

No. 14 Original

Office-Supreme Court, U.S.

FILED

DEC 3 1962

JOHN H. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

STATE OF LOUISIANA,
Plaintiff,

vs.

STATE OF MISSISSIPPI et als.,
Respondents.

**SUPPLEMENT TO BRIEF OPPOSING MOTION OF
STATE OF LOUISIANA FOR LEAVE TO FILE
COMPLAINT AND FOR STAY ORDER**

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MAY IT PLEASE THE COURT:

To bulwark their opposition to Louisiana's filing, Respondents, with respect, submit:

**I. THE AREA SAID BY LOUISIANA TO BE
IN DISPUTE**

During all times here pertinent the area involved has been, as it is now, within the actual bed of the Mississippi

River south of Glasscock Cutoff. This area is north of the 31st degree of north latitude. This is shown by the Acts of the Congress admitting both Louisiana and Mississippi into the Union of the United States of America (cited and quoted from at Sections II, III and IV of Louisiana's Complaint); and Louisiana's Complaint also recites (Section V, page 8 thereof) that, in this area, the thalweg, the thread of the main navigation channel, of the Mississippi River was by this legislation established as the eastern boundary of Louisiana—a boundary in common with the State of Mississippi.

One of the stated objectives of the prayer of Louisiana's Complaint is for the permanent establishment of "the eastern boundary line of the State of Louisiana between Glasscock Cutoff and Deadman's Bend *on the Mississippi River*"—page 19 of Complaint. In Supplemental Brief (page 5) Louisiana advances the claim that the filing by the Zuccaros (riparian landowners on the Mississippi side) of a tort action seeking a monetary award against Humble Oil & Refining Company for an asserted sub-surface trespass "has *activated* and made immediate the problem at large". Louisiana's contention (its Brief pp. 5-6) is that "an area approximately twelve (12) miles long, embracing a large *mass of river bottom* of substantial current and potential value, is the subject of the disputed boundary".

For a more ready understanding of the basic problem and to better portray this area in the live Mississippi River south of Glasscock Cutoff, which is said to be the subject of Louisiana's claim to a dispute we are annexing hereto photo copy of a composite of maps, Nos. 39 and 40 from the Mississippi River Commission Navigation Folio (1962 Edition). On this map we have superimposed data showing the Zuccaro property and the location of the bottom hole of Carter's 1954 well, and we have also shown the

head (point "A") and the foot (point "B") of Glasscock Cutoff.

Louisiana's Complaint (Section XVII thereof) is predicated upon the conclusion that, in this area below Glasscock Cutoff, it has a "vested right" to its boundary as it existed about 1939; and an object of its Complaint is to have this Court determine and to fix that boundary as the permanent boundary, thereby to disregard and discard the present live thalweg and main navigation channel of the Mississippi River.

The controversy which Louisiana undertakes to provoke is not as to the boundary itself but rather whether the live thalweg of the Mississippi River is the boundary in this stated area below Glasscock Cutoff.

II. ARGUMENT AND AUTHORITIES

1. **Since the Live Thalweg Remains and Marks the Boundary Below Glasscock Cutoff, Louisiana Has No Cause of Action and Has No Justiciable Controversy with Mississippi**

This very proposition was, in effect, determined against Louisiana by the Supreme Court of that State in *Esso Standard Oil Co. v. Jones*, 98 So.2d 236, 233 La. 915. Louisiana was itself a party to that litigation. The doctrine of collateral estoppel by judgment, though probably applicable, is not needed to demonstrate the complete fallacy of the position Louisiana has at bar assumed.

In the *Esso* case, the Louisiana Court narrated the history of Glasscock Cutoff. There, directly involved was the area in the bendway—that which the cutoff itself actually and directly by-passed. The Court nevertheless determined that the Article of the Civil Code applicable to ac-

cretions furnished the solution adverse to the contentions of the State of Louisiana. In so doing the Court pointed out:

“Mr. Geddes testified that the cut-off channel affects the river current as far as fifty miles upstream and ten miles downstream (Tr. 24, 25). If accretion by alluvion deposits should occur in that area along the main river channel, *I dare say no one would question the applicability of Article 509.*”

But that is exactly what Louisiana is here doing—contending that after the opening of the Glasscock Cutoff the law applicable to accretion and erosion no longer applied downstream therefrom, “along the main river channel”. Even as to the area in the bendway—that directly involved in the cut-off—the Court remarked:

“The State line will still follow the thalweg of the Deer Park Bend channel as it may change from year to year and if and when the old channel ceases to be a river or stream the location of the State line would be fixed and remain where it is *on the happening of that event.*”

Hence, it must assuredly follow that the Louisiana-Mississippi state line to the South of Glasscock Cutoff continues as and is marked by the varying thalweg of the live and flowing Mississippi River.

Section XV, pp. 14-15, of Louisiana's Complaint concludes with a recital that there have been some 15 of these cutoffs constructed by the United States Engineers to “reduce the dangers of floods” and in the public interest for navigation purposes. The Louisiana Supreme Court expressly found in *Esso, supra*, that, with reference to the Glasscock Cutoff, “there was no designed purpose whatsoever on the part of the engineers to bring about any change in property ownership” (98 So.2d 241). Louisiana has

advanced no reason why this Honorable Court should not, as the Louisiana Supreme Court did, apply as controlling *St. Clair County v. Livingston* (1874), 23 Wall. (U.S.) 46, 23 L. Ed. 59. This decision has, apparently without exception or qualification, been followed nationwide as a rule of property. See Annotations 134 A.L.R. 467 and such cases as *Michaelson v. Silver Beach Improvement Assn.* (1961), 342 Mass. 251, 173 N.E.2d 273, 91 A.L.R. 2d 846.

2. That the Live Thalweg Is Here the State Line Is Settled

This Court determined fifty years ago that riparian owners of land on the Mississippi side of the Mississippi River own to the thread of that stream and may recover damages for past trespasses and obtain injunctive relief against threatened trespasses. The reference is to the opinion delivered, without any dissent, by Mr. Justice Kenna in the case of *Archer v. Greenville Sand & Gravel Co.* (1913), 233 U.S. 60, 34 S. Ct. 567, 58 L. Ed. 850. After reviewing the common law rule of property prevailing in Mississippi, this Court found and held that the owner of the land on the bank of the river owned to the thread of the stream, subject to public rights of navigation.

In *Jefferson v. East Omaha Land Co.*, 134 U.S. 178, 10 S. Ct. 518, 33 L. Ed. 872, later expressly followed in *Smith v. Leavenworth*, 57 So. 803, 101 Miss. 238, this Honorable Court, through Mr. Justice Blanchford, declared:

"The case of *Jones v. Johnston*, 59 U.S. 18 How. 150 (15:320), is cited by the defendant as holding that a grantee can acquire, by way of appurtenance, land outside of such description. But that case holds that *a water line, which is a shifting line and may gradually and imperceptibly change, is just as fixed a boundary in the eye of the law as a permanent object, such*

as a street or a wall; and it justifies the view announced by the circuit court in its opinion, that *where a water line is the boundary of a given lot, that line, no matter how it shifts remains the boundary*, and a deed describing the lot by number or name conveys the land up to such shifting line exactly as it does up to a fixed side line. See also *Lamb v. Ricketts*, 11 Ohio, 311; *Giraud v. Hughes*, 1 Gill & J. 249; *Kraut v. Crawford*, 18 Iowa 549."

Other cases where this Court has established the law and thalweg theory, which Louisiana would here disregard for an arbitrary distance of 12 miles south of Glasscock Cutoff, are:

Iowa v. Illinois, 147 U.S. 1, 13 S. Ct. 239, 37 L. Ed. 55 (followed in Mississippi by *Hill City Compress Co. v. West Kentucky Coal Co.*, 155 Miss. 55, 122 So. 747), establishes that "the true boundary is the middle of the main channel of navigation of the Mississippi River, where that river constitutes the boundary line".

This rule, above quoted, was *finalized* by the Supreme Court of the United States in *Arkansas v. Tennessee*, 246 U.S. 158, 38 S. Ct. 301, 62 L. Ed. 638, holding: that "the *thalweg*, or middle of the navigable channel, is to be taken as the true boundary line between independent states".

The result of the authorities "puts it beyond doubt that accretions on an ordinary river would leave the boundary between the two states *the varying center of the channel*". *Nebraska v. Iowa*, 143 U.S. 359, 36 L. Ed. 186.

In *New Orleans v. United States*, 10 Pet. 662, it was said:

"The question is well settled at *common law* that the person whose land is bounded by a *stream of water which changes its course gradually by alluvial formations*, shall still hold the same boundary, including the

accumulated soil. No other rule can be applied on just principles. Every proprietor whose land is thus bounded is subject to lose by the same means which may add to his territory, and as he is without remedy for his loss in this way he cannot be held accountable for his gain."

City of St. Louis v. Rutz, 138 U.S. 226, 34 L. Ed. 941, at 949:

"The result of these authorities put it beyond doubt that accretion on an ordinary river would leave the boundary between two states *the varying center of the channel.*"

The law of thalweg was ably treated with by the eminent Judge Sibley in *Anderson-Tully Co. v. Tingle* (1948), 166 F.2d 224, certiorari denied 69 S. Ct. 36, 335 U.S. 816, 93 L. Ed. 371.

3. The Live Thalweg Being the Boundary, There Is No Need for the Boundary to Be Otherwise Marked or Established

The two States involved can have no present concern *inter se* or reason for dispute as to where the live thalweg of this river was at any past date; and it is a simple matter through a competent survey with traverse soundings to ascertain where the thalweg now is. There is no known dispute between the two states as to the exact location of this thalweg in this area; and there is no need for Louisiana to impose upon this Court to appoint a Master to designate a surveyor to perform mere ministerial acts. There is no difference in marking the live thalweg in this particular area than there would be in having that thalweg marked in every other sector of the lengthy reach of the Mississippi River where that river serves as the common boundary between the states of Louisiana and Mississippi.

Louisiana refers this Court to the recent case of *Mississippi v. Louisiana*, 350 U.S. 5, 100 L. Ed. 6, 76 S. Ct. 29. After lengthy and necessarily expensive proceedings, the Special Master presented his report, which this Court adopted, entering the decree which gives the course and distance and monuments utilized in marking the permanent boundary in the particular areas there involved.

It is interesting to note that where there was evidence of a "dead thalweg" that thalweg in the abandoned channel was utilized as the boundary; and where there was a *live thalweg* to depend upon the decree without exception went from a particularly specified latitude along the "live thalweg" to another designated latitude for, as shown in *Jones v. Johnson*, 49 U.S. 18 How. 150, 15 L. Ed. 320, a water line "is just as fixed a boundary in the eyes of the law as a permanent object" and "where a water line is the boundary * * * that line, no matter how it shifts, remains the boundary."

4. Sans Boundary Dispute Louisiana Without Standing for Stay Order or the Other Relief Prayed For on Behalf of Humble Oil & Refining Company

Louisiana's solicitude for Humble does not give it legal standing either to secure a trial of the Zuccaro tort action against Humble as an original action in this Court or to obtain a stay of the Zuccaro action pending for trial in the United States District Court.

The Zuccaros on November 27, 1962, filed their suit against Humble due to an alleged sub-surface trespass upon their property. This is an action *ex delicto* for recovery of a monetary award, a trial by jury having been properly and timely demanded by the Zuccaros.

The Zuccaros seek nothing from Louisiana. As a condition to recovering from Humble, the Zuccaros must meet the burden of proving the sub-surface trespass which they allege. They will not be entitled to recover nor will they recover unless they do. It is doubted that Louisiana would be a proper party to this litigation and it is clear that Louisiana is neither a necessary nor indispensable party. *Humble Oil & Refining Co. v. Martin*, 298 F.2d 163, certiorari denied Oct. 8, 1962, 9 L. Ed.2d 64; *Lige Estes v. Shell Oil Co.*, 234 F.2d 847; *Hudson v. Newell*, 172 F.2d 848; *MacIntosh v. Marks' Estate*, 225 F.2d 211.

There is, because of the Zuccaro suit against Humble, no risk of loss, real and substantial, upon Louisiana's part such as was treated with in *Texas v. Florida*, 83 L. Ed. 817, 306 U.S. 398. Louisiana, according to her Complaint (Section XI, p. 12 thereof), has had no complaint against Humble or its predecessor, Carter, and whether Humble or Carter have been overly generous with Louisiana is not before the Court and of no concern to the Respondents, other than possibly Humble itself. There is no showing that Louisiana, if entitled to any future relief against Humble, may not adequately protect itself in its own courts or in the United States District Courts therein without imposing on this Court in an original action and without the need of joining the State of Mississippi or the Zuccaros.

Nor should the possibility suggested by Louisiana that Humble may be subjected to two suits be here controlling. The circumstances at bar so vastly differ from *Texas v. Florida*, *supra*, as to make applicable the dissenting opinion

there of Justice Frankfurter, in which Justice Black joined. Here applicable is *Massachusetts v. Missouri*, 84 L. Ed. 3, 308 U.S. 1.

The State of Louisiana does not contend and cannot successfully assert that it cannot protect itself relative to the lease which it gave to Carter, now owned by Humble through merger with Carter; but the State of Louisiana asserts that this would subject Humble to possibly two lawsuits. Now certainly that is no reason to invoke the original jurisdiction of the Supreme Court of the United States; and particularly not since it appears from the face of the proceedings now before this Court that Humble made an unrecorded arrangement with its subsidiary Carter whereby it agreed and stipulated to disregard the true boundary line of the leases. This is shown from the instrument which appears as Exhibit "C-4" of Louisiana's Petition disclosing that Humble and its subsidiary Carter fixed a line between them and that Humble then proceeded to convey to Carter everything lying west of that line and Carter conveyed to Humble everything lying east of that line. The particular exhibit as filed by Humble in the United States District Court contains on the face thereof the penned notation "do not record"; and this exhibit on page 5 thereof recites that prior to the date of that agreement on November 25, 1953, Humble had established drilling units with the State Oil & Gas Board of Mississippi which lay west of the boundary line which it was agreeing upon with Carter; and that it was understood that Humble was going to secure a change or reformation in these filings with the State Oil & Gas Board of Missis-

ssippi as a condition to the agreement becoming effective. The agreement was pleaded by Humble as having been in effect; and there was further annexed (attached to Louisiana's Petition as Exhibits "C-5" and "C-6") documents which Humble and Carter had executed on September 3, 1954, and August 12, 1955, in both of which, except to the extent thereby expressly modified (not here material), the terms and provisions of the agreement and cross-assignment of November 25, 1953, were confirmed.

There will be no danger or threat of any armed conflict or major disturbance to the overall health and well-being of the citizens of either of the sovereign states involved or of the United States if the Zuccaro case against Humble proceeds to a trial and judgment in the United States District Court; nor will there be any such danger or threat if Louisiana, which has admittedly received all that was to it due up until the filing of its Petition herein, should later assert some claim based on its interpretation of its contractual engagement with Humble. Humble and its subsidiary Carter fixed the arbitrary line dividing their leaseholds, with both recognizing that the line by them determined upon was not the true line between the leases. Fortunately, Humble is financially and otherwise well able to protect itself in the quiet of the courtroom and to obtain the full benefit of all the rights to which it may be entitled.

III. CONCLUSION

Wherefore, showing that the live and varying thalweg of the Mississippi River is the boundary and that the State

of Louisiana has patently failed to state a cause of action in contending for the establishment of a different boundary and for the other reasons and grounds heretofore assigned, hereby amplified upon, Respondents, the State of Mississippi and the Zuccaros, submit that Louisiana's motion be denied.

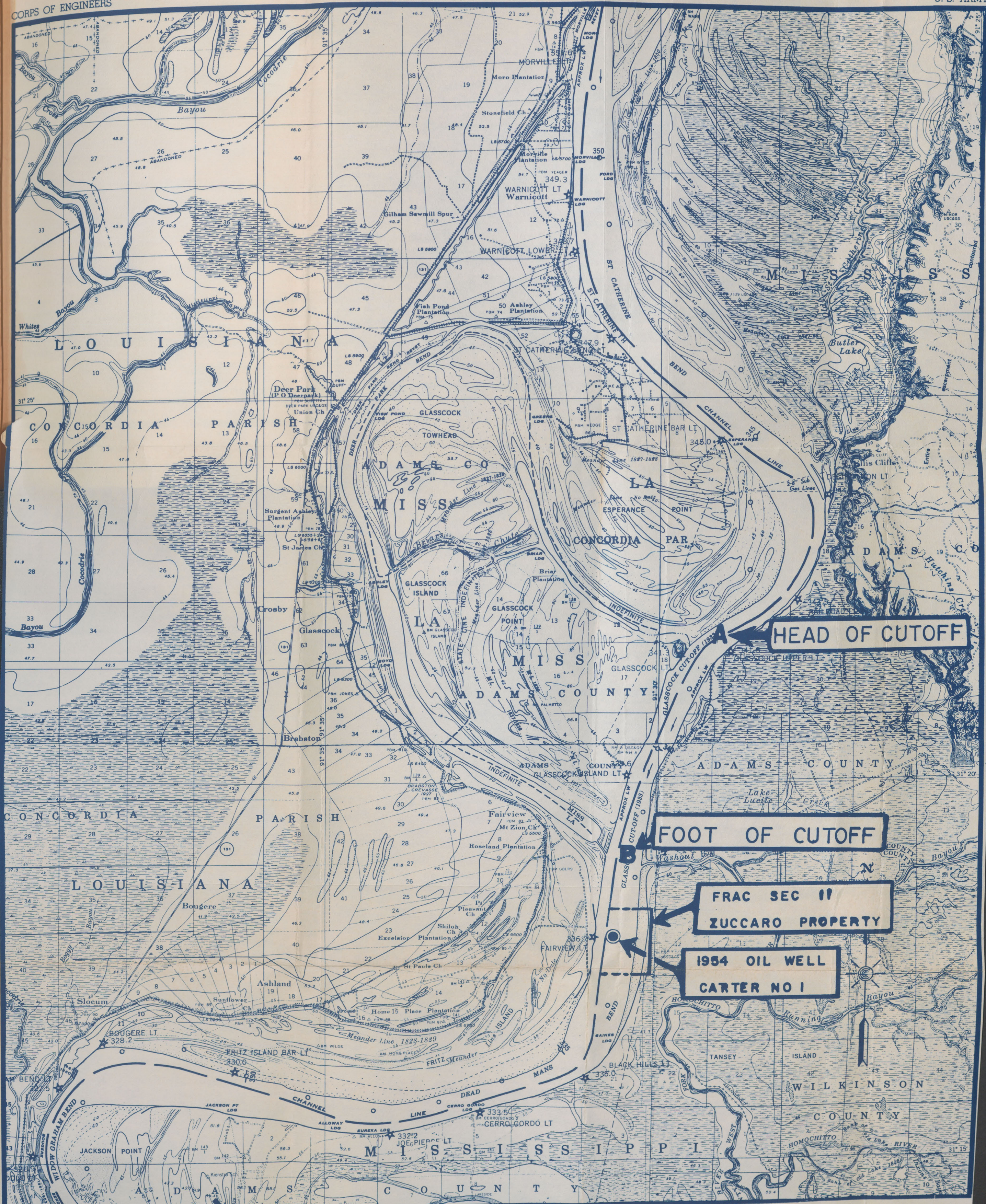
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