NO. 36, ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

THE STATE OF TEXAS,
Plaintiff

v.

THE STATE OF LOUISIANA,
Defendant

BEFORE THE HONORABLE
ROBERT VAN PELT, SPECIAL MASTER

BRIEF FOR THE STATE OF TEXAS IN SUPPORT OF MOTION FOR JUDGMENT

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney General of Texas

HOUGHTON BROWNLEE, JR.

J. ARTHUR SANDLIN

JAMES H. QUICK
Assistant Attorneys General of Texas

PRICE DANIEL
Special Assistant Attorney General of Texas

INDEX

INDEX OF AUTHORITIES

INDEX OF AUTHORITIES — Continued

Miscellaneous:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

NO. 36, ORIGINAL

THE STATE OF TEXAS,

Plaintiff

v.

THE STATE OF LOUISIANA,

Defendant

BEFORE THE HONORABLE
ROBERT VAN PELT, SPECIAL MASTER

BRIEF FOR THE STATE OF TEXAS IN SUPPORT OF MOTION FOR JUDGMENT

This is a suit between the State of Texas and the State of Louisiana. As such, it is within the original jurisdiction of the Supreme Court under Article III, Section 2, Clause 2, of the Constitution of the United States.

TREATIES AND STATUTES INVOLVED

Relevant portions of the following controlling treaties and statutes are set out in the Appendix, *infra,* pp. 1-24;

1. The Louisiana Purchase Treaty of 1803, 8 Stat. 200; Appendix, p. 1.
2. Act of Congress, creating the Territory of Orleans, March 26, 1804, 2 Stat. 283; Appendix, p. 2.

3. Act of Congress enabling the inhabitants of part of the Territory of Orleans to form a constitution and state government, February 20, 1811, 2 Stat. 641; Appendix, p. 3.

4. Constitution of the State of Louisiana, January 22, 1812, in which the western boundary of the new State was fixed in the middle of the Sabine River; Appendix, p. 4.

5. Act of Congress, admitting the State of Louisiana into the Union, April 8, 1812, 2 Stat. 701; Appendix, p. 5.

6. The Treaty, 1819, of Amity, Settlement, and Limits between the United States and Spain, 8 Stat. 252; Appendix, p. 7.

7. Resolution of the Louisiana Legislature, March 16, 1848, recognizing exclusive Federal jurisdiction over the western half of the Sabine River, and requesting consent of the Congress for extension of the jurisdiction of the State of Louisiana over such area; Appendix, p. 20.

8. Resolution of the Texas Legislature, March 18, 1848, requesting consent of the Congress for extension of the jurisdiction of the State of Texas over the western half of Sabine Lake, Sabine Pass, and Sabine River; Appendix, p. 22.

9. Act of Congress authorizing the State of Texas to "extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the 32nd degree of north latitude," July 5, 1848, 9 Stat. 245; Appendix, p. 23.

10. Act of the Texas Legislature extending its eastern boundary to the middle of the Sabine as authorized by Congress, November 24, 1849, 3 Gammels Laws of Texas 442; Appendix, p. 24.

QUESTIONS PRESENTED

1. Whether the western half of Sabine Pass, Sabine Lake and Sabine River from its mouth to the 32nd degree of north latitude was part of the territory of the United States and subject to its exclusive jurisdiction and ownership on July 5, 1848, when the Congress gave consent for the State of Texas to extend its eastern boundary so as to include such area.

2. Whether, based upon the pleadings, treaties, laws and other matters subject to judicial notice by the Supreme Court and the Special Master, the State of Texas is entitled to the judgment prayed for as a matter of law.

STATEMENT

This suit was instituted by the State of Texas for the purpose of establishing its rights as against the State of Louisiana to the jurisdiction over and ownership of the western half of the Sabine River[1] from the mouth of the River on the Gulf of Mexico to the 32nd degree of north latitude, and for a decree confirming the boundary of the two States in the middle of said stream.

Texas filed its motion for leave to file the Complaint on December 12, 1969. Louisiana filed its opposition to the motion on February 3, 1970. The Supreme Court granted Texas' motion on February 27, 1970, and Louisiana filed its answer and motion for the appoint-

[1]The use of the term "Sabine River" in the Complaint, Louisiana's Answer, and this brief includes Sabine Pass and Sabine Lake. By their pleadings, the parties are in agreement that these streams form a continuous body of navigable water, and that for convenience they are referred to collectively as "Sabine River."

ment of a Special Master in April of 1970. On May 28, 1970, Texas filed a motion for judgment on the pleadings, and on June 1, 1970, the Supreme Court appointed the Honorable Robert Van Pelt, Senior Judge of the United States District Court of Nebraska to hear the case as Special Master and "to submit such reports as he may deem appropriate."

The Complaint alleges that by Act of the Congress approved July 5, 1848, consent was given to the State of Texas to extend its eastern boundary so as to include the western half of Sabine River; that pursuant to this Act of Congress, the Texas Legislature so extended the eastern boundary of the State by Act approved November 24, 1849; that prior to November 24, 1849, the United States held and exercised exclusive territorial jurisdiction over and ownership of the western half of the Sabine, having acquired the area from France under the Louisiana Purchase of 1803; that the western boundary of the State of Louisiana was fixed by Acts of Congress in 1811 and 1812 and the constitution of the State of Louisiana of 1812 in the middle of the Sabine River, and that such boundary has never been changed; that Texas has exercised continuous possession, jurisdiction and ownership over the western half of the Sabine since 1849, and that Louisiana recognized and acquiesced therein for more than 100 years.

Louisiana's Answer alleges that Texas fails to state a claim upon which relief can be granted; that the United States is a necessary party; and that the United States was not acting for itself but for the State of Louisiana when it obtained from Spain in the Treaty of 1819 confirmation of the title and jurisdiction of the United States over the western half of the Sabine.

Louisiana does not deny the existence or terms of any of the treaties or statutes above referred to, and neither does it allege that any of the terms are uncertain or ambiguous. It alleges that the Acts of Congress and Constitution of Louisiana did not effectively establish the western boundary of the State, and seeks to introduce extrinsic evidence of intent to show that the western half of the Sabine automatically became a part of the State of Louisiana by reason of the treaty of 1819 between the United States and Spain.

In Texas' pending motion for judgment and reply to Louisiana's Answer, it is alleged that the controlling issue in this case depends upon the interpretation of the aforesaid treaties and statutes; that all are subject to judicial notice; that their terms are definite and cannot be changed by extrinsic evidence; and that by their terms Texas is entitled to judgment as a matter of law.

SUMMARY OF ARGUMENT

I.

As a matter of law, the United States had exclusive jurisdiction over and ownership of the western half of the Sabine River on July 5, 1848, when Congress consented for the State of Texas to extend its western limits so as to include such area within its boundaries. Louisiana disputes this, claiming that despite the Acts of Congress and its own Constitution of 1812 fixing its western boundary in the middle of the Sabine, such boundary was automatically extended to the west bank of the Sabine by reason of the Treaty of 1819 between the United States and Spain. Therefore, Louisiana asserts that it, and not the United States, had ownership and jurisdiction for local purposes over this area in 1848.

The determination of this controlling issue requires only an interpretation of the treaties and laws under which both parties assert their rights. They are subject to judicial notice, and there is no allegation that any of their terms are uncertain or ambiguous. They show that Texas is entitled to judgment as a matter of law for the following reasons:

A. 1. The area in controversy was part of the territory acquired by the United States from France under the Louisiana Purchase Treaty in 1803 (8 Stat. 200), under which the United States claimed that territory extended westward to the Rio Grande, including all of Texas.

2. The area in controversy was never included within the boundaries of the State of Louisiana, because: (a) The Enabling Act of Congress, February 20, 1811, specifically limited the proposed State of Louisiana to a western boundary "along the middle of said (Sabine) river, including all islands to the thirty-second degree of latitude." (2 Stat. 641); (b) The Constitution of the State of Louisiana adopted on January 22, 1812, fixed its western boundary in the middle of the Sabine River, using the same language as the Enabling Act, and this constitutional provision has never been changed; and (c) The Act of Congress, April 8, 1812, admitting Louisiana as a State (2 Stat. 701) repeats the same Sabine boundary (middle of the said River) as in the Enabling Act of 1811 and in the Louisiana Constitution of 1812.

(d) The mid-stream boundary of the State of Louisiana as fixed by Congress and the Constitution of Louisiana in 1812 was in accordance with the policy and law of the United States relating to river boundaries between states and territories. All of Louisiana's

water boundaries are located mid-stream either by specific statute or operation of law. *Louisiana v. Mississippi,* 202 U.S. 1 (1906).

(e) Relinquishment by the United States of that portion of Texas lying west of the Sabine and retention of its title and jurisdiction over the western half of the Sabine River in the Treaty with Spain in 1819, did not result in an extension of the western boundary of Louisiana. In its negotiations with Spain in 1819, with Mexico in 1828, and with the Republic of Texas in 1838, with respect to that part of its territory lying outside of the boundaries of the State of Louisiana, the United States was acting for itself and not for the State of Louisiana. An extension of Louisiana's State boundary westward of the middle of the Sabine River would have required approval by the Congress of the United States, and such approval was never granted.

3. From 1819 until Congress authorized Texas to extend its eastern boundary to the middle of the Sabine in 1848, the United States had and exercised exclusive territorial jurisdiction and ownership over the western half of the Sabine River, and this was so recognized by a Resolution adopted by the Louisiana Legislature on March 16, 1848.

B. The eastern boundary of the State of Texas was properly and legally extended to include the western half of the Sabine River by the Act of Congress of July 5, 1848, and the Act of the Texas Legislature on November 24, 1849, and by reason thereof Texas is entitled to jurisdiction over and ownership of the area, subject only to the constitutional rights and functions of the United States. State ownership and jurisdiction extend to the waters of and lands beneath navigable streams within state boundaries. This was confirmed

by the Submerged Lands Act of 1953 (67 Stat. 29). Since November 24, 1849, the Congress and various Federal agencies have continuously recognized that the boundary between Texas and Louisiana is in the middle of the Sabine. Many river and harbor acts passed by Congress since 1849 and maps prepared by Federal agencies evidence this. Recognition of this nature was held to be highly persuasive in *Louisiana v. Mississippi, supra.* For more than 100 years prior to the inception of this controversy, the State of Texas exercised continuous possession, jurisdiction and dominion over the lands in controversy, during which period Louisiana continuously acquiesced therein.

C. In addition to its record title, Texas has acquired title to and jurisdiction over the area by prescription, because the State of Louisiana continuously acquiesced in the exercise of possession, jurisdiction and dominion over the area by the United States from 1812 to 1849 and by the State of Texas from 1849 until this controversy arose in recent years. Because the relevant treaties and laws so definitely establish the boundary between the two States, it should not be necessary to reach the issue of prescription. However, if for no other reason than to show the actions of the two States to be in full accord with the mid-stream boundary fixed as a matter of law, Texas lists a long number of continuous acts of possession, jurisdiction and dominion over the area in controversy since 1849. Likewise, continuous acquiescence by Louisiana for more than 100 years is shown in the Argument under points C. 3. (a) through (j).

The actions on the part of Texas include extension of the boundaries of its adjacent counties and cities to include the western half of the Sabine; enforcement by Texas' State, county and city law enforcement agencies

of their laws and ordinances over the western half of the Sabine; payment for construction of bridges across the western half of the Sabine under cooperative agreements with Louisiana and its Parishes; expenditure of large sums by the City of Port Arthur and Jefferson County, Texas, on roads, golf courses, bridges and other improvements on land reclaimed from the bed of the west half of Sabine Lake, without any protest from Louisiana; payment of half of navigation improvement costs on the Sabine in cooperation with Louisiana; sales of sand, shell, and marl and execution of 78 mineral leases on the western half of Sabine Lake without protest from Louisiana; and collection of taxes on private leases and improvements in the area.

In addition to its inaction and acquiescence, Louisiana has given affirmative recognition through a decision of its Supreme Court in 1901 that the boundary between the two States is in the middle of the Sabine. *State v. Burton,* 29 So. 970 (1901). Also, the Louisiana Attorney General and other attorneys for the State have recognized the mid-stream boundary in the Sabine in briefs before the Supreme Courts of the United States and Louisiana and before the U. S. General Land Office.

By reason of Louisiana's long acquiescence, the Act of its Legislature and the decision of the Supreme Court of Louisiana in *State v. Burton, supra,* recognizing and holding that the western boundary is in the middle of the Sabine, the State of Louisiana is estopped from denying such boundary.

II

The Answer of the State of Louisiana to the Complaint raises no genuine issue as to any material fact, and is insufficient in law.

A. Louisiana's first defense, that the Complaint "fails to state a claim upon which relief can be granted," has been decided by the Court in granting leave to file the Complaint. A real controversy is obvious from the pleadings.

B. Louisiana's second defense is that the United States is a necessary party on account of the provision in the Texas Annexation Agreement (5 Stat. 797) that it was "subject to the adjustment by the United States of all questions of boundary that might arise with other governments." This was applicable only to disputes with foreign nations, particularly Mexico, and it does not require that the United States be a party to or appear on behalf of Texas in this dispute with another State of the Union. Further, the provision applied only to that territory which was in 1845 "properly included within and rightfully belonging to the Republic of Texas." The western half of the Sabine River was never within the boundaries of the Republic of Texas. It became a part of the State of Texas only by Act of Congress on July 5, 1848 (9 Stat. 245), authorizing the State to "extend her eastern boundary" to include the western half of the Sabine River and by Act of the Texas Legislature so extending the boundary on November 24, 1849.

C., D. Louisiana's third and fourth defenses assert that despite its 1812 boundary fixed by Congress and the Louisiana Constitution in the middle of the Sabine, the boundary automatically moved to the west bank when the title of the United States was confirmed to the west bank by the Treaty with Spain in 1819. This is contrary to the interpretation made by the Louisiana Legislature by Resolution of March 16, 1848,

in which it recited that "the constitution and the laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine River from the middle of said stream to the western bank thereof." It is also contrary to the holding of the Supreme Court of Louisiana in *State v. Burton, supra,* that "the middle of the Sabine River is the boundary line between Texas and Louisiana. . . ." These defenses are further answered under I. A. 2 above.

E. Louisiana's fifth defense urges that evidence be heard on the history "surrounding the Louisiana Purchase, the evolution of the two States, and of the various treaties fixing the western boundary of the State of Louisiana," and concerning the exact mid-stream boundary in case the Court holds that the west bank is not the boundary. Evidence on the latter question would be premature at this time. All of the other proposed evidence relates to treaties and laws which are subject to judicial notice, and the meaning of none is alleged to be uncertain or doubtful. Therefore, no extrinsic evidence could vary their terms, which clearly show that the boundary is in the middle of the stream and that Texas is entitled to judgment as a matter of law.

III

Because of what has been shown above as to the controlling treaties and laws, Texas is entitled to judgment on the pleadings, and it would be proper and appropriate for the Special Master so to find and report to the Supreme Court.

ARGUMENT

I.

THE COMPLAINT SHOWS TREATIES, LAWS AND FACTS SUBJECT TO JUDICIAL NOTICE WHICH ENTITLE THE STATE OF TEXAS TO JUDGMENT AS A MATTER OF LAW.

It is obvious from the Complaint filed by the State of Texas and the Answer filed by the State of Louisiana that the controlling issue in this case is governed by treaties and statutes of which the Court and the Special Master may take judicial notice.

As framed by the pleadings, the basic issue is whether the western half of the Sabine River from its mouth to the 32nd degree of north latitude was part of the territory of the United States and subject to its exclusive jurisdiction and ownership on July 5, 1848, when Congress gave consent for the State of Texas to extend its eastern boundary so as to include such area. 9 Stat. 245. Texas alleges that the United States possessed such exclusive territorial jurisdiction and ownership on July 5, 1848, by reason of the Louisiana Purchase of 1803 (8 Stat. 200), which was confirmed by the 1819 Treaty with Spain. 8 Stat. 252.

Louisiana alleges that in some manner its boundary fixed by Congress (2 Stat. 641 and 701) and by the Louisiana Constitution of 1812 in the middle of the Sabine River was automatically moved to the west bank of the River as a result of the aforesaid Treaty between the United States and Spain, and that the United States therefore did not possess exclusive territorial ownership and jurisdiction over the area in 1849.

The two States have one thing in common in this

controversy. Both claim title and jurisdiction from the United States. Neither was an original proprietor. The area was not a part of the Republic of Texas and was not within the boundaries of the State of Texas until the State extended its eastern boundary in 1849 pursuant to the Act of Congress mentioned above. Likewise, the area was not within the boundary of the State of Louisiana when it was created in 1812. Louisiana relies solely on its claim that the State acquired the area by operation of the Treaty of 1819. This poses the question of which sovereignty acquired title and dominion over the area under the Treaty of 1819, the United States or the State of Louisiana?

The answer is to be found only in the proper legal interpretation of the aforesaid treaties and statutes, which are cited by the parties in support of their opposing contentions. All are subject to judicial notice, and all are inserted in the Appendix to this brief for the convenience of the Court and the Special Master. There is no uncertainty or dispute about the wording or meaning of their terms, none of which is subject to being varied by extrinsic evidence. The only dispute arises from the opposing interpretations of their legal effect. Interpretation by the Special Master and the Court involves only questions of law.

For these reasons, Texas submits that the case should be decided on the pleadings, briefs and arguments, and based thereon, that the State of Texas is entitled to judgment as a matter of law.

A. THE UNITED STATES HAD EXCLUSIVE TERRITORIAL JURISDICTION AND OWNERSHIP OVER THE WESTERN HALF OF THE SABINE RIVER FROM ITS MOUTH TO THE 32ND DEGREE OF

NORTH LATITUDE ON JULY 5, 1848, WHEN CONGRESS GAVE CONSENT FOR TEXAS TO EXTEND ITS EASTERN BOUNDARY SO AS TO INCLUDE SUCH AREA.

1. THE AREA IN CONTROVERSY WAS PART OF THE TERRITORY ACQUIRED BY THE UNITED STATES FROM FRANCE UNDER THE LOUISIANA PURCHASE TREATY IN 1803.

It is undisputed in this case that the area in controversy was acquired by the United States from France as part of the Louisiana Purchase in 1803. 8 Stat., 200. See Louisiana Purchase Treaty, App., *infra,* p. 1.

By this Purchase, the United States obtained from France a vast area of land between the Mississippi River and the Rocky Mountains, from which all or part of fifteen States have been carved.[2] The United States claimed that the western boundary of the Purchase was the Rio Grande and that it thus included the area which comprises the present State of Texas.[3] This is significant in the present controversy only to the extent that it explains why the United States limited the State of Louisiana to a western boundary in the middle of the Sabine River in 1812.

---

[2]James K. Hosmer, *History of the Louisiana Purchase* (1902) 202.

[3]Thomas Jefferson, *The Limits and Bounds of Louisiana* (1804) 27-28, 31-32, published in *Documents Relating to the Purchase and Exploration of Louisiana* (Houghton Mifflin Co., 1904); Adams, *History of the United States,* II, 5-7, 298; Channing, *History of the United States,* IV, 331-333; Thomas M. Marshall, *A History of the Western Boundary of the Louisiana Purchase,* 1819-1841 (1914) 1-46.

The Nation was then and for seven years thereafter claiming the Province of Texas, and as shown under 2(d) *infra,* it was the policy of the United States to fix mid-stream boundaries between States and territories. It was not until 1819 that the United States ceded to Spain the area west of the west bank of the Sabine, retaining as part of its territory the western half of the stream.[4]

2. THE AREA IN CONTROVERSY WAS NEVER INCLUDED WITHIN THE BOUNDARIES OF THE STATE OF LOUISIANA.

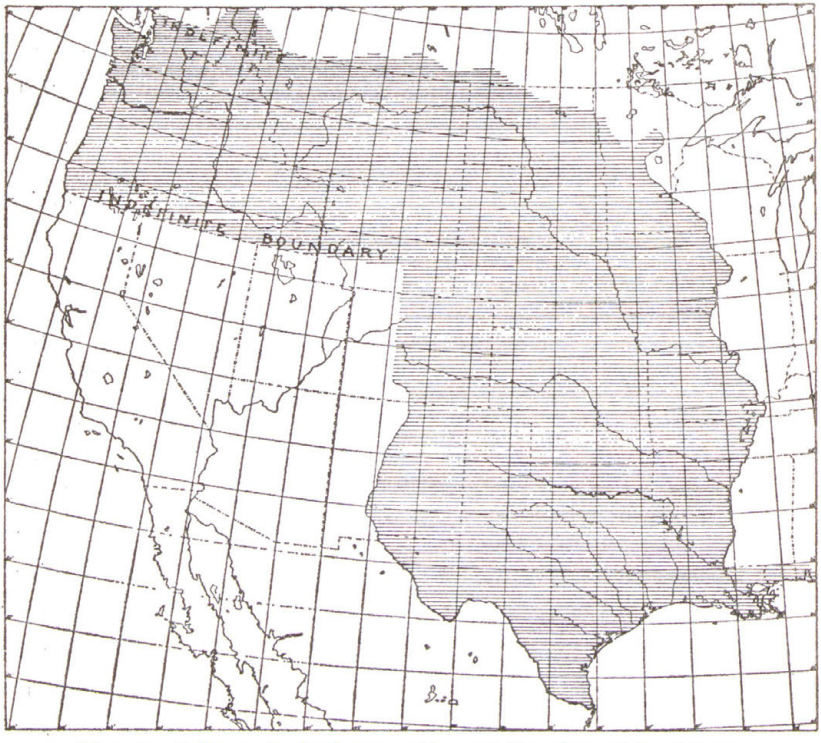
The area in controversy was included within the Territory of Orleans by Act of Congress in 1804 (2 Stat. 283) but was not included by Congress and the people of Louisiana within the boundaries of the State of Louisiana. The Territory of Orleans was created by Congress from that portion of the Louisiana Purchase lying west of the Mississippi River and south of the 33rd degree of north latitude. In this case, Louisiana admits that the west boundary of this Territory, from which the State of Louisiana was formed, "had not been established."[5] From 1804 until 1819, the United States claimed that the Territory of Orleans embraced all of the lands between the Mississippi River and the Rio Grande, including all of the Province of Texas.[6] Map 4 from Thomas M. Marshall's exhaustive work on the Louisiana Purchase is reproduced on the next page of this brief. It shows Jefferson's final

[4]3 Miller, *Treaties and other International Acts of the United States of America* (1934) 3.

[5]Defendant's Answer, p. 5.

[6]See footnote 3, *supra;* Marshall, *A History of the Western Boundary of the Louisiana Purchase, 1819-1841,* 13-16, 21-22, 55-60.

conception of the size of the purchase. All lands depicted south of the 33rd degree of north latitude were included in the Territory of Orleans.



Map 4. Jefferson's final conception of the size of Louisiana.

From Thomas M. Marshall, *A History of the Western Boundary of the Louisiana Purchase, 1819-1841.*

(a) The Enabling Act of Congress, February 20, 1811, specifically limited the proposed State of Louisiana to a western boundary "along the middle of said (Sabine) river, including all islands to the thirty-second degree of latitude." (2 Stat. 641)

Congress authorized the inhabitants of a certain portion of the Louisiana Purchase to form a government and seek admission as the State of Louisiana.

The relevant portion of the Enabling Act specifically defined the area over which such authority was granted, with the west boundary being fixed in the middle of the Sabine River, as follows:

> "That the inhabitants of all *that part* of the territory or country ceded under the name of Louisiana . . . *contained within the following limits,* that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn *along the middle of the said river, including all islands to the thirty-second degree of latitude;* thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi . . . be, and they are hereby authorized to form for themselves a constitution and state government . . ."[7]

Louisiana does not deny the passage or the terms of this Enabling Act.

(b) The Constitution of the State of Louisiana adopted on January 22, 1812, fixed its western boundary in the middle of the Sabine River, using the same language as the Enabling Act.

Pursuant to the authority granted by Congress, the inhabitants of this specifically defined area (which was carved out of the Territory) formed their government and adopted the State Constitution of Louisiana.[8] The Preamble of this Constitution fixed the western boundary of the State in the middle of the Sabine River, using the same language as in the Enabling Act, as follows:

---

[7]Emphasis supplied unless otherwise noted. The Act is printed in full in the Appendix, *infra,* p. 3.

[8]West, *Louisiana Statutes Annot., Const.* Vol. 3, 511; App., *infra,* p. 4.

"We, the Representatives of the People of all *that part* of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April 1803, between the United States and France, *contained in the following limits,* to wit: *beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty second degree of latitude—thence due north to the Northernmost part of the thirty third degree of north latitude*—thence along the said parallel of latitude to the river Mississippi—thence down the said river to the river Iberville, and from thence along the middle of the said river and lakes Maurepas and Pontchartrain to the Gulf of Mexico—thence bounded by the said Gulf of Mexico to the place of beginning, including all Islands within three leagues of the coast—in Convention Assembled . . . do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent State, by the name of the State of Louisiana."

A controlling point in this case is that the above constitutional boundary provision has never been amended by Louisiana, except for the addition on the east of a small portion of "West Florida." *Louisiana v. Mississippi,* 202 U.S. 1 (1906). As far as its western boundary in the middle of Sabine River is concerned, this constitutional provision is the existing law of the State of Louisiana. In its Answer, Defendant makes a general denial of the Complaint's specific allegations concerning this constitutional provision and otherwise completely ignores the boundary stated in the Louisiana Constitution of 1812. (Defendant's Answer, pp. 4-6, paragraphs 6 and 7). However, Louisiana does not specifically deny its existence.

In the recent "tidelands" boundary cases, No. 12 Original, October Term, 1949, No. 11 Original, October Term, 1956, and No. 10 Original, 1959, all of which are styled United States of America v. State of Louisiana, briefs were filed by former Louisiana Attorney General Bolivar E. Kemp, Jr., and the present Attorney General, Jack P. F. Gremillion, in which they cited and relied on the boundary provision in the Louisiana Constitution of 1812, as the State's basis for claiming ownership of all submerged lands within three leagues of the coast.

As hereinafter shown, *infra,* p. 31, Attorney General Gremillion, in his Supplemental Brief in Opposition to Motion for Judgment in No. 10 Original, October Term, 1959, pages 22-24, cited the boundary contained in the 1812 Constitution, compared inclusion of islands in the Gulf with those included "in the east half of the River Sabine," and insisted that the Gulfward portion of this boundary entitled Louisiana to judgment.

In *Louisiana v. Mississippi, supra,* Louisiana cited the Constitution of 1812 boundary provision as the existing boundary of the State, together with the addition of the small area on the east consented to by Act of Congress on April 14, 1812, 2 Stat. 702. The Court quoted the 1812 constitutional boundary provision and based its decision, in part, on that provision as containing the existing boundary limits of the State of Louisiana.

(c) The Act of Congress, April 8, 1812, admitting Louisiana as a State, repeats the same Sabine boundary (middle of the River) as in the Enabling Act of 1811 and in the Louisiana Constitution of 1812.

The relevant portions of the Act of Admission (2 Stat. 701) are printed in the Appendix, *infra,* p. 5. The Act repeats the same middle of the Sabine River boundary as contained in the Enabling Act and in the Louisiana Constitution of 1812. Louisiana does not deny the terms of the Act but alleges that it and the Enabling Act did not establish the western boundary of the State. (Defendant's Answer, page 4-6, paragraph 6.)

This Act not only reiterates that only *"that part of the territory . . .* contained *within the following limits"* was admitted, but adds a section which further confirms that a portion of the Territory of Orleans was omitted from the new State. Section 3 states "that the new State, *together with the residue of that portion of the country which was comprehended within the territory of Orleans . . .* shall be one district . . ." for the jurisdiction of a federal court created by the Act.

(d) The mid-stream boundary of the State of Louisiana as fixed by Congress and the Constitution of Louisiana in 1812 was in accordance with the policy and law of the United States relating to river boundaries between states and territories.

Louisiana's Answer indicates that the State might question the reasonableness or intent of Congress in fixing its western boundary in the middle of the Sabine. While reasonableness and intent have little or no bearing in determining what Congress actually did in definite and unambiguous terms, it should be pointed out that the Congress was simply following established policy and law with reference to river boundaries between states and territories. The middle of the stream

is always followed, either by statute or by operation of law, except where prior treaties or agreements have fixed a different line.

The rule was stated by the Supreme Court in *Louisiana v. Mississippi, supra,* p. 48, when speaking of the Mississippi River boundary established by Congress and the Louisiana Constitution of 1812. Although the Louisiana boundary limits on the east call only for the Mississippi River, and except for the midstream policy and law could have been interpreted to stop at the west bank of the River, the Court said, "Now to repeat, the boundary of Louisiana separating her from the State of Mississippi to the east is the thread of the channel of the Mississippi River . . ." The Court quoted from Mr. Justice Field's opinion in *Iowa v. Illinois,* 147 U.S. 1, as follows:

> "When a navigable river constitutes the boundary between two independent States, the line defining the point at which the jurisdiction of the two separates is well established to the middle of the main channel of the stream."

One of the leading works on water boundaries is Shalowitz, *Shore and Sea Boundaries,* published in two volumes by the U. S. Department of Commerce, Coast and Geodetic Survey, in 1962. The author says in Volume Two, 374:

> "The use of the geographic middle of the river, or the *Medium filum acquae or filum acquae,* as it is sometimes called, is a rule laid down by Grotius, the Dutch jurist who lived during the late 16th and early 17th centuries. . . . In construing a boundary convention between Georgia and South Carolina, the Supreme Court held the boundary line to be the thread of the Savannah and other rivers—the middle of the stream—when the water

is at ordinary stage regardless of the channel of navigation."

In *Georgia v. South Carolina,* 257 U.S. 516 (1922), referred to by Shalowitz, the Court said "Where a river, navigable or non-navigable, is the boundary between two States, and the navigable channel is not involved, in the absence of convention or controlling circumstances to the contrary, each takes to the middle of the stream. . . ." See also *Handly's Lessee v. Anthony,* 5 Wheat. 374, 379 (1820), in which Chief Justice Marshal wrote, "when a great river is the boundary between two nations or States, if the original property is in neither, and there be no convention about it, each holds to the middle of the stream."

There is no reason why the rule or the Act of Congress fixing Louisiana's western boundary in the middle of the Sabine should appear unusual to Louisiana, since all of its other water boundaries (Mississippi, Iberville, Amite, and Pearl Rivers, and Lakes Maurepas and Pontchartrain) go to the middle of the streams either by specific calls or by operation of the above stated rule of law. *Louisiana v. Mississippi, supra;* Douglas, *Boundaries, Areas, etc. of the United States and the Several States,* Geological Survey Bulletin 817, 1930, 166-169.

When Louisiana was admitted as a State in 1812, the United States was claiming a vast area to the west, including all of Texas (Point I, A, 1 *supra*), and under the river boundary policy and law then in effect it would have been more unusual if Congress had not limited Louisiana's western boundary to the middle of the Sabine. In any event, the geographical mid-stream boundary was what Congress specified, and it remains until this day the boundary as agreed to by the people of Louisiana in their Constitution of 1812.

(e) Relinquishment by the United States of that portion of Texas lying west of the Sabine and retention of its title and jurisdiction over the western half of the Sabine River in the Treaty with Spain in 1819, did not result in an extension of the western boundary of Louisiana.

(1) IN ITS NEGOTIATIONS WITH SPAIN IN 1819, WITH MEXICO IN 1828, AND WITH THE REPUBLIC OF TEXAS IN 1838, WITH RESPECT TO THAT PART OF ITS TERRITORY LYING OUTSIDE OF THE BOUNDARIES OF THE STATE OF LOUISIANA, THE UNITED STATES WAS ACTING FOR ITSELF AND NOT FOR THE STATE OF LOUISIANA.

Louisiana's allegation that the United States was "appearing on the part of the State of Louisiana," in negotiating the Treaty with Spain in 1819 (Answer, 9) is difficult to follow. The same may be said of its osmotic theory that by reason of such Treaty, the western boundary of Louisiana was automatically eased over from the middle of the Sabine to the western bank of the stream.

Ignoring for the moment the constitutional requirement of specific Congressional approval before a state boundary can be changed, it should be pointed out that the territorial boundaries agreed to in the Treaty of 1819 do not touch a single boundary of the State of Louisiana as established by Congress and the Constitution of Louisiana. The Treaty does not mention the State of Louisiana and neither do the extensive negotiations and subsequent commentaries which have been examined by Plaintiff.[9] The same is true of the

---

[9] 3 Miller, *Treaties and Other International Acts of the United States*, 3-64; Marshall, *A History of the Western Boundary of the Louisiana Purchase, 1818-1841* (1914), 17-

Treaty of 1828 with Mexico[10] and the Treaty of 1838 with the Republic of Texas[11] adhering to the same boundary as in the Treaty of 1819. The relevant portions of all these treaties are printed in the Appendix.

As stated in the opening sentence of the Treaty of 1819, it was concerned with defining as between the United States and Spain "the limits of their respective bordering *territories* in North America." For the United States, this meant the boundaries of the residue of the territory purchased from France, which the United States claimed to include all of Texas, all or portions of what later became the States of Arkansas, Missouri, Iowa, Minnesota, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Montana, Wyoming, Colorado, New Mexico, Idaho, Oregon, and Washington, and part of West Florida.

The sixteen years of negotiations with Spain on this Treaty began in 1803,[12] nine years before the State of Louisiana was created, and continued for seven years after Louisiana was admitted as a State. During all of these sixteen years the United States insisted that it was entitled to all of the Province of Texas, receding at times during the latter years from the Rio Grande to the Colorado River, the Trinity River, and finally to the west bank of the Sabine.[13] By the final terms agreed upon in 1819, the United States relinquished all of Texas west of the west bank of the Sabine in exchange for Florida and the Spanish claim to the

---

244; *State Papers, Foreign Relations IV,* 422-692; Cox, *The Louisiana-Texas Frontier,* Southwestern Historical Quarterly (1913), Vol. *XVII,* 1-42, 140-187.

[10]3 Miller, *supra,* 405-420; Marshall, *supra,* 71-123.

[11]3 Miller, *supra,* 133-143; Marshall, *supra,* 206-241.

[12]Marshall, *supra,* 70.

[13]Id., 17-70.

Oregon Territory.[14] There was strong public and official reaction, led by Henry Clay, against the relinquishment of Texas, and final ratifications were not exchanged until February 19, 1821.[15]

If this Treaty had put an end to the plans of national leaders who wanted Texas as a territory and possibly as a future State, there might have been some reason for Congress to have permitted Louisiana to extend its boundary so as to include the western half of the Sabine. However, this was not the case. Henry Clay and John Quincy Adams immediately renewed efforts to regain Texas by diplomacy or purchase.[16]

In 1821, Mexico declared its independence from Spain, and during the next fourteen years of negotiations with the new Mexican Republic as to the same boundary, the main thrust of the negotiators appointed by both President Adams and President Jackson was to effect a purchase of Texas from Mexico and fix the western boundary at the Rio Grande or as far west as possible. Mexico declined in 1828 and, as the price for a Treaty of Commerce, forced the signing of the Treaty of 1828. In it the United States agreed to the boundaries contained in the Treaty with Spain in 1819, but ratifications were delayed until April 5, 1832.[17]

Appointment of commissioners to run the boundary

---

[14]Id., 46-70.

[15]Id., 66-74. Thomas Jefferson wrote to Henry Dearborn on July 5, 1819: "I cannot say I am anxious about the Spanish treaty; in giving up the province of Texas, we gave up a sugar country sufficient for the supply of the United States. I would rather keep that and trust to the inevitable falling of Florida into our mouths." *The Writings of Thomas Jefferson,* Monticello Edition (1904), Vol. XIX, 270, 271.

[16]Marshall, *supra,* 86-123; Manning, *Texas and the Boundary Issue, 1822-1829* (1913), Southwestern Historical Quarterly, XVII, 217, 240-260.

was delayed, and it was never surveyed as agreed to in the Treaty. During this delay, President Jackson kept Anthony Butler in Mexico for six years still attempting to negotiate a purchase of Texas, with the offer finally reaching $5 million.[17] Also, Jackson interposed a claim that the Neches River (which lies west of the Sabine but also runs into Sabine Lake) was the stream called the "Sabine" in the Treaty of 1819 and vowed that in any survey he would contend for that river as the boundary and would defend it by force if necessary.[18]

Although not conclusive, there is evidence that Jackson and his friend, General Sam Houston, who came to Texas in 1832, had agreed upon a plan to wrest Texas from Mexico by revolution.[19] In any event, that is what occurred in 1836. At the first election in the new Republic, Sam Houston was named President and the people voted overwhelmingly to seek annexation to the United States.[20] The Republic was recognized as an independent nation on March 1, 1837,[21] and the Sabine portion of the boundary agreed upon with Spain in 1819 and with Mexico in 1828 was first run

---

[17]Marshall, *supra,* 86-99.

[18]*Stenberg, Jackson's Neches Claim, 1829-1836, Vol. XXXIX,* Southwestern Historical Quarterly, 255.

[19]Id., also Stenberg, *The Texas Schemes of Jackson and Houston, 1829-1836,* Southwestern Social Science Quarterly, XIII, 264-286; XV, 299-350. As early as 1833, Jackson endorsed a letter from Anthony Butler with these words: "The Convention in Texas meets the 1st of next April to form a constitution for themselves. When this is done, Mexico can never annex her jurisdiction again, or control its legislature. It will be useless after this act to enter into a treaty of boundary with Mexico." Marshall, *supra,* 102.

[20]John Henry Brown, *History of Texas, 1689-1892,* Vol. II, 99.

[21] Cong. Globe, 24th Cong., 2d Sess., 270.

on ground in accordance with the Treaty of 1838 between the United States and the Republic of Texas. 8 Stat. 511 Appendix, p. 18. Annexation followed in 1845, or reannexation as many members of Congress called it.[21a] Texas was admitted as a State on December 29, 1845. 9 Stat. 108. Within less than three years thereafter, Congress consented to the new State extending its eastern boundary from the west bank of the Sabine to the Louisiana line in the middle of the stream. 9 Stat. 245; Appendix, p. 23.

The foregoing summary of historical facts, which are subject to judicial notice, shows that in the Treaties of 1819, 1828, and 1838, the United States was acting for itself and not for the State of Louisiana, or any other single state, in delimiting the boundaries of the Nation's *"territories"* which bordered the original Province of Texas. They also show that the negotiations and treaties relating to the area west of the middle of the Sabine were chiefly concerned with keeping Texas as a territory or paving the way for it to become a State.

Until 1845, the western half of Sabine Pass, Sabine Lake and Sabine River was all that the Nation salvaged from that part of the territory ceded by France south of the 33rd degree of north latitude and west of the middle of the Sabine. However, the narrow width of this area did not make it any less a territorial possession subject to the Constitution and laws relating to territories of the United States.[22] This was so held in a decision of the General Land Office, opinion by

---

[21a]President Polk also used the term "reannexation," and called the action by the United States "the peaceful acquisition of a territory once her own." Polk, Inaugural Address, 1845, *Messages and Papers of the Presidents,* V, 2223, 2230-31.

[22]*Oklahoma v. Texas,* 258 U.S. 574.

the First Assistant Secretary of the Interior, June 27, 1910, in a hearing involving title to certain islands in the Sabine in which both Louisiana and Texas were parties. The opinion said:

> "The boundaries thus defined necessarily left the western portion of the westernmost channel (of the Sabine) exclusively in Federal jurisdiction and dominion."[23]

The brief filed by Louisiana in that hearing on September 16, 1909, pages 9-10, conceded this point in the following language:

> "The United States enjoyed undisputed and general jurisdiction over the remaining western half, from the middle of the main or sailing channel, of said Sabine Pass, Sabine Lake and Sabine River, to the western shore from the date of the treaty with Spain, February 22, 1819, to July 5, 1848, at which latter date the following Act to extend the Texas boundary (U.S. Stat. Vol. 9, 245) was passed:" (The brief then cites the Act consenting to Texas extending its eastern boundary so as to include the western half of the Sabine Pass, Lake and River.) National Archives, Record Group 49.

This was not the only instance in which the United States has held under Federal jurisdiction and ownership one-half of a river acquired in the Louisiana Purchase. By interpretation of the same Treaty of 1819 with respect to the Red River, on which Congress did not consent for Texas to move its boundary from the south bank to mid-stream, the Supreme Court of the United States held in *Oklahoma v. Texas,* 258 U.S. 574 (1922), that the United States acquired the entire

[23]39 Decisions Relating to Public Lands 53, 57 (1910), General Land Office, Department of Interior. Opinion and Louisiana Brief copied in full as Items 1 and 2 of Exhibit B filed in support of Motion for Judgment.

river under the Louisiana Purchase of 1803 and the Treaty with Spain in 1819; that it had conveyed to Oklahoma or its Indian Reservations only the north half of the stream; and that the United States retained the south half of Red River. Under this decision, the United States still owns the south half of Red River (a non-navigable stream) even though it gave Oklahoma jurisdiction over it for State purposes. In this case, the Court said:

> "Where the United States owns the bed of a non-navigable stream and the upland on one or both sides, it of course, is free when disposing of the upland to retain all or any part of the river bed . . ." (594)

(2) AN EXTENSION OF LOUISIANA'S STATE BOUNDARY WESTWARD OF THE MIDDLE OF THE SABINE RIVER WOULD HAVE REQUIRED APPROVAL BY THE CONGRESS OF THE UNITED STATES, AND THIS WAS NOT GRANTED.

The western half of the Sabine, being a territorial possession of the United States, its disposition or incorporation within the boundaries of an existing State was governed by Article IV, Section 3 of the United States Constitution and required action by the Congress. The relevant portion of the Constitution reads:

> ". . . no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.
>
> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . ."

There are numerous Supreme Court decisions on this point. In *Van Brocklin v. Tennessee,* 117 U.S. 151, 168 (1886), the Court said:

> "But public and unoccupied lands, to which the United States have acquired title . . . by treaty with a foreign country, Congress, under the power conferred upon it by the Constitution, 'to dispose of and make all needful rules and regulations respecting the territory or other property of the United States' has the exclusive right to control and dispose of, as it has with regard to other property of the United States; and no state can interfere with this right or embarrass its exercise."

With reference to Louisiana's theory of having acquired state jurisdiction under the Treaty of 1819, the Supreme Court has held that not only is this impossible but that territory acquired by treaty does not even become a part of the United States without action by Congress. A leading case is *Downes v. Bidwell,* 182 U.S. 244 (1901), in which the status of Puerto Rico was examined. Mr. Justice White wrote:

> "When the various treaties by which foreign territory has been acquired are considered in the light of the circumstances which surround them, it becomes to my mind clearly established that the treaty making power was always deemed to be devoid of authority to incorporate territory into the United States without the assent, express or implied, of Congress, and that no question to the contrary has ever been mooted." (319)

In comparing Puerto Rico with the Louisiana Purchase and the Act of Congress enabling the President to take possession for the temporary government thereof, Mr. Justice White said:

> "The provisions of this Act were absolutely incompatible with the conception that the territory had been incorporated into the United States by

virtue of the cession. (330) . . . the government of the United States had the undoubted right to acquire, hold, and govern the territory as a possession, and that incorporation into the U.S. could under no circumstances arise solely from a treaty of cession, even though it contained provisions for the accomplishment of such result . . ." (333).

Following the *Downes* case, the Court said in *Dorr v. U.S.,* 195 U.S. 138, 143 (1904):

> "Until Congress shall see fit to incorporate territories ceded by treaty into the U.S., we regard it as settled by that decision that the territory is to be governed under the power existing in Congress to make laws for such territories and subject to such constitutional restrictions upon the powers of that body as are applicable to the situation."

See also *Alabama v. Texas,* 347 U.S. 272 (1953), and *Alcoa Steamship Co. v. Perez,* 295 Fed. Supp. 187 (1968), wherein the Court said:

> "Under the Federal Constitution, the United States can acquire territories like any other sovereign; yet its treaty-making power does not mean that by the mere cession, the new territories become a domestic part of the United States ex proprio vigore. Formal incorporation requires that Congress take specific action on the matter—."

Louisiana Attorney General Jack P. F. Gremillion took the same position in a Supplemental Brief in Opposition to Motion for Judgment filed for Louisiana in the tidelands boundary case, *U.S. v. Louisiana, et al,* No. 10, Original, October Term, 1959, as follows: (Emphasis as in the Brief)

> "The United States Constitution, Article 4, Section 3, gives to Congress alone the authority to admit new states into the Union and to fix their

boundaries. Article 6 also provides that all provisions of the Constitution and all laws enacted by Congress pursuant thereto, as well as treaties made by the United States, shall be the *supreme law of the land.*

The Acts of Congress, therefore, which admitted the five Gulf Coastal States as members of the Union and described their limits and boundaries, are *the supreme law of the land* . . .

"Louisiana was the first Gulf Coastal State admitted by Act of Congress on April 8, 1812, which described the State boundary the same as in the enabling act on February 20, 1811, which authorized the people of the territory of Orleans to adopt a constitution to establish a state government, and the same as in the State's 1812 constitution, which was approved by the Act of Congress which admitted Louisiana as a State in the Union, within certain specified limits" . . .(Here the limits were described, including the middle of the Sabine boundary)

"Those *limits* include all islands eastward of the middle of the River Sabine to the thirty-second degree latitude and also all islands within three leagues of the coast in the Gulf of Mexico." (22-23)

"However, the reference to the inclusion of islands within the limits of the state, whether in the east half of the River Sabine or within three leagues of the Gulf coast, should not confuse one's thinking with the fact that by boundary description in the Congressional Enabling Act of 1811, the 1812 Louisiana Constitution, and again in the Congressional Act of Admission of April 8, 1812, the purpose was to fix the territorial limits of the State of Louisiana, both landward and seaward and to include all islands within said limits. Therefore, the limits described in those three instruments must be accepted as having contained all that part of the Louisiana territory ceded by

France beginning at the mouth of the River Sabine thence a line to be drawn along the middle of said river, to the thirty-second degree of latitude, etc., to the River Mississippi, thence down said river to the Gulf of Mexico; thence bounded by the said Gulf to the place of beginning within three leagues of the Coast." (24)

— — —

"Counsel for the United States must admit, as his failure to produce any evidence to the contrary attests, that no treaty has ever been entered into by the United States which, in any manner, can be construed as compromising any of these state boundaries." (31)

Plaintiff submits that in the above quotations Louisiana was correct in its statement of the law, and that indeed there has been no treaty which did or could constitutionally change those boundaries of 1812 so as to place the western half of Sabine River within the boundaries of Louisiana without the consent of Congress.

3. FROM 1819 UNTIL CONGRESS AUTHORIZED TEXAS TO EXTEND ITS EASTERN BOUNDARY TO THE MIDDLE OF THE SABINE IN 1848, THE UNITED STATES HAD AND EXERCISED EXCLUSIVE TERRITORIAL JURISDICTION AND OWNERSHIP OVER THE WESTERN HALF OF THE SABINE RIVER, AND THIS WAS SO RECOGNIZED BY A RESOLUTION ADOPTED BY THE LOUISIANA LEGISLATURE ON MARCH 16, 1848.

This point has been covered fully in the argument under I.A.2.(e) above, except for the Resolution by the Louisiana Legislature on March 16, 1848, which is copied in full in the Appendix, *infra,* p. 20. The portion which clearly recognizes that the United States had been exercising exclusive territorial jurisdiction

and that the western half of the Sabine was not within the boundary of Louisiana reads:

> "Whereas the constitution and the laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to the western bank thereof; and that it is of importance . . . that the jurisdiction of some State should be extended over said territory, in order that crimes and offences committed thereupon should be redressed in a speedy and convenient manner:
>
> *Therefore be it resolved by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* 1st. That the constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United States, embraced in the following limits (whenever the consent of the Congress of the United States can be procured thereto,) viz:
>
> — — —
>
> "2d. *Be it further resolved, etc.,* That our Senators be instructed, and our Representatives in Congress requested, to procure the passage of a law on the part of the United States, consenting to the extension of the constitution, and the jurisdiction of the laws of the State of Louisiana, over the territory in said river . . ."

B. THE EASTERN BOUNDARY OF THE STATE OF TEXAS WAS PROPERLY AND LEGALLY EXTENDED TO INCLUDE THE WESTERN HALF OF THE SABINE RIVER BY THE ACT OF CONGRESS OF JULY 5, 1848, AND THE ACT OF THE TEXAS LEGISLATURE ON NOVEMBER 24, 1849, AND BY REASON THEREOF TEXAS IS ENTITLED TO JURISDICTION OVER AND OWNERSHIP OF THE AREA, SUBJECT ONLY TO THE CONSTITUTIONAL RIGHTS AND FUNCTIONS OF THE UNITED STATES.

1. THE CONSENT OF CONGRESS.

The consent of Congress in the Act of July 5, 1848 (9 Stat. 245) reads as follows:

> *"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude."

This action had been requested by Resolution of the Texas Legislature approved March 18, 1848. See Appendix, p. 22.

2. THE ACT OF THE TEXAS LEGISLATURE.

The Act of the Texas Legislature extending its eastern boundary to the middle of the Sabine reads in part as follows:

> "Sec. 1. *Be it enacted by the Legislature of the State of Texas,* That in accordance with the consent of the Congress of the United States, given by an act of said Congress, approved July 5th, 1848, the Eastern Boundary of the State of Texas be, and the same is hereby extended so as to include within the limits of the State of Texas, the western half of Sabine Pass, Sabine Lake and Sabine River from its mouth as far north as the thirty-second degree of north latitude . . ."

3. STATE OWNERSHIP AND JURISDICTION EXTEND TO THE WATERS OF AND LANDS BENEATH NAVIGABLE STREAMS WITHIN STATE BOUNDARIES.

It is conceded by Louisiana that the Sabine River is navigable in fact throughout the length involved

in this controversy and that it has been navigable in fact since 1812. (See Answer, p. 4 and Stipulation). Therefore, under a long-established rule of law, Texas has had State jurisdiction over and ownership of the lands beneath the waters of the western half of the Sabine ever since the area was legally embraced within its boundaries. Navigability and location within State boundaries are the two basic requirements of the rule. It was stated as follows in *Martin v. Waddell,* 16 Pet. 367, 410 (1842):

> "For when the Revolution took place, the people of each state became themselves sovereign; and in that character hold the absolute right to *all their navigable waters and the soils under them,* for their own common use, subject only to the rights since surrendered by the Constitution to the general government."

The most often cited case is *Pollard's Lessee v. Hagan,* 3 How. 212, 229 (1845), which said:

> "First. The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. Second. The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.'"[*]

In any event, the rule has been confirmed and reinforced by the Submerged Lands Act of 1953, which quitclaimed to the states "title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters." 67 Stat. 29.

---

[*]By 1950, Sheppard's Citations show that this case had been cited with approval in 52 decisions of the U.S. Supreme Court and 244 Federal Court decisions. As to navigable inland waters within a state's "territorial jurisdiction," it was cited with approval by Mr. Justice Black in *United States v. California,* 332 U.S. 19 (1947).

4. SINCE NOVEMBER 24, 1849, THE CONGRESS AND VARIOUS FEDERAL AGENCIES HAVE CONTINUOUSLY RECOGNIZED THAT THE BOUNDARY BETWEEN TEXAS AND LOUISIANA IS IN THE MIDDLE OF THE SABINE.

In *Louisiana v. Mississippi,* 202 U.S. 1, 53-57 (1906), the Supreme Court held that in a water boundary suit of this nature long recognition of a certain location by Federal agencies was highly persuasive, especially on "general understanding and acquiescence." The Court cited various surveys and maps of Federal agencies which clearly recognized the locations contended for by Louisiana as against Mississippi and decided the case in favor of Louisiana.

In this case we have a greater abundance of Federal surveys and maps, decisions by Federal agencies, and Acts of Congress recognizing the Texas-Louisiana boundary to be in the middle of the Sabine. For instance, during the period of 61 years between 1852 and 1913, Congress made appropriations or directions to the Secretary of War for navigation surveys and improvements on Sabine Pass, Sabine Lake, and Sabine River, in which Texas or Texas and Louisiana are specified as the States within which such projects are located. A list of these is included in Exhibit B in support of Plaintiff's motion for judgment, Item 3. This list is taken from a three volume compilation of River and Harbor Acts compiled and published by the U. S. Army Corps of Engineers in 1913. Appropriations have continued in such manner almost annually on one or more of these projects within the waters of the Sabine, with Congress designating Texas or Texas and Louisiana as the State of location. The waterway serves three of the major ports of the Nation, Port Arthur, Beaumont and Orange.

The General Land Office and Geological Survey of the Department of Interior, and the Army Map Service, U. S. Corps of Engineers, have made surveys and maps from at least as early as 1916 showing the boundary between Texas and Louisiana to be in the middle of the Sabine. A folio of examples has been assembled and will be filed with the Special Master as Exhibit A in support of Plaintiff's Motion for Judgment, and because of the bulk and weight of these maps, Plaintiff will ask permission to file only one copy of Exhibit A with the Master and deliver only one copy to Defendant. This Exhibit A folio includes:

1. 1916 and 1922 maps entitled "The State of Louisiana" published by the U.S. General Land Office, with the latter having been made by the Geological Survey.

2. A 1932-1935 series of 13 maps prepared from surveys made by the U.S. Geological Survey in cooperation with the State of Louisiana with the heading, "STATE OF LOUISIANA, BOARD OF STATE ENGINEERS," along with the "GEOLOGICAL SURVEY" heading.

3. A 1948-49 series of maps prepared under the direction of the U.S. Corps of Engineers by the Army Map Service. These maps have the following notation: "Users noting any errors or omissions on this map are urged to mark hereon and forward directly to Commanding Officer, Army Map Service, Washington, D. C." Also, there is included a 1953 to 1956 series prepared by the Army Map Service.

4. A 1954 to 1960 series of maps prepared from surveys by the U.S. Geological Survey in cooperation with the State of Louisiana, covering all of the Sabine, showing the boundary in mid-stream, and with the printed notation: "For Sale by the U.S. Geological Survey . . . and by the State of Louisiana, Department of Public Works, Baton

Rouge 4, Louisiana." Under the cooperative cost sharing program on surveys of this nature, the State Department of Public Works was mailed a set of "advance proofs" with a notation "This proof is sent to you for your review and comment. If you observe errors or have suggestions, please make notations on the face of the map and return one copy within TEN days." The Louisiana Department of Public Works accepted the prints and was still distributing them as late as May 20, 1970. See affidavit of James H. Quick and attached map, Exhibit B in support of Motion for Judgment, Item 4.

GENERAL LAND OFFICE INTERPRETATIONS AND DECISION

By letter of June 25, 1903, the Acting Commissioner of the General Land Office, U.S. Department of Interior, wrote Dr. N. O. Brenizer at Austin, Texas, that the eastern boundary of Texas included the western half of Sabine Pass, Sabine Lake and Sabine River. (National Archives, Records Group 49). On March 1, 1932, the Acting Assistant Commissioner wrote S. A. Mayo, Mayo Title Company at Lake Charles, Louisiana, a review of the Texas-Louisiana boundary history and advised that Congress had permitted Texas to extend to the middle of the Sabine, saying "this would appear to fix the boundary line through Sabine Lake." (File 144727 "E," Records General Land Office, Washington, D. C.) These are included as Items 5 and 6 in Exhibit B referred to above.

On June 27, 1910, in a controversy before the General Land Office between Louisiana and Texas over certain islands in the Sabine, the First Assistant Secretary of the Interior wrote an opinion reviewing the boundary history and concluded:

"The boundaries thus defined necessarily left the western portion of the westernmost channel exclusively in Federal jurisdiction and dominion.

> "It was not until the act of July 5, 1848 (9 Stat., 245), that the State of Texas acquired a right to any part of the waters of said river. By that act the United States consented that the State of Texas may 'extend her eastern boundary so as to include within her limits, one-half of Sabine Pass, one-half of Sabine Lake, also one-half of Sabine River, from the mouth as far north as the 32° of north latitude.' The eastern boundary of Texas was thus made to coincide with the western boundary of Louisiana as fixed by the act of admission, and the State of Texas for the first time acquired jurisdiction and dominion over any part of the waters of said river." 39 Land Decisions 53. (Item 1, Exhibit B in support of Motion for Judgment)

Beginning in 1885, the Geological Survey of the U.S. Department of Interior has published lengthy books on the boundaries of the United States and the several States and the history of such boundaries. Each of these official publications shows the boundary between Texas and Louisiana to be in the middle of the Sabine and traces the history of same as Plaintiff has done in this brief. See chapters on Louisiana and Texas, Geological Survey Bulletin 13 of 1885; Bulletin 171 of 1900; Bulletin 226 of 1904; Bulletin 689 of 1923; and Bulletin 817 of 1930 by Edward M. Douglas.

Thus, in keeping with the 1848 Act of Congress authorizing Texas to annex the area in controversy, Congress and Federal agencies, often with the cooperation of the State of Louisiana, have continuously recognized the middle of the Sabine as the boundary between the two States.

C. IN ADDITION TO ITS RECORD TITLE, TEXAS HAS ACQUIRED TITLE TO AND JURISDICTION OVER THE AREA BY PRESCRIPTION, BECAUSE THE STATE OF LOUISIANA CONTINUOUSLY ACQUIESCED IN THE EXERCISE OF POSSESSION, JURISDICTION AND DOMINION OVER THE AREA BY THE UNITED STATES FROM 1812 TO 1849 AND BY THE STATE OF TEXAS FROM 1849 UNTIL THIS CONTROVERSY AROSE IN RECENT YEARS.

As a matter of law, the jurisdiction and title of Texas is so clear and certain from the controlling treaties and statutes that Plaintiff does not believe there is any need to reach the issue of prescription. However, this point will be developed if for no other reason than to show that possession and the exercise of jurisdiction and dominion by Texas and acquiescence by Louisiana have conformed exactly with the boundary fixed as a matter of law.

1. EXERCISE OF POSSESSION, JURISDICTION AND DOMINION BY THE UNITED STATES FROM 1812 TO 1849, AND ACQUIESCENCE BY LOUISIANA.

The exclusive possession and general jurisdiction exercised by the United States over the western half of the Sabine from 1803 to 1849 is fully discussed under the foregoing point I.A. 3 and need not be repeated here. The point was conceded by Louisiana in its brief filed before the General Land Office on September 16, 1909, in the above mentioned hearing involving two islands in the Sabine River.[35] At page 9 of this brief it was said:

[35]Brief in Behalf of the State of Louisiana, September 16, 1909, in case between Louisiana and Texas reported in 39 Land Decisions 53; National Archives, Record Group 49; copied in full as Item 2, Exhibit B.

"The State of Louisiana had enjoyed undisputed and complete jurisdiction over the eastern half, to the middle of the main or sailing channel, of Sabine Pass, Sabine Lake and Sabine river, 'including all islands'. The United States enjoyed sovereignty and general jurisdiction over the remaining western half, from the middle of the main or sailing channel, of the said Sabine Pass, Sabine Lake and Sabine River, to the Western shore, from the date of the treaty with Spain, February 22, 1819, to July 5, 1848, at which latter date the . . . Act to extend the Texas boundary (U.S. Stat. Vol. 9, 245) was passed . . ."

No stronger evidence of recognition and acquiescence by the State of Louisiana could be found than the Resolution of its Legislature on March 16, 1848, which recited that "the constitution and the laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to the western bank thereof . . ."[26]

2. ACQUIESCENCE OF LOUISIANA IN BOUNDARY ACTS OF CONGRESS IN 1848 AND THE TEXAS LEGISLATURE IN 1849.

If the State of Louisiana desired to complain or protest Texas' possession and jurisdiction on the western half of the Sabine, it should have done so when Congress was considering Resolutions of both States seeking consent to annex the area,[27] or at least immediately after Congress acted in favor of Texas on July 5, 1848. 9 Stat. 245. It did not complain, but acquiesced in the action by Congress and the Texas Act of November 24, 1849, holding its protest until

[26]Senate Documents, 30th Cong., 1st Sess., 1848, Misc. No. 135; Appendix, p. 20.

[27]See the Texas Resolution, id., Document 123; Appendix, p. 22.

oil was discovered beneath the waters more than a century later. It is interesting to note that the two United States Senators from Louisiana agreed to the Act of 1848. See report in Appendix, pp. 23 and 24.

3. EXERCISE OF POSSESSION, JURISDICTION AND DOMINION BY TEXAS FROM 1849 TO DATE, AND ACQUIESCENCE BY LOUISIANA.

(a) Texas' State, County and City law enforcement agencies have continuously enforced laws and ordinances over the western half of the Sabine, and Louisiana State, Parish and City officials have acquiesced therein.

In addition to extending its general laws over the area in 1849, the Texas Legislature, in the same Act, extended the boundaries of its counties to the middle of the Sabine, using the following language:

> ". . . and that the several counties of this State, bounded by said Sabine Pass, Sabine Lake and Sabine River from its mouth as far north as the thirty-second degree of north latitude, shall have and exercise jurisdiction over such portions of the western half of said Pass, Lake and River as are opposite to said counties respectively . . ."

Also the Cities of Port Arthur and Orange, Texas, have extended their city limits to the middle of Sabine Lake and Sabine River, respectively. Maps showing these extensions are included in the Exhibit A filed in support of Motion for Judgment, along with affidavits showing exercise of city jurisdiction thereover without any protests from Louisiana.

See the affidavits of Texas State Land Commissioner, Jerry Sadler, and Texas Parks and Wildlife Law Enforcement Coordinator, Robert L. Cross, in the

Appendix, pages 34 and 25, for details known to them and reflected by the records of their offices concerning exercise of State jurisdiction to the middle of the Sabine, without protest from Louisiana until 1964. This protest applied only to mineral leasing. The originals of these affidavits are included in Exhibit B as Items 8 and 9. The Cross affidavit shows not only acquiescence of Louisiana to our continued enforcement of game and fish laws on the west half of the Sabine, but cooperative agreements signed by Louisiana counterparts relating to enforcement on the east half of the streams. The Sabine has the only waters common to Texas and Louisiana, and these agreements clearly recognize that the common boundary is in these waters.

(b) Since 1926, Texas and its Counties have paid for construction of bridges across the western half of the Sabine under cooperative agreements with Louisiana and its Parishes.

Louisiana admits that Texas has been paying half of the costs for bridges across the Sabine (Answer, p. 7). The affidavit of Texas State Highway Engineer Dingwall, Appendix, p. 43, shows the extent of this construction work since 1926. Also, Jefferson County, Texas and Cameron Parish, Louisiana, have constructed at their joint expense a causeway across Sabine Lake. See Map and affidavit of Robert A. Bowers, Director of Planning, City of Port Arthur, which are included in the Exhibit A filed in support of Motion for Judgment. Also, affidavit of Bowers and copy of contract are in Exhibit B as Items 10 and 11.

(c) Under grants from the State of Texas beginning in 1934, the City of Port Arthur has spent large sums of money on a bridge, golf course, and other

Aerial view of Port Arthur, Texas, showing new bridge across ship channel connecting the mainland (left) with Pleasure Island (center), an 18 mile stretch of improved land built up from dredging in the western half of Sabine Lake (right). See map and affidavit of Robert A. Bowers, City Engineer, in Exhibits A and B, filed in support of Motion for Judgment.

improvements on land reclaimed from the bed of the west half of Sabine Lake, without any protest from Louisiana.

The City of Port Arthur has obtained from the State of Texas grants to several thousand acres of submerged lands in Sabine Lake, including over 3000 acres which have been reclaimed from the bed of the lake and on which has been built an island approximately 18 miles long, known as Pleasure Island. The City has expended millions of dollars in construction of a bridge, pleasure pier, marina, golf course, utilities and other improvements on this land over a period of more than 30 years without any protest from Louisiana. See Map and Affidavit of Robert A. Bowers cited in (b) above.

(d) Jefferson County, Texas, has spent large sums on roads and bridges on land reclaimed from the western half of the bed of Sabine Lake without any protest from Louisiana.

On the 18 mile Pleasure Island, reclaimed by dredging from the western half of Sabine Lake as mentioned in (c) above, Jefferson County, Texas, has constructed a hard-surfaced road and has furnished the local costs on a multimillion dollar bridge being constructed by the U. S. Corps of Engineers from the mainland to Pleasure Island, thus far without protest from Louisiana. See Bowers Map and affidavit cited in (b) above.

(e) Texas has paid half of navigation improvements on the Sabine in cooperation with Louisiana.

Louisiana's appropriation for navigation improvements on the Sabine on March 19, 1857 was conditioned on Texas appropriating "at least an equal sum for the same purpose." This was done (4 Gam. 427).

Texas, its Sabine River Authority, which was created by statute in 1951 (Article 8280-133), the cities of Port Arthur and Orange, and the Orange Navigation District, have continued to bear local costs for such projects. 4 Gam. 967, 1129; 8 Gam. 171.

(f) Texas has sold sand, shell, and marl from the western half of Sabine Lake without protest from Louisiana.

(g) Texas has dedicated the submerged lands and minerals beneath the western half of the Sabine to its Permanent School Fund and has executed 78 mineral leases thereon since 1950.

The affidavit of the Commissioner of the Texas General Land Office, Appendix, p. 34, sets forth the details concerning the above stated exercise of State ownership of the lands beneath the waters of the Sabine. As shown, these sales and leases were without protest from Louisiana until very recent years, and then only as to mineral leasing. The minerals beneath these lands are dedicated to the Permanent School Fund of Texas, and all revenues therefrom are devoted to school purposes. Article 5416, Vernon's Civil Statutes of Texas.

(h) Texas and its County units of government have collected taxes on private leases and improvements in the area, and Louisiana and its Parishes have not done so.

The State and Orange, Newton and Jefferson counties have collected taxes on private leases and improvements, including four producing oil wells, within the western half of the Sabine, without protest from Louisiana. See detailed affidavits and exhibits in Exhibit B, Items 12, 13 and 14.

(i) The Supreme Court of Louisiana held in 1901 that the boundary between Texas and Louisiana was in the middle of the Sabine.

One of the strongest and most binding recognitions by Louisiana occurred in 1901, when the highest court in the State of Louisiana held that the middle of the Sabine was the boundary between Texas and Louisiana. In *State v. Burton,* 29 So. 970 (1901), there was a Louisiana bootlegger who was selling his wares from a boat anchored in the western half of the river but tied by a rope to a floating gambling establishment which was in turn tied to the Louisiana east bank of the river. He was convicted of selling liquor without a license. In reversing, the Supreme Court of Louisiana said:

> "It cannot be contended that Louisiana courts have jurisdiction over Texas territory. That the middle of the Sabine is the boundary line between Louisiana and Texas . . . (the Court then quotes the treaties and statutes referred to in this brief). . . . The jurisdiction of the Louisiana courts cannot be extended over Texas territory by means of a rope. . . . Louisiana cannot extend the jurisdiction of her courts over Texas territory by act of her legislature. . . ." (Full opinion reproduced as Item 15 in Exhibit B).

This decision and the boundary holding was referred to with approval in subsequent Louisiana Supreme Court decisions in *State v. Burton,* 31 So. 291 (1902); *Parish of Red River v. Parish of Caddo,* 43 So. 556 (1907); and *State v. Malone,* 64 So. 711 (1914).

(j) The Louisiana Attorney General and other attorneys for the State have recognized the mid-stream boundary in the Sabine.

Plaintiff has heretofore cited and quoted from sev-

eral cases in which the Attorney General of Louisiana has recognized the Sabine boundary of Louisiana as being in the middle of the stream as provided in the Louisiana Constitution of 1812. These are summarized as follows:

1. In *Louisiana v. Mississippi,* 202 U.S. 1 (1906), the Attorney General of Louisiana quoted the 1812 boundary provision, including the call for middle of the Sabine and insisted that this set forth the existing boundaries of the State, except for the addition adjacent to Mississippi on the east.

2. In *U. S. v. Louisiana, et al,* No. 10, Original, October Term 1959, the present Attorney General cited the entire boundary as contained in the Louisiana Constitution and Act of Admission, insisting that it was the "supreme law of the land" and had not been changed by any treaty. See detailed quotes and discussion at pages 31-33, supra.

3. In the case before the General Land Office in 1909, referred to above (39 Land Decisions 53), the attorney representing Louisiana filed a brief in which he recognized the boundary and the law relating to same exactly as we have argued it to be in this brief. See quotes and discussion under I.C.2. above, and full text in Exhibit B, Item 2.

4. The brief of the Attorney General of Louisiana and the District Attorney filed in *State v. Burton,* 29 So. 970, *supra,* concedes that the boundary between Texas and Louisiana is in the middle of Sabine River. Brief on Behalf of the State, No. 13,936, Supreme Court of Louisiana. See Item 16, Exhibit B.

The law to be applied to the above acts of long possession and jurisdiction by Texas on the one hand and long acquiescence therein by Louisiana on the

other hand was stated and applied in the case of *Louisiana v. Mississippi, supra,* in which Louisiana was the possessor and winning party, as follows:

> "The question is one of boundary, and this court has many times held that, as between the States of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it should be accepted as conclusive, whatever the international rule might be in respect of the acquisition by prescription of large tracts of country claimed by both. *Virginia v. Tennessee,* 148 U.S. 503; *Indiana v. Kentucky,* 136 U.S. 479; *Missouri v. Kentucky,* 11 Wall. 395; *Rhode Island v. Massachusetts,* 4 How. 591."

In *Michigan v. Wisconsin,* 270 U.S. 295, the Court said:

> "The rule, long settled and never doubted by this Court, is that long acquiescence by one state in the possession of territory by another and in the exercise of sovereignty and dominion over it is conclusive of the latter's title and rightful authority."

II

THE ANSWER OF THE STATE OF LOUISIANA TO THE COMPLAINT RAISES NO GENUINE ISSUE AS TO ANY MATERIAL FACT, AND IS INSUFFICIENT IN LAW.

As heretofore pointed out, the controlling issue in this case is governed by treaties, laws and facts which are subject to judicial notice. None of the terms of the controlling treaties and statutes are alleged by Louisiana to be uncertain or ambiguous, and in no other manner has Louisiana raised any material fact issue. In this connection, Plaintiff replies to Louisiana's separate defenses as follows:

A. REPLY TO FIRST DEFENSE.

To Defendant's allegation that the Complaint "fails to state a claim on which relief can be granted," Plaintiff simply says that it is obvious from the pleadings (See Defendant's Answer, page 8, paragraph 8) that a real controversy does exist and that this Court has jurisdiction under Article III, Section 2, Clause 2, of the Constitution of the United States. The Court has so decided in granting leave to file the Complaint.

B. REPLY TO SECOND DEFENSE.

The provision in the Texas Annexation Agreement (5 Stat. 797) that it was "subject to the adjustment by the United States of all questions of boundary that might arise with other governments" was applicable to disputes with foreign nations, particularly Mexico, and it does not require that the United States be a party to or appear on behalf of Texas in this dispute with another State of the Union.[28]

Further, the provision applied only to that territory which was in 1845 "properly included within and rightfully belonging to the Republic of Texas." The western half of the Sabine River was never within the boundaries of the Republic of Texas. It became a part of the State of Texas only by Act of Congress on July 5, 1848 (9 Stat. 245) authorizing the State to "extend her eastern boundary" to include the western half of the Sabine River and by Act of the Texas

---

[28]See the court's opinion in *United States v. Louisiana, et al.*, 363 U.S. 1, 44-62, for a complete discussion of the meaning of this provision and the manner in which it was carried to conclusion. There the Court said at page 44: "Rather, the precise fixation of the new State's boundaries was left to future negotiations with Mexico. The circumstances surrounding the Resolution's passage make it clear that this was the understanding of Congress."

Legislature so extending the boundary on November 24, 1849.

If in fact the United States had any responsibility under the Texas Annexation Agreement for adjusting future domestic boundaries, it was no greater than the responsibility it has under the Constitution with respect to approval of changes in any State's boundary, and it was fully discharged with respect to the Sabine boundary by the Act of July 5, 1848. In no event is the United States a necessary party to this action, since it has already acted and this suit seeks to uphold that action and the jurisdiction and title the United States granted to Texas as against the adverse claims of Louisiana.

C. REPLY TO THIRD AND FOURTH DEFENSES.

These defenses are based entirely upon Louisiana's theory that the Treaty between the United States and Spain in 1819 somehow automatically moved its boundary from the middle of the Sabine to the west bank without any necessity of Congressional action. Plaintiff has answered these defenses in great detail under point A.2. above. They raise no material fact issue, because the Treaty speaks for itself in clear and definite terms which do not mention the State of Louisiana. These terms cannot be altered by extrinsic evidence, and in any event, Congress did not grant consent for any such boundary change.

D. REPLY TO FIFTH DEFENSE.

This defense relates solely to the alleged need for taking evidence in this case. It fails to present any material issue of fact, because it proposes only to develop the history and intent of treaties and acts which are definite and certain on their face. All are

subject to judicial notice, and the meaning of none are alleged to be uncertain or doubtful. Therefore, there is no need at this time for the taking of any evidence.

It is true that Plaintiff has alleged long possession and exercise of jurisdiction over the controverted area, first by the United States from 1803 to 1849 and thereafter by the State of Texas, and that Louisiana has acquiesced therein. However, in view of the admissions in Louisiana's Answer and the narrowing of the issues to the legal effect of the controlling treaties and legislative acts, it is doubtful that there will be any need to reach the issue of prescription. Even if it should be necessary to develop such issue, the proof can be made by both parties through statutes enacted, official acts, maps and documents which are subject to judicial notice and suitable for attachment to the briefs.

Louisiana further suggests that if the Court should determine that the western boundary of the State is in the middle of the Sabine, then evidence will be required to determine the exact location of the boundary in the River, Pass and Lake, including the location of all islands which belong to Louisiana. This seems premature at this stage of the case. The question now is whether the boundary is in the middle of the Sabine or along the west bank. If it is determined to be in the middle, and if a subsequent controversy arises which cannot be resolved by the States as to the exact location of the middle of the stream at any given point, that would be time enough for the Court to ask a Master to hear evidence and make findings. In many original actions involving boundaries the Court has retained jurisdiction for such future specific determinations.

III

THE STATE OF TEXAS IS ENTITLED TO JUDGMENT ON THE PLEADINGS, AND IT WOULD BE PROPER AND APPROPRIATE FOR THE SPECIAL MASTER SO TO FIND AND REPORT TO THE SUPREME COURT.

Unless Louisiana in its reply brief shows some justification not now apparent for the taking of evidence, this case is ripe for determination on Plaintiff's Motion for Judgment. The Complaint, the Answer, this brief in support of the Motion for Judgment, Louisiana's brief to be filed in opposition to the Motion, and the arguments of counsel, will give ample opportunity for all relevant matters to be placed before the Special Master for judicial notice. Thereupon, Texas contends that it will be entitled to judgment on the Motion and that it would be proper and appropriate for the Master so to find and report to the Supreme Court.

CONCLUSION

For the foregoing reasons, it is submitted that Plaintiff's Motion for Judgment should be set for hearing on a date which will permit Defendant 60 days within which to file its brief in opposition to the Motion and the Plaintiff 30 days for a reply, and after such hearing the Special Master should make his findings as a matter of law and report them to the Supreme Court.

It is submitted that the pleadings and the treaties, laws and facts subject to judicial notice entitle Plaintiff to judgment as prayed for as a matter of law.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney
General of Texas

HOUGHTON BROWNLEE, JR.

J. ARTHUR SANDLIN

JAMES H. QUICK
Assistant Attorneys General
of Texas

PRICE DANIEL
Special Assistant Attorney
General of Texas

CERTIFICATE

I, Crawford C. Martin, Attorney General of Texas, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the 10th day of July, 1970, I served copies of the foregoing Brief in Support of Plaintiff's Motion for Judgment, by first class mail, postage prepaid, to the office of the Governor and Attorney General, respectively, of the State of Louisiana.

CRAWFORD C. MARTIN
Attorney General of Texas

APPENDIX

INDEX TO APPENDIX

APPENDIX

1. Louisiana Purchase Treaty, 1803, Proclaimed October 21, 1803, 8 Stat. 200.

Article I

Whereas by the Article the third of the Treaty concluded at St. Idelfonso the 9th Vendémiaire an 9/1st October 1800 between the First Consul of the French Republic and his Catholic Majesty it was agreed as follows.

"His Catholic Majesty promises and engages on his part to cede to the French Republic six months after the full and entire execution of the conditions and Stipulations herein relative to his Royal Highness the Duke of Parma, the Colony or Province of Louisiana with the Same extent that it now has in the hands of Spain, & that it had when France possessed it; and Such as it Should be after the Treaties subsequently entered into between Spain and other States."

And whereas in pursuance of the Treaty and particularly of the third article the French Republic has an incontestible title to the domain and to the possession of the said Territory—The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship doth hereby cede to the said United States in name of the French Republic for ever and in full Sovereignty the said territory with all its rights and appurtenances as fully and in the Same manner as they have been acquired by the French Republic in virtue of the above mentioned Treaty concluded with his Catholic Majesty.

Article II

In the cession made by the preceding article are in-

cluded the adjacent Islands belonging to Louisiana all public lots and Squares, vacant lands and all public buildings, fortifications, barracks and other edifices which are not private property—The Archives, papers & documents relative to the domain and Sovereignty of Louisiana and its dependences will be left in the possession of Commissaries of the United States, and copies will be afterwards given in due form to the Magistrates and Municipal officer of Such of the said papers and documents as may be necessary to them.

ARTICLE III

The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible according to the principles of the federal Constitution to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property and the Religion which they profess.

* * *

2. Act Creating the Territory of Orleans, March 26, 1804, 2 Stat. 283.

An Act erecting Louisiana into two territories, and providing for the temporary government thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That all that portion of country ceded by France to the United States, under the name of Louisiana, which lies south of the Mississippi territory, and of an east and west line to commence on the Mississippi river, at the thirty-third degree of north latitude, and to extend west to the western boundary of

the said cession, shall constitute a territory of the United States, under the name of the territory of Orleans. * * *

3. Enabling Act for Creation of the State of Louisiana, February 20, 1811, 2 Stat. 641.

An Act to enable the people of the Territory of Orleans to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude; thence due north, to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down said river to the river Iberville; and from thence along the middle of said river and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning: including all islands within three leagues of the coast, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper, under the provisions and upon the conditions hereinafter mentioned.

4. Constitution of Louisiana, January 22, 1812.*

We, the Representatives of the People of all that part of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April 1803, between the United States and France, contained in the following limits, to wit: *beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty-second degree of latitude—thence due north to the Northernmost part of the thirty-third degree of north latitude**— thence along the said parallel of latitude to the river Mississippi—thence down the said river to the river Iberville, and from thence along the middle of said river and lakes Maurepas and Ponchartrain to the Gulf of Mexico—thence bounded by the said Gulf of Mexico to the place of beginning, including all Islands within three leagues of the coast—in Convention Assembled by virtue of an act of Congress, entitled "an act to enable the people of the Territory of Orleans to form a constitution and State government and for the admission of said State into the Union on an equal footing with the original States, and for other purposes:" In order to secure to all the citizens therof the enjoyment of *the right of life, liberty and property,* do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent State, by the name of the State of Louisiana. * * *

---

*West's Louisiana Statutes Anno., Const. Vol. 3, p. 511. Emphasis supplied.

5. Act for Admission of Louisiana as a State, April 8, 1812, 2 Stat. 701.

An Act for the admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said state.

WHEREAS, the representatives of the people of all that part of the territory or country ceded, under the name of "Louisiana," by the treaty made at Paris, on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: *beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latiture; then, due north, to the northernmost part of the thirty-third degree of north latitude;** thence, along the said parallel of latitude, to the river Mississippi; thence, down the said river, to the river Iberville; and from thence, along the middle of the said river, and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence, bounded by the said gulf, to the place of beginning, including all islands within three leagues of the coast; did, on the twenty-second day of January, one thousand eight hundred and twelve, form for themselves a constitution and state government, and give to the said state the name of the state of Louisiana, in pursuance of an act of Congress, entitled "An act to enable the people of the territory of Orleans to form a constitution and state government, and for the admission of the said state into the Union, on an equal footing with the original states, and for other purposes:" And the said constitution having been transmitted to Congress, and by them being hereby approved; therefore

*Emphasis supplied.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana: *Provided,* That it shall be taken as a condition upon which the said state is incorporated in the Union, that the river Mississippi, and the navigable rivers and waters leading into the same, and into the gulf of Mexico, shall be common highways, and for ever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States, without any tax, duty, impost or toll therefor, imposed by the said state; and that the above condition, and also all the other conditions and terms contained in the third section of the act, the title whereof is herein before recited, shall be considered deemed and taken, fundamental conditions and terms, upon which the said state is incorporated in the Union.

SEC. 2. *And be it further enacted,* That until the next general census and apportionment of representatives, the said state shall be entitled to one representative in the House of Representatives of the United States; and that all the laws of the United States, not locally inapplicable, shall be extended to the said state, and shall have the same force and effect within the same, as elsewhere within the United States.

SEC. 3. *And be it further enacted,* That the said state, together with the residue of that portion of country which was comprehended within the territory of Orleans, as constituted by the act, entitled "An act erecting Louisiana into two territories, and providing for the temporary government thereof," shall be one dis-

trict, and be called the Louisiana district; and there shall be established in the said district, a district court, to consist of one judge, who shall reside therein, and be called the district judge; and there shall be, annually, four stated sessions of the said court held at the city of Orleans; the first to commence on the third Monday in July next, and the three other sessions progressively on the third Monday of every third calendar month thereafter. * * *

6. Treaty, 1819, of Amity, Settlement and Limits Between the United States and Spain, Proclaimed February 22, 1821, 8 Stat. 252.

Treaty of Amity, Settlement and Limits between The United States of America, and His Catholic Majesty.

The United-States of America and His Catholic Majesty desiring to consolidate on a permanent basis the friendship and good correspondence which happily prevails between the two Parties, have determined to settle and terminate all their differences and pretensions by a Treaty, which shall designate with precision the limits of their respective bordering territories in North-America.

With this intention the President of the United-States has furnished with their full Powers John Quincy Adams, Secretary of State of the said United-States, and His Catholic Majesty has appointed the Most Excellent Lord Don Luis de Onis, Gonzales, Lopez y Vara, Lord of the Town of Rayaces, Perpetual Regidor of the Corporation of the City of Salamanca, Knight Grand-Cross of the Royal American Order of Isabella, the Catholic, decorated with the Lys of La Vendée, Knight-Pensioner of the Royal and distinguished Spanish Order of Charles the Third, Member of the

Supreme Assembly of the said Royal Order; of the Counsel of His Catholic Majesty; His Secretary with Exercise of Decrees, and His Envoy Extraordinary and Minister Plenipotentiary near the United-States of America.

And the said Plenipotentiaries, after having exchanged their Powers, have agreed upon and concluded the following Articles.

ARTICLE 1.

There shall be a firm and inviolable peace and sincere friendship *between the United-States and their Citizens, and His Catholic Majesty,** his Successors and Subjects, without exception of persons or places.

ART. 2.

His Catholic Majesty cedes *to the United-States,* in full property and sovereignty, *all the territories* which belong to him, situated to the Eastward of the Mississippi, known by the name of East and West Florida. The adjacent Islands dependent on said Provinces, all public lots and Squares, vacant Lands, public Edifices, Fortifications, Barracks and other Buildings, which are not private property, Archives and Documents, which relate directly to the property and sovereignty of said Provinces, are included in this Article. The said Archives and Documents shall be left in possession of the Commissaries, or Officers of the United-States, duly authorized to receive them.

ART. 3.

The Boundary Line between the two Countries, West of the Mississippi, shall begin on the Gulph of Mexico,

*Emphasis supplied throughout this document.

at the mouth of the River Sabine in the Sea, continuing North, along the Western Bank of that River, to the 32d degree of Latitude; thence by a Line due North to the degree of Latitude, where it strikes the Rio Roxo of Natchitoches, or Red River, then following the course of the Rio-Roxo Westward to the degree of Longitude, 100 West from London and 23 from Washington, then crossing the said Red-River, and running thence by a Line due North to the River Arkansas, thence, following the Course of the Southern bank of the Arkansas to the source of Latitude 42, North, and thence by that parallel of Latitude to the South-Sea. The whole being as laid down in Melishe's Map of the United-States, published at Philadelphia, improved to the first of January, 1818. But if the Source of the Arkansas River shall be found to fall North or South of Latitude 42, then the Line shall run from the said Source due South or North, as the case may be, till it meets the said Parallel of Latitude 42, and thence along the said Parallel to the South Sea: all of the Islands in the Sabine and the said Red and Arkansas Rivers, throughout the Course thus described, *to belong to the United-States;* but the use of the Waters and the navigation of the Sabine to the Sea, and of the said Rivers, Roxo and Arkansas, throughout the extent of the said Boundary, on their respective Banks, shall be common to the respective inhabitants of both Nations. The Two High Contracting Parties agree to cede and renounce all their rights, claims and pretentions *to the Territories* described by the said Line: that is to say—The United States hereby cede to His Catholic Majesty, and renounce forever, all their rights, claims, and pretensions *to the Territories* lying West and South of the above described Line; and, in like manner, His Catholic Majesty *cedes to the said United-States,* all his

rights, claims, and pretensions *to any Territories,* East and North of the said Line, and, for himself, his heirs and successors, renounces all claim to the *said Territories* forever.

ART. 4.

To fix this Line with more precision, and to place the Land marks which shall designate exactly *the limits of both Nations,* each of the Contracting Parties shall appoint a Commissioner, and a Surveyor, who shall meet before the termination of one year from the date of the Ratification of this Treaty, at Natchitoches, on the Red River, and proceed to run and mark the said Line from the mouth of the Sabine to the Red River, and from the Red River to the River Arkansas, and to ascertain the Latitude of the source of the said River Arkansas, in conformity to what is above agreed upon and stipulated, and the Line of Latitude 42, to the South Sea: they shall make out plans and keep Journals of their proceedings, and the result agreed upon by them shall be considered as part of the Treaty, and shall have the same force as if it were inserted therein. The two Governments will amicably agree respecting the necessary Articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary.

ART. 5.

The inhabitants of the *ceded Territories* shall be secured in the free exercise of their Religion, without any restriction, and all those who may desire to remove to the Spanish Dominions shall be permitted to sell, or export their Effects at any time whatever, without being subject, in either case, to duties.

ART. 6.

The Inhabitants of *the Territories* which His Catholic Majesty *cedes to the United-States* by this Treaty, shall be incorporated in the Union of the United-States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights and immunities of the Citizens of the United States.

ART. 7.

The Officers and Troops of His Catholic Majesty in *the Territories hereby ceded* by him to the United States shall be withdrawn, and possession of the places occupied by them shall be given within six months after the exchange of the Ratifications of this Treaty, or sooner if possible, by the Officers of His Catholic Majesty, to the Commissioners or Officers of the United-States, duly appointed to receive them; and the United-States shall furnish the transports and escort necessary to convey the Spanish Officers and Troops and their baggage to the Havana.

ART. 8.

All the grants of land made before the 24th of January 1818, by His Catholic Majesty or by his lawful authorities in the *said Territories ceded by His Majesty to the United-States,* shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the Territories had remained under the Dominion of His Catholic Majesty. But the owners in possession of such lands, who by reason of the recent circumstances of the Spanish Nation and the Revolutions in Europe, have been prevented from fulfilling all the conditions

of their grants, shall complete them within the terms limited in the same respectively, from the date of this Treaty; in default of which the said grants made since the 24th of January 1818, when the first proposal on the part of His Catholic Majesty, for the cession of the Floridas was made, are hereby declared and agreed to be null and void.

* * *

The records of the proceedings of the said Commissioners, together with the vouchers and documents produced before them, relative to the claims to be adjusted and decided upon by them, shall, after the close of this transaction, be deposited in the Department of State of the United-States; and copies of them or any part of them, shall be furnished to the Spanish Government, if required, at the demand of the Spanish Minister in the United-States.

* * *

ART. 12.

The Treaty of Limits and Navigation of 1795, remains confirmed in all and each one of its Articles, excepting the 2, 3, 4, 21 and the second clause of the 22d Article, which, having been altered by this Treaty, or having received their entire execution, are no longer valid.

With respect to the 15th Article of the same Treaty of Friendship, Limits and Navigation of 1795, in which it is stipulated, that the Flag shall cover the property, the Two High Contracting Parties agree that this shall be so understood with respect to those Powers who recognize this principle; but if either of the two Contracting Parties shall be at War with a Third Party, and the other Neutral, the Flag of the Neutral shall cover the property of Enemies, whose Government acknowledges this principles, and not of others.

ART. 13.

Both Contracting Parties wishing to favour their mutual Commerce, by affording in their ports every necessary Assistance to their respective Merchant Vessels, have agreed, that the Sailors who shall desert from their Vessels in the ports of the other shall be arrested and delivered up, at the insistance of the Consul—who shall prove nevertheless, that the Deserters belonged to the Vessels that claimed them, exhibiting the document that is customary in their Nation: that is to say, the American Consul in a Spanish Port, shall exhibit the Document known by the name of *Articles,* and the Spanish Consul in American Ports, the Roll of the Vessel; and if the name of the Deserter or Deserters, who are claimed, shall appear in the one or the other, they shall be arrested, held in custody and delivered to the Vessel to which they shall belong.

The United-States hereby certify, that they have not received any compensation from France for the injuries they suffered from her Privateers, Consuls, and Tribunals, on the Coasts and in the Ports of Spain, for the satisfaction of which provision is made by this Treaty; and they will present an authentic statement of the prizes made, and of their true value, that Spain may avail herself of the same in such manner as she may deem just and proper.

ART. 15.

The United-States to give to His Catholic Majesty, a proof of their desire to cement the relations of Amity subsisting between the two Nations, and to favour the Commerce of the Subjects of His Catholic Majesty, agree that Spanish Vessels coming laden only with productions of Spanish growth, or manufacture direct-

ly from the Ports of Spain or of her Colonies, shall be admitted for the term of twelve years to the Ports of Pensacola and St. Augustine in the Floridas, without paying other or higher duties on their cargoes or of tonnage than will be paid by the vessels of the United-States. During the said term no other Nation shall enjoy the same privilege within the *ceded Territories.* The twelve years shall commence three months after the exchange of the Ratifications of this Treaty.

* * *

7. Treaty of Limits Between the United States and the United Mexican States, Proclaimed April 5, 1832, 1828, 8 Stat. 372.

Treaty of Limits between the United States of America and the United Mexican States.

The limits of the United States of America with the bordering territories of Mexico having been fixed and designated by a solemn treaty concluded and signed at Washington on the twenty-second day of February, in the year of our Lord one thousand eight hundred and nineteen, between the respective Plenipotentiaries of the government of the United States of America on the one part and of that of Spain on the other: And whereas, the said treaty having been sanctioned at a period when Mexico constituted a part of the Spanish Monarchy, it is deemed necessary now to confirm the validity of the aforesaid treaty of limits, regarding it as still in force and binding between the United States of America and the United Mexican States.

With this intention, the President of the United States of America has appointed Joel Roberts Poinsett their Plenipotentiary; and the President of the United Mexican States their Excellencies Sebastian Camacho and José Ygnacio Esteva:

And the said Plenipotentiaries having exchanged their full powers, have agreed upon and concluded the following articles:

ARTICLE FIRST.

The dividing limits of the respective bordering territories of the United States of America and of the United Mexican States being the same as were agreed and fixed upon by the above-mentioned treaty of Washington concluded and signed on the twenty-second day of February in the year of one thousand eight hundred and nineteen, the two high contracting parties will proceed forthwith to carry into full effect the third and fourth articles of said treaty, which are herein recited as follows:

ARTICLE SECOND.

The boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river, to the 32nd degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; then, following the course of the Rio Roxo westward, to the degree of longitude 100 west from London and 23 from Washington; then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas; thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South Sea. The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. But if the source of the Arkansas river shall be found to fall north or south of latitude 42, then the line shall

run from the said source due south or north, as the case may be, till its meets the said parallel of latitude 42, and thence, along the said parallel, to the South Sea: *All the islands in the Sabine, and the said Red and Arkansas rivers, throughout the course thus described, to belong to the United States;* but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, or their respective banks, shall be common to the respective inhabitants of both nations.

The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions to the territories described by the said line; that is to say: the United States hereby cede to His Catholic Majesty, and renounce forever, all their rights, claims, and pretensions to the territories lying west and south of the above described line; *and in like manner, His Catholic Majesty cedes to the said United States,* all his rights, claims, and pretensions to any territories east and north of the said line; and for himself, his heirs, and successors, renounces all claim to the said territory forever.

ARTICLE THIRD.

To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a Commissioner and a Surveyor, who shall meet, before the termination of one year from the date of the ratification of this treaty, at Natchitoches, on the Red River, and proceed to run and mark the said line, from the mouth of the Sabine to the Red River, and from the Red River to the river Arkansas, and to ascertain the latitude of the source of the said river Arkansas, in conformity to what is agreed upon

and stipulated, and the line of latitude 42, to the South Sea: they shall make out plans, and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should be deemed necessary.

* * *

Additional Article to the Treaty of Limits concluded between the United States of America and the United Mexican States on the 12 day of January 1828.

The time having elapsed which was stipulated for the exchange of ratifications of the Treaty of Limits between the United Mexican States and the United States of America, signed in Mexico on the 12th day of January 1828, and both Republics being desirous that it should be carried into full and complete effect with all due solemnity, the President of the United States of America has fully empowered on his part Anthony Butler a Citizen thereof and Charge d'Affaires of the said States in Mexico. And the Vice-President of the United Mexican States, acting as President thereof, has in like manner fully empowered on his part their Excellencies Lucas Alaman, Secretary of State, and Foreign Relations, and Rafael Mangino, Secretary of the Treasury, who after having exchanged their mutual powers found to be ample and in form have agreed and do hereby agree on the following article.

The ratifications of the Treaty of Limits concluded on the 12th January 1828, shall be exchanged at the City of Washington within the term of one year count-

ing from the date of this agreement and sooner should it be possible.

The present additional article shall have the same force and effect as if it had been inserted word for word in the aforesaid Treaty of the 12th of January of 1828, and shall be approved and ratified in the manner prescribed by the Constitutions of the respective States.

In faith of which the said Plenipotentiaries have hereunto set their hands and affixed their respective seals. Done in Mexico the fifth of April of the year one thousand eight hundred thirty one, the fifty fifth of the Independence of the United States of America, and the eleventh of that of the United Mexican States.

[Seal] A: Butler
[Seal] Lucas Alaman
[Seal] Rafael Mangino

(Emphasis Supplied)

8. Boundary Convention Between the United States and the Republic of Texas, 1838, Proclaimed October 13, 1838, 8 Stat. 511.

Convention between the United States of America and the Republic of Texas, for marking the boundary between them.

Whereas the treaty of limits made and concluded on the twelfth day of January in the year of our Lord one thousand eight hundred and twenty eight between the United States of America on the one part and the United Mexican States on the other is binding upon the Republic of Texas, the same having been entered into at a time when Texas formed a part of the said United Mexican States:

And whereas it is deemed proper and expedient in order to prevent future disputes and collisions between the United States and Texas in regard to the boundary between the two countries as designated by the said treaty, that a portion of the same should be run and marked without unnecessary delay:

The President of the United States has appointed John Forsyth their plenipotentiary, and the President of the Republic of Texas has appointed Memucan Hunt its plenipotentiary:

And the said plenipotentiaries having exchanged their full powers, have agreed upon and concluded the following articles:

ART. 1. Each of the contracting parties shall appoint a commissioner and surveyor, who shall meet before the termination of twelve months for the exchange of the ratifications of this Convention at New Orleans and proceed to run and mark that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulph of Mexico to the Red River. They shall make out plans and keep journals of their proceedings and the result agreed upon by them shall be considered as part of this Convention and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons and also as to their respective escorts, should such be deemed necessary.

ART. 2. And it is agreed that until this line shall be marked out as is provided for in the foregoing article, each of the contracting parties shall continue to exercise jurisdiction in all territory over which its jurisdiction has hitherto been exercised, and that the remaining portion of the said boundary line shall be run and marked at such time hereafter as may

suit the convenience of both the contracting parties, until which time each of the said parties shall exercise without the interference of the other within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent to which it has been heretofore usually exercised.

ART. 3. The present Convention shall be ratified and the ratifications shall be exchanged at Washington within the term of six months from the date hereof, or sooner if possible.

In witness whereof, we, the respective Plenipotentiaries, have signed the same, and have hereunto affixed our respective seals. Done at Washington, this twenty fifth day of April in the year of our Lord one thousand eight hundred and thirty eight, in the sixty second year of the Independence of the United States of America, and in the third of that of the Republic of Texas.

[Seal] MEMUCAN HUNT
[Seal] JOHN FORSYTH

9. Resolution of the Louisiana Legislature, March 16, 1848, Requesting Consent to Extend Western Boundary*

Resolution of the Legislature of Louisiana, in favor of the extension of the jurisdiction of that State to the western bank of the Sabine, April 28, 1848. No. 212—Resolution.

Whereas the constitution and the laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to the western bank thereof; and that it is of importance to the citizens living con-

*Senate Documents, 30th Con., 1st Sess., 1848, Misc. 135.

tiguous thereto, and to the people in general, that the jurisdiction of some State should be extended over said territory, in order that crimes and offenses committed thereupon should be redressed in a speedy and convenient manner:

Therefore be it resolved by the Senate, and House of Representatives of the State of Louisiana in General Assembly convened, 1st. That the constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United States, embraced in the following limits (whenever the consent of the Congress of the United States can be procured thereto.) viz:

Between the middle of the Sabine river and the western bank thereof, to begin at the mouth of said river where it empties into the Gulf of Mexico, and thence to continue along the said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the States of—.

2nd. *Be it further resolved, etc.,* That our Senators be instructed, and our Representatives in Congress requested, to procure the passage of a law on the part of the United States, consenting to the extension of the constitution, and the jurisdiction of the laws of the State of Louisiana, over the territory in said river.

3d. *And be it further resolved, etc.,* That the governor of the State be requested to forward a copy of these to each of our Senators and Representatives in Congress.

PRESTON W. FARRAR,
Speaker of the House of Representatives.

TRAISMON LANDRY,
Lieut. Governor and President of the Senate.

Approved March 16, 1848.

ISAAC JOHNSON,
Governor of the State of Louisiana.

10. Resolution of the Texas Legislature, March 18, 1848, Requesting Consent to Extend Eastern Boundary*

Resolution of the Legislature of Texas, in favor of the passage of an act, extending the jurisdiction of that State over the Sabine pass, the Sabine lake, and the Sabine river, April 17, 1848.

Joint Resolution instructing our Senators and requesting our Representatives in Congress to use their efforts to have a law passed to extend the jurisdiction of Texas over one half of Sabine pass, lake, and river.

SEC. 1. *Be it resolved by the Legislature of the State of Texas,* That our Senators be instructed, and our Representatives in Congress be requested, to use their efforts to have a law passed by Congress, extending the jurisdiction of Texas over one half of the waters of Sabine lake, Sabine pass, and Sabine river, up to the 32° of north latitude.

SEC. 2. *Be it further resolved,* That the governor of this State be required to transmit to each of our Senators and Representatives in Congress a copy of the foregoing joint resolution.

JAMES W. HENDERSON,
Speaker of the House of Representatives.

JOHN A. GREER,
President of the Senate.

Approved March 18, 1848.

GEO. T. WOOD

*Senate Documents, 30th Cong., 1st Sess., 1848, Misc. 123.

11. Act Giving Consent to the State of Texas to Extend Her Eastern Boundary so as to Include Within Her Limits One-half of Sabine Pass, Sabine Lake and the Sabine River as Far North as the Thirty-second Degree of North Latitude, July 5, 1848, 9 Stat. 245.

An Act giving the Consent of the Government of the United States to the State of Texas to extend her eastern Boundary so as to include within her Limits one half of Sabine Pass, Sabine Lake, and Sabine River, as far north as the thirty second Degree of North Latitude.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude.

Approved, July 5, 1848.*

Report of Senate Action

*Congressional Globe, 1st Sess., 30th Cong., Dec. 6, 1847-Aug. 14, 1848; New Series No. 56 at p. 882:

"In Senate
Thursday, June 29, 1848

Reports From Committees

Mr. Butler, from the Committee on the Judiciary, reported an act giving the consent of the Government of the United States to the State of Texas to extend the eastern boundary so as to include within her limits one-half of the Sabine Pass, Sabine Lake,

and the Sabine River as far north as the 32° of north latitude.

Mr. B. asked for the immediate consideration of the bill, and briefly explained its character. The boundary of the United States, it was known, embraced the Sabine River and lake to its western shore. The boundary of the State of Louisiana extended to the middle of the Sabine; so that the half of the river and lake, to the western shore belonged to the United States, and was not included in the State of Louisiana; therefore, the boundary of the State and that of the United States, was not identical. The bill before the Senate gives the half of the river beyond the boundary of the State of Louisiana to the State of Texas for the purpose of enabling the latter to extend her criminal jurisdiction to the Louisiana boundary. There could be no objection to the bill, and he hoped it would now be passed.

Mr. Johnson, of La., and Mr. Downs in behalf of the State of Louisiana, expressed their acquiescence in the arrangement.

The bill was then read a third time and passed."

12. Act of Texas Legislature Extending Eastern Boundary, November 24, 1849, 3 Gammels Laws of Texas 442.

An Act to extend the Eastern Boundary of the State of Texas, so as to include within its limits the western half of Sabine Pass, Sabine Lake and Sabine River up to the Thirty-second Degree of North Latitude.

SEC. 1. Be it enacted by the Legislature of the State of Texas, that in accordance with the consent of the Congress of the United States, given by an act of

said Congress, approved July 5, 1848, the Eastern Boundary of the State of Texas be, and the same is hereby extended so as to include within the limits of the State of Texas, the western half of Sabine Pass, Sabine Lake and Sabine River from its mouth as far north as the thirty-second degree of north latitude; and that the several counties of this State, bounded by said Sabine Pass, Sabine Lake and Sabine River from its mouth as far north as the thirty-second degree of north latitude, shall have and exercise jurisdiction over such portions of the western half of said Pass, Lake and River as are opposite to said counties respectively; and this act shall take effect from and after its passage.

Approved, November 24, 1849.

13. Affidavit of Robert L. Cross Law Enforcement Coordinator Texas Parks and Wildlife Department

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

I, Robert L. Cross, being first duly sworn, on my oath depose and say as follows:

I am State Law Enforcement Coordinator for the agency of the State of Texas now known as the Texas Parks and Wildlife Department, which has the responsibility of enforcing the game and fish laws of the State. I have served in this position since October 1, 1969. Prior to that, from November 1, 1958, to September 1, 1961, I served as District Supervisor for the agency, with headquarters in Houston. My district covered fifteen southeast Texas counties, including those adjoining Sabine Pass, and Sabine Lake and portions of the Sabine River. From September

1, 1961, to October 1, 1969, I served as Regional Enforcement Supervisor for the agency, with my region covering thirty-three southeast Texas counties, including those mentioned above. My duties as aforesaid enabled me to know the facts set forth herein.

During all of my period of service, and even until this day, our Texas State agency and its officers enforced the laws relating to game and fish on the west one-half of the Sabine River, Sabine Lake and Sabine Pass. During this time, I never heard of any question being raised as to our right to enforce the Texas laws in this area. During this period, we filed and prosecuted many cases for violations of Texas laws within the waters of the west half of Sabine Pass, Sabine Lake, and Sabine River. These were filed and prosecuted in the Texas counties whose boundaries extended by law to the center of said streams.

At no time during this period did the State of Louisiana or its officials seek to enforce the Louisiana game and fish laws on the Texas side or western half of these streams, nor did they ever assert, so far as I ever heard, the right to do so. On the contrary, Louisiana officials enforced their game and fish laws only on the eastern half of the Sabine Pass, Sabine Lake and Sabine River and always respected our jurisdiction on the western half of these streams. We always have had very fine cooperation from the Louisiana Wildlife and Fisheries Commission and its officers, and our relationships have been most cordial. On many occasions our Texas agency and the Louisiana Commission would work together and conduct joint operations on the Sabine River, checking nets for violations, with our officers going along the western one-half of the river and Louisiana officers simul-

taneously going along the eastern one-half of the river.

In a cooperative endeavor to alleviate enforcement problems, the Texas Parks and Wildlife Commission and the Louisiana Wildlife and Fisheries Commission entered into a reciprocal agreement, authorized by the Legislatures of the respective States, signed on December 14, 1967, by the Louisiana Commission and on February 13, 1968, by the Texas Commission, setting forth who could fish "the common boundary waters of Texas and Louisiana," which agreement provides, inter alia, that a possessor of a license from either State may fish anywhere in the said waters. A true and correct copy of this agreement is attached hereto as Exhibit A.

Another reciprocal agreement was entered into by the two Commissions, signed by Louisiana September 22, 1969, and by Texas October 3, 1969, setting forth a joint agreement as to bag limits for fish on Toledo Bend Lake, a lake created by the recent construction of Toledo Bend Dam on the Sabine River. A true and correct copy is attached as Exhibit B.

The Texas Health Department in recent years has closed portions of the western one-half of Sabine Lake to oystering, because of pollution conditions. Louisiana has done likewise on the eastern half of the Lake.

The Texas Parks and Wildlife Commission has for at least fifteen years granted permits to shell dredgers for the taking of shell from the bed of Sabine Lake on the western half thereof, and thousands of tons of shell have been dredged from the bed of the western half of the Lake under these permits, with compensation therefor being paid to the State of Texas. These, like all the activities of our agency on the western half of Sabine Lake, Sabine Pass and Sabine River,

were conducted in full view of our counterpart officers of Louisiana whose boats patrolled their eastern half of the streams, and I never heard of any objection or assertion by them against our rights and jurisdiction over the waters and beds of the western half of the streams. On the contrary, as indicated above, they worked in complete cooperation and recognition of our rights and jurisdiction west of the center of the streams and confined their similar activities east of the center of the streams. This has been true not only during my personal knowledge of the facts since November 1958, but according to my predecessors and the records of this agency, such activities by Texas officials on the western half of these streams and complete acquiescence therein by Louisiana officials has existed since the predecessor of this agency, The Texas Game, Fish and Oyster Commission, was created in 1929.

Executed at Austin, Texas, this the 11th day of June, 1970.

ROBERT L. CROSS

SWORN TO AND SUBSCRIBED BEFORE ME by Robert L. Cross on this the 11th day of June, 1970.

W. C. PARKER
Notary Public in and for
Travis County, Texas

Exh. A to Cross Affidavit

RECIPROCAL AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, by virtue of Article 978-f-6, Texas Penal Code, the Texas Game and Fish Commission now the Texas Parks and Wildlife Commission, may enter into agreements of reciprocity with the author-

ized agents, commissions or boards of states having a common border with the State of Texas to provide for fishing on lakes and rivers located upon a common boundary between Texas and such other states by sports fishermen who hold a fishing license issued by either state; and,

WHEREAS, the State of Louisiana through the Louisiana Wild Life and Fisheries Commission is authorized by House Concurrent Resolution No. 211 to enter into reciprocal agreements with the proper officials of the State of Texas permitting sports fishermen, either duly licensed or exempt from the licensing law of said state, to fish common boundary lakes and rivers between Louisiana and Texas; and,

WHEREAS, the States of Texas and Louisiana intend to enter into such an agreement so that bona fide residents of Texas and Louisiana may fish in the common boundary waters of the two states; and,

WHEREAS, to insure the proper administration of the law, rules and regulations in force in the States herein identified, it is the intention that the term "resident" shall mean any person who resides in the State of Texas or the State of Louisiana for a period of not less than six (6) consecutive months; and

WHEREAS, Article 4032-b-1, R.C.S. of Texas exempts persons under seventeen (17) years of age and over sixty-five (65) years of age from the legal requirements of possessing a fishing license when sports fishing in the waters of Texas; and,

WHEREAS, R.S. 56:331 of Louisiana exempts any person under sixteen (16) years of age, whether a resident or non-resident, from obtaining a sports fishing license or paying said license fee in order to sports-fish the waters of Louisiana; and,

WHEREAS, R.S. 56:331 and 643 of Louisiana exempts any person over sixty (60) years of age from paying the sports fishing license fee but does require said person to obtain and possess a free license, when sports fishing the waters of Louisiana; and,

WHEREAS, the foregoing exemptions shall reciprocally apply to citizens of Texas and Louisiana when fishing in common boundary waters.

NOW, THEREFORE, this reciprocal agreement made and entered into in duplicate by and between the Texas Parks and Wildlife Commission, in behalf of the State of Texas, and the Louisiana Wild Life and Fisheries Commission, in behalf of the State of Louisiana, wherein it is mutually agreed as follows:

(1) The term "resident" shall mean any person who is a bona fide resident and who has so continuously resided in either of the said States for a period of not less than six (6) months.

(2) A resident of the State of Texas, under seventeen (17) years of age and over sixty-five (65) years of age may sports-fish in the common boundary waters of Texas and Louisiana without being required to possess a fishing license.

(3) A resident of the State of Louisiana, under sixteen (16) years of age may sports-fish in the common boundary waters of Texas and Louisiana without being required to possess a fishing license or pay the license fee. A resident of the State of Louisiana over sixty (60) years of age must obtain and possess a valid license to sports-fish the common boundary waters of Texas and Louisiana but is exempt from paying the license fee.

(4) A resident of either of the aforementioned States that is required to have a sports-fishing license

may sports-fish in the common boundary waters of the aforementioned States with a license issued by either State.

(5) The Texas Parks and Wilflife Commission is authorized to issue proclamations approving negotiations as entered into by this reciprocal agreement and such agreement shall become effective in the common boundary waters of Texas and Louisiana thirty (30) days after the agreement has been lawfully accepted by the Louisiana Wild Life and Fisheries Commission.

(6) Immediately after the adoption of this agreement a copy of the rules and regulations contained in the agreement will be numbered and filed in the office of the Secretary of State, in the office of the Parks and Wildlife Commission, Austin, Texas, and a copy thereof will be filed in the office of each County Clerk and each County Attorney in the counties within which the rivers and lakes involved are located, the office of the Secretary of State of Louisiana, the Louisiana Wild Life and Fisheries Commission and a copy shall be furnished to each employee of the Texas Parks and Wildlife Commission who performs duties in said counties in which common boundary waters are located.

(7) Either State to this agreement may withdraw therefrom upon six (6) months notice in writing, addressed to the other State.

TEXAS PARKS AND WILDLIFE COMMISSION

By: WILL ODOM
Chairman

By: J. M. DELLINGER
Member

By: HARRY JERSIG
Member

Witness our official hands and signatures this 13th day of February, A.D. 1968, as and constituting the Parks and Wildlife Commission of the State of Texas.

LOUISIANA WILD LIFE AND FISHERIES COMMISSION

By: LESLIE L. GLASGOW
Director

Witness my official hand and signature this 14th day of December, A.D. 1967, as the Director of Louisiana Wild Life and Fisheries Commission for and on its behalf.

Exh. B to Cross Affidavit

WITNESSETH:

WHEREAS, the State of Louisiana by and through its Louisiana Wild Life & Fisheries Commission, a component agency of the State of Louisiana, is authorized to enter into a reciprocal agreement with the State of Texas under authority of LSA-R. S. 56:673 to establish sport fishing creel limits for Toledo Bend Lake, and

WHEREAS, by virtue of Article 978f-6, Texas Penal Code, the Texas Game and Fish Commission, now the Texas Parks and Wildlife Commission, may enter into agreements of reciprocity with the State of Louisiana to establish sport fishing creel limits for Toledo Bend Lake, and,

WHEREAS, the States of Louisiana and Texas intend to enter into such an agreement so that uni-

form regulations are established for Toledo Bend Lake.

NOW, THEREFORE, this reciprocal agreement for Toledo Bend Lake made and entered into in duplicate by and between the Louisiana Wild Life & Fisheries Commission, in behalf of the State of Louisiana, and the Texas Parks and Wildlife Commission, in behalf of the State of Texas, wherein it is mutually agreed as follows:

1. The creel limit for black bass (to include both the largemouth bass and spotted bass) shall be 15 per day, with no possession limits.

2. There shall be no creel or possession limits on catfish, white bass, crappie, sunfish or other species taken by sport fishing.

3. The Louisiana Wild Life & Fisheries Commission and the Texas Parks and Wildlife Commission are authorized to issue proclamations approving negotiations as entered into by this reciprocal agreement and such agreement shall become effective in Toledo Bend Lake thirty (30) days after the agreement has been lawfully accepted by both states.

4. Immediately after the adoption of this agreement a copy of the rules and regulations contained in the agreement will be filed in the office of the Secretary of State of Louisiana, the office of the Louisiana Wild Life & Fisheries Commission, the office of the Secretary of State of Texas, the office of the Texas Parks and Wildlife Commission, in the office of each county clerk and each county attorney in the counties within which Toledo Bend Lake is located in the State of Texas.

5. Either state to this agreement may withdraw

therefrom upon six (6) months notice in writing, addressed to the other state.

LOUISIANA WILD LIFE & FISHERIES COMMISSION

By: CLARK M. HOFFPAUER
Director

Witness my official hand and signature this 22nd day of September, A.D. 1969, as the Director of Louisiana Wild Life & Fisheries Commission for and on its behalf.

TEXAS PARKS AND WILDLIFE COMMISSION

By: PEARCE JOHNSON
Chairman

By: HARRY JERSIG
Member

By: J. M. DELLINGER
Member

Witness our official hands and signatures this 3rd day of October, A.D. 1969, as and constituting the Parks and Wildlife Commission of the State of Texas.

14. Affidavit of Jerry Sadler
Commissioner of the General Land Office of Texas

THE STATE OF TEXAS	)	KNOW ALL MEN
	)	BY THESE
COUNTY OF TRAVIS	)	PRESENTS:

That I, JERRY SADLER, being first duly sworn, on my oath depose and say as follows:

Since January 1, 1961, I have held the position of Commissioner of the General Land Office of the State of Texas, and I am familiar with the facts set out below:

The official maps of the State of Texas, including those showing state boundaries and the boundaries of its counties, are kept in the General Land Office. The eastern boundary of the State was extended by an Act of November 24, 1849, so as to include "the western half of Sabine Pass, Sabine Lake and Sabine River from its mouth as far north as the 32° of north latitude," (3 Gammel's Laws of Texas 442), as specifically approved and consented to in advance by the Congress of the United States by an Act of July 5, 1848 (9 Stat. 245). In the same Boundary Act of November 24, 1849, the Texas Legislature extended the jurisdiction of each of the counties contiguous to the western half of the Sabine River, Lake and Pass to include those portions of the streams opposite each of said counties.

Since 1849, official maps prepared by the General Land Office of Texas reflecting state and county boundaries have consistently shown the eastern boundary of the state to be in the middle of the Sabine Pass, Sabine Lake and the Sabine River as far north as the 32° of north latitude, and the records of this office reflect that the State of Texas and its state agencies, including the General Land Office, have exercised jurisdiction and claimed ownership over the western half of said streams continuously since 1849. Since that date, county boundary maps of this office show the contiguous county boundaries to extend to the middle of said streams. An example of such maps is the relevant portion of the map of the General Land Office dated 1957, which is reproduced and attached hereto as Exhibit 1 to this Affidavit.

Among other exercises of state jurisdiction and ownership over such lands since 1849 have been improvements for navigation, impoundments for water supply, regulation of fishing and hunting on the western half of the aforesaid bodies of water, sale of sand, shell and gravel therefrom and leasing of the submerged land for production of oil, gas and other minerals. The latter leasing functions were exercised by the Commissioner of the General Land Office until 1939, when all such minerals beneath submerged lands were dedicated and conveyed to the Permanent School Fund and the School Land Board of Texas was created to administer the leasing of these and other lands belonging to the Permanent School Fund. (Art. 5421c-3, Vernon's Texas Civil Statutes). The Commissioner of the General Land Office serves as Chairman of the School Land Board and as custodian of its records.

At various times since directional and platform drilling made possible the exploration of submerged lands for mineral production, the State, acting through the Commissioner of the General Land Office and subsequently the School Land Board has advertised for lease and executed oil and gas leases on certain tracts within the western half of the Sabine River, Pass and Lake. These leases are awarded to the highest bidder in a sealed bid sale after public advertisement. A search of the records of this office reflect the following examples of leases advertised on lands within the western half of the Sabine River, Pass or Lake, with bids opened on the dates indicated:

1) *December 5, 1950.* Item 834 of 100 acres in the western half of Sabine River in Newton County was leased to the single bidder for $6,105.00.

2) *December 5, 1950.* Items Nos. 836, 837 and 838, totaling 303 acres in the western half of Sabine River

in Orange County, were advertised for bids. Three bids were received and the tracts were leased to the high bidders for $125,377.00.

3) *July 1, 1952.* Item No. 450 of 67 acres in Orange County in the western half of Sabine River was leased to the highest of three bidders for $6,850.00.

4) *December 6, 1955.* Items Nos. 77, 78 and 79, totaling 2,585 acres in Jefferson County in the western half of Sabine Lake were advertised for bids. Four bids were received on two of the tracts totaling 1,725 acres and they were leased to the highest bidders for $33,470.00.

5) *July 3, 1956.* Item 199 of 80 acres in the western half of the Sabine River in Newton County was leased to the single bidder for $41,307.20.

6) *December 2, 1958.* 42 separate tracts in the western half of Sabine Lake (Items 218-59, inclusive) in Jefferson County ranging in size from 350 to 1,070 acres, and Item 5A of 40 acres on the west half of the Sabine River in Newton County, were advertised for bids. A total of 16,878 acres, and 5 year leases were made to the highest bidders for a total of $1,106,815.26. The 40 acres in the west half of Sabine River in Newton County was leased to the highest bidder for $3,000.00.

7) *December 1, 1959.* 18 separate tracts in the western half of Sabine Lake (Items 300-17, inclusive) in Jefferson County ranging in size from 380 to 970 acres, and Items 2, 6 and 7 of 90, 53 and 40 acres, respectively, in the western half of Sabine River in Newton County were advertised for bids. A total of 33 bids were received on all 18 Sabine Lake tracts, totaling 12,835 acres, which were leased to the highest bidders for a total of $1,252,358.80. No bids were received on Items

2 and 7. The 53 acres of Sabine River land in Item 6 in Newton County was leased to the highest bidder for $2,650.00.

8) *December 6, 1960.* Item 5B, a 50 acre tract in the western half of the Sabine River in Newton County, was advertised for bids. No bids were received on this tract.

9) *August 1, 1961.* Items 5B and 7 of 50 acres and 110 acres, respectively, in the western half of the Sabine River in Newton County were advertised for bids. Item 7 was withdrawn and the 50 acres of Tract 5B was leased to the high bidder for $2,500.00.

10) *May 5, 1964.* 25 separate tracts in the western half of Sabine Lake (Items 327-51, inclusive) in Jefferson County ranging in size from 333.24 to 1,694 acres were advertised for bids. Five bids were received on 5 tracts totaling 3,285.24 acres, and 5 year leases thereon were executed to the highest bidders for a total of $77,243.00.

11) *October 6, 1964.* Item 1 of 85 acres in the western half of Sabine River in Orange County was leased to the highest bidder for $2,893.90.

12) *June 1, 1965.* Two separate tracts in the western half of Sabine Lake (Items 269-70) in Jefferson County for 903 and 1,040 acres, respectively, were advertised for bids. No bids were received on these tracts.

13) *February 1, 1966.* Three separate tracts in the western half of Sabine Lake (Items 329-31, inclusive) in Jefferson County for 903, 1,040 and 930 acres, respectively, and 2 tracts in the western half of Sabine Pass (Items 332-3) in Jefferson County of 420 and 590 acres were advertised for bids. No bids were received on any of these tracts.

14) *April 4, 1967.* Items 7 and 8 of 40 acres each in the western half of Sabine River in Newton County were advertised for bids. No bids were received on these tracts.

15) *December 3, 1968.* Item 2A of 35 acres in the western half of the Sabine River in Newton County and Item 1 of 85 acres in the western half of the Sabine in Orange County, were advertised for bids. No bids were received on the Orange County tract. The Newton County tract was leased to the highest bidder for $7,000.00.

16) *July 1, 1969.* Item 3 of 135 acres in the western half of the Sabine River in Newton County was advertised for bids. No bids were received on this tract.

The State and its Permanent School Fund have received royalties from oil and gas production on four of the above mentioned tracts, and same are still producing or are pooled with producing drilling units.

By letter of January 31, 1966, Jack P. F. Gremillion, Attorney General of Louisiana, protested the above mentioned advertised lease sale of February 1, 1966, and notified prospective lessees of this date that he, on behalf of Louisiana, was claiming title to the western half of Sabine River, Sabine Pass and Sabine Lake. A copy of that letter is attached hereto as Exhibit 2 to this affidavit. As above indicated, Texas received no bids on the advertised tracts in this sale and has been able to lease only one tract in the western half of Sabine River since that date.

The unfounded claim and unwaranted protest asserted by the Attorney General of Louisiana in 1966, and persisted in since that date, has harassed the State of Texas and its prospective lessees and has obstructed leasing and development of minerals in that portion

of the Sabine River, Pass and Lake within the boundary duly established in 1849 by consent of the Congress of the United States. In the meantime, the State of Louisiana continues to execute leases within its half of the Sabine streams and to encourage the drilling and production of oil and gas wells which are draining or will drain minerals from beneath the Texas owned western half of said streams. These actions by Louisiana in retarding leasing and development beneath the Texas half of the boundary streams while encouraging leasing the production on its eastern half of said boundary streams, has damaged and will continue to damage the State of Texas and its Permanent School Fund until Louisiana is restrained from interfering with the leasing and development by the State of Texas of the western half of the Sabine streams.

Witness my hand this 9th day of June, 1970.

s/ Jerry Sadler
JERRY SADLER

Sworn to and subscribed before me, the undersigned authority, by Jerry Sadler, Commissioner of the General Land Office and Chairman of the School Land Board of the State of Texas, on this the 9th day of June, 1970, to certify which witness my hand and seal of office.

s/ Helen Ingram
Notary Public in and for
Travis County, Texas

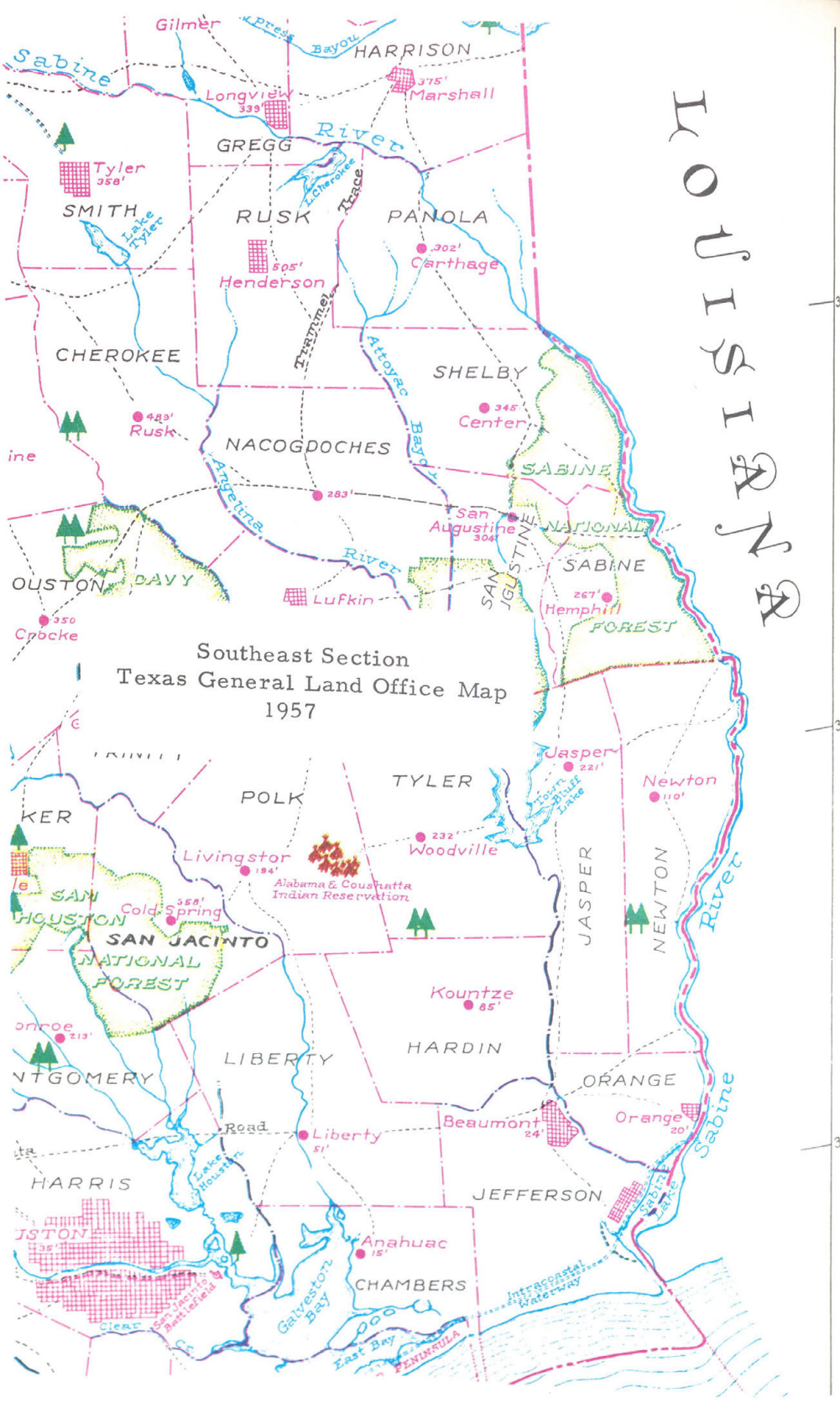

LOUISIANA
Southeast Section
Texas General Land Office Map
1957
Gilmer
Sabine
Longview
339'
Marshall
375'
HARRISON
Pres
Bayou
Sabine River
GREGG
Tyler
358'
SMITH
Lake Tyler
RUSK
Trace
Cherokee
PANOLA
Carthage
302'
Henderson
505'
Trammel
CHEROKEE
Attoyac Bayou
SHELBY
Center
345'
Rusk
483'
NACOGDOCHES
Angelina River
283'
SABINE
San Augustine
304'
NATIONAL
SABINE
FOREST
San Augustine
Lufkin
Hemphill
267'
OUSTON
DAVY
Crocke
350'
32°
31°
30°
Jasper
221'
Town Bluff Lake
Newton
110'
TYLER
POLK
Woodville
232'
Livingston
194'
Alabama & Coushatta Indian Reservation
SAN HOUSTON
Cold Spring
358'
SAN JACINTO
NATIONAL FOREST
JASPER
NEWTON
Sabine River
Kountze
85'
HARDIN
LIBERTY
ORANGE
Road
Liberty
51'
Beaumont
24'
Orange
20'
HARRIS
Lake Houston
JEFFERSON
Sabine Lake
Anahuac
15'
CHAMBERS
Galveston Bay
Intracoastal Waterway
East Bay
PENINSULA

EXHIBIT 2

State of Louisiana
DEPARTMENT OF JUSTICE
Baton Rouge

January 31, 1966

Honorable Jerry Sadler
Commissioner
General Land Office
State of Texas
Austin, Texas

Dear Mr. Sadler:

I have before me a document issued by you in your official capacity in conformity with an order of the School Land Board of Texas giving notice for bids to be received not later than 10 A.M., February 1, 1966, for oil, gas and mineral leases covering certain tracts that are described in the notice for bids.

Among the tracts included in the notice for bids are the following:

SABINE LAKE
Jefferson County

329.	Tract 41	903 Acres	
330.	Tract 42	1040 Acres	
331.	Tract 43	930 Acres	

SABINE PASS
Jefferson County

332.	Tract 1	420 Acres	Approximately
333.	Tract 2	590 Acres	Approximately

GULF OF MEXICO
Jefferson County

401.	Tract 13-L	1283.1	Acres
402.	Tract 13-L NW/4	1440	Acres

According to the territorial claim of the State of Louisiana of lands lying within the boundaries of said state and to it belonging, are all of the tracts, either in whole or in part, that are identified above and described in your notice for bids. In the exercise of my official duties and mandate as set forth in Article VII, Section 56 of the Constitution of the State of Louisiana, I hereby enter serious protest on behalf of the State of Louisiana against your offering for lease and leasing, on behalf of the State of Texas and the School Land Board of that state, any of the tracts above identified and included in the notice for bids aforesaid.

You are fully informed as to the claims of the State of Louisiana to submerged land areas in Sabine River, Sabine Lake, Sabine Pass, and the area of said lands extending seaward from said pass. Even if the State of Texas, represented by its officers and agents, does not accept and agree to such claim and the extent thereof, it seems only reasonable to suggest that the State of Texas not offer for lease any lands lying within the area or areas of submerged lands affected by disputed claims of the two states, until the boundary dispute is resolved by compact or litigation.

Sincerely yours,

s/ Jack P. F. Gremillion
JACK P. F. GREMILLION
Attorney General
State of Louisiana

cc: Honorable John Connally
Governor of Texas

Honorable Waggoner Carr
Attorney General of Texas

Honorable John J. McKeithen
Governor of Louisiana

Honorable Ellen Bryan Moore
Register of State Land Office
State of Louisiana

Honorable Henry D. Howe, Chairman
Louisiana State Mineral Board

Honorable Howard M. Jones
State Senator, Louisiana

Honorable Lloyd R. Hymel
State Representative, Louisiana

15. Affidavit of J. C. Dingwall, Texas State Highway Engineer

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

Before me, the undersigned notary public in and for Travis County, Texas, on this day personally appeared J. C. Dingwall, who being by me duly sworn, upon oath says:

My name is J. C. Dingwall, and I am State Highway Engineer for the State of Texas, having been with the State Highway Department for 38 years. I have personal knowledge of the facts and records of this Department relating to construction of bridges by the State of Texas and the State of Louisiana across the Sabine River. All of the bridges on the State Highway Department System across the Sabine River between Logansport, Louisiana (near the 32nd degree of north latitude), and the Gulf of Mexico were constructed with the State of Texas and the State of Louisiana each paying fifty percent (50%) of cost, except for

Federal contributions, and except for the present crossing of Toledo Bend Reservoir on Texas State Highway 21 (Louisiana State Highway 6), which was paid for by the Sabine River Authorities of Texas and Louisiana as a replacement crossing necessitated by the reservoir construction.

A list of such bridges, the Texas counties crossed, highway numbers, and dates of construction is attached hereto and made a part hereof.

Signed the 15 day of June, 1970.

s/ J. C. Dingwall
J. C. DINGWALL
State Highway Engineer

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

Subscribed and sworn to before me the undersigned authority on this 15 day of June, 1970.

s/ Beatrice O. Fox
BEATRICE O. FOX
Notary Public in and for
Travis County, Texas

BRIDGES CONSTRUCTED ACROSS THE SABINE RIVER BETWEEN THE STATES OF TEXAS AND LOUISIANA

TEXAS COUNTY	HIGHWAY NUMBER	PROJECT NUMBER	CONTROL NUMBER	DATE CONTRACTED	DATE COMPLETED
Shelby	U.S. 84	NRH 792(Tex.) NRM 792(La.)	175-1-1	11/35	12/36
Sabine	S.H. 21	WPH 862	119-5-1	6/36	8/37
Sabine	S.H. 21	C-119-5-3	(Toledo Bend Reservoir)	12/65	5/68
Newton	F.M. 692	None	1300-2 (Over Toledo Bend Dam)		
Newton	S.H. 63	WPH 833	214-4-1	6/36	7/37
Newton	U.S. 190	FAP 567 I	244-6-1	1/30	4/31
Newton	S.H. 12	WPSS 822	499-1-1	6/36	2/38
Orange	U.S. 90 (Old Loc.) I.H. 10	FAP 336 A-B I FI 1091(1)	28-12-1 (Removed 28-14-1	4/26 4/54 6/49	11/27 8/54) 1/51