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NO. 14 ORIGINAL

**In the
Supreme Court of the United States**

OCTOBER TERM, 1965

STATE OF LOUISIANA

v.

STATE OF MISSISSIPPI, ET AL

**PETITION FOR REHEARING BY
THE STATE OF LOUISIANA**

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The State of Louisiana, plaintiff herein, appearing through its Attorney General and other counsel of record, and acting pursuant to Rule 58 of the Rules of the Supreme Court of the United States, presents and urges this its petition for rehearing of the Per Curiam and Decree of this Honorable Court rendered on April 18, 1966.

The opinion phase of said Per Curiam and Decree limits itself to the simple statement that, "(1) All exceptions are overruled and the Report is in all things Confirmed." In the absence of a written decision, this petition for rehearing is largely confined to the uncertainty, as well as the ominous nature, of the position in which the State of Louisiana is placed by the existing Per Curiam and Decree.

Territorial boundaries are of the utmost importance to every state in the Union and to the nation as well. They define the state's area of jurisdiction

and encompass vital property rights. Each Commonwealth and all its citizens are sensitive to any encroachment on or violation of its borders. Having been fixed by proper Acts of Congress, such territorial limits should remain undisturbed. Change can be tolerated only through political action or by forces of nature. Particularly should state boundaries not be changed or permitted to be changed by the artificial works of human agencies, no matter how well and properly intended they are and regardless of the governmental authority empowering the human agencies to act.

On page 48 of his Report, the Special Master says: "It was conceded by all the experts that Deadman's Bend would have continued to migrate eastward had it not been for the construction of Glasscock Cut-off." It is certain, therefore, that the action of the United States Engineers was the sole and only cause of the elimination and reversal of Deadman's Bend and the westward migration of the thalweg. By adopting the Special Master's Report "in all things," this court, in effect, has sanctioned a change in the boundary between Louisiana and Mississippi caused only by the artificial works of human agencies.

The effect, then, of the court's Decree in this action is to acknowledge the existence of an independent, intervening agency, in the performance of acts of man, being capable of changing the boundaries between states, whether at will or perforce of happenstance. Without the consent of either state affected, this court has now recognized that power lies within

the grasp of United States Engineers to change the boundary between two states by diverting the main channel of navigation and with it, of course, the live thalweg. It is made inferentially clear, by the court's unqualified acceptance and confirmation of the Special Master's Report, that United States Engineers have now been given full reign to reroute mighty rivers by main current diversion, without the consent of Congress and no matter what effect such results will impose upon the jurisdiction of neighboring states and upon the property rights of their citizens.

Such is contrary to the Constitution of the United States and to prior decisions of this court. United States Constitution, Article I, Section 10; *Florida v. Georgia*, 58 U.S. (17 How.) 478 (1855). Rejecting the right to appeal in *Norton v. Whiteside*, 205 F. 5 (8th Cir. 1913), this court said, in part, 239 U.S. 144, at page 154:

“... the mere fact that Congress, in the exercise of its power to improve navigation, directed the construction of the new channel, affords no basis whatever for the assumption that thereby, as a matter of Federal law, rights of property, if secured by the state law, were destroyed and new rights of property under the assumption indulged in, incompatible with that law, were bestowed by Congress.”

The record in this case abundantly demonstrates and, as aforesaid, the Special Master found as a fact that the sole cause of the elimination of historic Deadman's Bend and the substitution of a reverse bend was

the creation of Glasscock Cutoff by the United States Engineers. Such being the case, the live thalweg should not be permitted to stand as the true boundary between the States of Louisiana and Mississippi.

No mention was made of the action of the United States Engineers in the court's Per Curiam and Decree, even though the results of such action constituted the major point of conflict between the litigants. Petitioner contends and seriously urges that the results of the action taken by the United States Engineers constitute the crux of the case. To say that the live thalweg was a gradually curving line on October 3, 1932 and April 10, 1964 leads to the erroneous assumption that the gradually curving line of the live thalweg on such dates resulted from natural causes and normal action of the river, uninfluenced by the profound acts of man.

A large part of the territorial limits of the State of Louisiana hinge upon the Mississippi River. The Decree of this Honorable Court, as it presently stands, not only places in jeopardy much of Louisiana's border but endangers the property rights of private citizens of said state whose lands along the Louisiana banks are being subjected to erosion as the main navigational channel of the Mississippi River creeps continuously westward in the problem area.

If any inference aforesaid that petitioner has drawn from the court's Per Curiam and Decree herein is unfounded, there is no written decision to resort to in order to test the reality of the implications which appear so clearly to be justified. To take proper steps

to safeguard its future, either by means of local action, through subsequent judicial controversies, or by congressional remedy, Louisiana is entitled to a clearcut exposition by this Honorable Court of its views on so grave and important a problem. The State of Louisiana, therefore, urges upon this court that it furnish guidance to this state by a full explanation of its views predicated on the facts and record in the instant case. Only in such manner and by such results can the State of Louisiana proceed with wisdom and vigor to pursue such courses that may be open to it in dealing with submerged lands in the Mississippi River which the state claims in full ownership by virtue of its inherent sovereignty. A full explanation of its views, preferably by written opinion herein, would also disclose to other states with problems similar to those faced by Louisiana in this case, whether this court takes the view, by so expressing it, that United States Engineers in cutting channels in navigable rivers and streams, dividing states of the Union, and diverting main channels of navigation, may change pre-existing boundaries between such states. The Per Curiam and Decree of April 18, 1966 provides only the clear inference that such power is vested in United States Engineers.

WHEREFORE, the State of Louisiana prays that this Honorable Court grant a rehearing herein, reverse the Special Master's conclusions of law, and enter a decree on rehearing that the boundary between the States of Louisiana and Mississippi in Deadman's Bend became permanent in 1932, prior to the construction of Glasscock Cutoff, and before the Missis-

issippi River, in reversal of its directional migration eastward, began to move westward as a result of the construction aforesaid.

Respectfully submitted,

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BY: _____
Of Counsel for the State of
Louisiana

CERTIFICATE

I, Jack P. F. Gremillion, Attorney General of Louisiana, of counsel for the State of Louisiana in the original action above entitled and numbered, and a member of the Bar of the Supreme Court of the United States, do hereby certify that the above and foregoing petition for rehearing is presented in good faith and not for delay.

Baton Rouge, Louisiana, May....., 1966.

JACK P. F. GREMILLION

Of Counsel

PROOF OF SERVICE

The undersigned, of counsel for the State of Louisiana, plaintiff herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the.....day of May, 1966, I served copies of Louisiana's Petition for Rehearing of the court's Per Curiam and Decree, by depositing same in a United States Post Office, with sufficient first class postage prepaid, addressed to:

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BATON ROUGE, LOUISIANA, MAY.....,
1966.

JOHN L. MADDEN,
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