that it failed to prove its claim factually, the Government, in its Statement of the Case, also glosses over the clear language of the Interim Agreement and its context which provide that revenues which were intended to be refunded were to be escrowed. This impoundment scheme for refundable revenue was in stark contrast to the clear non-impoundment contract rights related to Zone 1 revenues. That stark contrast made the meaning of the unqualified language of exclusive supervision and administration very clear. Notwithstanding the absence of explicit payment language, the exclusive rights included the right to receive and keep monies generated during the controversy.

Some clear facts emerge from this history. First, no one can justifiably be accused of engaging in or tolerating bad faith dilatory tactics in a case of this magnitude and complexity between ponderous governments. The accuser's case, not the victim's, is made generally suspect by such invective and emotional pique. Louisiana's case, by contrast, is based on evidence and law.

Secondly, the prior boundary adjudication decrees are in no way inconsistent with the later general accounting decree. The pre-1956 adjudication relied upon by the Government in fact employed the basic principle that the status quo prior to decision should be respected and no liability should be imposed for expended monies received, prior to decisions, from areas in conflict.[46] That principle supports the Louisiana position, not that of the Government. All of the post-1956 decrees reserved jurisdiction to enter additional decrees or hold further proceedings[47] and none disturbed the principle mentioned above. The 1972 decree even noted the deferral of accounting problems, stating, in treating one problem, that they had "heretofore been deferred by the parties pending resolutions of the larger disputes between them."[48]

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[46] United States v. Louisiana, 340 U.S. 899 (1950), imposing only post-June 5, 1950 decree liability.

[47] 364 U.S. 502 (1960), paragraph 8.
382 U.S. 288 (1965), paragraph 11.
404 U.S. 388 (1971), paragraph 5.
Decree of October 16, 1972, paragraph 7, granted 409 U.S. 17 (1972), paragraph 1.

[48] Paragraph 1 of the decree of October 16, 1972, granted 409 U.S. 17 (1972).

ARGUMENT

I. BASIC ARGUMENTS IN SUPPORT OF THE MASTER'S ZONE 1 RULINGS

There are two basic theses supporting the Zone 1 portion of the Report. (1) With insignificant exception, Zone 1 monies claimed by the Government were not truly derived from or on account of the parts of Zone 1 won by the Government. This alone negates the claim. *See* Report pp. 18-19. (2) Even if the funds had been so derived, still Louisiana would be entitled to keep the monies.

A. Nearly all of the lease revenue claimed by the United States was not derived from or on account of the lands or resources of the United States.

Under the Decree of June 16, 1975 paragraph 6(a), the United States must prove more than merely showing that sums were derived by leasing from Zone 1. It must also show the sums were derived "from or on account of any of the lands, minerals or resources described in paragraph 1" of the Decree; that is, it must be shown the sums were "from" in the sense of being "on account" of the federal areas.

There were many instances where it was in the interest of both governments to facilitate leasing Zone 1 where uncertainties of true boundaries existed. It is quite normal, to avoid slander of another's title while yet facilitating leasing on both sides of uncertain water boundaries,

to lease in such areas only such rights as the lessor may in fact own. See *e.g.*, testimony of Messrs. Bonnecarrere, Dupuy and Carmouche, discussed *infra,* and Report p. 18. This is done by describing a geographic area by way of engineering descriptions of metes and bounds, or by an outline of an area on a map, accompanied by language to make plain that the lease covers only lands within the area which are in fact owned by the lessor. The broader area is just to show the vicinity in which state lands are located. Bonuses and rents are in fact only for such lands as are owned within the broader area or vicinity. The uncertainty doubtlessly influences the bidding, but it at least furnishes a basis to describe an uncertain extent of land with legal certainty. Without this system, in the chaotic wetlands of rivers, lakes, bays, marshes and islands, it would be impossible to conduct mineral leasing without slandering titles en masse.

Lease revenues not physically derived from actual production in federally won areas were certainly not "from or on account" of the lands and resources ultimately decreed to be federal, in any instance where this type of lease was granted. They were "from or on account of" state lands, notwithstanding the fact that federal lands may have been within the metes and bounds areas, for those geographic areas were qualified by description language. This is unquestionably the case as the leases merely purported to lease only such lands or interest as the State owned. As we elsewhere demonstrate, all state leases are also understood in the custom of the industry as being without warranty and in the nature of quit claim leases. They do not purport to cover rights not owned. This was made explicitly clear in most of the leases. The trier of

fact heard lengthy testimony by numerous witnesses on the consistency of this understanding with custom in Louisiana mineral lease descriptions.

The Government did not present a single witness to refute that testimony, nor to refute the plain language of the leases. The detailed language of the many leases is presented in Appendix 1. See Figure 1 for graphic explanations, *supra.* It is unreasonable for the United States to claim that the bonus and rental revenues generated by those leases were from or on account of federal lands, when the very terms of the leases made plain that only lands owned by, or belonging to, Louisiana were being leased. The payments were therefore *only* for areas belonging to Louisiana. These leases were not any slander on the federal title.

Only if wells produced and revenues were paid from wells on federal land would there even be a scintilla of rationality in the federal posture, and even then, it would be incorrect, for all Zone 1 revenues *pendente lite* properly belong to Louisiana. (Incidentally, much of the money is bonus and delay rental monies, not production royalty rental.) Beyond a doubt, the evidence discussed in Appendix 1 shows that there is no basis to utterly unsupported and unsupportable federal claims that $18 million was derived from federal areas.

Thus, the United States Memorandum is remarkably devoid of any analysis of the contracts and ignores the grossly serious fact that it has not proven that the bulk of the so-called Zone 1 revenues to which it adverts are actually from or on account of the areas the United States

won. And prove this it must, for the very title of its brief before the Special Master was "On Issues with Respect to Which It Has the Affirmative Case." Only parts of two leases are "from or on account of" areas won by the United States and no other bonus or rental revenue can be so classified.

This burden extends to *time and place* problems. *See* Appendix B of the 1975 Decree, 422 U.S. 13, and consider that the Government didn't prove that the revenues were attributable to lands owned by the Government at the time the sums were derived. Proof was required. *Ipse dixit* will not suffice. The oil was in fact mostly derived from Louisiana territory, when produced.

B. If the monies were derived from or on account of federal areas, which is denied, other reasons preclude liability.

Although this argument is much greater in extent, only the revenue from two leases is solely dependent on it. *See* Report pp. 18-19, and argument *supra.*

1. *The OCS Lands Act not only authorized the Interim Agreement provisions of Zone 1, but provided that payments pursuant thereto were constructively equivalent to payment to the United States.*

Louisiana grounds its rights to retain Zone 1 revenues upon clear text, context and purpose of the Interim Agree-

ment, which formed contract rights reserved to it in the June 16, 1975 Decree, paragraph 13.[49] First, to show the true import of the Outer Continental Shelf Lands Act, we present the authority of the federal signatories. The authority to execute the Agreement also aids in construing the Agreement and its legal effect on payments made pursuant thereto.

On its first page, the Interim Agreement noted the authority of the Secretary to make agreements involving the payment of rents and royalties and the issuance of new mineral leases:

> WHEREAS, Section 7 . . . [of] . . . the Act, authorizes the Secretary . . . 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. . . . [Emphasis added.]

Section 7 (43 U.S.C. 1336) reads:

> 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 sub-chapter, the Secretary is authorized, nowithstanding the provisions of section 1335 (a) and (b) of this title, . . . to negoti-

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[49] ". . . 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." 422 U.S. 13, par. 13.

> ate and enter into agreements with the State, its political subdivision or grantee or a lessee thereof, respecting operations under existing mineral leases and payment and impounding *of rents, royalties, and other sums* payable 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. . . . *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.* [Emphasis added.]

Note that Section 1336 provides "Payments made pursuant to such agreement . . . shall be considered as compliance with section 1335 (a) (4) . . . ," which called for payments to the Secretary and deposit in the Treasury.

Thus, the OCS Lands Act not only authorized payment to Louisiana pursuant to the Interim Agreement; it also established that the effect of that payment was constructive payment to the United States. Therefore, the United States cannot claim that it has not been paid monies to which it is entitled. There is no language limiting this effect to lessees only, as claimed by the Government. Quite to the contrary, the clause in Section 1336 in fact, by *explicit* language, covers arrangements "with the State."

Thus, in addition to its other defenses, Louisiana pleads payment in defense to the United States' claim that it is entitled to Zone 1 revenues, pursuant to the OCS Lands Act rule that payment pursuant to a stipulation[50]

[50] 67 Stat. 467, 43 U.S.C. §1336.

or agreement is to be treated the same as payment into the United States Treasury.

Somehow, the Government argues that the effect of the stipulation or agreement made *with the State,* not with the oil companies, was to be understood as only for the benefit of the oil companies. It is unreasonable to impute such an intent to either the statute or the Agreement. This statutory provision governs "payment" "with the State." However, were one to agree *arguendo* with the view that the statute only constructively achieves payment by the oil companies, nonetheless, if an oil company has paid the Government constructively, the Government cannot be paid twice by also claiming actual payment from the State. The ultimate gravamen of the Government's claim must be that it had not been paid by the oil companies because they paid Louisiana. If its own law says it has been paid by the oil companies, that ends it. It has no complaint against anyone if, as the price of lifting the injunction and the total Agreement, it consented to payments to the State.

2. *The June 16, 1975 Decree reserved Interim Agreement rights to Zone 1 revenue.*

Paragraph 13 of the June 16, 1975 Decree provides, *inter alia*:

> 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.

Thus, rights under the Interim Agreement remained in effect except as explicitly modified by the Decree. Paragraph 6 (a) 's requirement to account did not explicitly modify the right to prior revenues under the Agreement, but was merely a general provision. Therefore, since the Interim Agreement and innumerable other agreements, such as unit agreements, recognized Louisiana's right to receive Zone 1 lease payments and this was confirmed by the practice of the parties, said rights are reserved by the Decree.

3. *The Interim Agreement conferred the right to exclusive leasing in Zones 1 (for Louisiana) and 4 (for the United States). This includes the right to lease revenues* pendente lite.

Paragraph 6 of the Interim Agreement states:

> 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.

Paragraph 2 provided these zones would be "binding upon the parties for the purposes hereof" although no other inference or prejudice was to be drawn from the boundary demarcations. See discussion elsewhere on the point that the Agreement was binding for Zone 1 and Zone 4 lease purposes. The Special Master found as a fact, after hearing testimony of negotiators:

> The purpose of the Interim Agreement was clearly to settle the rights of the parties to the extent that this could be done pending final determination by the Court. Report p. 19.

This Agreement was in the context of precedent following the principle that uncontested practice of receiving revenues would not result in refund liability, until the date of a decision changing the status quo.[51] The Government never challenged Louisiana's right to receive these payments *pendente lite*, even though boundary claim changes were made in 1967, and the Master so found. Report p. 17. That was indeed the unquestioned practice and construction of the Agreement by the parties, the United States receiving Zone 4 revenue *pendente lite* and Louisiana receiving Zone 1 revenue *pendente lite*. Clearly, the binding effect of the Agreement for payment purposes was confirmed by the practice. The Master tried the case, reviewed the documents, and saw and heard the witnesses on the facts of practice and contemporaneous construction. The findings, Report pp. 17-19, were not drawn from the

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[51] *See,* United States v. Louisiana, 363 U.S. 1, at 83-84 (1960). There, in note 140, the Court reviewed how the decision in 1950 was effective prospectively only. That to which the United States was entitled was an "appropriate accounting." *See* paragraph 3 of the 1960 decree 364 U.S. 502, directing the States to render to the United States an "appropriate account." This was then done in connection with the December 13, 1965 decree, 382 U.S. 288, which was "[f]or the purpose of giving effect to the conclusions of the Court" in the 1960 opinion and decree. *Only* areas outside of Zone 1 were thus adjudicated in the 1965 decree because of the unresolved coast line problems *not* treated in 1960. And of course, the whole purpose of the 1965 decree and the accounting proceedings was to determine appropriate ways in which to account.

air. We do not believe that this practice would in any way now be challenged had the factual circumstances not developed whereby the United States won all of Zone 4 while Louisiana lost part of Zone 1.

The very system of the Agreement and its content on other matters confirms the understanding that the authority to receive revenues from Zone 1 clearly included the right to retain the money. The Agreement noted the need for impoundment of revenues from the "disputed area" and the need for provision for new leasing in the "disputed area." Zone 1 was not defined as part of the "disputed area." See second "Whereas" paragraph on page 2 and numbered paragraphs 3 and 6-7 of the Interim Agreement. Note that the impoundment procedure of paragraph 7 shows that the parties manifestly contemplated the need for special refund or repayment procedures where later claim of refund or entitlement might be made. That is why the impoundment and escrow arrangements were established—to secure payment of those monies which one party might receive and be obliged to pay to the other.

Each government knew this was essential because, where one is dealing with governments, substantive liability or authority is not the only relevant legal matter. There must be special authority to pay, and that was lacking absent escrow arrangements. Thus, paragraph 7 (b) even went so far as to deal with the problem that lease revenues, once received by Louisiana into the general fund, could not even be impounded (much less paid) under Louisiana law:

> (b) The State of Louisiana, since May 22, 1953 has granted certain mineral leases which affect sub-

> merged 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, special procedure was set up requiring lessees desiring lease ratification to pay into an impounded fund to secure such possible liability. This was only with respect to "disputed area" revenue, and was a prerequisite to ratification. No payments or liability were ever contemplated for defunct leases, or leases which were abandoned.

No impoundment procedure whatsoever was employed for Zone 1 and Zone 4 revenue, the intent being clearly to authorize new leasing and retention of prior and new revenues from those zones during the pendency of the case.

The tenor and system of the Agreement is obvious: the disputed area was the only area for which refund or payback liability might exist. That was the only area for which an impoundment or escrow arrangement was made. Yet it was known that without such an arrangement, there was no provision in the law for a pay back to be accomplished. To make the point even plainer, the parties explicitly provided that each should have exclusive leasing powers and administration over Zone 1 (Louisiana) and Zone 4 (the United States).

This, incidentally, was not a one-sided give-away. It was a reciprocal exchange of mutual rights of exclusive leasing powers. The United States received the same rights, *pendente lite*, as to Zone 4, which Louisiana received, *pendente lite*, as to Zone 1.

Those rights were only for the period until a final judgment or decree was to be rendered, without prejudice to the boundary rights and contentions that would be ironed out by a final decree. It was the latter type of non-prejudice as to the effect of the Zone 1 agreement which this Court recognized.[52]

4. *The obligations to account under paragraphs 6(a) and (b) are informational reporting obligations with liability to be determined under paragraph 6(c).*

The federal government ultimately must rely upon (a) of paragraph 6 of the Decree of June 16, 1975, to claim that sums derived from Zone 1 are payable to the United States. Such reliance does not reach the question of the limiting effect of paragraph 6 (c). Paragraph 6 (c) plainly reflects that mere obligation to account does not per se create an obligation to pay or suffer offset.

While paragraph 6 (a) [like (b)] provides that there is an obligation to render and file a "true, accurate and appropriate account," this does not mean all items includable therein create or are to reflect liabilities. Rather, (a) and (b) were merely to set the stage for the determination of liability to be made under (c). The system of subparagraph (c) shows that after the informational reporting of 6 (a), provision was made for a dispute procedure under (c) to determine which items were payable or to be taken properly into account in ascertaining net balances. Although the Decree had settled the boundary di-

[52] United States v. Louisiana, 394 U.S. 11, at 73, n.97 (1969).

viding geographic areas, 6 (a) spoke of issues concerning the "areas still in dispute," obviously using "areas" in a subject matter sense. Other phrases, *e.g.*, "undisputed balances," "objections," and "any amount shown by such accounts to be payable," are employed which reflect that under 6 (c), liability determinations would be made. All of these phrases obviously show a system in the Decree that contemplated [1] reporting of information and positions under (a) and (b) and [2] contest and/or agreement on the liability for payment or offset as to items reflected in the accountings, to determine a net balance.

Contrasted with the federal position, this analysis of the totality of paragraph 6 provisions accords more rationally with the balance of the Decree. Paragraph 9 contemplated probable controversy about offsets. Paragraph 11 directed a further decree to treat "matters related to unresolved issues, if any, concerning accountings and payments [note—accounting was not equated with payment], offset claims [and other matters]." Paragraph 13 reserved rights under contracts, and especially under the Interim Agreement.

The federal objections do not really establish a basis for liability other than to rely on paragraph 6 (a). Merely to show removal of minerals by *third persons* is no basis of liability. This is especially true where removal was authorized by the United States in its grant of the rights to lease Zone 1, *pendente lite*. It received many benefits for that grant, including the reciprocal right to lease Zone 4 *pendente lite* and the acquisition of developed oil fields upon completion of the controversy.

5. *The non-prejudice clause of the Agreement on Zone 1 related to non-prejudice as to boundary or ownership purposes, not leasing purposes.*

The provisions of paragraph 2 of the Interim Agreement to the effect that "no inference or conclusion was to be drawn from . . . use of the so-called Chapman Line or any other boundary of said zones" were heretofore employed by the Court to support the finding that the Interim Agreement did not prejudice boundary or ownership contentions of the parties. *See* 394 U.S. 11 at 73, n. 97. Louisiana makes no claim that the Zone 1 - Zone 4 understanding modified ownership or boundaries. Thus, the quotation of this note, Government Memorandum, p. 20, in no way aids the Government. Indeed, Louisiana is not embarrassed by, but is helped by, paragraph 2 and the Court's language. We affirmatively used that language before the Master as serving the purposes of the Agreement. The Court explicitly declared that the limits of the zones "shall be binding for the purposes hereof." *The Master has found as a fact,* after evaluating a mass of evidence, that the purpose

> *was clearly to settle the rights of the parties to the extent this could be done* pending a final determination by the Court. . . . *this was recognized by both parties to include* the right to collect rents from mineral leases in that zone and to expend the funds . . . without impoundment. [Emphasis added] Report p. 19.

Louisiana is thus supported by the Supreme Court approval of the Agreement as "primarily for purposes of

reaching agreement on the leasing . . . pending a final ruling on ownership." *See* 394 U.S. 11 at 73, n. 97.

The Louisiana position is simply that, for the purposes of leasing, the Interim Agreement is like dozens of agreements such as unit agreements, which the United States regularly enters into, agreeing upon shares of oil or gas participation. Such agreements merely fix participation from areas in proximity to boundaries, during the effective period of the agreement. They do not determine ownership of land or mineral rights. They do not prejudice boundary or property claims and may be prospectively upset. However, without them, administration of leases along boundaries would require unimaginably large and numerous technical lawsuits to resolve complex participation or leasing rights. If it is held that the United States cannot so agree, or if agreements thus made are restrictively interpreted, much litigation may ensue. State *and* federal lease administration will be impaired. Some understanding of background the Special Master considered is useful to appreciate these remarks. He, of course, did not burden the Court with details of the testimony of mineral experts, *e.g.*, Messrs. Dupuy, Bonnecarrere and Carmouche. However, he certainly evaluated that background.

The non-prejudice provisions of paragraph 2 really only related to technical and boundary problems of location. Thus, the language that no inference or conclusion was to be drawn from the use of the "Chapman Line or any other boundary of said zones" to the benefit or prejudice of either party was promptly followed by other language that the specific limits of the zones were to be finally fixed by agreement or otherwise. Numerous specific agree-

ments, such as unit agreements employing specific engineering limits for Zone 1, were thereafter reached. In fact, all of the revenues which Louisiana claims to have derived from Zone 1 are in fact recognized to have been from within Zone 1's limits, as a result of agreement on specific limits of Zone 1, which resulted in no objections to the technical conclusions filed by the parties. This is part of the reason why this proceeding has been so protracted. Engineering and legal staffs met, reviewed old staff agreements, negotiated new understandings and otherwise labored at length on specific limits of Zone 1 and related revenue matters, either using agreements (such as unit agreements) confected in the past, or reaching new technical understandings of whether particular wells or unit areas were within Zone 1's specific limits. The Interim Agreement did not prejudice those negotiations as to the specific limits of Zone 1, which have all been entirely resolved. Nor did it prejudice the determination of whether particular revenues were or were not from Zone 1, or their amounts. That was a technical negotiation problem, now resolved. It should be distinguished from the controverted fact issue related to the customary import of the lease description language. This lease description issue was treated in the testimony of the lease experts and resolved, favorably to Louisiana. Report p. 18.

Specific limits of Zone 1 having been established, and facts of revenue therefrom established, the Agreement is binding for its purposes of leasing and lease revenue rights determined by those limits. Only positions on the limits or on boundary controversies were not prejudiced by the Agreement. The consequences of an area being in Zone 1

or Zone 4, once boundary matters were resolved, were of course affected in a binding way or there would have been no reason for the Agreement. The non-prejudice language simply related to precise limits of the Zones and permanent boundaries. There is no unresolved issue on these matters and thus the non-prejudice clause has as its sole surviving provision "binding for the purposes hereof."

6. *The law of executive right confirms Louisiana's right to retain revenues from exercise of leasing rights.*

In granting "exclusive supervision and administration," including the right to "issue new leases," paragraph 6 of the Interim Agreement created an executive right, defined in the general common law of mineral law as "the exclusive right to grant mineral leases of specified land or mineral rights." *See* Louisiana Revised Statutes 31:105 to 113, comprising Chapter 6 of the Louisiana Mineral Code.

These provisions of the 1974 Louisiana Mineral Code are not per se[53] dispositive of the issue, but they are reflective of the general common law federal courts would follow. See 2 Williams and Meyers, *Oil and Gas Law*, Secs. 338 and 339, for the general common law which served as a model for Louisiana law.

As earlier noted, Louisiana maintains that the Outer Continental Shelf Lands Act itself and the Interim Agreement both support Louisiana's position. These authorities

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[53] However, 1975 amendments to the Outer Continental Shelf Lands Act do adopt the law of adjacent states in 1975 as federal law—*see* 43 U.S.C. §1333 (2).

would of course control over general common law, and they support Louisiana.

However, to the extent the general common law of mineral transactions would aid in interpreting the Agreement, given the oil and gas legal expertise of the principal negotiators, general common law as federal common law might be useful in gauging the intent of the parties' oil and gas experts. That general common law, codified in the Louisiana Mineral Code, and adopted as surrogate federal law, would recognize the freedom of parties to create independent executive rights which entitle the holder to all lease revenue. *See* La. R.S. 31:106, and the Comment thereto that the rules did not prevent "other forms of contract."

As analyzed earlier, the form, context and practice of the parties under the Interim Agreement *all* show that Louisiana had the right to receive all forms of lease revenue derived from its exercise of its executive right, until a final judgment might prospectively provide otherwise. This would include royalty revenue. However, if this intent and practice were not present, at the very least, the general law of executive right would afford the right to retain bonus and delay rental revenue. Thus, Article 105 of the Louisiana Mineral Code, in codifying the general national common law rule recognized in the *Williams and Meyers* treatise, states "unless restricted by contract it [the executive right] includes the right to retain bonuses and rentals."

Therefore, as a very minimum, even if Louisiana's overall Zone 1 defense were rejected, Louisiana would be

entitled to retain bonuses and rentals from Zone 1, by reason of paragraph 13 of the Decree confirming rights under the Interim Agreement.

7. *Royalty revenue derived from unit agreements should not be refunded to the United States or used to strike the balance under paragraph 6(c), due to the exemption and protection of contract rights under paragraph 13.*

The small extent of royalty revenue is,[54] in major part, from pooled or unitized production under agreements that fix the participation. Again, paragraph 13 of the Decree reserved rights under existing contracts. While prospective revisions of unit participations may be in order, the participation fixed by unit agreements is retroactively protected under paragraph 13 of the Decree, which says

> 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. . . . [Emphasis added.]

Unit agreements offshore are often complex agreements where participation is not determined on a mere pro rata acreage basis. Often, participation is negotiated taking into account a complexity of technical facts which determine the equities of participation where a boundary

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[54] Some $11,921,654.65 of royalty revenue is included in the Government's Zone 1 claim. This is a miniscule amount compared to the countless billions of dollars the United States has enjoyed from areas it won offshore Louisiana.

crosses a reservoir. For example, if parcel A belonging to owner A has 50% of the reservoir underlying it, this may be only one factor used in negotiating an agreement. Owner B of parcel B, which may have only 30% of the reservoir acreage, may have his acreage situated high on the structure, and the reservoir may be far thicker under B, containing more hydrocarbons, thus entitling him to perhaps 60% participation. Owner A, on the other hand, possessed of far more acreage in the reservoir, may have a thinner portion of the productive sandstone underlying his land, be low on structure adjacent to water (which means oil wells on his land would quickly dry up or produce excessive waste water), and have less oil content under his larger productive acreage. A and B, together with other owners with lands overlying the reservoir, may have negotiated what to their experts is an equitable participation in the reservoir. The location of the boundaries of the lands overlying the reservoir are thus but one of many very technically complex facts determining participation in such negotiated unit agreements. In the course of negotiation, give or take may occur on one factor as a *quid pro quo* for agreement on another factor. Therefore, if a new boundary adjudication occurs, there should, equitably speaking, be no automatic redetermination on a pro rata acreage basis. There should be a renegotiation. *A fortiori,* there should not be a retroactive upsetting of prior revenue.

These are the reasons why protections against retroactive upsetting of unit agreements were provided in paragraph 13. Expert evidence and argument was presented to the Master on these policy reasons underlying oil and gas contracts. These reasons are perfectly consistent with paragraph 6. They would honor the boundaries called for by

the Decree, and merely refrain from upsetting agreements retroactively. This principle is acutely important where the boundary location was but a single, perhaps small, factor in a negotiated participation formula under an oil and gas contract.

The merits of the arguments in this sub-part are confirmed by the practice of the parties and subsequent modification of the Interim Agreement itself, an amendment not presented to the Court in the copy of the Interim Agreement in the Government Memorandum. That copy adroitly implied that paragraph 10 had not been amended although the fact of the amendment is truly uncontraverted and its effect was previously argued.

Originally, the Interim Agreement provided that allocations of royalty under the Interim Agreement in connection with unit production was to be allocated on a pro rata acreage basis. On December 11, 1964, a formal modification of that Agreement was made and reads as follows:

> AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA AMENDING ARTICLE 10 OF THEIR AGREEMENT OF OCTOBER 12, 1956, PURSUANT TO SECTION 7 OF THE OUTER CONTINENTAL SHELF LANDS ACT AND ACT 311 OF THE LOUISIANA LEGISLATURE OF 1964
>
> WHEREAS, on October 12, 1956, the United States of America and the State of Louisiana entered into an agreement regarding the operation and management of submerged lands off the coast of Louisiana

pending determination of the ownership of such submerged lands; and

WHEREAS, the second sentence of Article 10 of that agreement provides:

> If, however, in connection with royalty payments, any well or wells are bottomed under a unit theretofore validly established 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 leases 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.

and

WHEREAS, experience has shown that in some circumstances it is preferable to allocate unit royalties on some basis other than that of acreage as required by the foregoing provision,

NOW, THEREFORE, the United States of America, acting by and through the Secretary of the Interior with the concurrence of the Attorney General, pursuant to Section 7 of the Outer Continental Shelf Lands Act, and the State of Louisiana, acting by and through the State Mineral Board with the concurrence and approval of the Attorney General pursuant to Act 311 of the Louisiana Legislature of 1964, agree that the second sentence of Article 10 of the Agreement of October 12, 1956, is hereby amended to read as follows:

If, however, in connection with royalty payments,

> any well or wells are bottomed within a unit validly established which includes submerged lands lying within the area of dispute, the royalty for minerals produced from such well or wells after establishment of the unit shall be allocated to each lease or portion thereof lying within the area of dispute in such proportion and in such manner as may be agreed to by the State Mineral Board and the Secretary of the Interior, or his delegate.
>
> THUS MADE AND EXECUTED effective this 11 day of Dec., 1964. [There followed the signatures of the Secretary of the Interior and other federal and state officials.]

This amendment which related to the proportions to be credited to Zone 1 or 4 to be paid to Louisiana or the United States, as the case may be, or to be credited to Zone 2 and 3 impounded revenues, confirms the basic factual point made in this subpart, that the oil and gas experience of the parties has shown that the determination *or redetermination* of unit equities can only be made by agreement of the parties. The Decree, in paragraph 12, protects these rights under the 1964 amendment. Therefore, the Master could not disturb them, not even prospectively, and certainly not retroactively, without new agreements being confected, due to the fact that mere boundary placement is too inextricably involved in a host of other technical factors that determine whether production is "from or on account of" which party's resources.

Apart from the particular need to not disturb unit participations retroactively, this discussion of unit equities illustrates a principle that was in the spirit of the Interim

Agreement. Oil and gas contracts involving rights to lease or participation, made among a great complexity of factors, should not be disturbed retroactively by ultimate determinations that one of those factors, a boundary, is different than as agreed for the limited purposes of leasing and interim payments until decision. That is why paragraph 13 of the Decree makes good sense.

8. *Interim Agreement rights, protected by paragraph 13 of the Decree, show that it was intended that any determination of the controversy would have prospective application only.*

Paragraph 15 of the Interim Agreement, states *inter alia*:

> 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. . . .
>
> Upon 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.

Thus, it was agreed an adjudication was to have prospective application only.

The only provision in the Agreement for the release of payments upon final settlement or adjudication related to impounded revenue and payments by lessees to obtain

lease validations. *See* discussion of third party agreements, *infra.*

The Government would have the Court believe that a pre-1953, pre-1956 decision *not* deciding coast line or 3-mile projection matters controls over this clear, specific language, preserved by paragraph 13 of the 1975 Decree. General language of the post-1956 decrees does not irrationally wash out this sensible prospective provision preserved in the 1965 decree implementing the 1960 decree, and also preserved in 1972 and 1975. *See* discussion of decrees, *infra.*

9. *Payments called for by the Interim Agreement are exempt from the offset procedure of paragraph 6(c) of the Decree.*

Paragraph 14 of the Interim Agreement provides:

> 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 offset against any claim against or liability or obligation of the other party. . . .

This provision plainly contemplates that sums to be paid under the Agreement are not to be figured in any offset claim or system. The United States' claim is prosecuted under paragraph 6 (a) of the Decree and ultimately paragraph 6 (c), pursuant to offset procedure in the Decree. Paragraph 13 of the Decree, though, explicitly protects rights under this Agreement. It is therefore submitted that payments made pursuant to Zone 1 or Zone 4 rights are not subject to offset under paragraph 6 (c).

That is not to say, however, that impounded funds are not available to pay liabilities the Agreement establishes should be paid out of those funds, *e.g.*, sums derived from federal use or unjust enrichment on account of State lands or resources.

10. *The form of third party agreements attached to the Interim Agreement shows that it was explicitly contemplated that the United States would look to mineral lessees instead of to the State with respect to unimpounded lease payments.*

Among the documents appended to the Interim Agreement was Exhibit B, "The Lessee's Consent and Waiver Form." In the discussion *infra* of the language of various leases (See Appendix 1 also) affecting Zone 1 areas won by the United States, it is shown that there are only two leases which do not contain quitclaim-type granting clauses. All other leases, in their descriptions, mooted the Government claim. Those leases were granted prior to the 1956 Interim Agreement, in 1954. As a condition of the lessees' obtaining federal ratification of such leases, the lessees' consent and waiver form provided:

> Also, as to any of the listed leases granted by the State of Louisiana since May 22, 1953, if any, which are referred to in Paragraph 7 (b) of the foregoing agreement, the undersigned further agrees to pay to the United States, if it is the successful[55] party in the litigation, such bonus, rental, royalty or other payment due with respect to such area or portion thereof which

[55] Of course, it has to be first determined the United States has a right to Zone 1 money. Among other reasons, it is not so entitled, due to paragraph 6 of the Agreement, as discussed *supra*.

has not been impounded under the provisions of said Paragraph 7 (b), such payment to be made within ninety (90) days following the final adjudication or determination of the controversy.

Thus, the modest solace with respect to those two leases is not that the Government is to be paid by Louisiana, but *by the lessees*, and then *only* if they seek ratification.[56]

At this point, it becomes apparent why the Interim Agreement in other provisions argued below (paragraph 11, Interim Agreement), contemplated no liability for lapsed or terminated leases but continued the right to recover payments received thereunder. Only if the United States was to be called upon to grant new leasehold rights by ratification could it expect recompense, and then only from the lessee.

11. *Under Paragraph 11 rights of the Interim Agreement, there is no refund or offset liability for terminated leases.*

Louisiana put into the record substantial information pertaining to the failure of various lessees to maintain leases in effect in Zone 1.[57] This discussion shall demonstrate that as to leases which have been cancelled or abandoned by reason of non-production, there is no liability

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[56] The lessees might then have a claim back against Louisiana, if these leases were with warranty. *See* La.R.S. 31:120. Thus, to impose direct liability on Louisiana vis-a-vis the United States might cause double payment and collection.

[57] *See* testimony of Vernon Helms, Acting Director of the Mineral Income Division, Louisiana State Mineral Board, Tr. 744-751.

with respect to the revenue therefrom. Subparagraph (c) of paragraph 11 of the Interim Agreement of 1956 provides:

> 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[58] 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 of 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.

This subparagraph (c) is a part of paragraph 11 which made plain that it was not merely applicable to the disputed area zones, but applied to *any* area affected by a lease or portion thereof to which the Agreement was applicable. Thus, paragraph 11 opened with the phrase:

> 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. . . . [Emphasis added.]

These validation procedures treated in the various parts of this paragraph only required receipt of impounded funds as a prerequisite to validation. This suggests no

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[58] This also shows paragraph 6 of the Interim Agreement contemplated payment rights in its exclusive administration, jurisdiction and right to lease provisions.

claim would exist as to unimpounded revenue. It was in this context that subparagraph (c) spoke of liability to *either* the State of Louisiana (only by Zone 1 provisions was liability to Louisiana contemplated) or the United States, by lessees, with respect to payments due prior to termination or forfeiture of the lease.[59] Then, in the last sentence of the paragraph it was said, "This agreement *as between the United States and the State of Louisiana shall continue in effect as to payments made with respect to such lease.*" Recall that paragraph 11 opened by dealing with the consequences to flow "upon the final settlement or adjudication." Thus it is clear that as to any terminated or forfeited lease the Interim Agreement continues in effect with respect to past payments made to Louisiana or the United States. Since both parties had the right to receive payment for issuing new leases as part of their rights of exclusive administration and supervision in Zone 1 (Louisiana) and in Zone 4 (federal), that right to receive and retain past revenues has continued in effect and is not terminated by the Decree.[60] If (as it is indeed provided in subparagraph (c) of paragraph (11), Louisiana has a post-adjudication right to collect any unpaid monies that should have been paid to it prior to final adjudication, *a fortiori*, it may retain sums in fact paid to it under authority of paragraph 6.

This argument interlocks with the argument made elsewhere that the Government only contemplated payment

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[59] *See* paragraph 11 (c) of the Interim Agreement quoted *supra*.

[60] The Decree continued the Interim Agreement in force except as explicitly modified by the terms of the Decree. 422 U.S. 13, 18, paragraph 13.

to it for unimpounded lease revenues if a lessee sought ratification of a lease, and then such payment was to be made by the lessee, for the rights to be gained by the lessee.

C. Testimony supports the conclusions of the trier of fact as to the intent of the Interim Agreement with respect to the right to receive and retain Zone 1 revenues

1. *The Master's Zone 1 findings included fact findings based upon an appraisal of testimony*

Previous discussion has primarily treated documentary evidence. However, the trier of fact considered much more than the documents. In his Report, he did not have to discuss the detail of the testimony he had evaluated because there was clear documentary evidence and because there was no serious contrary evidence. However, that is no reason for the Government to imply that the Zone 1 issues before the Court are purely or substantially legal in character, nor to imply that the results were compelled by legal interpretations alone[61] or only involve construction of documents.[62]

These postures of the Government contrast sharply with the reality that although the Government lacked evidence to support its denials, the Special Master made important fact findings from testimony which, although often uncontradicted by evidence, had not been admitted by the

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[61] Government Memorandum, p. 5.

[62] Government Memorandum, p. 7.

Government. For example, the finding was made that in practice both parties did not question the other's right to receive *and retain* revenues from Zones 1 (State) and 4 (federal). Report p. 17. The Government continues to deny this right to retain the money while simultaneously contending there was no testimonial or evidentiary evaluation on any important disputed factual matter. This simply does not accord with the Report. Thus, quoting paragraph 6's grant of "exclusive supervision and administration" from the Interim Agreement, the Special Master found:

> Pursuant to this provision, the State of Louisiana did in fact collect *and retain* rentals on mineral leases on areas lying within Zone 1 and the United States did so on those areas lying within Zone 4. Neither party questioned the other's right to do so, and so it is apparent *that both considered* that the right to "exclusive supervision and administration" included the right to collect *and retain* those rentals. . . . Report p. 17. [Emphasis added.]

He made yet another important finding of fact which further contradicts the view that his findings did not purport to resolve any factual matter.[63] Thus, he found that

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[63] True, some of the evidence was so clear it was undisputed; but it would be most sophistical to say that the findings of a trier of fact, grounded in uncontradicted testimony, are thereby legal in character and the uncontradicted nature of the testimony is somehow reason to reverse findings based on that testimony. He heard the several witnesses and gave weight to the importance of what they said in part because of their impressive sincerity in expressing their understanding of the 1956 Agreement and also because there was no *contradictory sworn* testimony, although in pleadings and accountings, the Government denied what it would not—could not—contradict with sworn testimony.

Louisiana had usually incorporated provisions in its Zone 1 leases which showed that the leases covered and the revenues were from *only* those lands that were Louisiana's in Zone 1. This, the Special Master concluded, negated the federal claim to those revenues.[64] Thus, the Report, pp. 18-19, found:

> Louisiana apparently anticipated the possibility that some portions of the areas in Zone 1 upon which it granted leases (as it was specifically authorized to do under the Interim Agreement) might ultimately be adjudged to belong to the United States, as it inserted in all of those leases except two a provision that it was leasing the right to extract minerals *only* from those parts of the described areas "belonging to the State of Louisiana" or such as were "owned by the State of Louisiana." Whether this language gives rise to a claim by the United States against the lessees is not now before the Special Master for consideration, but it does tend to negative any claim by the United States against the State of Louisiana. [Emphasis added.]

Another fact finding buttressing his conclusion on the Zone 1 issue related to the purpose of the Interim Agreement:

> The purpose of the Interim Agreement was clearly to settle the rights of the parties to the extent that this could be done pending final determination by the Court. Under it, Louisiana was given "exclusive su-

[64] This is because the lease revenues were not derived from or on account of the federal areas. This was required by the Decree's language to give rise to a liability to account for unimpounded revenue.

> pervision and administration" over all areas lying within Zone 1, and this was recognized by both parties to include the right to collect rents from mineral leases in that zone and to expend the funds so collected without impoundment. This agreement remained in full force and effect until the entry of the decree of June 16, 1975, under which its terms were validated except as therein explicitly modified, therefore the State is entitled to keep all rentals derived prior to the entry of that decree from mineral leases upon areas lying within that zone, and the United States has no right to recover them.

These conclusions were not grounded upon capricious speculation or mere document examination. They were based upon a record of testimony. Most of that extensive testimony was assiduously avoided in the Government Memorandum excepting to the Special Master's concise and well-reasoned fact findings as to federal recognition of the purpose and right to *retain* Zone 1 revenues. The only testimony quoted by the Government in its Memorandum was that of a career attorney, who admitted he knew nothing about oil and gas contracts, while nonetheless opining about oil and gas contracts. However, even that testimony tended to aid rather than harm Louisiana's position.[65] One brief remark was attempted as to the testimony of one Louisiana witness,[66] and that was a statement taken out of context.[67]

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[65] *See* testimony of Mr. Swarth on the intent of letting Louisiana receive Zone 1 revenue, discussed United States Memorandum, p. 23, and further analyzed hereafter.

[66] Government Memorandum, p. 21.

[67] The Government said in its Memorandum, p. 21, that Mr. Dupuy had said that "no complete waiver—as opposed to a postponement—of accounting claims in respect of Zone 1 was in-

The pretense that this was not an evidentiary matter and the accompanying failure to treat the evidence seriously in the Government Memorandum are quite understandable. An examination of that evidence shatters the pretense that facts are not involved and supports the fact findings of the Special Master.

2. *General comparisons of the credibility of federal and State testimony on Zone 1 matters present a Contrast in expertise and full disclosure.*

The United States Memorandum, p. 21, obscures a major void in federal evidence. It speaks of "*The* federal negotiator whose deposition was introduced in evidence. . . ." [Emphasis added.] This does not mean, as it implies, that there was only one federal negotiator, nor does it mean that any other federal negotiator gave in-court testimony. The Government merely used the testimony of only one of many federal negotiators, by deposition; and, at that, a person who knew nothing of oil and gas con-

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tended." Indeed, Louisiana *had not waived* its accounting claims *against the United States* for monies wrongfully taken by the United States from areas *inside* of Zone 1 owned by Louisiana. Louisiana didn't waive that claim to some $5 million or so of funds about which Mr. Petty, a federal Treasury official, testified. Tr. 584. That in no way helps the Government. Moreover, Mr. Dupuy's testimony at Tr. 646 was in the context of claims which were generally *not* Zone 1 accounting claims. Claims such as Zone 1 boundary claims certainly were deferred and protected by the Interim Agreement. Elsewhere, Mr. Dupuy made quite plain that it was intended Louisiana would permanently retain Zone 1 revenue. *See* direct quotations in text.

tracts.[68] There was no explanation of why the others, including oil and gas contract experts, were not called.

By way of contrast, several of the leading members of the Louisiana negotiating team were called to testify and subjected to in-court examination by the Special Master and in-court cross-examination. Death or severe illness explained the absence of others.[69] All of Louisiana's negotiation witnesses were quite experienced in oil and gas law or contract problems, in sharp contrast to the Government boundary advocate.[70]

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[68] The Interim Agreement involved Interior Department and Treasury Department responsibilities of lease and revenue administration. It also involved the maritime boundary litigation contentions for which the Department of Justice and the Solicitor's office had responsibility. Therefore, the federal negotiating team included a maritime boundary litigation expert. This boundary expert testified he knew nothing of the oil and gas contract aspects. (Dep. Tr. 71-72) Yet he alone was chosen to give an out-of-court deposition, about the accounting, financial, and oil and gas lease rights under this oil and gas lease administration agreement. The principal federal negotiators were not called by the Government. There were technical experts on the federal negotiating team who knew about the oil and gas contract aspects of the Interim Agreement. None were called, and no explanations were offered, nor are any now offered, for their absence.

[69] *E.g.* Mr. Austin Lewis and Mr. John Madden are deceased; Mr. William Helis, the then-Chairman of the Mineral Board and principal negotiator, has disabling health problems, and other negotiators were also, due to health, unable to testify. *See* Tr. 30-31.

[70] Contrast, for example, the understanding by Mr. Dupuy and Mr. Swarth on the nature and import of "executive rights" in mineral law. At Tr. 626-627, Mr. Dupuy showed he was quite aware of the general background law that to confer a right to lease land for mineral rights creates an "executive right," which carries with it the right to rentals. See discussion of executive right law in the text *supra*. When asked about the law of executive right, Mr.

An evaluation of the reasoning of the State and federal witnesses must have influenced the Special Master in his findings. Louisiana's witnesses testified to correct and credible background reasons and facts supporting their understanding of the import of clauses of the Interim Agreement now in controversy. While not attributed to the testimony, these reasons were, in essence, adopted by the Special Master. Report pp. 18-19. They also testified to the fact that the opposing experts on the federal team had similar background understandings, especially regarding right to retain revenues. By contrast, the sole federal witness presented admittedly erroneous legal reasons and documents antedating the Interim Agreement as purported bases for interpretations of the import of the Interim Agreement clauses in controversy.

3. *The testimony of the State negotiators amply supports the Special Master's findings of fact on Louisiana's entitlement to retain Zone 1 revenue and on related matters*

The Testimony of Mr. Dupuy

Mr. Dupuy had an unusual combination of expertise and experience that made his testimony valuable in regard to the Zone 1 matters. A consulting geologist and oil man,

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Swarth testified, Swarth Deposition, pp. 81-82:

Q. Have you ever heard of the legal term used in oil and gas property law, executive right?

A. I don't recall it.

Q. Were there people in on negotiations for the United States who were more experienced and expert on oil and gas matters per se than you were?

A. Oh indeed, yes, the people from Interior were.

Mr. Dupuy also had considerable experience as an oil and gas lawyer, both as an assistant to the Attorney General of Louisiana during the period that the Interim Agreement was written, and thereafter in private oil and gas practice.

As one of the State attorneys involved in the negotiation of the Interim Agreement, Mr. Dupuy was familiar with the system of zones in that Agreement. He was asked:

> Q. Did Louisiana feel like it had to refund money from Zone 1 after you all had negotiated that Interim Agreement of 1956?
>
> A. No, definitely not.
>
> The Zones I and IV were considered alike. Neither was considered to be disputed for the purposes of the agreement. Tr. 611.

This testimony was elicited in connection with the testimony of a federal witness that the Government had not, with regard to Zone 4 payments to it, set up contingency liability accounts.[71] This had shown beyond doubt, that *even the Government* never construed the undisputed zone revenues as being subject to possible refund or offset liability. Mr. Dupuy was testifying, in effect, that this was consistent also with Louisiana's understanding and handling of Zone 1 revenue. *See also* testimony at Tr. 612 about the fact that both parties understood there was to be exclusive Louisiana jurisdiction in Zone 1 and exclusive federal jurisdiction in Zone 4. This exclusive jurisdiction was understood in light of the knowledge that it would result in payments of money to Louisiana for Zone 1 being spent, if not impounded under the Interim Agreement,

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[71] *See* testimony of Mr. Arnold Petty, Tr. 596.

and for which no refund mechanism would exist in the law. Tr. 612-613. Important federal officials such as Herbert Brownell were involved in the negotiation and had fine staff support. These officials realized full well that refund of money to be received and not impounded would have had to depend solely upon the grace of the Louisiana legislature in passing new legislation. Therefore, if receipts were to be refundable, they would have been impounded given the atmosphere of the time.[72]

Q. Did the United States realize at that time that the problem to which one of the defendant witnesses testified about having to get acts for an appropriation also would have existed with respect to Louisiana as to any unimpounded funds and liabilities? Did they realize this?

A. Well, I am certain it was made very clear that we had no authority to impound or we had no money, as a matter of fact, that had already been spent.

It would have taken an act of the legislature. It had already been spent and it would have taken an act of the legislature to so put up the money again and to impound it.

For that reason the Interim Agreement recognized that fact and the Document Five Agreements of Lease that were granted by the State after 1953 and between the 1956 agreement provides that. Tr. 614.

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[72] In the political atmosphere of the mid-1950's, no responsible federal official would have made a federal fiscal benefit related to the then bitter Tidelands controversy solely dependent upon the grace of the Louisiana Legislature.

At Tr. 617-624, Mr. Dupuy explained the customary system of leasing State wetlands in Louisiana. A typical inland[73] wetlands lease was discussed with its language indicating that the lease covered lands owned by the State within the broader tract description. This was a customary type of State wetlands lease description, as the public has been advised repeatedly, and *does not purport to cover more than the lands owned by the State within the tract. It is not a claim to the whole tract.* Tr. 621. The system is essential and customary to the leasing of State lands in the confusing title and boundary problem areas of Louisiana wetlands. *See* Tr. 622-624.

Mr. Dupuy also testified that the customary understanding in Louisiana is that the holder of an executive right[74] who grants a mineral lease is entitled to the bonus and rentals. Tr. 626-627.

Very little of significance was brought out on the cross-examination of Mr. Dupuy, except the suggestion by counsel, that the non-prejudice language of paragraph 6 of the Interim Agreement may have related to inaccuracies

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[73] Use of an *inland* wetlands lease was employed to show that nothing special nor extraordinary was being done with Zone 1 leases. Exactly the same type of descriptions are used all over the State in leasing wetlands, to avoid accidental title slanders and claims that the State is deriving revenue from or on account of the lands of others.

[74] Louisiana maintains that as a very minimum, if it did not do more, paragraph 6 of the Interim Agreement conferred the executive right of mineral law upon Louisiana (as to Zone 1) and the United States (as to Zone 4). The executive right is the power to grant leases, which includes the right to the leasing proceeds known as bonuses and rentals. *See, supra,* at 38-40.

in the Chapman Line. Tr. 640. As earlier discussed, Louisiana recognized that there were technical problems in delimiting the Chapman Line and the 3-mile projection, but these were all worked out, so there is no substance to the suggestion of counsel. The examination did clarify the witness's understanding that Zone 1 and Zone 4 rights were to continue until an adjudication. The witness very correctly distinguished, in response to a question by the Master, between matters of conveyance of title (which the Interim Agreement did not do) and the matters of the handling of money and the right to money (which the Interim Agreement did affect). Tr. 641.

Very interestingly, the witness noted that while language of relinquishment of claims as to Zone 1 and Zone 4 had been dropped, Zone 1 provisions were for the purpose of showing the grant of the Submerged Lands Act and that Act indeed referred to relinquishment of the federal claims. Tr. 645. *See* 43 U.S.C. 1311 (b) (1): "The United States releases and relinquishes unto said states. . . ." The obvious purpose of the Zone 1 boundary was to show the area relinquished by Congress. Although the Government might still make claims thereto, or refine its boundary position in the litigation, the witness made plain that it was the negotiators' understanding that the Zone 1 - Zone 4 rights would be effective for the purposes of the Agreement *until changed*. *See* Tr. 646-647. Again, the witness made plain that while rights and claims were reserved, they were not to retroactively affect the Agreement:

> Perhaps there was a mutual recognition of the possibility of potential claims, but for the purposes of

> our agreement, nothing retroactive was going to have to be returned. Tr. 648.

He also explained, in redirect, that it is customary for oil and gas agreements to have an interim revenue effect, conveying rights to distribution or lease revenues until an adjudication might prospectively provide to the contrary. Tr. 669-670. Of course, that is what the Interim Agreement did as to Zone 1.[75]

To avoid this powerful testimony, the Government in its Memorandum, p. 21, incorrectly represented the significance of this testimony as conceding that no complete waiver of accounting claims was intended. Actually, even the isolated passage cited by the Government says *nothing* about *accounting* claims. The cross examination cited included reference to claims generally. Of course, Louisiana's rights to Zone 1 money wrongfully received by the United States prior to the 1956 Agreement were reserved to a later proceeding and not resolved by the 1956 Agreement. Of course, boundary claims were reserved until later. Louisiana has never maintained that Zone 1 accountings were not to be deferred until after the final boundary determination. The Government owed and still owes Louisiana for Zone 1 money which it wrongfully procured in Zone 1 areas *won* by Louisiana. That was the *only* later accounting liability. But none of this defeats Mr. Dupuy's

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[75] Government argument (that even an incorrect perception by a negotiator is probative) returns to it with the *a fortiori* force of correct and uncontroverted understandings of the negotiators, as to the meaning custom would give their words. *See* Government Memorandum, p. 18, n.7.

testimony, that the import of the Agreement was that "nothing retroactive was to be returned" with respect to payments covered by the Agreement. Tr. 648. The mere fact that later accountings were to occur poses no *ipso facto* case for liability as to each and every possible contention, and certainly not for contentions contrary to the clear understandings of the negotiators and the clear import of the Agreement.

The Testimony of Mr. Carmouche

Mr. Carmouche, quite an experienced oil and gas attorney, also testified concerning his recollections and impressions as a negotiator of the Interim Agreement and as to customary understandings of oil and gas contract terminology. Tr. 681 *et seq.*

He testified to his understanding at the time that the agreement did not call for refund of Zone 1 revenues. Portions of his testimony at Tr. 682 are so succinctly clear that they are best quoted *in extenso*:

Q. Was it ever your understanding that the fact [sic-effect] of the Interim Agreement would be upon a final adjudication of title matters to confer retroactive rights to mineral revenues in Zone 1 upon the United States government?

A. No, sir, it was not.

Q. Was it your understanding that this agreement was indeed an Interim Agreement, as it was styled?

A. Yes.

Q. Is it unusual for the State of Louisiana to enter into agreements in contested title matters, or even matters which have not actually gone to court, but matters which might go to court, questionable title problems on an interim basis with actual or possible title opponents to decide mineral participation on an interim basis?

A. It is very usual for us to decide on an interim basis.

Every lease that I had anything to do with the State of Louisiana from 1955 or on was in the nature of a quitclaim or a non-warranty lease and, as Mr. DuPuy previously testified, all of the lands owned by the state within a given area.

So we had that double protection, that we would not have to refund.

Q. Now, after such leases were granted would there be problems of unitization and participation of units?

A. Yes.

Q. And these agreements in which participation and title questions were resolved with particular well and lease participation purposes—were they on an open ended basis very often?

A. Normally, yes.

I know of only one or two instances that were not open ended in some twenty years.

Q. What do you understand open ended to mean?

A. It means that at anytime either party can come in, if the law changes or if the factual situation changes, and that the agreement is cut off and then prospectively the rights of the parties are determined.

Q. Would the negotiators for Louisiana from this kind of background have had this kind of general understanding of how these title matters can be adjusted on an interim basis?

A. Yes, sir.

Q. Were there any of the documents that you can recall in the Interim Agreement attachments and the negotiations leading up to the Interim Agreement which called for possible refund to the United States on monies Louisiana had received or would receive in Zone 1 before any final decree in the title in this case?

A. I know of none, sir.

In fact, all of the negotiators felt that there would be no refunds in Zones I or IV.

The language in the Interim Agreement as to the handling of Zones I and IV is identical.

I thoroughly agree with Mr. Petty [a federal official] when he testified this morning that they had no intention of refunding anything in Zone IV and they made no accounting, weren't obligated to do so.

We feel the same way about Zone I and felt that way in 1956.

The Testimony of Mr. Bonnecarrere

Mr. Bonnecarrere, the long-time secretary of the Louisiana Mineral Board, also took part in the 1956 negotiations. He testified, corroborating the recollections of Mr. Dupuy and Mr. Carmouche that the negotiators understood no refund liability would exist for Zone 1. Tr. 695-696.

Q. Did you hear the testimony of Mr. Carmouche concerning the understandings of the negotiators as to the Zone 1 and Severance Tax matters?

A. I certainly did, yes, sir.

Q. Did you also hear the testimony of Mr. Dupuy in this connection, sir?

A. I certainly did.

Q. That testimony relative to the matter of the understanding of Louisiana's negotiators as to Zone 1, possibilities of payment of refund liability to the United States, do your recollections accord with that?

A. Completely.

* * *

My full appreciation was that we were not required to refund any monies from Zone 1, as the federal government was not required to refund any monies as to Zone 4 during the Interim Agreement.

He also testified to *the United States* being a party

to many so-called "open ended" agreements where it is customary to give effect to changes on a prospective, not a retroactive basis, when an agreement might be changed by new facts as happened in Chapman Line position changes based on new map work. Tr. 697-698.

Again, he gave his recollection of the understanding that no refund liabilities would exist for Zone 1 and Zone 4, and that is what "for the purposes of the agreement" meant in the non-prejudice clause. Tr. 712-713.

He noted that the real purpose of the non-prejudice clause was to permit the parties to deal with survey problems, or the problems of "little slivers" of territory involved in accurate location of the Chapman Line, (such as both parties negotiated in this very accounting proceeding). It was never contemplated that whole leases might be claimed *retroactively*, although positions might be changed *prospectively*. *See* Tr. 714-715.

D. The testimony of a federal advocate proved futile to the Government, being based upon irrelevant pre-1956 documents and strained legal positions outside of the witness's expertise.

A career federal boundary advocate was the only member of the federal Interim Agreement negotiation team who gave testimony on his understanding as to the matter of whether Louisiana would be entitled to retain Zone 1 revenues. He admitted he was not expert in, and knew nothing of, oil and gas terminology and law. *See* Appendix 1. However, his testimony related to his under-

standing of an oil and gas contract and the law underlying it.

That understanding was grounded on basically two points. First, he construed the Outer Continental Shelf Lands Act as prohibiting any waiver whatsoever of any federal rights. The cross examination, Dep. Tr. 49-82, demolished that incredible legal stance, and it was ignored or rejected by the Special Master. Now, in its brief, to avoid the general taint that a particularly untenable posture confers upon a case, the Government has conceded that this first line of reasoning was erroneous, but attempts to dignify it as reflecting a negotiator's state of mind. Government Memorandum, p.18, note 7. While erroneous state of mind evidence of a negotiator may have some miniscule weight, it cannot be much under these circumstances: self-serving testimony of a former advocate in this case, supported by patently incorrect legal reasoning, uncorroborated by other federal witnesses who were oil and gas experts, and further supported by other strained or suspect reasons.

That brings us to the second major line of reasoning of this witness: his other reasoning that the documentary history accorded with his construction of the Zone 1 provision of the 1956 Interim Agreement. Cross-examination showed that the documents relied upon were mostly dated before the 1953 Submerged Lands Act Grant of the three-mile belt and were all dated long before the 1956 negotiation which brought Zone 1 rights into existence. Dep. Tr. 49-54. Post 1956 documents were not in fact used. Dep. Tr. 55.

II. RESPONSES TO PARTICULAR GOVERNMENT ARGUMENTS

Having presented its case and generally responded to federal argument, Louisiana now addresses a limited number of particular Government arguments. Space considerations make it impossible to treat all of the many arguments and innuendoes. Such limited response should not be construed as an implied concurrence in any particular federal arguments not specifically answered.

A. Finality of this proceeding

The Government states this is the final chapter in the litigation instituted in the 1940's. This is not a chapter in the 1948 case. It is merely the most recent chapter of a later related case. If temporary partial arrangements or deferrals of problems cannot be later efficiently resolved by argument, yet other chapters or another case may ensue. In any event, a final decree and further accounting must be had, in regard to split leases and other matters whereby the Government holds and refuses to pay or invest more than thirty million dollars of Louisiana funds. Louisiana cannot assure the Court that the Government will do what is lawfully required and no more litigation will ensue. These remarks are made merely to show non-acquiescence in the validity of this Government posture, because the question of what is the last or final matter in this case could have serious impact on important matters vis-a-vis third parties, *e.g.* tax collection suits awaiting a final decree.

B. The federal argument that the Zone 1-Zone 4 provision was one-sided is not persuasive.

The Government repeatedly argues, *e.g.*, *see* Government Memorandum, pp. 9-10, 24, that Louisiana's view of the meaning of paragraph 6 of the Interim Agreement cannot be correct for that view is "one-sided" in favor of Louisiana. It is argued that the Government would have no reason to agree to a clause against the Government's interest. This argument is at odds with the plain language of paragraph 6 that *both* governments received rights as to Zones of like character, 1 and 4. *All* leasing had been stopped in 1956, including leasing in the undisputed areas Louisiana owned and also in the undisputed area the United States owned. However, *both* undisputed areas were tied up by the injunction halting both drilling and leasing because of uncertainties of boundary. Whatever the odds of success or failure may have been in Zone 1 compared to Zone 4 is irrelevant. Everything was halted. An agreement which identified the undisputed areas, lifted the injunction affecting *both* governments, and enabled *both* governments to proceed with leasing was indubitably a matter of mutual benefit. To argue otherwise is to take undue liberties with truth. It is unimaginably audacious to so argue in the face of innumerable other general benefits flowing to both governments from the total Agreement, which would sustain even one-sided particular phrases. Opening up Zones 2 and 3 to development and leasing that has generated tens of billions of dollars of revenues was no small consideration, *e.g.*, $1.9 billion was procured by the United States in a single November 28,

1979 lease sale. Scores of federal lease sales were made possible by the agreement over the years of its life, and most of the federal offshore lease revenue comes from these Louisiana areas. A goodly part of present national energy production exists today, thanks to the Agreement. The one-sided analysis is certainly not serious. Perhaps its only virtue is to suggest that the overall results of the litigation have rather one-sidedly favored the United States.

C. The "disingenuous" charge by the Government to counter the lease description argument of Louisiana avoids facing the evidence and is contrary to the Master's findings.

By asserting, *ipse dixit,* without reference to a scrap of evidence, that the lease descriptions "encompassed also, or indeed primarily, areas ultimately adjudicated to the United States," the United States dismisses the Special Master's concisely reasoned findings of fact to the contrary. It does this by assuming or stating "facts" for which there is no supportive evidence. Government Memorandum, p. 28, n.16. Paradoxically, the Government does this while insisting that the problem resolved by the Special Master was not an issue of fact, and saying "indeed, the Master relied entirely on the statute for his conclusion, without purporting to resolve *any* factual dispute." [Emphasis added.] Government Memorandum, p. 7. Then the Government argues an alleged "incorrect" resolution made of a factual dispute as to whether the leases of the Zone 1 controversy included only State lands or also federal lands. Frankly, Louisiana is at a loss to understand just what are

the Government's contentions, given such internal contradiction.

Next, the Government reasons that Louisiana leased the federal areas in Zone 1 by noting that Louisiana claimed and had the power to lease Zone 1. In this context, mere power to lease is irrelevant. Power to lease doesn't mean the power has been exercised over any given area.

From these circumstances the Government concludes it is "disingenuous" of Louisiana to argue that the Zone 1 federal lands within the lease description were not leased. This adroitly assumes an unreality, without considering evidence. Not one word of the leases is quoted to show that there were in fact federal lands within the lease description. The whole point of the Special Master's finding was that the evidence was overwhelmingly clear that the federal lands were *not* described in the granting clause of the lease. Merely stating the opposite view convincingly, without resort to evidentiary analysis, proves nothing. Figure 1, *supra* p. 3, graphically shows the true use of vicinity maps or vicinity areas merely referred to in state lease descriptions. There was nothing disingenuous about this. It was routine Louisiana practice as testified to by several witnesses. Appendix 1 treats the evidence in detail as to lease description language. See also discussion of testimony of Messrs. Dupuy, Bonnecarrere and Carmouche, *supra*. Part of the argument above also treats this fact matter.

The effort to label the normal leasing practice as a mere non-warranty device uses the Government's words,

not Louisiana's. A Louisiana witness testified that both non-warranty provisions *and* quit claim-type descriptions of leasing are used as a *double* safeguard in routine practice, not that the quit claim description was a mere warranty device. *See* testimony of Mr. Carmouche, Tr. 682-3. The Government perverts this to say that the description method was a warranty device. That is not so, but if it were so, still this does not mean the Government lands were included in the description of lands leased. Whatever the reason, the federal lands were not described in the granting clause; therefore the federal lands were not leased and are *not* the source from which the funds were derived. The patently inaccurate arguments of the Government here and those discussed above, bring to mind the words of Mr. Justice Black, joined by Mr. Justice Douglas, who said:

> ". . . it is difficult to understand why the Federal Government is subjecting the State of Louisiana and this Court to a long series of technical and wasteful law suits." 394 U.S.11, 85, n.2.

D. The prior decrees and decisions are incorrectly represented as to content and significance in the Government arguments.

Finding little comfort in the language of the June 16, 1975 Decree, which actually governs this proceeding, the Government marches into a miscellany of irrelevant charges and some past Government successes that are incorrectly represented. A fair examination of the actual circumstances of the history of various decisions and decrees

shows nothing of real comfort to the Government's present case. See the history more generally developed in the Statement of the Case and in earlier argument, which shows that the Government relies for its Zone 1 case upon decrees and decisions which did *not* adjudicate Zone 1 problems, which deferred accounting problems, which reserved Louisiana's rights under the Interim Agreement or which otherwise were useless to the Government's case. Let us examine some examples of these invalid attacks.

Louisiana is attacked for not urging in 1949 and thereafter certain defenses derived from the 1956 Interim Agreement until the 1975 accounting ordered by the Court. This attack is an example of the irrational avoidance of context. This chronologically absurd attack is presented with such bravado that its simple illogic is somehow obscured. Government Memorandum, pp. 10-11. It is plain nonsense to lambast a litigant for not arguing or doing in 1949 what was not appropriate until ordered in 1975. Let us more closely examine these decisions and the particular attacks based thereon.

The 1950 decision reiterated what was already obvious, and what no one quarrels with then or now. That is, normally, mineral revenues belong to the owners of land. However, there are a thousand and one exceptions to this rule such as the effect of good faith. As the Government puts it, "in deference to the States," the accounting date was set at June 5, 1950, but this was not mere deference. There were good faith dispute concepts. Presumably, the Government thinks this was merely some kind of courtesy. In fact, a principle was being applied. The Court did *not* retroactively punish the States by im-

posing damages for exercising supposed rights that the Government itself had not challenged for more than twenty years.

In sum, the first decree did not establish absolute *universal* liability for extracting minerals on property of another. Implicitly, if not explicitly, by the 1950 decree, 340 U.S. 899, the *status quo pendente lite* was recognized, for it imposed no liability prior to the decision date. The Interim Agreement, in its Zone 1-Zone 4 language, recognized this principle also. Where matters were in controversy, and uncertain until decided, the parties were not fairly on notice. *See* the explanation, 363 U.S. at 83, n. 140, in the 1960 decision, that until the 1950 decision date, the states were not really on notice.

Even more seriously, Government use of the 1950 decree and decision obscures its irrelevancy for Zone 1 matters, for the State three-mile belt confirmation occurred under the Submerged Lands Act of 1953, cited *supra*, "releasing and relinquishing" prior federal rights. The extent of these rights was the subject of the 1956 Interim Agreement, which granted further contract rights authorized by the OCS Lands Act.

The casual assumption that the unrestrained duty to account for all mineral revenues derived from the area of the United States "remains the governing rule" is the essence of the Government posture, p. 12. Many irrelevant citations later, after talking around the Submerged Lands Act, the Government then uses a general observation in the 1960 *decision* on the three-league problem (which certainly did not affect Zone 1) in the consolidated Gulf

Coast States cases, to say that the immutable "rule" of the California case was unchanged — still the United States was entitled to an accounting. In a triumphant swipe at the purported "failure of the Special Master to explain how that circumstance tallies with his ruling," the Government invokes the 1960 decision ". . . as settling that the Submerged Lands Act itself in no way modified the State's obligation to account for" revenues beyond the grant of that Act, Government Memorandum p. 15.

The Government has lanced straw men, not real problems. It was the OCS Lands Act that authorized agreements to deal with coast line controversies, not the Submerged Lands Act, as the Government finally conceded with "surprise" at p. 10. As far as implying that the chronological revelation showed that the Master had erred, it does not. The Special Master simply read a little more of the Court's words which went on to say in the 1960 decree, 364 U.S. 502, that the Interim Agreement was to be followed as to Louisiana (paragraph 3) and jurisdiction was reserved to render further decrees to give proper effect to the 1960 decree (paragraph 8). Then, at 382 U.S. 288, the Court said in the December 13, 1965 decree

> For the purpose of giving effect to the conclusions of this Court . . . in its opinion, announced May 31, 1960, and the decree entered by this Court on December 12, 1960, it is ordered . . .

that nothing was to prejudice rights regarding the remainder of disputed areas or under the Interim Agreement (paragraph 10) and the Court retained jurisdiction to entertain further proceedings, including "further ad-

justments of the accounting." Then, in its 1975 Decree, the Court quite explicitly and forcefully reserved Interim Agreement rights (paragraph 13), saying not only that there should be no prejudice to such rights, but it remained in effect except "as explicitly modified hereby."

These details of the Court's decrees substantiate the validity of the Special Master's implicit finding that these belated Government arguments, emanating only now from the Solicitor's office, suggest unfamiliarity with the minutiae that were examined in the trial proceedings.

Again, either deliberately glossing over evidence or displaying vast voids of understanding of the trial record that clarified the Interim Agreement beyond question, the Government plods on, claiming there is no basis in the precise letter of the Interim Agreement for Louisiana's position. Government Memorandum at pp. 18-19. This ignored custom, background, and contemporaneous construction testimony, discussed elsewhere in this memorandum.

The Government does, however, finally admit, p. 18, what it would not admit in the trial proceedings — that the Government had statutory power to make Zone 1 agreements under the OCS Lands Act. (Incidentally, this undermines one foundation of the Report on the use of the money issue.) Then it quickly jumps to an alleged illogic of the Louisiana argument, saying "There is no word of the Interim Agreement that can be pointed to as accomplishing this waiver," before pointing to some words of the Agreement which, with others, do accomplish the waiver, to wit, the grant of "exclusive supervision and ad-

ministration." In failure to give these words import, the Government here forgets its earlier tactic of going back to the decrees and history. In *United States v. California,* 332 U.S. 19, the controversy, as to the Government's rights, had been couched in terms of purported "paramount powers." While not in any way recollecting this historical curiosity where it is relevant in construing the Interim Agreement, paragraph 6, the Government Memorandum, p. 4, n. 4, did passingly refer to this bit of legal history, citing 339 U.S. at 724 (sic-704). There the Court observed

> The question here is not the power of a state to use the marginal sea . . . it is the power of a state to deny the paramount authority which the United States seeks to assert. . . .

See also the "paramount power" phraseology of the 1950 decree, 340 U.S. 899, and Justice Frankfurter's dissent in *California,* 332 U.S. at 41, and *Louisiana,* 339 U.S. at 706.

Indeed, given the development in many opinions and decrees since those days, this problem seems a bit quaint now, but it does show that the negotiators in 1956 would have had technical reservations as to whether they were dealing with imperium rather than dominium power. Even now, the Government says "ownership" and "title," strictly speaking, "may not be correct usage." Government Memorandum, p. 4, n. 2. So it was that the more semantically conscious lawyers of another time wrote of the "exclusive supervision and administration" to negate the rights of the other government, for it was likely thought that all the Government may have had was mere imperium

power and the 1950 case had *not* negated Louisiana's ownership. Thus, in the legal setting of 1956, "exclusive supervision and administration" (imperium) was the source of the dominium power to lease. In 1956, for lawyers to use those words meant a Government could lease and keep the money, for those concepts were what the 1947 *California* and 1950 *Louisiana* cases focused upon.

Certainly, the analysis accords with the interpretation of the parties. See the uncontroverted testimony of Louisiana's witnesses discussed *supra,* and the findings of the Special Master, Report pp. 17-19, quoted *supra,* on the parties' understanding that the Interim Agreement conferred, in paragraph 6, the power to receive *and retain* lease rentals. The rights of dominium, stemming from contested imperium, were what the litigation was all about.

E. The Outer Continental Shelf Lands Act attack of the Government is erroneous

The relevance of certain Outer Continental Shelf Lands Act provisions has been affirmatively presented earlier, to show *both* the authority for the waiver or grant of rights by the United States in the Interim Agreement and also to show that payment to Louisiana by a lessee was constructive payment to the United States. Certainly, this was also confirmed by practice found by the Master and by other provisions showing that after termination of leases, the Interim Agreement was to remain in effect and showing that monies payable prior to forfeiture under a lease were to be paid pursuant to the Agreement even after

the Agreement ended. Paragraph 11 (c), Interim Agreement.

These arguments need not be reiterated at length. Instead, we simply correct the federal effort to connote that the Special Master's Zone 1 finding hinges *only* on the issue of whether this *additional* supporting reason is sustained. *See* Government Memorandum pp. 5, 26-27. Suffice it also to note the plain error of the notion that the OCS Lands Act does not affect state-federal relations or rights, only federal vs. lessee rights. This is unconvincing, from a party who simultaneously admits the Act's provisions permit and affect federal vs. state legal relations, if an Agreement were in fact made. Government Memorandum, p.18.

F. The facts and the ambulatory provisions of the coast line decree destroy the Government argument that the coast line is immutable.

The Government makes a "past and present coast line" argument, Government Memorandum, p. 35. That argument utterly ignores the ambulatory boundary ruling of the Court in 1969, 394 U.S. 11, 32-34, which was embodied in the important Appendix B of the Decree. That appendix presented an array of areas of coastal change for various sectors over different periods. While merely noting exceptions to the "past and present" language of the Decree, the Government failed to analyze how those important exceptions impacted its argument.

It had an absolute void of evidence to sustain its

burden of proof that the areas it claimed to have won in Zone 1 were not the same areas of coastal change involved in the execution of Appendix B. The Special Master found, and correctly so:

> The burden of persuasion is therefore upon the Government. Report p. 15.

The Government itself referred to the areas involved in its Zone 1 claim as "slivers" related to survey problems, p.23, and noted the final determination involved "meanders back and forth across the old Zone 1-2 line," p. 17, citing in n. 6, the East Bay and Ascension Bay areas as the substantial "bulges" affected by this meandering.

Of course, it was precisely those "bulges" which were the areas involved in the two areas referred to at p.35 as exceptions to the"past and present coast line" language of the decrees. *See* Appendix B of the Decree. Most of the Zone 1 money was from these oil-rich "bulges" of the changing coast line provisions of the Decree; thus, it is understandable why the Government made no effort to carry the burden of evidence and persuasion it had to sustain to show the exceptional provision did not apply. As noted above also, the Government's own arguments now substantially show it *could not* have met that burden. Thus, the many decree analyses founder on the facts.

III. THE GOVERNMENT ZONE 1 ARGUMENT USING DECREE LANGUAGE SUPPORTS LOUISIANA'S EXCEPTIONS ON LIABILITY OF THE GOVERNMENT FOR ALL SUMS DERIVED FROM LOUISIANA'S LANDS.

A. A statement of the basic rationales of Louisiana's Exception regarding financial benefits and the Government's Zone 1 Exception

Louisiana's Exception claims, in essence, that benefits derived by the Government from use of Louisiana's oil lands monies are payable under the Decree's terms. The basic Government Zone 1 argument supports this Louisiana Exception. That argument is simply this. The plain language of the Decree (the Government says) generally imposes liability on each government for *any* sums derived from or on account of the other's lands or minerals. Louisiana does not challenge this basic rationale of the Decree's import, except to the extent that the Court's own decrees made exceptions or imposed limitations. Rather, Louisiana defends the Zone 1 claim by *inter alia* pointing to the exceptional and limiting language of the decrees, and especially paragraph 13 of the Decree of 1975, reserving Interim Agreement rights.

Then Louisiana also establishes its Zone 1 rights or shows that on the facts, the monies claimed were not from Government land. However, the Government can point to nothing in the 1975 Decree, nor in the 1972 and 1965 decrees adjudicating territory to Louisiana (by use of the phrases relied upon by the Government), which contained

any reservation or exception of contract rights that the United States can rely upon to claim it is privileged or excused from refraining to account for benefits derived from or on account of Louisiana's lands.

Thus, it really matters not whether the Interim Agreement conferred no right to claim interest. It matters not whether general statutory law or jurisprudence is to the effect that interest generally cannot be recovered in contract claims against the Government. It matters not if the array of particular contract and general legal arguments in support of Louisiana's Exception to the Report are all rejected. Certainly, we do not admit (nor need we here assert) anything about the points referred to above in this paragraph.

What we do assert and what does matter is that the Government enjoyed sums which were derived from or on account of Louisiana's lands, to wit, financial benefits from the use of the funds derived from or on account of the Louisiana lands and minerals. It is *res judicata* that *all* such sums should be paid over to Louisiana, including such sums as are calculable as financial benefits derived from the use of or on account of Louisiana's lands and minerals. This, indeed, is a rationale the Government logically must concur in, for it is its own Zone 1 rationale. This claim need not stand on the Interim Agreement, nor on statutory law. Unless the claim is negated by the Interim Agreement, the Government defenses to Louisiana's Exception all fall. Thus, mere failure to provide for interest in the Interim Agreement is no defense, for this is not a contract claim for interest. It is an adjudicated decree claim. The Government's Zone 1 rationale tells us

such a decree claim is valid, for that Zone 1 rationale maintains it is enough if the 1975 Decree, or any prior decree, imposed liability for sums derived from or on account of the other's land. These points are even clearer when amplified by background and detailed analysis.

This discussion relates to the fact that the United States indirectly derived large sums from lands won by Louisiana, as a result of financial benefits from holding and using Louisiana's mineral revenue. The holding and use of these monies generated some $88 million of benefits and unjust enrichment to the Government by reason of its failure to invest the money at interest, *even after formal request and demand. See* Louisiana's Exceptions to the Special Master's Report.

It is submitted that the federal logic on monies "derived from" lands applies not only to monies *directly* derived from or on account of the other's land, but also to monies *indirectly* derived through the long usage of the funds, which qualify as "sums derived" "from or on account" of State lands.

Thus, irrespective of the decision on the trust, fiduciary, escrow, unjust enrichment or other supportive legal questions associated with the Louisiana Exceptions, which show federal liability under the Interim Agreement, Louisiana is entitled to have those Exceptions sustained by the clear and simple language of the Decree, under the logic of the Government's Zone 1 claim. Given Louisiana's special Zone 1 contract defenses, the Government has clearly failed to prove the sums it claims from Zone 1 were truly

derived from or on account of Government lands. However, the basic rationale of the Government Zone 1 argument sustains Louisiana's Exception on the use of Louisiana's money. That rationale employs the Decree language of "derived from" the Government's land to make a most expansive and liberal claim stemming from the Decree language. That Government claim, in essence, is that mere derivation of benefits from the other government's land imposes liability. This was even stretched to maintain that mere presence of Government land in a vicinity tract map results in lease revenues from state lands being derived from federal land. *See* figure 1 *supra,* reflecting the facts found by the Special Master, Report pp. 18-19.

B. The Government emphasis on the controlling character of Decree language redounds to its disadvantage

Purporting to use without urging need to overturn the Special Master's fact findings, the answer to the Zone 1 problem, the Government urges, turns *only* on Decree and Agreement construction. Government Memorandum, pp. 7 and 8. See also the reliance on the "derived from areas" Decree reasoning, pp. 2 and 11, which, of course, applies in reverse to the companion clauses of the Decree and Interim Agreement imposing federal liability to the State. Thus, to paraphase Government argument, p. 11, one may say "Since the very beginning, one object of this litigation has been to require the United States to account for, and pay over to Louisiana, sums derived by the United States from State submerged lands."

C. The Decree provision "sums derived from" encompasses more than mineral lease revenue per se

Note, we have said "sums," a much broader term than the word "revenues" used in the Government language about Zone 1, because "sums" *is* the language of the Decree and clearly means that sums claimed do not have to be "revenues," but need only be derived from or on account of the other party's lands.

D. Output liability provisions of the decrees are not confined to funds which were "payments," unlike the input obligations of the Interim Agreement.

This analysis of the importance of the word "sums" is reinforced by contrasting the broad language of the Decree's property adjudication clauses and the language of the Interim Agreement contract rights and responsibilities. Thus, in paragraph 7 (a) of the Interim Agreement, on contract duties, the Government was directed "to impound . . . a sum equal to all bonuses, rentals, royalties, and other payments . . . paid to it for and on account of each lease. . . . Thus *only payments* to it, from leases were involved. But, by contrast, the *output* or liability provisions of the Decree show that the United States was ordered to pay in much *broader terminology* than merely turning over *payments* made to it from leases or other grants. It was ordered to account in paragraph 6 (b), for

> . . . *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. . . . [Emphasis added.]

It is submitted that the money the United States saved by enjoying Louisiana mineral lease money from Louisiana's lands and minerals was derived from or on account of the lands, minerals or resources of Louisiana, for it was a clearly unearned proprietary benefit derived from another's property. It is utterly immaterial whether the Government was authorized to hold such monies. The benefit was causally a sum derived from or on account of Louisiana lands and minerals, and that's that.

E. The Government Zone 1 argument that defenses not previously urged are cut off by the decrees unless particularly excepted by the decrees sustains Louisiana's Exception on the financial benefits question.

If the Government had defenses to this proposition, it should have asserted them in earlier phases of the matter. Again, Government arguments return to haunt it. See Government Memorandum, pp. 11 and 14, maintaining that language of prior Decrees is applicable and decided the Zone 1 matter. This reasoning has no serious effect against Louisiana for a number of reasons, *inter alia,* that contract rights were reserved to Louisiana under the 1960, 1965, and 1975 decrees and the Court had reserved powers in all prior decrees to thus supplement the earlier decrees. No such contract rights argument is urged by the United States. In contrast to Louisiana's position, the Government cannot point to *any* language in the In-

terim Agreement granting it an exception from the very broad accounting obligations ordered in the Decree.

F. The impoundment provisions imposed duties and did not confer rights on the Government to use and enjoyment of the monies, unlike the Zone 1 provisions which did clearly confer rights of use derived from executive right theory

Indeed, the Special Master found no free interest or interest charge language in the Interim Agreement. This is understandable. There was no free use of the money rights conferred by the Agreement. As noted in the discussion above, the impoundment *obligations* did not confer rights to all sums derived from leasing but related to *duties* the *United States had agreed to.* For instance, paragraph 7 (a) of the Interim Agreement provided ". . . the United States agrees to impound. . . ." Unlike Louisiana's Zone 1 defense to the Government's argument, there was no exclusive right granted to the Government in the Interim Agreement to lease the lands ultimately adjudicated to belong to Louisiana. *See* argument, *supra,* regarding the fact that an executive right is an *exclusive* right to lease lands belonging to another, and only such *exclusive* rights carry with them the right to receive and retain revenues derived from the leasing. The leasing powers in Zones 2 and 3 which the Government enjoyed and from which areas all of the impounded monies were derived, were governed by paragraph 13 of the Interim Agreement. The Government's powers there granted were *not* exclusive but were shared with Louisiana. Thus, joint agreement was

necessary on the need to prevent drainage in Zone 2, before the Secretary of the Interior could grant a lease there. "Otherwise . . . the injunction against new leasing shall continue . . . as to that area."

All leasing pursuant to paragraph 13, even as to Zone 3 leases, required concurrence from a committee of State and federal appointees, who passed on the adequacy of the bids.

All sums payable were to be impounded pursuant to the Agreement, and under paragraph 9 (b) :

> Any funds derived from an area finally determined to be owned by the State of Louisiana . . . shall be taken from the separate and impounded fund in the Treasury of the United States . . . [and] paid to the [Louisiana] official or agency then designated by Louisiana law to receive such payments. . . .

G. The impounded fund payout provisions of the Interim Agreement accord with the Decree's language and are not exceptional, as they also show broad liability to pay funds derived from State areas.

Note again that the payment or output liability from the impounded fund was not limited to *lease payments*, as with the input provisions of the Agreement. Rather "any funds derived from an area . . . shall be taken [and] paid to [the State]." *Any funds* derived from *an area* means what it says—*any* funds derived not merely from leasing in an area but *from* the area; ultimate causal relation is all that is necessary. Thus, even if there were sums derived by the United States from State areas which were

supposed to have been impounded but were not, the United States was obliged to pay them from the impounded fund, whether or not derived from leasing. The value of the use of Louisiana's lease monies was, however, clearly derived from leasing, and the United States was thus obliged to pay even if the source had to be from leasing.

H. The language of the various decrees supports the applicability of the Government Zone 1 argument to Louisiana's Exceptions.

The language of the Decree, paragraphs 5 (b) and 6 (b), shows that whether the Government obligation is approached as an impounded funds accounting problem or an unimpounded funds accounting problem, the broad Decree language supports Louisiana's Exceptions.

Turning to prior decrees, we note and use this Government method of urging their force, and analyzing the import of them as background. When the Court first adjudicated theretofore Government-claimed areas to Louisiana, it ordered in paragraph 7 (c) of the December 13, 1965 Decree, 382 U.S. 288, that the United States should pay Louisiana impounded monies "derived from or attributable to" the lands of Louisiana, and further ordered in paragraph 7 (d) an account of

> . . . any and all other sums of money derived by the United States by sale, leasing, licensing, *exploitation* or *otherwise* from or attributable to the lands, minerals or resources [of Louisiana]. [Emphasis added.]

Note that in the 1975 Decree, instead of "from or attributable to," the language was enlarged even further to read in paragraph 6 (b) "from or on account of." Thus, there was an *enlargement* in 1975, to emphasize the connotation of financial accounting and actual causation. If "sums" (not necessarily payments—but abstractly calculable "sums") were *either* derived *from* or *derived on account* of the land, then the United States was to be liable. Clearly, the sums didn't have to be derived from the land, didn't even have to be payments to or cash received by the United States, didn't need to be attributable to the land, but only had to be on account of the land.

It is simply impossible to deny that the time value sums Arthur Andersen & Company's experts found to be the value of the Government's use of Louisiana's money were neither derived from, nor on account of, nor attributable to Louisiana's land. There was an unearned benefit to the Government from Louisiana land by use of Louisiana's mineral revenues from that land, a use that was gained through the issuance of an injunction obtained by the United States that was illegally issued as to Louisiana land.

Such time value injury or benefit from an improvident injunction related to a wrongful damage from the use of another's property rights, and is not an interest claim per se. *See Gilman v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* 182 N.Y. L.J. 84 (1979), a recently decided New York case. It presents a damage claim for the use of another's property.

There, Merrill Lynch had used California banks to

pay monies owed to New York customers, thus benefitting to the amount of hundreds of thousands of dollars from the use of the money resulting from the "float" connected with the long distance, out-of-state banking. There was no right to interest by contract or statute. A class action was instituted by the New York customers. A proposed settlement was rejected because it did not include a *damage* award for use of the money. Damages were recognized as required on the basis of the value of the unnecessary usage of the customer's monies, measured by the financial benefit to Merrill Lynch and the financial loss to the customers. This was calculated by calculating interest saved on interest lost, but it was not interest per se. It was damages for the wrongful use of the money.

While this is not a controlling precedent on the United States Supreme Court, its principles are impeccable. They dovetail into the reasoning the Government has misapplied in the Zone 1 matter, but which perfectly well applies to establish Louisiana's claim for use of Louisiana's money. The profit derived from or on account of an unnecessary retention or use of funds derived from land ought to be paid to the owner of the property.

This is simple justice. A lower court New York State judge should not stand above the Justices of the United States Supreme Court in service of justice. Indeed, he does not, for this Court's prior decrees, if literally read, afforded justice to this type of claim long ago.

IV. THE TENOR OF THE GOVERNMENT MEMORANDUM OBSCURES VALID EQUITABLE AND POLICY CONSIDERATIONS.

Repeatedly, the Government gratuitously tosses into its Memorandum centuries-old historical facts which it perhaps surmises are the most tenuous claims made by Louisiana during the course of this litigation.[76]

We ask the Court to evaluate the case not on the arts of advocacy, but to examine the law and the evidence. The Government, perhaps mindful of the old lawyer's maxim to argue equities when law and facts are against you, would castigate Louisiana with overstatements, untruths and charges of bad faith delay. *E.g., see* Government Memorandum, pp. 6-7. Thus preoccupied, perhaps no one will notice the great inequities or inconsistencies in the Government's own posture.

It maintains to the Justices of this Court that it is entitled to the free use of Louisiana's money, while citing no explicit grant to that free use, as none exists. At the same time, it contends that the same Agreement conferring *exclusive* power in Louisiana (over an area that was clearly 99% Louisiana property anyway) was really an illusory benefit, for it is claimed that revenues thus derived were to be later paid back to the United States. It blithely ignores the uncontroverted testimonial evidence, relying principally upon bald factual assertions contradicted by the

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[76] We do not exaggerate. The Government even disturbs La-Salle's surveying errors in—was it the eighteenth century—and speculates about the import of what some lawyer said about that error in 1958. *See, e.g.,* Government Memorandum, p. 22, n.11.

actual evidence and the Special Master's findings. The only "testimony" it relied upon was the self-serving, excessive arguments of a career federal advocate, inexpert in the field.

The simple equities of the matter are thus obscurred. Those simple equities are as follows. The Interim Agreement gave both Louisiana and the Government the very same Zone 1 and Zone 4 arrangement, but that arrangement benefitted the Government infinitely more than it did Louisiana, for it lifted the injunction as to a vast federal area dozens of times wider than Louisiana's miniscule Zone 1 three-mile strip. Now, a quarter of a century later, after the money was expended, the Government having received billions upon billions of dollars from Zone 4, persists in picayune parsimony. It is still chipping at Zone 1, seeking revenues from hundreds of petty slivers of Louisiana's three-mile strip, and using tactical ploys to that end which are ill suited for putting at rest the long disturbance that this litigation has caused State-federal relations.

Justices Douglas and Black were right in advocating the wisdom of a more outward line that would have prevented this and future controversy. *See* 394 U.S. 11 at 85. The relatively small extra areas the State would have gained would have meant little to the nation compared to its vast Outer Continental Shelf. But that wisdom did not prevail then, and no reversal is practical now.

But, in a more modest form, that wisdom should yet prevail, for if Louisiana were to succeed in having the simple equities of its relatively modest and well-documented Zone 1 and use-of-the-money claims upheld, the

tenacious, decades-long assault upon our territory and resources, forcing us to defend inch by inch, well by well, dollar by dollar, new theory by new theory, can be mitigated. We never wanted this. We wanted a broad-brush peace-making solution.

Agreement on the ambulatory boundary, on split leases, on the final decree, and on the future of State-federal collaboration on Outer Continental Shelf exploitation and coastal impacts would be greatly eased if charges are not forever hurled about and the climate electrified with excesses of advocacy. It can end. Let it end. Let us win a little, for then the atmosphere would exist in which agreements could be reached on details that were too much even for a Special Master to put to rest.[77] Only a spirit of co-

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[77] The Special Master was not called upon to resolve numerous more or less mechanical applications of his rulings or those of the Court, nor was he called upon to resolve several matters left open by the Decree. The Government Memorandum, pp. 40-41, n. 23 and 24, presents matters that are not truly germane to the Exceptions before the Court, which treat only selected parts of such matters and certain errors. There are also proposals to handle matters in ways at variance with the Decree or Agreement regime. *See* n. 24. Elsewhere in the Government Memorandum, there are other ventures into accounting minutiae, *e.g.* p. 5, n. 3, which also assert positions implying or stating the consequences to result from the Court's rulings. These data ignore sums accruing after the Decree from split lease revenue still being impounded, and sums excepted or deferred under the Decree. They also ignore other matters that must be resolved by subsequent application of the accountings which have long been filed and of record.

It seems unwise to anticipate the mathematics of the calculations to be made by the accountants after the Court's ruling. There is no reason to disturb the prior understanding and agree-

operation between governments can overcome remaining problems of split lease accounting and many others. Such

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ments of the parties that a ruling on the three issues submitted to the Special Master will enable the accountings to be completed. The partial injection of accounting minutiae into these proceedings will not eliminate further out-of-court accounting and decree drafting negotiations by the parties, *e.g.* as on post-Decree revenues, split lease matters, and details of final decree form.

It is unseemly and serves no legitimate purpose to present proposals and counterproposals for waiving Agreement provisions to the Court. Policy arguments (*See* Government Memorandum, p. 40) based on negotiation proposals are too speculative to warrant response. However, it is useful to note that if liability is imposed on the Government for the sums it financially derived from Louisiana's lands, the Agreement permits this to be collected from the impounded fund. *See* discussion in text *supra*, under Part III of the argument.

We note some obvious error in note 23, *e.g.* failure to correctly offset payments or credits made in the 1966 accounting. As noted *supra*, the data are not truly germane to the Exceptions. Therefore, we do not present corrective details now. We are confident mere mathematical oversight can be ironed out, as it has in the past, by the accountants applying the rulings of the Court to the accountings heretofore filed, after the decision of the Court sets those rules. Of course, all rights are reserved to differ with the Government on such detail at a correct time and place, and to also later show the true effect of the Court's actual rulings, after they are issued.

One substantive aspect is at the nexus of the two issues at bar and may become relevant for the Court to resolve to guide accounting work. If the Court rules in favor of the United States on the Zone 1 issue, and against Louisiana on Louisiana's Exception insofar as Louisiana's Exception seeks monetary recovery from the fund, it is conceivable the Court might yet rule that United States recovery against Louisiana is offset by the value of the Government's financial benefits. Correct theory actually calls for a cash recovery by Louisiana, but alternatively, Louisiana submits that the claim urged in Louisiana's Exceptions at least

cooperation can only be enhanced by giving force to the language and content of prior agreements between the parties and the June 16, 1975 Decree of this Court.

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bars by offset or equitable recoupment the claim of the Government Exception.

CONCLUSION

Louisiana respectfully urges that the Exception of the United States to the Report of the Special Master should be overruled, but that the reasoning of said Exception be employed to award the value of the federal use of Louisiana's oil lands money to the State as it is a sum causally derived from Louisiana's lands and resources.

Respectfully submitted,

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PROOF OF SERVICE

I, the Attorney General for the State of Louisiana, certify that copies of this reply brief have been properly served on the 14th day of December, 1979, by mailing copies, sufficient postage prepaid, to the Solicitor General and to the Attorney General of the United States, Department of Justice, Washington, D. C. 20530.

s/William J. Guste, Jr.
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December, 1979

APPENDIX 1

A Summary of Lease Description Language Utilized by Louisiana in Leases Granted in Zone 1 Showing that There Is No Basis to the Claims of the United States that Zone 1 Revenue Were Derived from Federal Areas.

State Lease 2590 (La. Ex. 1-LPI 73) contains language that is typical of the leases employed after the Tidelands controversy arose. It purported to lease

> All of the lands now or formerly constituting the beds and bottoms of all . . . water bodies of every nature and description *owned by the State of Louisiana* and not under lease as of June 21, 1954 (the date of bid advertisements) . . . [within a given engineering description shown on a plat]. [Emphasis added.]

State leases numbered 2592, 2716, 2986, 2868 and 2869 were granted prior to the Interim Agreement and were introduced under La. Exh. 1-LPI 74 through 76, 78 and 79. All of this group of leases employed this type of description.

Leases granted after the Interim Agreement of 1956 and before the 1962 lease form revision, were introduced under La. Exh. 1-LPI Nos. 80 through 91 (State Leases 3522, 3523, 3529, 3532 to 3536, 3624, 3626, 3772 and 3773), 129 (S.L. 1669), 132 (S.L. 1667), 133 (S.L. 1668).

This group of leases used the language

> All of that portion of [a certain offshore Block] . . . belonging to the State of Louisiana . . . not under

> lease . . . lying in Zone. . . . The entire block is described as [the precise metes and bounds descriptions of the Block are given, of which only the portion belonging to the State was being leased].

Leases granted by Louisiana after the 1962 form revision and before the 1966 revision, were introduced as La. Exh. 1-LPI Nos. 92 to 108 (State Leases 3839 to 3841, 3971, 3978, 4234, 4238, 4242, 4291, 4436, 4585, 4526, 4595, 4621, 4686, 4720, 4768) and La. Exh. I-LPI 123 (S.L. 4418). These used language like that in State Lease 3839 (La. Exh. 1-LPI 92), which was substantially the same as the pre-1962, post-Interim Agreement leases.

> All that portion of [a stated Block] . . . belonging to the State of Louisiana . . . not under lease [on the application date] . . . lying in Zone 1 as defined the October 12, 1956 agreement. . . .

As in the pre-1962 leases, acreages were estimated but these were only approximations. Typical language used was "estimated to comprise approximately 1,250 acres."

The leases after the 1966 lease form revision, introduced as La. Exh. 1-LPI Nos. 109 to 117 (State Leases 4932 to 4934, 4987, 5017, 5054, 5124, 5155, and 6312), all employed essentially the same type of descriptive language as the other post-1956 leases. *See, e.g.*, State Lease 4932, which reads:

> *Portion of Block 26 . . .*
>
> That portion of Block 26 . . . belonging to the State of Louisiana and not under mineral lease . . . lying in Zone 1 as defined in the October 12, 1956 Agreement. . . .

This lease further identified the lands as "Portions of Block 26, Ship Shoal Area, Terrebonne Parish, Louisiana," limiting the leased area to those portions of the block *in* Terrebonne Parish. All of the other leases were so limited also.

This language contrasts with pre-June 5, 1950 lease description language (for which there is no liability for bonus or rental as per the Court's earlier decrees and the Outer Continental Shelf Lands Act). *See, e.g.*, State Lease 862 (La. Exh. 1-LPI 59) which refers to a block as being in "Vermilion Area" (not Parish) and refers to "Tract 1393 (Block 15), Gulf of Mexico, State of Louisiana." However, even this description was limited elsewhere to lands "located in Vermilion Parish, Louisiana."

The specific description though, did not contain the "owned by," "belonging to Louisiana," "not under lease," "in Zone 1," clauses of the post-1956 leases.

We found only two leases, using the October, 1948 revised lease form, granted after June 5, 1950 which were not restricted by express clauses to areas within the tract "belonging to" or "owned by" Louisiana. These are State Leases 2550 and 2554 (La. Exh. 1-LPI 71 and 72).

These are the *only* two leases the United States can point to which involved an actual leasing of areas won by the United States. They are the *only* two which involve bonus or rental revenue, which, in the language of the decree, were "derived by the State of Louisiana since June 5, 1950 by . . . leasing . . . from or on account of any

of the lands, minerals or resources described in paragraph 1" of the Decree.

Therefore, even if the Court should overrule the finding of the Special Master that Louisiana is entitled to retain all Zone 1 revenue, only the pro rata portion of the bonus or rental of these two leases should be taken into account.

It is noteworthy also that the bonus and rental payments made were not on an acreage basis, but were on a lump sum basis. *See, e.g.*, State lease 2590 (La. Exh. 1-LPI 73) providing for a bonus of $1,673,000.00 and a rental of $836,500.00, not a price or rental per acre. Therefore, it cannot be urged that inclusion of federal areas in the tract descriptions enhanced the bonus and rental payment computations. Even if that were the case, however, that which Louisiana leased was only what it owned, not what the United States owned, and therefore no part of the bonus or rentals from any except the two exceptional leases are even arguably derived from or on account of the federal areas in Zone 1.

Before the Special Master, the Government did not carry its burden of showing that the areas were *not* part of Louisiana at the time the leases were granted.

The Master considered the holdings of this Court that for various times and periods Louisiana had title to certain areas, but not on a permanent basis, due to shoreline and related cartographic change. The United States did not put on engineering or other technical evidence to

support its burden of proof that at the time particular leases were granted, the tracts described were owned by the United States.

The detailed provisions discussed above may be summarized as follows. With but two exceptions, all of the many dozens of leases for which the United States claims it is entitled to lease revenues, were either (a) granted before June 5, 1950 and thus there is no liability for bonus and rental or (b) very carefully only purported to lease water bottoms in Zone 1 *belonging to or owned by* Louisiana, within a described tract. The leases mentioned under (b) above were not leases of the whole tracts; they were explicitly only those *portions* of geographic areas (and at that only in Zone 1) which were *owned* or *belonging to* Louisiana. Payments received by way of bonus or rental were for or on account of (in the language of the Decree) only those portions owned by or belonging to Louisiana, as the lease descriptions irrefutably prove. The ultimate basis of the United States' Exception is that the engineering, plat or metes and bounds description of the general area (in which only the portion owned by Louisiana was being leased) included area won by the United States. Such a position is only excusable as resulting from a lack of technical expertise or familiarity with oil and gas contract terminology. The lack of oil and gas contract experience was admitted by Mr. Swarth, the long-time head of the legal staff that developed Tidelands claims:

Q. You are really not an oil and gas lawyer?

A. Oh, no.

* * *

I had nothing to do with oil and gas law.

* * *

I am not an expert on oil and gas terminology. (Dep. Tr. 71 and 72)

Yet, this testimony was offered as somehow persuasive on oil and gas contract meanings.

APPENDIX 2

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[1]

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

[1] Footnotes are used in this Appendix to indicate discrepancies between the Government's quotation of the Interim Agreement (in the Appendix to the "Memorandum in Support of Exception" filed by the United States, hereinafter referred to as Government Appendix) and the actual text of that agreement, including the omission of the 1964 amendment to it, *see* fn. 5 *infra* and Appendix 3.

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 occurrence 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 impoundment 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 annexed[2] 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.

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[2] "announced" in Government Appendix.

(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 Unted 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 sub-paragraph (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 payments 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 pay-

able 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 sub-paragraph (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 parties,[3] 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.

[3] "portions" in Government Appendix.

(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 payment 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 those[4] cases (1) where the lessees have not complied with Paragraph 5 of this agrement, 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 impounded 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.

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[4] "these" in Government Appendix.

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 established 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.) [5]

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

[5] The language enclosed in parentheses was amended by agreement of the parties on December 11, 1964. The full text of the amendment is set out in Appendix 3, *infra*, as well as at p. 42 of this brief, *supra*.

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 ben 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 shutting[6] 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)

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[6] "abutting" in Government Appendix.

The shutting[7] 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 agree-

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[7] "abutting" in Government Appendix.

ments relating to leases lying partly within and partly without the disputed area.

(b) [8] 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, 1956:[9]

1. The unit for oil and gas dated December 9, 1955, and approved June 29, 1956, of which Magnolia Petroleum

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[8] "(d)" in Government Appendix.

[9] "1965" in Government Appendix.

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 those[10] 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,

[10] "these" in Government Appendix.

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 offset[11] 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.

15.[12]

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

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[11] "effect" in Government Appendix.

[12] Paragraph number omitted in Government Appendix.

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 Legislature 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

APPENDIX 3

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE STATE OF LOUISIANA AMENDING ARTICLE 10 OF THEIR AGREEMENT OF OCTOBER 12, 1956, PURSUANT TO SECTION 7 OF THE OUTER CONTINENTAL SHELF LANDS ACT AND ACT 311 OF THE LOUISIANA LEGISLATURE OF 1964

WHEREAS, on October 12, 1956, the United States of America and the State of Louisiana entered into an agreement regarding the operation and management of submerged lands off the coast of Louisiana pending determination of the ownership of such submerged lands; and

WHEREAS, the second sentence of Article 10 of that agreement provides:

> If, however, in connection with royalty payments, any well or wells are bottomed under a unit theretofore validly established 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 leases 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.

and

WHEREAS, experience has shown that in some cir-

cumstances it is preferable to allocate unit royalties on some basis other than that of acreage as required by the foregoing provision,

NOW, THEREFORE, the United States of America, acting by and through the Secretary of the Interior with the concurrence of the Attorney General, pursuant to Section 7 of the Outer Continental Shelf Lands Act, and the State of Louisiana, acting by and through the State Mineral Board with the concurrence and approval of the Attorney General pursuant to Act 311 of the Louisiana Legislature of 1964, agree that the second sentence of Article 10 of the Agreement of October 12, 1956, is hereby amended to read as follows:

> If, however, in connection with royalty payments, any well or wells are bottomed within a unit validly established which includes submerged lands lying within the area of dispute, the royalty for minerals produced from such well or wells after establishment of the unit shall be allocated to each lease or portion thereof lying within the area of dispute in such proportion and in such manner as may be agreed to by the State Mineral Board and the Secretary of the Interior, or his delegate.

THUS MADE AND EXECUTED effective this 11th day of December, 1964. [There followed the signatures of the Secretary of the Interior and other federal and state officials.]