No. 36 ORIGINAL

In the Supreme Court of the United States

(OCTOBER TERM, 1970)

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

Before the Honorable Robert Van Pelt, Special Master

REPLY BRIEF BY LOUISIANA TO THE BRIEF OF THE STATE OF TEXAS IN SUPPORT OF ITS MOTION FOR JUDGMENT

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General.

EDWARD M. CARMOUCHE,
Assistant Attorney General.

OLIVER P. STOCKWELL,
Special Assistant Attorney General.

JACOB H. MORRISON,
Special Assistant Attorney General.

SAM H. JONES,
Special Assistant Attorney General.

INDEX

TABLE OF AUTHORITIES

CASES

CONSTITUTIONS

TREATIES AND CONVENTIONS

CONGRESSIONAL STATUTES

STATE LEGISLATIVE ACTS AND RESOLUTIONS

OTHER AUTHORITIES

MISCELLANEOUS

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INTRODUCTORY STATEMENT

The Texas legal staff is to be congratulated for the thoroughness and excellence of their brief in support of their State's motion for judgment. We do believe, in all modesty, that we have adequate answers to their arguments and authorities; and we will proceed, through the medium of this brief, to expound Louisiana's position which is based on solid legal principles.

Louisiana's legal posture appears from the three pleadings filed by it, in the order in which they were filed, labeled respectively: A. Opposition of the State of Louisiana to the filing of the Complaint by Texas;

B. Motions and Answer of the State of Louisiana to Complaint by State of Texas; and C. Amended Answer and Counter-claims of the State of Louisiana.

BASIC ELEMENTS OF LOUISIANA'S DEFENSE

These pleadings assert Louisiana's basic contentions that:

1. Absence of a justiciable controversy due to a veritable "accord and satisfaction" based on the previously (1840–'41) staked and located "treaty boundary" (Senate Document 199, 27th Congress, 2d Session, 1842).
2. The want of Louisiana's consent (under U.S. Constitution, Art. 4, Sec. 3) to the purported "consent" by Congress, (Act of July 5, 1848, Ch. 94, 30th Congress, 9 Stat. 245), to the "extension" by Texas of her eastern boundary to the middle of the Sabine.
3. The "extension" of Texas' eastern boundary to the Sabine's middle did not amount to a conveyance of *title* to the western half of that river, but was designed only to extend her criminal jurisdiction. (Louisiana Resolution 212 of March 16, 1848; Report of Senate Judiciary Committee of June 29, 1848).
4. To interpret Congress' permission for the extension and Texas' acceptance thereof as a titular conveyance would render both unconstitutional, as violative of Art. 4, Sec. 3, U.S. Constitution, *Louisiana v. Mississippi*, 202 U.S. 1, 26 S.Ct. 408, 50 L. Ed. 913 (1906).
5. The doctrine of "acquiescence" by Louisiana in the mid-river location of the boundary can-

not possibly apply to a waterway where the treaties' recognition of navigation rights, available to both parties negates any semblance of adverse use or possession. In any event, adequate proof of acquiescence or prescription does not exist; hence there does exist a serious evidentiary conflict on this alone sufficient to defeat a summary judgment.[1]

SUBSTANTIVE QUESTIONS TO BE DECIDED BY THE MASTER

The fundamental substantive points for determination fit into two basic categories, one essentially legal and the other both legal and factual. They are:

I. In the light of the treaties, laws and statutes involved, (a) was Louisiana the beneficiary of the establishment on the Sabine's *west* bank by the treaties of 1819, 1828 and 1836 of the boundary between the territory of the United States and that, respectively, of Spain, Mexico and the Republic of Texas? (b) was there an "accord and satisfaction" based on a staked and located boundary? and (c) could the U. S. legally "give" Texas both jurisdiction and *title* to a 150-foot strip of water at Louisiana's expense?

II. Has there been any proven acquiescence on the part of Louisiana in the assertion-by-acts on the part of Texas of dominion over the western half of the Sabine water system?

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[1] (Wherever the term "Sabine" is used, unless otherwise specified, it includes the Sabine River, Sabine Lake and Sabine Pass).

HISTORICAL BACKGROUND ESTABLISHING LOUISIANA'S WESTERN BOUNDARY AND THE EXISTENCE OF AN "ACCORD AND SATISFACTION" ON WHICH SHE RELIES

We regret that there is no short cut to a proper consideration of Point I. A detailed analysis of the admitted historical facts is unavoidable, though we regret to tax the patience of the Special Master with a historical dissertation.

As briefly outlined in Louisiana's first pleading (its opposition, p. 7) the original of this dispute over the State's western boundary stems from extensive and lengthy "border diplomacy" surrounding the fledgling American Republic and the Kingdoms of France and Spain at the beginning of the nineteenth century, and even before that. Such great historic figures as Napoleon and Jefferson were involved.

As is well known historically, the Louisiana Territory was the subject of a series of transfers between France and Spain, beginning with the Treaty of 1762, retrocession to France by Spain in 1800 by the Treaty of San Ildefonso, and, finally, the Louisiana Purchase from France by the United States in 1803 (8 Stat. 200). See document entitled "Historical Sketch of Louisiana and the Louisiana Purchase" by Frank Bond, published in 1933 by the General Land Office, Department of the Interior.[2]

The border was the source of continuous dispute

[2] See Exhibit A for "Historical Sketch of Louisiana and the Louisiana Purchase" by Frank Bond.

and was always an unknown and unsettled quantity both prior to and after the State of Louisiana was admitted into the Union. (See Louisiana's original opposition, p. 10 and its motions and answer, p. 5). However, the Sabine River water system seems to have been a sort of focal point or guideline to which both sides adhered in a rough kind of way.

This dispute, as to the western limits of the Orleans Territory was carried on between the United States and Spain. Finally a "neutral zone" was agreed to between General Wilkinson, representing the United States, and Lieutenant Colonel Herrera, representing Spain, in 1806. The neutral zone was ostensibly between the Sabine and Mermentau Rivers. (See Louisiana's original opposition, p. 10 and its motions and answer, p. 5). It ran north to Red River (Rio Roxo), and the Gulf was its southern boundary.

The Neutral Zone existed from 1806 to 1821. See Haggard's "The Neutral Zone between Louisiana and Texas, 1806 to 1828", (Vol. 28 "The Louisiana and Historical Quarterly" No. 4, (Oct., 1949); also Document 190 H. of R. 25th Congress, 2d Session (1838)). (See also a report to Congress rendered in 1825, being Document No. 445 of the 18th Congress, 2nd Session.)[3]

The new State of Louisiana was to encompass almost all of the Orleans Territory which was created by an Act of Congress of March 26, 1804, (2 Stat. 283), and the area on the east known as the Florida

[3] See Exhibit C for "The Neutral Zone Between Louisiana and Texas, 1806 to 1828" by Haggard.

Parishes. (Gayarre, "History of Louisiana," Vol 4, pp. 265–275). There was created out of the Louisiana Purchase this Territory of Orleans, "which lies South of the Mississippi Territory and of an East and West line to commence on the Mississippi River at the 33rd degree of North latitude, and to extend West to the Western boundary of the said section." The western boundary was still in doubt ("Historical Sketch of Louisiana and the Louisiana Purchase," by Frank Bond, Department of Interior General Land Office, 1933). See the Debates and Proceedings in the Congress of the United States, Eleventh Congress, 3rd Session, comprising the period from December 3, 1810 to March 3, 1811, pp. 521, 522 and particularly the remarks of Congressman Johnson, pointing out the existence of the dispute over the western and southern boundaries between the United States and Spain.[4]

However, Chambers, in his "History of Louisiana," Vol. 1, page 506 noted that the bill authorizing the creation of the State of Louisiana out of the Territory of Orleans fixed the Sabine as the western boundary even though Spain had never conceded that the western limits of the Orleans Territory extended that far.

The Sabine was always the happy medium; and, despite the claims of the adversaries, they consistently fell back on the Sabine waterways as the most likely point for settlement and location of the boundary between the Spanish possessions on the west and the lands of the United States on the east.

[4] See Exhibit A.

In the middle of these disputes and negotiations, Louisiana was admitted to the United States in 1812.

It is quite true that in the Act of Congress enabling Louisiana to become a state (Feb. 20, 1811, 2 Stat. 641), the Act of Congress admitting Louisiana as a state (April 8, 1812, 2 Stat. 701. Ch. 50), and in the Louisiana Constitution (Jan. 22, 1812, Constitution, Vol. 3, p. 511 West's Edition), the boundary between Louisiana and the Spanish territories is placed in the middle of the Sabine. It should be borne in mind that this dividing line was in the throes of an international dispute. One thing was certain and that was that Louisiana was the westernmost state of the United States.

So, what border was the United States attempting to crystallize? Ostensibly, it was that of the American Union, but essentially it was bound to have been—as a concomitant—that of its westernmost state, Louisiana. The State could not have negotiated a boundary dispute. That lay within the exclusive province of the national government. (U.S. Constitution, Art. I, Sec. 10, Cl. 1).

THE TREATIES

In our original opposition, (pp. 10-11), there appears a capsuled outline of the negotiations between Chevalier de Onis, representing Spain, and John Quincy Adams, Secretary of State and afterwards President, acting for the United States. Spain contended vigorously for a boundary between the Calcasieu and Mermentau Rivers. (Annals of Congress, 15th Con-

gress, 2d Session, 1819, p. 1900).[5] Adams sought one west of the Sabine but finally proposed, as a compromise, that "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 west bank of that river to the 32nd degree of latitude; thence by a line due north to the 33rd degree of latitude where it strikes Rio Roxo of Natchitoches, etc."

This was finally agreed to as the dividing line by the Treaty of 1819, Article III. (Annals of Congress, Appnd., 16th Congress, 2d Session, pp. 2120, 2121, 2123).[6] It was also provided in the same Treaty that "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 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."

This was in consonance with United States policy which called for the vesting of title to the beds of navigable streams in new states created out of territories of the United States. In 1819 Louisiana was the only state to which the Sabine's western river-bed could attach as there was no American territory west of it.

During the period of time herein involved, that is the approximate decade following 1819, leading Ameri-

[5] See Exhibit A.

[6] See Exhibit A.

can statesmen uniformly referred to the boundary established by the Treaty of 1819 as being the dividing line between the State of *Louisiana* (rather than the United States) and the foreign power to the east. In Document No. 61, 20th Congress, 1st Session, Henry Clay who was then Secretary of State used the following language:

> "The Secretary of State, to whom has been referred, by the President, the resolution of the House of Representatives of the 2d instant, requesting him 'to inform that House, if it be not incompatible with the public interest, whether any representation or arrangement to or with the Mexican Government, has been made so as to enable citizens of the United States to recover debts and property belonging to them, from persons absconding from the United States and taking refuge within the limits of that Government; and whether any steps have been taken to establish the boundary of the United States between the *State of Louisiana* and the Province of Texas,' has the honor to report:
>
> (Second paragraph not pertinent)
>
> That the Minister of the United States at Mexico, when he was sent on his mission, was charged with a negotiation relating to the territorial boundary between that Republic and the United States in its whole extent; and, consequently, including that portion which *divides Louisiana from* the Province of Texas: but no definitive arrangement on that subject has been yet concluded; and it is respectfully submitted to the President, that, in the present stage of the negoti-

ation, it would be premature to publish the correspondence that has passed between the two Governments." (Emphasis ours).

It is highly significant that, after he became the sixth president of the United States, John Quincy Adams, author of the Adams-de Onis Treaty of 1819 while Secretary of State, used the following language in transmitting a report to Congress:

> "In compliance with a resolution of the House of Representatives of the 2d instant, requesting information respecting the recovery of debts and property in the Mexican States from persons absconding from the United States, and also respecting the *boundary between the State of Louisiana* and the Province of Texas, I now transmit a report from the Secretary of State on the subject-matter of the resolution.
>
> JOHN QUINCY ADAMS"
>
> (Emphasis Ours).

See Vol. III of "A Compilation of the Messages and Papers of the Presidents", page 960. [7]

By the Treaty of January 12, 1828 between the United States of America and the United Mexican States, the dividing limits of the respective countries were declared to be the same as those fixed by the Treaty of 1819. (8 Stat. 372).

The Republic of Texas by Act of December 19, 1836 accepted this boundary. (1 Sayles' Early Laws of Texas, Art. 247).

We might pose the question right here: suppose

[7] See Exhibit A.

that de Onis' contentions had prevailed, and the Mermentau River had been selected for the boundary, where would Spain have gotten the additional territory to the east? Out of Louisiana, of course. As a consequence, any rectification of the boundary by which Louisiana profited rather than lost should, by a parity of reasoning, redound to her benefit.

In 1838, the United States and the Republic of Texas entered into a Convention by which each appointed a Commissioner to locate, lay out and stake the actual boundary line between said respective sovereigns on the *western* bank of the Sabine water system from the Gulf to the 32nd parallel and continuing thence northward on the land from the *west* bank of the Sabine (where it turns west and ceases to be the border) to the 33rd parallel. John H. Overton was the American Commissioner; and the Commission is often called the "Overton Commission." Physical monuments were constructed to mark the border.

The actual survey was not completed until 1841. A graphic story of its progress and pitfalls appears in Senate Document 199, 27th Congress, 2d Session, 1842, 5 Stat. 312.

As appears from "A Compilation of the Messages and Papers of the Presidents," Vol. 5, page 1932, in the First Annual Address of President Tyler on December 7, 1841, he had this to say:

> "The joint commission under the convention with Texas to ascertain the true boundary between the two countries has concluded its labors, but the

> final report of the commissioner of the United States has not been received. It is understood, however, that the meridian line as traced by the commission lies somewhat farther east than the position hitherto generally assigned to it, and consequently includes in Texas some part of the territory which had been considered *as belonging to the States of Louisiana and Arkansas.*" (Emphasis ours.)

Nowhere is it asserted that the United States owned any part of this border land.

In 1846, the United States, through the Surveyor General, resurveyed the sections along the west boundary of Louisiana and reduced the size to conform to the survey made by the Overton Commission. The United States refunded to the patentees the amount paid by them for the lands that were determined to be in the Republic of Texas.[8]

Basis of Texas' Claim

The basic genesis of Texas' claim to the western half of the Sabine derives from the Act of Congress of July 5, 1848 (9 Stat. 245, Ch. 94, 30th Congress, 1st Session) "consenting" to the Texas legislature's extending her eastern boundary so as to include within her limits one-half of the Sabine water system, and the Act of the Texas Legislature of November 24, 1848 (3 Gammel's Laws of Texas, 442) carrying out such extension. Louisiana's legislature never consented to this.

[8] See Exhibit F.

The fundamental legal question boils down to the validity of the right of the United States to "give" Texas title to a thin 150-foot wide water strip that we contend was already owned by Louisiana, thus defying Article IV, Section 3 of the federal constitution.

It is impossible to believe that, when the Treaty of 1819 between the United States and Spain was confected, the United States had in mind the establishment of a "buffer" strip between its own westernmost State, Louisiana, and the dominions of the King of Spain to the west. This buffer strip would have consisted of one-half of a 300-foot wide river (and even less than that at certain points because Louisiana's constitutionally established territory *included all islands*). This would be quixotic at best; and no useful purpose could have been conceived therefor, whether for national defense, navigation or exploitation. Inasmuch as the State of Louisiana was part of the American Union, it needed no independent intervening insulation or protection by said Union (as a separate entity), from a potential enemy, i.e., Spain. Assuredly a slender strip of water—less than a stone's throw in width—would not have served such purpose, even if it existed.

The course of historic events justifies the contention that no reason could have existed for the maintenance by the United States (independent of Louisiana) of such a thin buffer zone, i.e., a 150-foot strip, one-half the width of the Sabine to the 32nd parallel and continuing northward on the "land portion" of the boundary between the 32nd parallel (where the Sabine turns west) and the 33rd parallel which is the Lou-

isiana-Arkansas line. As a matter of undisputed fact, *the western boundary of the State of Louisiana on the said "land portion" of the boundary has been recognized as being located exactly on and as coinciding with the western boundary of the United States.*[9]

In the factual stipulation entered into between plaintiff and defendant in this case, Texas has disclaimed ownership of any such "buffer" strip on the "land portion" of the boundary, viz.:

> "(b) The eastern boundary of the State of Texas between the 32nd and 33rd degrees of north latitude is a line marked on the ground in 1840–1841 by Commissioners appointed by the United States and the Republic of Texas from the junction of the west bank of the Sabine River with the 32nd degree of north latitude, thence north to the 33rd degree of north latitude, being the same line fixed by the Treaties between the United States and Spain in 1819, between the United States and Mexico in 1828, and in 1838. This line has remained the same since it was so marked on the ground."

Interestingly enough, Texas at one time did assert a claim to the "land portion" of the boundary, between the 32nd and 33rd parallels. Land Commissioner Bascom Giles of Texas wrote Governor Sam H. Jones of Louisiana to this effect on November 25, 1941. Copy of this letter is annexed to the affidavits of Governor Jones and Jacob H. Morrison.[10]

Texas takes the position in its answer to our

[9] See Exhibits A and F.

[10] See Exhibit B and Appendix A to this Brief.

counterclaims that this "land portion" of the boundary between the 32nd and 33rd parallels "has no bearing on this controversy." True it is not part of this lawsuit; but it has a definite bearing on the questions of both intent and action that are strongly persuasive in resolving this controversy.

Insofar as the United States is concerned, it has long ago conceded that *Louisiana's western boundary is located precisely where we contend* it is, namely, along the line staked and located by the "Overton Commission" under the convention of April 25, 1838 between the United States and the Republic of Texas. (Senate Document 199, 27th Congress, 2d Session). This line ran due north from the junction of the *west* bank of the Sabine with the 32nd parallel to the 33rd parallel, the State's northern border.

Yet, according to plaintiff's theory of the case, prior to 1848, the American nation owned in fee simple this strip of water-and-land territory 150 foot wide (half the Sabine's width) running from the Gulf to the 32nd parallel and thence to the 33rd parallel, the Arkansas line. According to Texas theory, it was composed of the space between the Sabine's middle (claimed to be the western boundary of the United States) and its west bank.

Then in 1848, so Texas contends, the United States "gave" Texas the water portion of the boundary (the western half of the Sabine)—from the Gulf to the 32nd parallel. It naturally follows that the United States must have retained the ownership of the land

portion—from the 32nd to the 33rd parallel. However, this apparently did not happen. Louisiana got it though not by any gift. She got it—and this is our basic contention—through the medium of the Adams-de Onis Treaty of 1819. The "enlargement" of the boundary space by the width of the Sabine redounded to the benefit of the American nation's westernmost state, Louisiana.

How else could Louisiana have obtained this 150-foot wide land strip from the 32nd to the 33rd parallel? It follows logically that, if Louisiana was the beneficiary of this narrow 150-foot wide land strip under the aegis of the Adams-de Onis Treaty of 1819, she was also the beneficiary of the 150-foot wide water strip from the Gulf to the 32nd parallel by virtue of the same treaty.

This reasoning appealed strongly to a learned authority, Mr. Bunyan H. Andrew, who wrote in the "Southwestern Historical Quarterly" in July, 1949:

> "This act (of Congress of July 5, 1848) did not authorize an extension eastward of the limits of Texas any farther north than the thirty-second parallel. Obviously, if the national government had, between 1819 and 1848, retained as Federal territory the western half of the Sabine up to the thirty-second parallel, either one or the other of two additional conditions prevailed: first, the Federal possession also extended northward beyond this parallel, comprising the strip lying between the lines running north from the points at which the middle of the river and the west bank of the river, respectively, intersected the said

parallel; or, second, the Louisiana state line was allowed to become identified automatically with the 1819 line. If Congress had retained a strip of Federal territory west of the entire length of the Louisiana line as described in the act admitting this state, then why did Congress not authorize Texas in 1848 to extend her eastern limits to include all the Federal strip? If, on the other hand, the Louisiana boundary was permitted to coincide with the 1819 line north of the thirty-second degree of latitude, why would the Louisiana boundary not 'follow the flag' south of this parallel?"

In its brief, plaintiff uses language implying that Louisiana never claimed that its western boundary was the west bank of the Sabine. This is erroneous.

The Louisiana Legislature adopted a resolution on March 16, 1848 (Senate Misc. Document 135, 30th Congress, 1st. Sess., Vol. 511) in which it expressed doubt as to its jurisdiction over crimes and offenses committed in the west half of the Sabine; and it called on the United States Congress to rectify this situation. However, it asserted the State's *ownership* to the *west* bank of the Sabine. The resolution reads:

"Therefore, be it resolved, by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened: first, 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 banks 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 State of Texas.*" (Emphasis ours).

We are reinforced in our position by the fact that it is patent on the face of the 1848 Acts, respectively, of Congress, Texas and Louisiana that all the parties had in mind was *criminal* jurisdiction, not fee simple ownership.

On March 18th, 1848 the Texas Legislature resolved to petition its representatives in Congress to "extend the jurisdiction" of Texas over the Sabine.

In the report of Senate action on the Texas resolution of March 18, 1848 (Congressional Globe, 1st. Sess., 30th Congress, June 29, 1848), the Chairman of the Judiciary Committee urged the passage of an Act of Congress extending the eastern boundary of Texas to the middle of the Sabine. The following appears:

> "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." (Emphasis ours).

The act of the Texas Legislature dated November 24, 1849, (9 Stat. 245) accepting the extension mentioned above states that the several counties of Texas from the mouth of the Sabine to the 32nd 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;" (Emphasis ours).

We have already quoted from the resolution of the Louisiana Legislature adopted on March 16, 1848 from which there can be no doubt that the sole objective thereof was to cure the existing hiatus in the *criminal* jurisdiction. As stated above, said resolution specifically declares that the *western* bank of the Sabine is "*the boundary line between the State of Louisiana and the State of Texas.*"

It is interesting to note that as early as 1910 representatives of Louisiana contended—as we do now—that the Acts of 1848 "relative to the extension" of the limits of Texas to the middle of the Sabine amounted to no more than the bestowal of the *jurisdiction* of that state to the middle of the Sabine.[11] See Texas' Exhibit "B" in which reference is made to a legal battle before the Department of the Interior involving two islands in the Sabine River, which resulted in favor of Louisiana. At page 20 of Louisiana's brief, the following appears in referring to the Act of Congress of 1848 (9 Stat. 245):

"This was a grant by Congress of jurisdiction

[11] Even the State of Texas has serious doubts on this point, for in its Motion for Leave to File Complaint and Brief in Support of Motion, at page 12, it asserted that it acquired by the Submerged Lands Act of 1953 (67 Stat. 29), title to the strip in dispute. This could not be so since title to this strip was already vested in the State of Louisiana.

pure and simple, and not a grant of territory; for no mention is made of any island, and at that time several were known to lie in the lake and river."

The net result of the foregoing is that there has never been any outright titular conveyance—legally approved by Louisiana's constitutional authorities—of the western half of the Sabine water system by the United States to the State of Texas.

Texas' brief contains a detailed scholarly treatise on the salient episodes in the history of the Texas-Louisiana border dispute (pages 11-16). We have no quarrel with this learned dissertation; and we readily admit that, beginning with Thomas Jefferson, America's statesmen and political leaders—as politicos are prone to do—claimed far more than they ever hoped to get from Spain. Jefferson's imaginative horizons even included the Rio Grande as the western boundary of history's greatest real estate deal—his Louisiana Purchase from France's Napoleon.

However, the realities were out of balance with the hopes, and the result was that the pretensions of the United States' leaders shrank to the Colorado (the one in Texas), then to the Neches and finally to the Sabine by the time the Territory of Orleans was actually formed and Louisiana became a state. Consequently, the area of dispute had narrowed considerably by the time Adams and de Onis began their negotiations that culminated in the Treaty of Amity, Settlement and Limits of 1819.

Each sovereign, respectively, ceded "territories" to the other. In Spain's case, she actually did own ter-

ritory, i. e. land under her effective control and actual administration. This was East and West Florida. The United States' "territories" consisted mostly of claims, without control, to the vast area that is now the State of Texas.

In its brief (pages 18-21), Plaintiff argues forcefully that, in the border negotiations with Spain and in the language of the Adams-de Onis Treaty of 1819 itself, the United States was seeking to define and establish the limits of its bordering "territories"; that since the word "state" was not used, it could not have been acting for the State of Louisiana. We disagree. We believe that the word "territories" was used in its generic sense, meaning simply land, i. e. "a geographical area belonging to or under the jurisdiction of a governmental authority" (Webster's Seventh New Collegiate Dictionary, 1963). This would encompass states as well as officially designated "territories" (such as the former Territory of Orleans), or colonial possessions which, according to Webster, would have "some degree of autonomy."

Certainly, the wild, largely uninhabited area west of the Sabine had no degree of autonomy between 1803 and 1819; and the "authority" of the United States government never went beyond the status of a claim. Control, prior to 1812, was largely a matter of military force and compromise—such as that involving the Wilkinson-Herrera "Neutral Zone."

The logical consequence is that the United States was acting for and on behalf of its westernmost state, Louisiana, as well as for its own territorial lands.

In its brief (pages 22-24), Texas injects a contention that it is possible for the United States to own the bed of a stream even though it does not have jurisdiction over the area occupied by that stream. The example cited is that of the south half of Red River which was involved in the same Adams-de Onis Treaty of 1819. It is appropriate here to refer the Master to the long course of litigation between Oklahoma and Texas, which spawned the following cases:

U. S. v. Texas, 162 U.S. 1, 16 S. Ct. 725 (1896);

Oklahoma v. Texas, 253 U.S. 465, 40 S. Ct. 580 (1919);

Oklahoma v. Texas, 256 U.S. 602, 41 S. Ct. 539 (1920);

Oklahoma v. Texas, 260 U.S. 606, 43 S. Ct. 221 (1922);

Oklahoma v. Texas, 261 U.S. 340, 43 S. Ct. 376 (1922);

Oklahoma v. Texas, 258 U.S. 574, 42 S. Ct. 406 (1921); and

Oklahoma v. Texas, 272 U.S. 21, 47 S. Ct. 9 (1926).

Suffice it to say that the Red River was and is a non-navigable stream and the Sabine water system is a navigable stream. In the article aforesaid, written by Mr. Bunyan H. Andrew, he says:

> "It is well established that 'in accordance with the constitutional principle of the equality of States' the title to the beds of rivers within a

state passed to the state when admitted, 'if the rivers were then navigable,' but 'if they were not then navigable, the title . . . remained in the United States.' (Citing U. S. v. Utah, 283 U.S. 64, 75, April 13, 1931). Oklahoma did not acquire statehood until 1907, a time at which the Red River was not being used for navigation. It is possible that this river might have been adjudged navigable at some earlier date, but neither Texas nor Oklahoma had any basis for claiming river bed ownership derived from the previous navigability of Red River, provided that the fact of navigability could be established.

Since the Sabine was, in fact, a navigated river during the period in which Louisiana and Texas became states, state ownership of its bed is coextensive with state boundaries. Therefore, more than the mere exercise of jurisdiction is involved in the question of what the Texas-Louisiana boundary is in relation to the Sabine River. And the final answer to this question depends largely on whether or not the Act of July 5, 1848, by which Congress authorized Texas to extend her eastern boundary, is valid." (Emphasis ours)

Plaintiff raises the point (at pages 23-25 of its brief), that Article IV, Section 3 of the United States Constitution states that a territorial possession of the United States cannot be incorporated into an existing state without the consent of Congress. The particular 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 state 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 . . . "

Plaintiff also cites *Van Brocklin v. Anderson*, 117 U.S. 151, 6 S. Ct. 670, 29 L. Ed. 845 (1885). The answer to this argument is that no "new state" was formed in this case. Louisiana was already a state in 1819. Furthermore, in coalescing the western half of the Sabine with Louisiana, Congressional action (Senate approval of the 1819 Treaty) was involved and is relied on by us.

We grant that Congress is authorized to incorporate territories ceded by treaty into the United States as Texas points out; and that Congress is empowered to make laws governing such territories. The "territory" here involved was a 150-foot wide stream of water plus a 150-foot wide strip of land to its north. Our argument is that this did not become a separate "territory" of the United States but was simply an enlargement or rectification of Louisiana's western boundary.

The United States can add to the territory of a state without any formal act or deed so long as no other state or territory is affected. See *Pope v. Blanton*, 10 F. Supp 18 (1935), decided by a Florida District Court in 1935. Coincidentally, this case involved an interpretation of the same Adams-de Onis Treaty of 1819 that concerns us in this controversy. Plaintiff contended the boundaries set in the Constitution of

1868 and 1865 were illegal "because they conflict with the Treaty of Spain and the United States; because they conflict with the Act of Congress admitting the state into the Union, March 3, 1845, in that the Constitutions fixed the boundaries at three leagues off shore when the law did not contemplate extending the boundaries but one league off shore."

The Court stated:

> "Admitting that the boundaries of the state were limited to one league off shore by the Treaty, and by Act of Congress admitting the state into the Union, and so remained until the Constitution of 1868, there is no rule of law to prevent the state, with the approval of Congress, from fixing the boundaries. It may be that it is usual to do this at the time of admission into the Union, but that does not signify that it cannot be done at any other time by agreement *between the state and the Congress, so long as the change does not affect the territory of another state. Louisiana* v. *Mississippi*, 202 U.S. 1, 26 S. Ct. 408, 50 L. Ed. 913; *New Mexico* v. *Colorado*, 267 U.S. 30, 45 S. Ct. 202, 69 L. Ed. 499; *Arkansas* v. *Tennessee*, 246 U.S. 158, 38 S.Ct. 301, 62 L. Ed. 638, L.R.S. 1918 D. 258." (Emphasis ours).

> "The consent of Congress need not be expressed, if it is implied from the acquiescence of Congress, and this may appear subsequently as well as at the time 'the compact in this case, having received the consent of Congress, though not in express terms, yet impliedly, subsequently, which is equally effective, becoming obligatory and binding upon all the citizens of both Virginia

and Tennessee. 148 U.S. 503, Text 525, 13 S. Ct. 728, 737, 37 L. Ed. 537."

(Due to lack of jurisdictional amount—dismissed, 229 U.S. 521, 81 L. Ed. 384, 57 Sup. Ct. 321).

Of course, Texas was not "another state" in 1819. It did not even exist.

The *Blanton* case was approved by the Supreme Court of Florida in *Skiriotes v. State*, 197 So. 736 (1940) in the following language:

> "From the decided cases, it appears that any state by the approval of Congress has a right to fix its marine boundaries and that if fixed in reason, such right has never been questioned by Congress, by any other nation, or citizen thereof." (Citing Indiana v. Kentucky, 136 U.S. 479, 10 S. Ct. 1051, and Maryland v. West Virginia, 217 U. S. 1, 30 S. Ct. 268).

Virginia v. Tennessee, 148 U.S. 503, 13 S. Ct. 728, 37 L. Ed. 537 (1893), leaves no doubt that the *consent of Congress* to a boundary compact *may be given subsequently*, or may be *implied* from the *subsequent action of Congress itself*. (The compact was between the two states).

There can be no controversy over the fact that Louisiana accepted as its western boundary the line of the "Overton Survey" marked by monuments and staked out on the ground.

When Louisiana's western-most parishes (counties) were created by various Acts of the Legislature the boundary situation was reflected. Back in 1843,

for example, the opinion was undoubtedly prevalent that the western boundary of Louisiana coincided with the western boundary of the United States.

These Acts of the Louisiana Legislature creating the parishes (counties) that adjoin the Sabine and the line from its west bank to the 33rd parallel reveal that Caddo (created by an Act of 1843) and DeSoto (created by Act 88 of 1843) have as their western boundaries the "*boundary of the United States*," meaning the line running from the *west* bank of the Sabine north to the Arkansas line. Sabine Parish (created by Act 46 of 1843) specifies the western bank of the Sabine as its western boundary. Beauregard (created by Act 8 of 1912) has the Sabine's middle as its western boundary. The Acts creating the remaining border parishes simply name the "Sabine River" as their western boundaries, without specifying any particular part of it.

We realize, of course, that there have been many occasions in the history of the United States when border states were flanked by extensive territories. However, as a general principle of law where a federal republic, such as the United States of America, is concerned, the boundaries of the United States conform to the external boundaries of the several states. 54 Am. Jur. Sec. 7 p. 525. The United States Supreme Court case cited in support of this principle is *Harcourt v. Gaillard*, 12 Wheaton 523, 6 L. Ed. 716 (1827). This case involved a grant by the British Governor of Florida to plaintiff's ancestor in title dated January 24, 1777, (after the Declaration of Independence) of

land between the Mississippi and Chatahouchee Rivers and between the 31st degree of north latitude to the south and a line drawn from the mouth of Yazoo River due east to the Chatahouchee. The northern boundary of the Floridas was the 31st parallel. This was also the southern boundary of the United States. The claims of the United States, South Carolina and Georgia were united in the general government.

This grant was held to be invalid as the foundation of title in the courts of the United States.

It was contended that the tract had "been legally separated from Georgia before the revolution and attached to West Florida; and, therefore, a grant by the Governor of the latter province was valid if made at any time previous to the treaty of peace." The grant was held to be invalid, as the foundation of title in the courts of the United States.

WHAT IS MEANT BY THE "MIDDLE" OF THE RIVER?

We understand that the Special Master may decide not to determine the actual physical location of the boundary. Nevertheless, in the event of a decision in favor of Texas holding the boundary to be in the middle of the Sabine, rather than on its west bank, the question then will arise as to the meaning of the term "middle". Is it the "geographic middle" or the "thalweg", i.e., "middle" of the "main channel of navigation"?

In Texas' latest pleading, constituting an answer to the Counterclaims of Louisiana (page 7), it force-

fully insists that the "geographic" middle of the Sabine is the correct interpretation. It also contends that Louisiana does not own "all islands" that existed in the Sabine in 1812. On the contrary, Texas argues that Louisiana owns only the islands in the "eastern half of the Sabine". The term "geographic middle" is a convenient coinage of words but is lacking in legal validity.

In *Louisiana v. Mississippi*, 202 U.S. 1, 26 S. Ct. 408, 50 L. Ed. 913 (1906), the Court applied the "thalweg" rule, i.e., (p. 421 of 26 S. Ct.):

> "If the doctrine of the thalweg is applicable, the correct boundary line separating Louisiana from Mississippi in these waters is the deep-water channel.
>
> "The term 'thalweg' is commonly used by writers on international law in definition of water boundaries between states, meaning, the middle, or deepest, or most navigable channel.
>
> In Iowa v. Illinois, 147 U. S. 1, 37 L. ed. 55, 13 Sup. Ct. Rep. 239, the rule of the thalweg was stated and applied. The controversy between the states of Iowa and Illinois on the Mississippi river, which flowed between them, was as to the line which separated 'the jurisdiction of the two states for the purpose of taxation and other purposes of government.' Iowa contended that the boundary line was the middle of the main body of the river, without regard to the 'steamboat channel' or deepest part of the stream. Illinois claimed that its jurisdiction extended to the channel upon which commerce on the river by steamboats or other vessels was usually conducted. *This court held that the*

true line in a navigable river between states is the middle of the main channel of the river."

Mr. Justice Field, delivering the opinion of the court, said:

> "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 be the middle of the main channel of the stream. The interest of each state in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest. It is therefore, laid down in all the recognized treatises of international law of modern times that the middle of the channel of the stream marks the true boundary between the adjoining states up to which each state will, on its side, exercise jurisdiction. In international law, therefore, and by the usage of European nations, the term 'middle of the stream,' as applied to a navigable river, is the same as the middle of the channel of such stream, and in that sense the terms are used in the treaty of peace between Great Britain, France and Spain, concluded at Paris in 1763. *By the language, 'a line drawn along the middle of the River Mississippi from its source to the River Iberville,' as there used, is meant along the middle of the channel of the River Mississippi.*" (Emphasis ours).

Texas relies on *State of Georgia v. State of South Carolina*, 257 U.S. 516, 42 S. Ct. 173 (1921). That case can easily be distinguished from the case at bar. There the Supreme Court was dealing with a boundary established by *convention*—the Beaufort Convention

of 1787. In the case at bar, Louisiana's boundary, set by both the Act of Admission of April 8, 1812 (2 Stat. 701) and the State Constitution was "a line to be drawn along the middle of the said river (Sabine) including all islands. . ." The only "treaty boundary" or convention-fixed line was that set in the Adams-de Onis Treaty of 1819; and that boundary line was on the "Western Bank" of the Sabine water system. The said Treaty was confected seven years after Louisiana became a state of the Union.

In the Georgia-South Carolina boundary case, the following observation is manifestly correct, as we repeat, the court was dealing with a dividing line fixed by convention:

> "However, the general rule is that 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 (Handly's Lessee v. Anthony, 5 Wheat. 374, 379, 5 L.Ed. 113; Hall, International Law (6th Ed.) 123; Creasy, First Platform of International Law, 231), and therefore in this case the conclusion of the General Assembly of South Carolina in 1852 and in 1861, as we have quoted it, was clearly the correct one." (Emphasis ours.)

It is quite true that in *Georgia v. South Carolina*, supra, the Court did state that there was no reason for the application of the thalweg doctrine due to the fact that navigation rights were accorded to both of those states. When Louisiana was admitted to the

Union there was no state or territory west of her boundary. The Kingdom of Spain owned the adjacent territory, though, we candidly admit that claims were being made by the United States to lands west of the Sabine.

There is a great difference between a claim and actual ownership or sovereignty.

In 1819 when the Adams-de Onis Treaty was agreed upon, it certainly constituted a "convention" similar to the Beaufort convention that was involved in *Georgia v. South Carolina.* However, we hasten to remind the Special Master that the 1819 treaty or convention with Spain did not fix the boundary line in the middle of the Sabine. On the contrary it was fixed on the western bank. The net result of all this is that the thalweg doctrine is bound to apply because both the Act for Admission and the Constitution of Louisiana fixed the State's western boundary in the "middle" of the Sabine. This is exactly the same language as is used in *Iowa v. Illinois,* 147 U.S. 1, 13 S. Ct. 239, 37 L. Ed. 55 (1892), and *Louisiana v. Mississippi,* supra. In fact, the latter case involved the self-same Constitution of Louisiana of 1812 that concerns us in the case at bar.

Texas' contention (in its latest pleading, i. e. its answer to the counterclaims of Louisiana, p. 7) that the whole basis for the thalweg rule is absent because of free navigation of the Sabine, is refuted by *Arkansas v. Tennessee,* 246 U. S. 158, 38 S. Ct. 304 (1918). At page 305 the following language was used by the United States Supreme Court:

"There is controversy with respect to the application of the foregoing rule to the particular circumstances of this case. It is insisted in behalf of the State of Tennessee that *since the rule of the thalweg derives its origin from the* equal rights of the respective States *in the navigation of the river*, the reason for the rule and therefore the rule itself *ceases* when navigation has been rendered impossible by the abandonment of a portion of the river bed as the result of an avulsion. In support of this contention we are referred to some expressions of Vattel, Almeda, Moore, and other writers; *but we deem them inconclusive, and are of the opinion, on the contrary, that the contention runs counter to the settled rule and is inconsistent with the declarations of this court,* in Nebraska v. Iowa, 143 U. S. 359, 367, 12 Sup. Ct. 396, 399 (36 L. Ed. 186), that 'avulsion would establish a fixed boundary, to wit: the center of the abandoned channel,' or, as it is expressed on page 370 of 143 U. S. on page 400 of 12 Sup. Ct. (36 L. Ed. 186), 'the boundary was not changed, and it remained as it was prior to the avulsion, the center line of the old channel,' and in Missouri v. Nebraska, 196 U. S. 23, 36, 25 Sup. Ct. 155, 158 (49 L. Ed. 372) *that the boundary line 'must be taken to be the middle of the channel of the river as it was prior to such avulsion'.*" (Emphasis ours).

In connection with the controversy at hand, after demand was made upon the State of Texas by Governor Jones and Attorney General Stanley in 1941, Honorable Tom Connally, United States Senator from Texas, wrote the United States Department of the Interior

forwarding to it a letter from Bascom Giles, Commissioner of the General Land Office of Texas. An opinion was requested. By letter dated January 5, 1942 addressed to Senator Tom Connally by Fred W. Johnson, Assistant Commissioner of the General Land Office at Washington, the opinion of that department was given as follows:

> "*This office is of the opinion that the east boundary of Texas is along the middle of the western-most channel of the Sabine River, according to the act of July 5, 1848 (39 L.D. 55)*, and along the line surveyed by the Commission in 1841, extending north from the point of intersection of the 32° of latitude with the *west bank* of that river. The act of July 5, 1848, did not change the original boundary line extending north from the Sabine River. *Accordingly, the State of Texas can have no claim to the strip of land approximately 150 feet wide, lying between the line as surveyed by the Commission in 1841, and a line extending north from the point of intersection of the 32° of latitude with the middle of the Sabine River.*" (Emphasis ours.)

In his article entitled "Some Queries Concerning the Texas-Louisiana Sabine Boundary" Vol. LIII, No. 1 of the "Southwestern Historical Quarterly" (1949), Bunyan H. Andrew (p. 16) flatly states, "But the Act of Congress by which Louisiana was admitted as a state reserved to Louisiana 'all islands' in the Sabine " 'to the thirty-second degree of latitude'."

In "Exhibit B" filed by Texas in support of its motion for judgment, a decision by the General Land

Office appears as the first document therein. The question that confronted Texas and Louisiana in that dispute was the ownership of certain islands in the Sabine. The department used the following language on page 3 of its opinion, dated June 27, 1910 (See Texas' Exhibit B, pages 1-8):

> "In the absence of any term limiting or restricting the boundary to a particular channel of the river, the limits described would extend, by the plain language of the statute, *to the farthest or western channel* of the river, even if the other descriptive term, 'including all islands,' had been omitted; but when considered together those terms of description indicate with absolute certainty *that the western boundary of the State is the farthest western branch or channel through which any part of the waters of the Sabine River may naturally flow.*" (Emphasis ours).

This opinion was re-affirmed in 1932. (See Texas Exhibit B, pages 47-49).

Texas relies on various statements and declarations by Louisiana officials which allegedly support Texas' viewpoint and "estop" Louisiana. These will be discussed in detail hereinafter. Except for a single isolated case, none of these expressions of opinion are relevant as they do not pertain to the specific issue of the location of the Texas-Louisiana boundary. However, a definite observation with reference to this specific question was made by Mr. Bascom Giles, Commissioner of the General Land Office of Texas, in his letter to Governor Sam H. Jones of Louisiana dated November 25, 1941. He wrote:

> "It has come to my attention that you are contending that possibly the State of Louisiana has title to all of the Sabine River bed. The United States Department of the Interior, by letter dated June 4, 1937, advised the General Land Office of the State of Texas that the center of the Sabine River from its mouth to the 32° of latitude was the boundary line between Texas and Louisiana. Since it is my duty to administer and conserve the public lands of the State of Texas, I have made a rather extensive investigation into the extent of your claim. This investigation convinces me that the State of Texas has title to the west one-half of the Sabine River bed *exclusive of the islands therein.*"

We have emphasized the last clause "exclusive of the islands therein." Assuredly, Texas did not doubt in 1941 that Louisiana owned *all* islands in the Sabine regardless of what side of the stream they appeared in.

A late case entitled *State of Arkansas v. State of Tennessee,* No. 33 Original, 90 S. Ct. 784 (1970), decided on February 25, 1970 concerned the doctrine of the thalweg which was admittedly applicable; the question being whether an avulsion had existed. The Court followed the middle of the old abandoned channel holding it to be the correct boundary.

The following decisions by the federal courts leave no doubt that where the term "middle of the river," without any other qualification refers to the "thalweg."

> Minnesota v. Wisconsin, 252 U.S. 273, 40 S.Ct. 313; Houge v. Stricker Land and Timber Co., 63

F. 2d 167; Sherill v. McShan, 356 F. 2d 607; Anderson-Tully Company v. Franklin, 307 F.S. 539; Anderson-Tully Company v. Walls, 266 F.S. 804; Anderson-Tully Company v. Tingle, 166 F. 2d 224; Iselin v. LaCoste, 139 F. 2d 887; and Wisconsin v. Minnesota, 295 U.S. 455, 55 S.Ct. 786.

II.

PLEA OF ACQUIESCENCE AND PRESCRIPTION

There has been no "acquiescence" on the part of Louisiana in dominion over and use by either Texas or the United States of the western half of the Sabine River System sufficient to estop Louisiana or to constitute prescription based on possession and control.

The threshold obstacles to the position of Texas on this score are the Adams-de Onis Treaty of 1819 between the United States and Spain and the Act for Admission of Louisiana of April 8, 1812, (2 Stat. 701). As stated heretofore in this brief, and as delineated many times in the brief on behalf of Texas, the intent of the Treaty parties was to give the United States, rather than Spain, ownership of the entire area occupied by the Sabine River, Red River and Arkansas River. However, the Treaty aforesaid provides that "the use of the waters and navigation of the Sabine to the Sea . . . shall be common to the respective inhabitants of both nations."

In the Act for Admission of Louisiana as a state of the Union, it was provided that the "navigable rivers and waters . . . shall be common highways, and forever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States . . ."

These highly significant reservations and the physical facts are largely determinative of the issue as to possession and control. In any event, how does one "possess" a river? It is easy to control land. Water is, by nature, something entirely different.

In its brief (pages 27 and 28) Texas asserts that, from 1819 until 1848 the United States exercised "exclusive territorial jurisdiction and ownership over the western half of the Sabine River", and that subsequent to 1848, the exercise of such possession, jurisdiction and dominion over the western half by Texas was acquiesced in by Louisiana. We dispute both postulations.

Texas devotes the last thirteen pages of its brief to the argument that Louisiana is "estopped" to defend this boundary suit as it has allegedly acquiesced in the ownership of, first, the United States from 1819 to 1848, and, second, the State of Texas from 1848 to the present day. Furthermore, it contends that only recently, that is in the last few years, has Louisiana protested and otherwise opposed the use and possession of the western half of the Sabine water system by Texas. This is not so.

At the outset, *we wish to remind the Special Master that 29 years ago Louisiana formally and officially protested the ownership claimed by Texas of the western half of the Sabine.* This was in November and December of 1941. This protest was made through the medium of letters of demand written by former Governor Sam H. Jones and the then Attorney General of Louisiana, Eugene Stanley. (See affidavit of Honorable Sam H. Jones to which is annexed copies of his

letters of November 27, 1941, letter of Bascom Giles, Land Commissioner of Texas dated November 25, 1941 and Jones' letter of December 17, 1941).[12]

A reference to the three letters mentioned above will reveal that the State of Louisiana laid its whole case on the table for all to see. There was no other official route by which a protest could be lodged. In Governor Jones' letter of November 27, 1941, to the Governor of Texas, he said:

> "As Governor of the State of Louisiana, and under the authority in me vested by the Constitution and Statutes of this State, I hereby make formal demand for the recognition by the State of Texas, as the true and correct boundary between our respective states, of the western bank of Sabine Pass, Sabine River and Sabine Lake up to the 32nd parallel, and of the line between the 32nd and 33rd parallel of north latitude as established by the joint commission in 1839-41 and as adhered to by the citizens of both states adjoining it."

Louisiana passed Act No. 295 of 1942 authorizing a suit against Texas to establish the correct boundary and appropriated $10,000.00 for this purpose. The question naturally arises: Why did not Louisiana follow up by filing suit? The answer is that the Japanese attack on Pearl Harbor occurred on December 8, 1941 and the Nation was plunged into war for a period of four years. Governor Jones' term expired before the end of hostilities, and so did that of Attorney General

[12] See Affidavit of Governor Jones with copies of letters attached thereto in Exhibit B and Appendix A of this Brief.

Stanley. Jacob H. Morrison, Special Assistant to the Attorney General, who had conducted extensive research on the boundary issue, was in the army and was not released until late in 1945. So the controversy was not litigated.

After the war, so many new problems and issues engrossed the attention of Louisiana's new political leaders that no attempt was made to carry out the legislative mandate.

It stands to reason that from and after 1941, everything that Texas did or performed in the western half of the Sabine water system was done at her own risk and with knowledge that those who acted under her authority did so at their peril.

With admirable diligence the Texas legal staff has assembled a formidable array of leases, contracts, and agreements and has produced proof of a large number of acts in or affecting the western half of the Sabine. (On behalf of Louisiana, we have counter-attacked with similar material.)[13]

Inasmuch as Louisiana had presented its claim and protest to the Texas authorities in 1941, none of the acts and deeds performed by Texas subsequent to 1941 are relevant.

In subscribing to leases and agreements and in building bridges and other public works between 1941 and 1970, Texas was charged with knowledge that such acts might be nullified.[14] Moreover, Texas and Louisi-

[13] See Exhibits D., E, and G.

[14] See Affidavits of Mr. A. D. Jackson, Assistant Director

ana worked cooperatively in Sabine River improvement projects without either state considering acutely the boundary dispute.

It is not up to a State to protect some other state or private party holding from that state. In addition there are other considerations on which we will now dwell.

We will divide our discussion of the argument and evidence produced by plaintiff State into three (3) main categories:

(1) General discussion of "acquiescence" and "prescription";

(2) Plaintiff's reliance on utterances and observations by various Louisiana authorities; and

(3) A discussion of the evidence adduced by both Texas and Louisiana on this subject.

Plaintiff asserts (p. 26 of its brief) that the alleged "*exclusive territorial jurisdiction and ownership*" on the part of the United States extended from 1819, the date of the Adams-de Onis Treaty with Spain, to 1848, the year of the passage of the Acts of Congress and of Texas that purported to extend the eastern boundary of that State to the middle of the Sabine.

In Subdivision I of this brief, we have set forth our reasons for disagreeing with this proposition; and we reiterate our basic premise that as a result of the 1819 Treaty, Louisiana's border area encompassed

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of the Louisiana Department of Highways, and Mr. Richard K. Yancey, Assistant Director of Louisiana Wild Life and Fisheries Commission in Appendix A to this brief and Exhibit B.

the western half of the Sabine from the Gulf to the 32nd parallel.

Just what "territorial jurisdiction" could the national government have had over this thread-thin strip of border water? The entire section was virgin land, overgrown with forests. No forts, harbors, customs houses, court houses or other indicia of the federal presence existed in the mud of the western Sabine. Under the Treaty of 1819, the use and navigation of the entire Sabine was open to the inhabitants of both Spain and the United States; the same thing was true under the Act of Louisiana's admission of 1812. This necessarily implied that citizens of Louisiana fished, hunted, boated and logged all over the river. Any degrees of use by federal officials could only have been infinitesimal, quite different from the United States government's activities in the inland waters today where dredging, levee protection, and navigation controls go on without cessation.

After 1848, there can be no doubt that no single Louisiana fisherman, logger, trapper or boatman ever hesitated to utilize the western half of the Sabine, that is until a bootlegger tried it in 1901—The *Burton* Case. By the same token, Texans took advantage of the *entire* Sabine in their commercial and recreational activities.[15]

We grant that, as time went on, large towns such as Orange and Port Arthur were built on the western bank of the Sabine. Texas could have built right up to

[15] See Exhibit C.

the line on the west bank as a matter of law and so it did. She also had certain rights of user of the bank itself. The Treaty of 1819 itself contains the words, "on their respective banks", in speaking of the common use of the Sabine waters.

Furthermore, in *Oklahoma v. Texas*, 260 U.S. 606, 43 S. Ct. 221, 67 L. Ed. 428 (1922) the Court said:

> "Texas places some reliance on the concluding words of the treaty provision, 'but the use of the waters, and the navigation of the Sabine to the Sea, and of the said rivers Roxo (Red) and Arkansas, throughout the extent of the said boundary, on their respective banks shall be common to the respective inhabitants of both nations.' *As already observed, these words show that the boundary intended is 'on' the bank.* No doubt they reserve and secure a right of access to the water, at all stages, adequate to the enjoyment of the permitted use; but they afford no basis for regarding the boundary as below the bank or within the river bed. Dunlap v. Stetson, 4 Mason, 349, 366, Fed. Cas. No. 4,164. This part of the treaty provision is quite unlike the old compact considered in Maryland v. West Virginia, 217 U.S. 577, 30 Sup. Ct. 630, 54 L. Ed. 888, which gave to the citizens of Virginia full property in the shore of the Potomac, and so carried the jurisdiction and title to the water's edge. See Handly's Lessee v. Anthony, 5 Wheat. 374, 385, 5 L. Ed. 113. In an earlier opinion disposing of other phases of this suit it was determined that the section of the Red river adjacent to this boundary is not navigable. 258 U.S. 574, 42 Sup. Ct. 406, 66 L. Ed. 771." (Emphasis ours).

Following this is a discussion of the "Overton Survey" from which it appears that Louisiana's Commissioner, Overton, prevailed. His view that the boundary line was along the mean water line on what he defined as the bank prevailed.

The simple fact is that, until well after the turn of the century, there was no reason for either Texas or Louisiana to be anything but indifferent to what was happening in a 150-foot strip of water. Add to this the fact that few persons even knew of the existence of any border problem and could not have cared less.

We are well aware of the well recognized doctrine of "acquiescence" and "prescription" upon which Texas relies. However, we are confident that it does not apply to the facts of the case at bar. A glance at the long line of decisions by the United States Supreme Court that formulate this doctrine buttresses our opinion on this score.

The cases of *Virginia v. Tennessee*, supra; *Indiana v. Kentucky*, 136 U.S. 479, 10 S. Ct. 1051, 34 L. Ed. 329 (1890); *Missouri v. Kentucky*, 11 Wall (U.S.) 395, 20 L. Ed. 116 (1871); *Rhode Island v. Massachusetts*, 4 How. 590, 11 L. Ed. 1116 (1846) are authority for the following well recognized rule:

> "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 re-

spect of the acquisition by prescription of large tracts of country claimed by both."

Virginia v. Tennessee, supra, concerned a line that had been run on the ground by commissioners from both states in 1803. *Rhode Island v. Massachusetts*, supra, concerned a point of beginning that had been made in a survey in 1642 and a line that had been run on the ground by commissioners from each colony. *Indiana v. Kentucky*, supra, involved the title to an island in the Ohio River; and the question was whether the boundary was the north channel or the south channel. Kentucky proved that it had exercised control, jurisdiction and possession over the island.

Maryland v. West Virginia, 217 U.S. 1, 30 S. Ct. 268, 54 L. Ed. 645 (1910) was a dispute over which line—the Deakins line, or the Michler line—was correct; the court held that the former had been recognized and used as a boundary on both sides.

New Mexico v. Colorado, 267 U.S. 30, 45 S. Ct. 202, 69 L. Ed. 499 (1925), concerned the location on the ground of the Darling line. The doctrine of recognition of a long existing physical status was applied.

In *Arkansas v. Tennessee*, 310 U.S. 563, 60 S. Ct. 1026, 84 L. Ed. 1362 (1940), the decision was based entirely on the fact that the disputed island had been possessed by Tennessee for many years; taxes had been paid to that state; land titles had emanated from that state; the inhabitants had voted in Tennessee, etc.

Louisiana v. Mississippi, supra, was a boundary action in which the determining factor was possession and control of the St. Bernard Peninsula.

Most of the cases concerned boundaries laid out on terra firma, where water boundaries were involved, but possession of the water did not constitute an issue. For example, *Indiana v. Kentucky* and *Arkansas v. Tennessee* involved disputes as to which arm or branch of the Ohio and Mississippi Rivers, respectively, constituted the correct boundary. In each, an island lay between the branches; and possession of the *island*—not of any of the streams—was the deciding factor.

In *Louisiana v. Mississippi*, supra, the court upheld Louisiana, following the thalweg doctrine along the watercourse claimed by Louisiana east of the St. Bernard Peninsula. If Mississippi had prevailed, the entire St. Bernard Peninsula would have been transferred from Louisiana to Mississippi. Possession did not involve a watercourse but land between water channels. The Supreme Court held that the area in question, consisting of low lands, marshes, islands, etc., had been under the dominion and control of Louisiana for many years.

In enumerating the criteria relied on to prove possession, control, acquiescence and dominion, in all of the foregoing cases, the Supreme Court emphasized such acts as paying taxes, land titles, voting in elections, jurisdiction of courts, enforcement of laws, etc., as being of high importance.

It is readily apparent that none of the foregoing decisions can possibly apply to the facts in the litigation at hand. The essential point is that not only could there have been no dominion over or control of the west

half of the Sabine, but practically nobody knew where the middle of the river was at any given point or at any particular time. Assuming that the thalweg rule applies, there would have been a constant change in the "main channel of navigation." Assuming pro arguendo that the geographic middle of the Sabine is correct in delineating the "middle", it would have been impossible for a layman using the river or even a government official in granting a lease to know where the geographic middle was.

In *New Jersey v. Delaware*, 291 U.S. 361, 54 S. Ct. 407, 78 L. Ed. 847 (1934), there were two points at issue, involving the correct boundary between the States of New Jersey and Delaware. One of these points was the question of whether or not Delaware owned the entire bed of the Delaware River within a circle of 12 miles about the town of New Castle, referred to as the "Circle", or whether she owned only to the center of it. New Jersey contended that the proper boundary was the middle of said body of water.

The Court analyzed the various legislative enactments, finding that the true and correct boundary between the States of Delaware and New Jersey was the eastern bank of the Delaware River. Hence, the holding was that the entire bed of the Delaware River within the limits of "The Circle" up to low-water mark on the eastern bank thereof was owned by Delaware.

New Jersey contended that riparian proprietors who were citizens of New Jersey and had held their titles from her had been permitted by Delaware to

build wharves and piers projecting into the Delaware River within "The Circle"; hence, that, as the structures were built and maintained without protest on the part of Delaware and, in fact, with her approval, that this constituted an acquiescence in the ownership of New Jersey of half of the Delaware River comprised within the 12-mile "Circle" about the town of New Castle.

Justice Cardozo, as the organ of the Supreme Court, disposed of these contentions in the following significant language, at Page 412:

> "The acts of dominion by riparian proprietors are connected with the building of wharves and piers that project into the stream. The structures were built and maintained without protest on the part of Delaware, and no doubt with her approval. There is nothing in their presence to indicate an abandonment by the Sovereign of title to the soil. By the law of waters of many of our states, a law which in that respect has departed from the common law of England, riparian proprietors have very commonly enjoyed the privilege of gaining access to a stream by building wharves and piers, and this though the title to the foreshore or the bed may have been vested in the state. Yates v. Milwaukee, 10 Wall. 497, 19 L. Ed. 984; Scranton v. Wheeler, 179 U. S. 141, 157, 158, 21 S. Ct. 48, 45 L. Ed. 126; Shively v. Bowlby, supra, at pages 24, 55 of 152 U. S., 14 S. Ct. 548; Town of Brookhaven v. Smith, 188 N. Y. 74, 80 N. E. 665, 9 L. R. A. (N. S.) 326; United States v. Dern, 289 U. S. 352, 357, 53 S. Ct. 614, 77 L. Ed. 1250. New Jersey in particular has been liberal in according such a

> license (State v. Jersey City, 25 N. J. Law, 525), and so, it seems, has Delaware (Harlan & Hollingsworth Co. v. Paschall, 5 Del. Ch. 435; State v. Reybold, 5 Har. 484, 486), though in Delaware, unlike New Jersey, title to the foreshore is in the riparian proprietor. From acquiescence in these improvements of the river front, there can be no legitimate inference that Delaware made over to New Jersey the title to the stream up to the middle of the channel or even the soil under the piers. The privilege or license was accorded to the owners individually and even as to them was bounded by the lines of their possession."

Vermont v. New Hampshire, 289 U.S. 593, 53 S. Ct. 708 (1933) is closely in point. The Court decided that the western bank of the Connecticut River was the correct boundary. The following excerpt is from the Supreme Court's opinion:

> "We think that the practical construction of the boundary by the acts of the two states and of their inhabitants tends to support our interpretation of the Order-in-Council of 1764, and of the resolutions of Congress and of Vermont Legislature, preceding the admission of Vermont to the Union. We conclude that the true boundary is at the low-water mark on the western side of the Connecticut River, as the special master has found. We adopt his definition of low-water mark, which is not challenged here, as the line drawn at the point to which the river recedes at its lowest stage without reference to extreme droughts."

Texas places considerable reliance on various expressions in briefs and opinions by Louisiana author-

ities. The case of *State v. Burton*, 105 La. 516, 29 So. 970 (1901) and other statements and written data do contain language to the effect that within the context and circumstances of their utterances, the middle of the Sabine River water system from the Gulf to the 32nd parallel was believed to be the correct boundary between Louisiana and Texas. None of these statements estop Louisiana in any way nor do they constitute any type of res judicata or binding administrative and judicial acts.

All of these statements were rendered in connection with litigation that did not involve or even concern the precise location of the boundary. They were uttered "en passant", and were not intended to be declarations determinative of the boundary location. The boundary was a pertinent point in *State v. Burton*, supra. This was a criminal case and the record shows that the Supreme Court did not have the benefit of the authorities herein relied upon when it simply held that the criminal jurisdiction of Louisiana extended only to the middle of the Sabine.

This is evident when one considers that the Louisiana Supreme Court, compressed within the narrow confines of a single paragraph, and in the most cavalier fashion, all the law that it had before it; this included reference to a Texas Act of 1856 and a decision by the Criminal Court of Appeals of Texas (*Spears v. State*, 8 Tex. App. 467).

The Special Master will recall that in the resolution adopted by the Legislature on March 16, 1848, this

hiatus in the criminal law was dealt with; the Louisiana Legislature having expressed the belief that the law of Louisiana did not extend over the western half of the Sabine. It left no doubt that it thought the actual boundary was located on the Sabine's west bank, when it asked Congress to extend the state's *jurisdiction* to the western bank of the Sabine; i. e.:

> "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 State of Texas.*" (Emphasis ours)

It is axiomatic that criminal proceedings must be based on positive law free from any doubt. The Legislature had no doubt as to the location of the Louisiana-Texas boundary, the west bank of the Sabine.

The Supreme Court of the United States has made it clear that decisions of state courts taking an erroneous view of the law are not binding in a direct action between states involving solely the issue of the location of the boundary between them.

In *Arkansas v. Mississippi*, 250 U.S. 39, 39 S. Ct. 422 (1919), the court considered certain decisions and expressions by the Supreme Court of Mississippi concerning local questions in which said court stated its belief that the geographic middle of the river was the correct boundary. The United States Supreme Court disregarded such expressions in their entirety, declaring:

> "But whatever may be the effect of these decisions upon *local rights of property or the administra-*

> *tion of the criminal laws of the state,* when the question becomes one of fixing the boundary between states separated by a navigable stream, it was specifically held in Iowa v. Illinois, supra, followed in later cases, that the controlling consideration is that which preserves to each state equality in the navigation of the river, and that in such instances the boundary line is the middle of the main navigable channel of the river." (Emphasis ours)

In *Arkansas v. Tennessee,* 246 U.S. 158, 38 S. Ct. 304 (1918), the Supreme Court of Arkansas had handed down an opinion that the boundary line between the two rivers was equidistant from the permanent banks of the channel. The Supreme Court of Tennessee had reached a similar conclusion. Furthermore, Tennessee's General Assembly appointed a commission to locate the line in an abandoned channel of the river. The United States Supreme Court held that *none* of these decisions and legislative acts *amounted to such acquiescence as would determine the true location of the boundary.*

Apropos of the case of *State v. Burton,* 29 So. 970, 105 La. 516, also 31 So. 291, 106 La. 732, upon which Texas places great reliance and which is discussed by us a few pages back in this brief, it is interesting to note that the United States Supreme Court in this very case, *Arkansas v. Tennessee,* commented on and refused to follow an Arkansas state decision which, like *State v. Burton,* supra, involved a prosecution for violation of the liquor laws. At page 304 of 38 S. Ct., the following appears:

"It is said that Arkansas has interpreted the line to be at a point *equidistant* from the well-defined and permanent banks of the river, that Tennessee likewise has recognized this boundary, and that by long acquiescense on the part of both States in this construction, and the exercise of jurisdiction by both in accordance therewith, the question should be treated as settled. The reference is to certain judicial decisions, and two sets of legislation. In Cessill v. State (1883) 40 Ark. 501, *which was a prosecution for unlicensed sale of liquors upon a boat anchored off the Arkansas shore*, it was held that the boundary line, as established by the original treaties and since observed in federal legislation, state constitutions, and judicial decisions was the 'line along the river bed equidistant from the permanent and defined banks of the ascertained channel on either side.' This was followed in subsequent decisions by the same court. Wolfe v. State (1912) 104 Ark. 140, 143, 148 S.W. 641; Kinnanne v. State (1913) 106 Ark. 286, 290, 153 S.W. 262. The first pertinent decision by the Supreme Court of Tennessee is State v. Pulp Co. (1907) 119 Tenn. 47, 104 S.W. 437, in which a similar conclusion was reached, partly upon the ground that it had been adopted by the courts of Arkansas." (Emphasis ours).

Following this, the Supreme Court discussed Tennessee statutes and Arkansas decisions which latter, as the Court said: "had for their object the establishment of a proper rule for the administration of the criminal laws of the State." (Emphasis ours).

In *Oklahoma v. Texas*, 272 U.S. 21, 47 S. Ct. 9, (1926), the syllabus reads as follows:

> "In action to establish boundary between Oklahoma and Texas north from South fork of Red river, stipulation of parties that since 'Greer County' decision of the United States and the territory and State of Oklahoma, in succession, *had continuously enforced their civil and criminal laws over territory in dispute, held insufficient to establish Oklahoma's claim to such territory by prescription.*" (Emphasis ours).

In *New Jersey v. Delaware*, 291 U.S. 361, 78 L. Ed. 847 (1934), the Supreme Court disregarded proof of assessments for taxes, making of deeds, and service of process by New Jersey in the disputed area; inasmuch as there was no showing that Delaware had acquiesced.

At page 37 of its brief, Texas comments on a statement by the present Louisiana Attorney General in *U. S. v. Louisiana, et al*, No. 10, Original, October Term 1959. The brief in this case was joined in by all five (5) defendant states; and it involved one of the many "Tideland Cases" from 1947 through 1960. These cases had nothing to do with the Sabine as they involved a controversy with the United States over the submerged lands offshore. Consequently, any reference to Louisiana's boundary (other than the Gulf of Mexico boundary) had nothing to do with the questions at issue.

The boundaries of Louisiana were described according to its Act of Admission and in the Act Admitting Louisiana into the Union, but that was done for one purpose alone, and that was to bring into focus the

words, "including all islands within three leagues of the coast." There was no issue in the Tidelands Case involving the boundary between Texas and Louisiana above the shore or coast line, only the location of the coast line and the distance seaward from that coast line that Louisiana's seaward boundary extended.

In undertaking to bring the contentions made by Louisiana in the Tidelands Case into the Sabine boundary issue, Texas acts inconsistently. When No. 36 Original, October Term 1969 was instituted, Texas expressed the conviction that the issue should be restricted to areas within Sabine River, Sabine Lake and Sabine Pass, and it was well justified; but now Texas abandons its expressed fears by undertaking to bring the tidelands area into the Sabine boundary action.

Texas states, among other things, on page 37 of its brief that the Louisiana Attorney General and other attorneys for the state have recognized the mid-stream boundary of the Sabine, specifically referring to the position taken by Louisiana in *Louisiana v. Mississippi* (1906), 201 U. S. 1. In that case, the State of Louisiana contended that the thalweg rule governed the boundary between the two states in the area of the St. Bernard peninsula, seaward of the mouth of Lake Borgne, and the Court upheld that contention. There can be no relevancy between the border line controversy brought into focus in the Louisiana-Mississippi case and the boundary issue involved in the present action; even if there were, Louisiana is alternatively taking the same position in this boundary action, and, at least, manifests consistency. Texas contends that if the

boundary between Texas and Louisiana in the area of the Sabine is not found to be on the west bank of Sabine River, Sabine Lake and Sabine Pass, the border between the two states is in the geographical middle of said water bodies and that the thalweg rule is not applicable. The point made by Texas is that Louisiana is bound in this action by the position it took in the *Louisiana-Mississippi* case. Alternatively, Louisiana is, in fact, taking the same position in this action, and it is difficult to understand why Texas should insist upon the application of the thalweg rule in this action when that state takes the contrary position in its pleadings and brief that such rule is inapposite and should not govern.

In further support of the assertion made that the Louisiana Attorney General and other attorneys for the state have recognized the mid-stream boundary of the Sabine, on pages 37 and 38 of its brief, Texas refers to a brief filed by an attorney representing Louisiana in a case before the General Land Office in 1909 (39 Land Decisions 53). Texas has annexed a copy of the decision in the appendices to its brief (Exhibit B, Item 2), but no copy of the brief, and in the absence of same, Texas cannot undertake to establish its assertion. The decision reflects, however, that the boundary between Texas and Louisiana was not the issue but the ownership of two islands in the Sabine River. The question involved in the proceeding was whether the two islands inured to Louisiana under the Swamp Land Grants. It was not a matter of Louisiana agreeing with Texas but of Texas agreeing with Louisiana.

No opinion of any Louisiana Attorney General has been found in which the view was taken that the boundary between Texas and Louisiana was located in the geographical middle of the Sabine system. On the contrary, however, two opinions of the Attorney General of Louisiana, one dated April 12, 1945, rendered to Bunyon H. Andrew, and another, dated November 23, 1966, rendered to Honorable Ellen Bryan Moore, Register of State Land Office, have been located in which the view was expressed that the boundary between Texas and Louisiana was the west bank of the Sabine.[16]

In its brief and supporting documents (pages 33-38), Texas devotes considerable space to various acts performed by it in the western half of the Sabine such as the enforcing of laws, contributing to the construction of bridges, improvements on the bank and adjacent islands by Port Arthur, navigation improvements; sales and leases for shells and sand.[17] In the light of the

[16] See Exhibit B.

[17] The evidence offered by Texas in support of its assertion of Louisiana's acquiescence consists very largely of a record of things done and money spent by Texas in the Sabine River area, which only shows the interest of Texas in improving the general area, and does not reflect any acquiescence by Louisiana in establishing a mid-stream boundary. As a matter of fact, Texas and Louisiana have worked cooperatively to improve said area and have contributed money jointly to such development programs. So that evidence produced by Texas does not reflect acquiescence by Louisiana at all. Louisiana has reacted favorably to the development programs of Texas, and Texas has done the same in regard to the development programs undertaken by Louisiana, none of which was done with any intent to establish the legal boundary between the States.

authorities cited immediately above none of these acts constitute "dominion" or "possession". See the case of *New Jersey v. Delaware*, 291 U.S. 361, 54 S. Ct. 407, 78 L.Ed. 847, supra, and authorities therein cited in lengthy quotations from Justice Cardozo's opinion.

As has been frequently stated above, that the use and navigation of the Sabine was common to both states; so dominion or control by either state was not a vital question. While "acquiescence" is alleged by Texas, we are sure that the Special Master will keep in mind the fact that there is no adequate proof of same. In any event, there are disputed facts on this issue, as is evident from the affidavits in Appendix A.

As the exhibits in this case reflect, there has always existed a certain degree of confusion, doubt and uncertainty in regard to the Texas-Louisiana boundary. No better illustration can be given than the exchange of letters between Honorable Price Daniel, leading counsel for Texas in this case, and the Attorney General of Louisiana, in 1951. See Texas' Exhibit 3, pages 24-27a. In 1951, a new political administration had taken over in Louisiana. As so often happens, most of the threads of communication with the old administration had been severed. The Attorney General of Louisiana at that time, Bolivar Kemp, Jr., did not seem to be aware at all of the fact that Louisiana had made definite and specific demands on Texas ten (10) years before, namely, in November and December of 1941, to recognize Louisiana's boundary assertion. However, Mr. Kemp did mention the fact that Louisiana claimed the entire Sabine, to its west bank.

In other documents which the attorneys for Texas have included in their Exhibit C, the west bank was assertedly the proper boundary. See particularly Item 18, page 38, concerning the McKee lease in 1930; the Attorney General's Memorandum in 1965 (Item 16, pages 33-36); and former Governor Sam H. Jones' letter of December 12, 1949 (Item 23, page 49).

In a letter by Mr. Sadler, Land Commissioner of Texas, dated December 14, 1964, he stated:

> "It has long been recognized by officials of both Louisiana and Texas that the exact location of the boundary between the two states had been in dispute and from our past discussion and correspondence it is apparent that both states recognize the seriousness of the problem and the need for a settlement."

Texas has filed as Exhibits A. and F., two large volumes of maps by Federal, state and local authorities. While we admire the energy and zeal of the Texas legal staff in searching for and gathering such a voluminous array of documents, we think that acquiescence which each state has attributed to the other is of relative unimportance compared with the major issues. Its exhaustive efforts notwithstanding, it is still encumbent on Texas to establish that all of the maps filed as exhibits aforesaid are actually official and were made for the purpose which Texas represents them to reflect. The respective dates of the maps should also be considered in relation to the representations made by Texas concerning the weight to be given them. Louisiana's title cannot be defeated by this type of evidence.

Cartographers, like other technicians, have defi-

nite tasks assigned to them, and they do not go beyond the limits of their instructions. We venture to say that no cartographer, without specific instructions to govern his thinking and actions to the contrary, would ever think of the possibility that a river boundary between equal sovereign states would be elsewhere than the usual happy medium, namely, the middle of the stream, although there are many such boundaries. Furthermore, not one of them would think of the "thalweg" doctrine, though this is a well-known principle of law.

The record leaves no doubt that law enforcement agencies of both states patrolled all over the Sabine and neither confined itself to the middle thereof (assuming that anyone knew just where the "middle" was).

We have introduced written proof that Louisiana as well as Texas has granted shell leases, mineral leases, etc. and has enforced its fishing and gaming laws without regard to any scientific or geographic location of the boundary.

In these cases there is usually an affidavit Armagedon; this case is no exception. We have produced the affidavit of Dr. Lyle S. St. Amant, Assistant Director of the Louisiana Department of Wild Life and Fisheries, from which it appears that 24 out of 25 leases granted by Louisiana for the removal of shells covers the entirety of Sabine Lake or Sabine Pass, as the case might have been.[18]

[18] See a copy of Dr. Lyle S. St. Amant's affidavit in Appendix A to this brief and Exhibit D.

The affidavit of Ory G. Poret, Deputy Register of the Louisiana State Land Office, establishes that the 18 mineral leases affecting the Sabine waterways cover the west side thereof. Further, that right-of-way grants cover submerged lands in the western half of Sabine River, Pass and Lake; in addition, that from his search of the records, Louisiana has asserted title, throughout the Sabine, to the west bank thereof.[19]

The affidavit of Hatley N. Harrison, Jr., Chief, Land and Surveys Division, Louisiana Department of Public Works, points out that cognizance had long been taken of the legal dispute over the boundary and that the various maps showing lines in the Sabine were never drafted officially to recognize the establishment of any boundary line between Louisiana and Texas.[20]

A. D. Jackson, Assistant Director of the Louisiana Department of Highways, states, by affidavit, that it was never the intention of the Louisiana Department of Highways, in entering into various agreements regarding construction of bridges, etc., with the State of Texas or the preparation and issuance of the various highway maps, to establish any legal boundary between the respective States.[21]

The affidavit of Richard K. Yancey, Assistant Director of the Wild Life and Fisheries Commission

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[19] See a copy of Ory G. Poret's affidavit in Appendix A to this brief and Exhibit E.

[20] See a copy of Hatley N. Harrison's affidavit in Appendix A to this brief and Exhibit G.

[21] See a copy of A. D. Jackson's affidavit in Appendix A to this brief and Exhibit B.

of the State of Louisiana, states that, while there have been agreements signed between the State of Texas and the State of Louisiana concerning fishing and hunting in the Sabine, it was never the purpose of any of such agreements to establish any legal boundary between the two States.[22]

In recent years—the 1960's—Louisiana adopted the policy of recognizing the existence of the boundary dispute and acted accordingly. Prior to that time, this State simply went along with any and all joint projects concerning the building of bridges and other acts in the western half of the Sabine River, without attempting to establish a legal boundary or waive Louisiana's claim. Its attitude concerning cooperative projects and efforts undertaken with the United States Government was the same.

Insofar as the payment of taxes levied by Texas on property, facilities and structures in the Sabine system is concerned, Louisiana taxing officials, if informed of such taxation at all, simply allowed such matter to take its course, very much in the same manner, it is suspected, that Texas taxing officials reacted to any such taxation, known to have been engaged in by Louisiana. The levy and collection of ad valorem taxes on or against a relatively few oil or gas well drilling rigs and the equipment and facilities thereof in the waters of the Sabine River, Sabine Lake and Sabine Pass would certainly not lay any realistic

[22] See a copy of Richard K. Yancey's affidavit in Appendix A to this brief and Exhibit B.

foundation for either state to charge acquiescence against the other.

For the foregoing reasons, we submit that Louisiana is not estopped, nor has she ever acquiesced in any acts by Texas that are alleged to have estopped her from asserting the right to a boundary located on the west bank of the Sabine. We have demonstrated from decisions of the Supreme Court of the United States, cited above, that the activities in the western Sabine relied on by Texas fall far short of constituting the requisites of ownership, dominion or control.

The Special Master is thoroughly familiar with the law having reference to summary judgments. One of the latest cases on this subject was decided in 1969 by the Court of Appeal for the Fifth Circuit which has jurisdiction over both Texas and Louisiana.

In *Lighting Fixture and Electric Supply Co., Inc. v. Continental Insurance Co.*, 420 F. 2d 1211, 1213, the following appears:

> "On a motion for summary judgment, the trial court must determine whether a genuine issue of material fact exists rather than how that issue should be resolved. Summary Judgment should only be granted, this Court has stated, 'when it is clear what the truth is and where no genuine issue remains for trial.' United States v. Burket, 5 Cir. 1968, 402 F. 2d 426, 430. A summary judgment may be improper even though the basic facts are undisputed if the parties disagree regarding the material factual inferences that properly may be drawn from these facts. See, e.g. N.L.R.B. v. Smith Industries, Inc., 5 Cir.,

1968, 403 F. 2d 889, 893; Keating v. Jones Development of Missouri, Inc., 5 Cir., 1968, 398 F. 2d 1011, 1013."

We respectfully submit that there should be judgment overruling the motion for summary judgment filed by the State of Texas, and judgment should be rendered in favor of the State of Louisiana sustaining its plea of accord and satisfaction.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General.

EDWARD M. CARMOUCHE,
Assistant Attorney General.

OLIVER P. STOCKWELL,
Special Assistant Attorney General.

JACOB H. MORRISON,
Special Assistant Attorney General.

SAM H. JONES,
Special Assistant Attorney General.

Attorneys for defendant.

CERTIFICATE

I, JACK P. F. GREMILLION, Attorney General of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of _____, 1970, I served copies of the foregoing brief by transmitting conformed copies of the same, by first class mail, postage prepaid, to the Special Master, the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas, and upon the Solicitor General of the United States, in compliance with Rule 33.2 (b) of the Rules of the Supreme Court of the United States.

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana

INDEX TO APPENDIX

No. 36, ORIGINAL

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

STATE OF LOUISIANA,

Defendant.

Before the Honorable
Robert Van Pelt, Special Master

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FILED BY THE STATE OF TEXAS

STATE OF LOUISIANA

Parish of East Baton Rouge

BEFORE ME, the undersigned authority, personally came and appeared HATLEY N. HARRISON, JR., who, upon first being duly sworn, did depose and say:

That he is Chief, Land and Surveys Division of the Department of Public Works, State of Louisiana, and that he is familiar with the records of his office, which are under his supervision and control, and that this affidavit is based on said records and is true to the best of his information and belief.

That the Louisiana State Legislature, by Act 159 of July 16, 1928, directed the Board of State Engineers, in co-operation with the Federal Government, to make a topographic survey and to prepare a topographic map of Louisiana. That in accordance with this Act, the State of Louisiana entered into a co-operative agreement with the United States Geological Survey, Washington, D. C. to begin surveying and mapping the State of Louisiana.

The 1937 First Edition Official Map of Louisiana by the Board of Engineers was taken from these quadrangle sheets that had been prepared by the U. S. Geological Survey. As a matter of fact the 1937 Edition of the Louisiana Official Map was actually prepared in Washington by the U. S. Geological Survey in co-operation with the representatives of the Board of State Engineers. Since the quadrangle maps prepared by the U. S. Geological Survey placed a line in the Sabine Pass, Sabine Lake and Sabine River, this same line was carried over on the Official Map of the State of Louisiana. This was not done with any intention on the part of the State of Louisiana to establish any legal boundary between the State of Texas and the State of Louisiana. As a matter of fact, all Official Maps subsequent to 1937 do not show any line in the Sabine Pass, Sabine Lake or Sabine River, but show a line on the west bank of said water bodies as is illustrated by the next Official Map of the year 1943 attached hereto.

It has been long recognized by the Board of State Engineers that there has been and is a legal dispute

over the boundary between the State of Texas and the State of Louisiana.

That while the maps referred to herein, and other maps, have shown lines in the Sabine River, Sabine Lake and Sabine Pass, they have never been, as far as Affiant knows, officially recognized as establishing any legal boundary line between the State of Louisiana and the State of Texas.

/s/ HATLEY N. HARRISON, JR.

SWORN TO AND SUBSCRIBED before me, Notary Public, at Baton Rouge, Louisiana, on this 15th day of October, 1970.

/s/ ESTHER A. KELLY
Notary Public

No. 36, ORIGINAL

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

STATE OF LOUISIANA,

Defendant.

Before the Honorable
Robert Van Pelt, Special Master

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FILED BY THE STATE OF TEXAS

STATE OF LOUISIANA

Parish of Orleans

KNOW ALL MEN BY THESE PRESENTS, that before me, the undersigned authority, personally came and appeared RICHARD K. YANCEY, who, upon first being duly sworn, did depose and say:

That he is Assistant Director of the Wild Life and Fisheries Commission of the State of Louisiana, which has its domicile at 400 Royal Street, New Orleans, Louisiana.

That he has been associated with the Wild Life and Fisheries Commission in varying capacities for 21 years.

That he is familiar with the records of this Commission pertaining to the reciprocal agreements between the State of Louisiana and the State of Texas relating to fishing and hunting in Sabine Pass, Sabine Lake and Sabine River.

Affiant knows that the Wild Life and Fisheries Commission has co-operated over the years with the similar Commission for the State of Texas in regulating the fishing in Sabine Pass, Sabine Lake and Sabine River, and regulating the hunting in the same area.

That while there have been agreements signed between the State of Texas and the State of Louisiana concerning fishing and hunting in Sabine Pass, Sabine Lake and Sabine River, that it never was the purpose of said agreement to establish any legal boundary between the State of Texas and the State of Louisiana and that this fact was known both to those representing the State of Louisiana and to those representing the State of Texas.

That said agreements were signed for the mutual benefit of both States since it was recognized that the citizens in both States had certain rights in the waters of Sabine Pass, Sabine Lake and Sabine River.

Affiant further states that from his search of the records of the Wild Life and Fisheries Commission that he has been unable to find any documents which purport to establish any legal boundary in Sabine Pass, Sabine Lake and Sabine River between the State of Texas and the State of Louisiana, and that the said Department does not have any authority to establish

any such boundary or to give up any rights of the State of Louisiana.

/s/ RICHARD K. YANCEY

SWORN TO AND SUBSCRIBED before me, Notary Public, at New Orleans, Louisiana, on this 20th day of October, 1970.

/s/ PETER E. DUFFY
Notary Public

No. 36, ORIGINAL

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

STATE OF LOUISIANA,

Defendant.

Before the Honorable
Robert Van Pelt, Special Master

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FILED BY THE STATE OF TEXAS

STATE OF LOUISIANA

Parish of East Baton Rouge

BEFORE ME, the undersigned authority, personally came and appeared A. D. JACKSON, Assistant Director, Department of Highways, State of Louisiana, who, upon first being duly sworn, did depose and say:

That he has been an employee of the Department of Highways for 41 years. That the records of the Department of Highways are under his supervision and control.

From these records and from personal knowledge,

Affiant knows that the Department of Highways has entered into various agreements with the State of Texas, through its various Departments, for the construction of bridges across Sabine River, Sabine Lake and Sabine Pass, and that the cost of constructing these structures has been borne by both States on a formula mutually satisfactory to them.

Your Affiant is familiar with the fact that the Department of Highways has issued various maps and drawings on which various lines are shown dividing the State of Texas from the State of Louisiana.

Affiant states that it was never the intention of the Department of Highways, in entering into these various agreements with the State of Texas or the preparing and issuance of the various maps, to establish any legal boundary between the State of Texas and the State of Louisiana. Affiant recognizes that there has been in dispute the location of the boundary between the State of Texas and the State of Louisiana for many years and that it was never the intent of the Department of Highways, nor did it have the authority, to settle any boundary between the State of Texas and the State of Louisiana, and that as far as Affiant knows this matter was thoroughly understood by representatives of the State of Texas.

The policy of the Department of Highways and that of the State of Texas, as far as Affiant knows, was to try to work out mutually satisfactory bridges across the Sabine River, Sabine Lake and Sabine Pass for the mutual benefit of the inhabitants of both States and the public generally.

Affiant is familiar with the fact of the location of signs on some of the bridges across the Sabine River and Sabine Pass, and states that as far as the Department of Highways was concerned these signs were never placed on the bridges with any intent to locate the legal boundary between the State of Texas and the State of Louisiana.

/s/ A. D. JACKSON

SWORN TO AND SUBSCRIBED BEFORE ME, Notary Public, at Baton Rouge, Louisiana, on this 16th day of October, 1970.

/s/ PHILIP K. JONES
Notary Public

No. 36, ORIGINAL

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

STATE OF LOUISIANA,

Defendant.

Before the Honorable
Robert Van Pelt, Special Master

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FILED BY THE STATE OF TEXAS

STATE OF LOUISIANA

Parish of Orleans

BEFORE ME, the undersigned authority, personally came and appeared DR. LYLE S. ST. AMANT, who, upon first being duly sworn, did depose and say:

That he is Assistant Director of the Department of Wild Life and Fisheries, State of Louisiana, and that he is familiar with the records of his office, which are under his supervision and control, and that this affidavit is based on said records and is true to the best of his information and belief.

That he is making this affidavit to be used by the State of Louisiana in opposition to the motion for summary judgment filed by the State of Texas.

That, among other exercises of State jurisdiction and ownership over those portions of Sabine Pass and Sabine Lake west of the center line thereof, the State of Louisiana has leased submerged lands for the purpose of taking and removing clam shells, reef shells, and/or oyster shells which have covered the entire bed and bottom of said bodies of water.

That a search of the records of the Department of Wild Life and Fisheries reflects the following examples of leases covering the entirety of Sabine Pass and Sabine Lake:

a) State Lease to W. T. Burton Co., Inc., dated November 30, 1950, which covers Sabine Lake near Port Arthur, Texas, and from Sabine Pass (Entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers.

b) State Lease to W. T. Burton Co., Inc., dated March 6, 1952, which covers Sabine Lake near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers.

c) State Lease to W. T. Burton Co., Inc., dated September 14, 1954, covering Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, Louisiana.

d) State Lease to W. T. Burton Co., Inc., dated

April 9, 1958, which covers Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana.

e) State Lease to W. T. Burton Co., Inc., dated March 10, 1959, covering Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana.

f) State Lease to W. T. Burton Co., Inc., dated April 29, 1969, which covers Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana, and Calcasieu Lake, sometimes known as Big Lake located in Cameron Parish, Louisiana.

g) State Lease to Lake Charles Dredging & Towing Co., Inc., dated February 25, 1955, covering Sabine Lake, Cameron Parish.

h) State Lease to Lake Charles Dredging & Towing Co., Inc., dated March 8, 1957, covering Sabine Lake, Cameron Parish, La.

i) State Lease to Lake Charles Dredging & Towing Co., Inc., dated January 28, 1959, covering Sabine Pass in the area between Mesquite Point and Lighthouse Bayou, Cameron Parish, State of Louisiana.

j) State Lease to Lake Charles Dredging & Towing Co., Inc., dated February 10, 1959, covering Sabine Lake, Cameron Parish, State of Louisiana.

k) State Lease to Louis J. Deshotel, dated September 23, 1958, covering Sabine Lake, Parish of Cameron, State of Louisiana.

l) State Lease to Guarisco Construction Co., Inc., dated July 16, 1957, which covers Sabine Lake, Parish of Cameron, State of Louisiana.

m) State Lease to Louisiana Towing & Dredging Co., Inc., dated February 8, 1961, which covers Sabine Lake, Cameron Parish, State of Louisiana.

n) State Lease to Stevens and Co., Inc., dated July 6, 1947, which covers Sabine Lake near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers.

o) State Lease to Bauer-Smith Dredging Co., Inc., dated November 7, 1957, which covers Sabine Lake, Parish of Cameron, State of Louisiana.

p) State Lease to S. A. Smith & Associates, dated June 27, 1960, which covers Sabine Lake, Cameron Parish, State of Louisiana.

q) State Lease to W. T. Burton Co., Inc., dated March 7, 1956, covering Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, Louisiana.

r) State Lease to W. T. Burton Co., Inc., dated February 21, 1957, covering Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana.

s) State Lease to W. T. Burton Co., Inc., dated June 21, 1960, covering Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana.

t) State Lease to Lake Charles Dredging & Towing Co., Inc., dated February 25, 1956, which covers Sabine Lake, Cameron Parish, La.

u) State Lease to Lake Charles Dredging & Towing Co., Inc., dated March 19, 1958, covering Sabine Lake, Cameron Parish, State of Louisiana.

v) State Lease to W. D. Haden Company of Galveston, Texas, dated March 13, 1933, covering Sabine Lake near Port Arthur, Sabine, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers.

w) State Lease to W. D. Haden Company of Galveston, Texas, dated March 13, 1935, covering Sabine Lake near Port Arthur, Sabine, and from Sabine Pass (entrance to Sabine Lake), to the mouths of the Sabine and Neches Rivers.

x) State Lease to W. D. Haden Company of Galveston, Texas, dated March 13, 1937, covering Sabine Lake near Port Arthur, Sabine, and from Sabine Pass (entrance to Sabine Lake), to the mouths of the Sabine and Neches Rivers.

y) State Lease to Smith Bros. Dredging Co., dated February 10, 1958, which covers Louisiana side of Sabine Lake, Parish of Cameron, State of La.

That affiant has always considered the boundary between the State of Texas and the State of Louisiana as being on the west bank of the Sabine Pass, Lake, and River, although affiant is aware that this boundary has been in dispute for many years. Attached hereto and made part hereof are copies of the leases referred to hereinabove.

/s/ LYLE S. ST. AMANT

SWORN TO AND SUBSCRIBED before me, Notary Public, at New Orleans, Louisiana, on this 21 day of October, 1970.

/s/ PETER E. DUFFY
Notary Public

No. 36, ORIGINAL

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

STATE OF LOUISIANA,

Defendant.

Before the Honorable
Robert Van Pelt, Special Master

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FILED BY THE STATE OF TEXAS

STATE OF LOUISIANA
Parish of East Baton Rouge

BEFORE ME, the undersigned authority, personally came and appeared ORY G. PORET, who, upon first being duly sworn, did depose and say:

That he is Deputy Register of the State Land Office, State of Louisiana, and that he is familiar with the records of his office, which are under his supervision and control, and that this affidavit is based on said records and is true to the best of his information and belief.

That he is making this affidavit to be used by the State of Louisiana in opposition to the motion for summary judgment filed by the State of Texas.

That, among other exercises of State jurisdiction and ownership over those portions of Sabine Pass, Sabine Lake and the Sabine River west of the center line thereof, the State of Louisiana has leased submerged lands for the production of oil, gas, and other minerals and made right-of-way grants which have covered the entire bed and bottom of said bodies of water.

That, at various times subsequent to Texas' admission to the Union, the State of Louisiana, acting through the appropriate agencies, has advertised for lease and executed oil and gas leases on certain tracts within the western half of Sabine Pass, Sabine Lake and Sabine River. These leases were awarded to the highest bidder in a sealed bid sale after public advertisement. The search of the records of the appropriate State agencies reflect the following examples of leases advertised on lands within the western half of Sabine Pass, Sabine Lake and Sabine River:

a) April 19, 1933. State Lease No. 272 of approximately 1500 acres to C. A. King covering tract situated in Calcasieu Parish, Louisiana, and extending to the west side of the Sabine River for $2,375.00.

b) October 22, 1935. State Lease No. 326 to William T. Burton covering tract in Calcasieu Parish, Louisiana, and extending to the west side of the Sabine River for $500.00.

c) April 21, 1938. State Lease No. 376 to Mr. Tom C. Igoe covering a tract in DeSoto Parish, which extends to the west side of the Sabine River for $500.00.

d) June 3, 1949. State Lease No. 1717 to Ohio Oil Co., covering Tract No. 4390 situated in Calcasieu and Cameron Parishes, Louisiana, which extends to the west side of the Sabine River and estimated to contain 736 acres for $11,040.00.

e) July 12, 1950. State Lease No. 1834 to Midstates Oil Corp., covering Tract No. 4563 in Calcasieu Parish, Louisiana, which extends, at one point, to the west side of the Sabine River and estimated to contain approximately 225 acres for $2,587.50.

f) July 12, 1950. State Lease No. 1842 to Lincoln Frost, Jr., covering the North 500 acres of Tract No. 4579 in Beauregard Parish, Louisiana, which extends to the west side of the Sabine River and estimated to contain approximately 700 acres for $5,057.79.

g) October 8, 1951. State Lease No. 2048 to Atlantic Refining Co., covering Tract No. 4930 in Beauregard Parish, Louisiana, which extends to the west side of the Sabine River and estimated to contain approximately 260 acres for $15,600.00.

h) June 16, 1955. State Lease No. 2732 to Houston Oil Co. of Texas (25.5% interest), Sinclair Oil & Gas Co. (25.5% interest) and Stanolind Oil and Gas Co. (49% interest), covering Tract No. 6050 in Cameron Parish, Louisiana, which extends to the west

side of the Sabine Pass and estimated to contain 742.97 acres for $76,191.57.

i) December 15, 1955. State Lease No. 2874 to C. C. Steinberger, Jr., covering Tract No. 6282 in Cameron Parish, Louisiana, which extends to a point east of the center line of Sabine Lake or Pass and contains approximately 310 acres for $8,000.00.

j) March 4, 1959. State Lease No. 3485 to Sun Oil Co., covering Tract No. 7432 situated in Sabine Parish, Louisiana, which extends to the west side of the Sabine River and which is estimated to contain approximately 110 acres for $1,326.00.

k) March 4, 1959. State Lease No. 3459 to Shell Oil Company, covering Tract No. 7384 in Cameron Parish, Louisiana, which extends beyond the center line of Sabine Lake and is estimated to contain approximately 2450 acres for $294,000.00.

l) March 4, 1959. State Lease No. 3461 to The California Company, covering Tract No. 7386 in Cameron Parish, Louisiana, which extends to a point beyond the center line of Sabine Lake, and is estimated to contain approximately 4520 acres for $640,256.00.

m) March 4, 1959. State Lease No. 3463 to The California Co., covering Tract No. 7388 in Cameron Parish, Louisiana, which extends to a point beyond the center line of Sabine Lake and is estimated to contain approximately 4900 acres for $205,434.00.

n) September 26, 1959. State Lease No. 3565 to The California Company, covering Tract No. 7541 in Cameron Parish, Louisiana, which extends beyond the

center line of Sabine Lake and estimated to contain approximately 4350 acres for $335,116.00.

o) September 26, 1959. State Lease No. 3561 to The Atlantic Refining Co., covering Tract No. 7534, which extends to the west side of the Sabine River and is estimated to contain approximately 53 acres for $10,610.00. This property is situated in Beauregard Parish, Louisiana.

p) April 23, 1962. State Lease No. 3874 to Sun Oil Co., covering Tract No. 8167, situated in Calcasieu Parish, Louisiana, which extends to the west side of the Sabine River and estimated to contain approximately 176 acres for $5,473.60.

That, furthermore, the State of Louisiana has, on numerous occasions granted rights-of-way for pipeline construction, maintenance, etc., and other purposes across the entirety or, at least, to a point which extends to a point west of the center line of Sabine Pass, Lake, and/or River. A search of the records of the appropriate State agencies reflect the following examples of right-of-way grants on lands within the western half of Sabine Pass, Lake, and/or River:

1) State Right-of-Way dated July 9, 1929 granting to H. L. McKee a right-of-way for the construction of a bridge and approaches thereto, across the entirety of Sabine Lake, pursuant to Act 215 of 1916 and Public Law (U.S.) 432, 70th Congress, dated May 18, 1928.

2) State Right-of-Way No. 224, dated August 24, 1962 to Colonial Pipeline Company covering the

Sabine River and other bodies of water for the operation of a pipeline for the transportation of oil, gas, and other mineral products across the entire Sabine River for the sum of $1,491.00.

3) State Right-of-Way No. 230, dated August 24, 1962 to Transcontinental Gas Pipe Line Corporation covering Sabine River for the operation of pipeline for the transportation of oil, gas, and other minerals across the entire Sabine River for the sum of $78.18.

4) State Right-of-Way No. 431, dated July 15, 1964 to Tennessee Gas Transmission Co. for the operation of a pipeline for the transportation of oil, gas and other minerals across the Sabine River, near the town of Columbus, Sabine Parish, Louisiana, for the sum of $184.00.

5) State Right-of-Way No. 741, dated December 13, 1966 to Sabine Pipe Line Co. for the operation of a pipeline for the transportation of oil, gas and other minerals "across that portion of the Sabine River lying, within the boundary of the State of Louisiana in Cameron Parish, Louisiana . . ." for the sum of $112.00.

6) State Right-of-Way No. 742, dated December 13, 1966 to Black Lake Pipe Line Company for the operation of a pipeline for the transportation of oil, gas and other minerals across Sabine River in Vernon Parish, Louisiana, for the sum of $81.00.

7) State Right-of-Way No. 743, dated December 7, 1966 to Union Carbide Corporation for the opera-

tion of a pipeline for the transportation of oil, gas, and other minerals across the "Westhalf (W/2) of the Sabine River located in Section 33, Township 10 South, Range 13 West", Calcasieu Parish, Louisiana, for $989.10.

8) State Right-of-Way No. 960, dated June 4, 1968 to Big Three Pipeline Co., a division of Big Three Industrial Gas & Equipment Co. for the operation of a pipeline for the transportation of oil, gas, and other minerals across the Sabine River approximately 100′ north of the Southern Pacific Railroad bridge, four miles north of Orange, Texas, from a point in Calcasieu Parish, Louisiana, for the sum of $113.43.

That affiant attaches hereto and makes part hereof a copy of each of the oil and gas leases and right-of-way grants hereinabove referred to.

Affiant further states that, as far as he can determine from a study of the records in his office, Louisiana has maintained that its boundaries are in accordance with the Treaty of 1819 between the United States and Spain and extends to the west bank of Sabine Pass, Lake, and River to where the 32nd degree of North latitude strikes the west bank of Sabine River, then due North to the 33rd degree of North latitude, and, furthermore affiant has found no records in his office which would indicate that Louisiana has ever relinquished title to lands owned by it to said boundary. That affiant has not found in said records any claim by the United States to the area in dispute in this litigation and affiant has found from his rec-

ords that the landward portion of said boundary has not been in dispute.

/s/ ORY G. PORET

SWORN TO AND SUBSCRIBED before me, Notary, at Baton Rouge, Louisiana, on this 23rd day of October, 1970.

/s/ ESTHER A. KELLY
Notary Public

STATE OF LOUISIANA
Parish of Orleans

BEFORE ME, the undersigned authority, a Notary Public duly commissioned and qualified in and for the aforesaid Parish and State,

PERSONALLY CAME AND APPEARED:

JACOB H. MORRISON, of age and a resident of the Parish of Orleans, Louisiana who, after having been duly sworn did depose and say that:

He was acting as Special Assistant Attorney General in 1941 and became interested in the question of the correct location of the boundary between the States of Louisiana and Texas. Sam H. Jones was governor and Eugene Stanley was Attorney General at the time.

Deponent annexes hereto and makes part hereof a copy of a letter addressed to the Governor of Texas which letter was prepared by him and signed by Governor Jones, Attorney General Stanley and himself. The reason the date does not appear on the copy is that said letter was drafted by him and then mailed from his office in New Orleans to Governor Jones in Baton Rouge, the state capitol. It was signed by At-

torney General Stanley and Governor Jones in Baton Rouge on or about November 27, 1941; and Deponent is informed and believes that the said letter was promptly mailed to the Governor of Texas.

Deponent further says that a letter was received by Governor Jones from Honorable Bascom Giles, Commissioner of the General Land Office of Texas dated November 25th 1941, copy of which is annexed hereto and made part hereof. Said letter was referred to deponent for reply by Governor Jones.

Deponent further says that in response to said letter, a reply was drafted by him in New Orleans and mailed to Governor Jones in Baton Rouge for his signature. The copy is annexed. Governor Jones wrote deponent on December 17, 1941 advising him that he had signed the letter and mailed it to Mr. Giles about December 17, 1941. A copy of said letter is annexed hereto and made part hereof.

Deponent annexes hereto and makes part hereof the copy of letter dated January 5, 1942, which was sent to Senator Tom Connally of Texas by Mr. Fred W. Johnson, Assistant Commissioner of the General Land Office of the United States, Department of the Interior. A copy of this letter was referred to deponent in the course of his activity in connection with the boundary dispute herein involved.

/s/ JACOB H. MORRISON

SWORN TO AND SUBSCRIBED BEFORE ME THIS 16th DAY OF OCTOBER, 1970.

/s/ JAMES G. DERBES
Notary Public

STATE OF LOUISIANA
Parish of Calcasieu

BEFORE ME, the undersigned authority, a Notary Public duly commissioned and qualified in and for the aforesaid Parish and State,

PERSONALLY CAME AND APPEARED:

HONORABLE SAM HOUSTON JONES, of age and a resident of the Parish of Calcasieu, Louisiana who, after having been duly sworn did depose and say that:

He was Governor of the State of Louisiana in 1941 and was interested in the question of the correct location of the boundary between the States of Louisiana and Texas. Eugene Stanley was Attorney General at the time; and Jacob H. Morrison was acting as a Special Assistant Attorney General in connection with said matter.

Deponent annexes hereto and makes part hereof a copy of a letter addressed to the Governor of Texas which letter was signed by him, Attorney General Stanley and Jacob H. Morrison. It was mailed on or about November 27, 1941. The reason the date does not appear on the copy is that said letter was drafted by Jacob H. Morrison and mailed from his office in New Orleans to my office in Baton Rouge, the state capitol. It was signed by Attorney General Stanly and myself in Baton Rouge on or about November 27, 1941; and was promptly mailed to the Governor of Texas.

Deponent further says that he received from Hon-

orable Bascom Giles, Commissioner of the General Land Office of Texas a letter dated November 25th, 1941, copy of which is annexed hereto and made part hereof.

Deponent further says that in response to said letter, a reply was drafted by Jacob H. Morrison and mailed to him in Baton Rouge for his signature. He signed said letter and mailed it to Mr. Giles on or about December 17, 1941. The reason he knows this is that he wrote Mr. Morrison on December 17, 1941 advising him of this fact. A copy of said letter is annexed hereto and made part hereof.

SAM HOUSTON JONES

Sworn to and subscribed before me this 30th day of September 1970.

/s/ DOROTHY BRASWELL
Notary Public

The Honorable Governor of the State of Texas,
State Capitol Building,
Austin, Texas.

Dear Sir:

I am writing you in the interest of setting at rest all doubts that may exist as to the correct boundary between the states of Louisiana and Texas. The true boundary between our respective states is the western bank of the continuous body of water known as Sabine Pass, Sabine Lake and Sabine River from the Gulf up to the 32nd degree of latitude, and thence due north to the Louisiana-Arkansas boundary.

Some confusion has been created by the erroneous idea entertained in some quarters that the *middle* of Sabine Pass, Lake and River is the right boundary. This has no basis in law or fact.

In order that you may have before you for ready reference the pertinent statutes and decisions on this question, I call your attention to the following:—

By the treaty of February 22, 1819 between the United States of America and the King of Spain (8 U. S. Statutes at Large 252), the limits between the United States of America and the then Territories of the King of Spain in North America were fixed at a line beginning on the Gulf of Mexico at the mouth of the River Sabine, and continuing north along the western bank of that river (Sabine Pass, Sabine Lake and Sabine River proper) to the 32nd degree of latitude. The boundary then followed a line running due north from the last named point to the southern bank of Red River.

By the Treaty of Limits, dated January 12, 1828, between the United States of America and the United Mexican States, the same boundary was adopted (see 8 Statutes at Large, Page 372). By an act dated December 19, 1836, the Republic of Texas ratified the same boundary as that prescribed theretofore in the treaties of February 22, 1819 (between Spain and the U. S.) and January 12, 1828 (between Mexico and the U. S.).

By an act of Congress of July 5, 1848 (U. S. Statutes at Large, 30th Congress (1848), First Session,

Chapter 94), the United States sought to extend the eastern boundary of the State of Texas so as to include one-half of Sabine Pass, Sabine Lake and Sabine River up to the 32nd degree of latitude. This act is clearly unconstitutional under the doctrine of Louisiana vs. Mississippi, 202 U. S. 1; 26 Sup. Ct. 408; decided in 1906.

In the several cases involved in the litigation between the states of Oklahoma and Texas, the Supreme Court of the United States held definitely that the boundaries as delineated by the Treaty of 1819 between Spain and the United States were effective and controlling. Accordingly, the Supreme Court held that the western bank of Sabine Pass, Sabine Lake and Sabine River and the southern bank of Red River were the correct boundaries.

To this effect, see:—

United States v. Texas, 162 U. S. 1; 16 Supreme Court 725;

Oklahoma v. Texas, 256 U. S. 70; 41 Supreme Court 420;

Oklahoma v. Texas, 256 U. S. 602; 41 Supreme Court 539;

Oklahoma v. Texas, 258 U. S. 574;

Oklahoma v. Texas, 260 U. S. 606;

United States v. Choctaw & Chickasaw Nations, 179 U. S. 494.

The boundary line between the State of Louisiana

and the State of Texas was actually located, laid out and marked upon the earth by commissioners appointed in 1839 respectively by the United States and the then Republic of Texas. The limits as established by the successive treaties of 1819, 1828 and 1836 were strictly adhered to. The commissioners completed their work in 1841.

You have probably observed in the press some comment on an alleged error in the survey establishing that portion of the boundary running from the 32nd parallel (where the Sabine ceases to be the boundary) up to the Arkansas-Louisiana Line (the 33rd parallel of north latitude). I am not in a position to discuss the engineering phases of the matter. What I can and do say is that, regardless of any error that may have been committed in running this portion of the line (which error I do not admit but expressly disclaim), the actual boundary as physically laid out on the ground and as adhered to for the past century by the citizens of both states adjoining it would govern and control.

As Governor of the State of Louisiana, and under the authority in me vested by the Constitution and Statutes of this State, I hereby make formal demand for the recognition by the State of Texas, as the true and correct boundary between our respective states, of the western bank of Sabine Pass, Sabine River and Sabine Lake up to the 32nd parallel, and of the line between the 32nd and 33rd parallel of north latitude as established by the joint commission in 1839-41 and as adhered to by the citizens of both states adjoining it.

The Attorney General joins me in this letter, as will appear by his official signature hereto.

Yours respectfully,

/s/ SAM H. JONES
Governor, State of Louisiana

/s/ EUGENE STANLEY
Attorney General, State of Louisiana

/s/ JACOB H. MORRISON
Special Assistant to the Attorney General of the State of Louisiana

GENERAL LAND OFFICE
State of Texas
Austin

BASCOM GILES, Commissioner
Alvis Vandygriff, Chief Clerk

November 25, 1941

Honorable Sam Jones, Governor
State of Louisiana
Baton Rouge, La.

Dear Governor Jones:

It has come to my attention that you are contending that possibly the State of Louisiana has title to all of the Sabine River bed. The United States Department of the Interior, by letter dated June 4, 1937, advised the General Land Office of the State of Texas that the center of the Sabine River from its mouth to the 32° of latitude was the boundary line between Texas and Louisiana. Since it is my duty to administer and conserve the public lands of the State of Texas, I

have made a rather extensive investigation into the extent of your claim. This investigation convinces me that the State of Texas has title to the west one-half of the Sabine River bed exclusive of the islands therein.

It is possible that you have overlooked the following facts:

1. The west boundary of Louisiana was fixed by the Act of April 8, 1812, admitting said State into the Union and is described as follows:

> "Beginning at the mouth of the River Sabine; thence, by a line drawn along the middle of said River including all islands to the 32° of latitude; thence due north to the northernmost part of the 33° of north latitude." (2 Stat. 701)

2. On February 22, 1819, after Louisiana had been admitted to the Union, the United States entered into a treaty with Spain to fix the boundary line between the Spanish territory that is now Texas and the United States. This treaty fixes the boundary line of the United States at that time as follows:

> "Beginning at the mouth of the River Sabine in the sea, continuing north along the western bank of that River to the 32° of latitude; thence due north to the 33° of latitude." (8 Stat. 252)

3. Mexico, the Republic of Texas, and the State of Texas, who succeeded Spain as sovereign of the lands to the west of the Sabine River, each ratified the boundary as set out in the Treaty of 1819. (8 Stat., 372; 8 Stat., 511.)

4. On July 5, 1848, after Texas was admitted to the Union, the Congress of the United States realizing that it had never relinquished the title to the west one-half of the Sabine River which it had obtained from Spain in 1819, gave Texas permission to extend its eastern boundary to the middle of the Sabine River from its mouth as far north as the 32° of latitude. (9 Stat., 245)

5. Texas acted immediately to take advantage of this permission and on November 24, 1849, the Legislature of the State of Texas passed an act extending the limits of the State of Texas to the center of the Sabine River from its mouth to where the River intersects the 32° of latitude. (Act of Nov. 24, 1849, 3 Gam. Laws of Texas. Pg. 442).

It can readily be seen that the State of Louisiana is bound by the limits placed on it when it was admitted into the Union in 1812. Its boundaries then did not extend beyond the middle of the Sabine River and this boundary has never been changed. The west one-half of this River which you have claimed remained the property of the United States of America until it so graciously consented for the State of Texas to extend its boundaries and include this area. For more detailed information I refer you to Geological Survey Bulletin 817.

I would like to point out, however, that my investigation into the boundary line between our two States has revealed an interesting situation between the 32° of latitude and the 33° of latitude. It appears that there is a strip approximately 150 feet in width and 70

miles long between the marked boundary of Texas of 1838 and the actual boundary of Louisiana as fixed in 1812, which is not owned by the State of Louisiana but is quite possibly owned by the State of Texas. This strip extends from Joaquin, Texas, opposite Logansport, Louisiana, to the Arkansas-Louisiana line and contains about 1300 acres.

This situation arises from the fact that in 1838 the Republic of Texas and the United States of America entered into a convention by which the boundary between the Republic of Texas and the United States was affirmed as being that agreed upon between Spain and the United States in 1819. Pursuant to this Convention of 1838 a Boundary Commission was appointed between the two Nations and the boundary as then existing was surveyed and marked on the ground. This line ran along the western bank of the Sabine River to the 32° of latitude, and then turned due north. Since the boundary of Louisiana was previously fixed as running up the middle of Sabine River to the 32° of latitude, thence due north to the northernmost part of the 33° of latitude, it is evident that the line as surveyed on the ground in 1838 did not and could not coincide with the boundary of the State of Louisiana, as fixed in 1812, by the width of one-half of the River.

To illustrate this point, I am enclosing a blue print of a sketch prepared by this office based on the original maps filed here by the Boundary Commission of 1838. You can at once see that there is a discrepancy between the Louisiana boundary line running due north from the center of the Sabine River at the 32° parallel and

the boundary of Texas as surveyed and marked running north from the western bank of the Sabine River. Conceding that the Sabine River is only 300 feet wide at the point it intersects the 32° of latitude, the strip between the boundary line of Louisiana and the old surveyed boundary line of 1838 would be approximately 150 feet wide. I would like to point out, however, as reflected by the original surveyor's maps, that it is quite possible that the Sabine River is much wider at this point because of overflows and swampy land which might increase this strip to as much as a mile.

It is true that the Congress of the United States did not expressly mention this strip when it authorized Texas to take over the west one-half of the Sabine River, but we feel that they intended that the same be done since it follows as a natural corollary of moving the boundary of Texas from the west bank of the Sabine River to the middle of that River.

Because of the strong implications that this territory belongs to the State of Texas, I have examined all of the information I have been able to obtain on this matter and have transmitted it to Senators Tom Connally and W. Lee O'Daniel of Texas so that they may take whatever action they think expedient to protect any rights the State of Texas might have in this strip.

In addition to the above mentioned blue print, I am enclosing the following instruments:

1. Certified photostatic copy of Sheet No. 1 of the map of a part of the boundary between the Republic of Texas and the United States of America drawn from notes of survey made by the Joint

Commission under the Convention of the 25th of April, 1838.

2. Certified photostatic copy of Plan B, Sheet No. 3, of the above named survey.

I am sure that you have given this matter much study, and I will be happy to have the benefit of your opinion thereon.

Sincerely yours

(Sgd.) Bascom Giles
BASCOM GILES, COMMISSIONER
OF THE GENERAL LAND OFFICE

Encls.
Giles:rlw

Honorable Bascom D. Giles,
Commissioner of the General Land Office
Austin, Texas.

Dear Commissioner Giles:

Your letter of November 25th was duly received and I hope you will pardon the delay in answering it. I have just returned from an absence from the State, and additional delay was occasioned by the fact that I wished to submit the matter to Attorney General Eugene Stanley for his views and conclusions.

Let me say that I appreciate the courteous, careful and complete summation of your state's position in this matter as set forth by you. I freely acknowledge that you have done a thorough and able job, both in research and in presentation of the material on this

subject from your point of view. However, my original opinion has not been changed, modified or varied by the citations and forceful arguments advanced.

Needless to say, we are and have been well aware of the Act of Congress admitting Louisiana into the Union, dated April 8, 1812 (2 Statutes at Large 701, Chapter 50), giving the middle of the Sabine as the western boundary. The Treaty of February 22, 1819 between the United States and Spain (8 Statutes at Large 252) is the principal genesis of Louisiana's right and title to the entire bed of the Sabine water system from the Gulf of Mexico to the 32nd degree of north latitude, and to the land boundary from the point where the 32nd parallel meets the Sabine's west bank north to the 33rd parallel. I do not think there can be any dispute as to the context of the various statutes and treaties cited by you, which we were actually aware of. Our differences arise over the effect to be given these statutes and treaties and the proper construction to be placed upon them.

In the first place, we believe that the Act of Congress of July 5, 1848 (Chapter 94, 30th Congress—9 Statutes 245), which is your main reliance, is unconstitutional, null and void. The reason is that Louisiana was the beneficiary of the boundary agreement between the United States of America and the King of Spain, as set forth in the Treaty of February 22, 1819, the actual line having been marked out by a joint commission under the Convention of 1838 between the Texas Republic and the United States. We disagree entirely with your theory that the United States of

America held title to a thin strip of water comprising the western half of the Sabine from the Gulf to the 32nd parallel and a thin strip of land equivalent to one-half of the width of the Sabine from the 32nd to the 33rd parallel (the Louisiana-Arkansas line). We believe that the only possible effect of the Treaty of 1819 was to extend the western boundary of the State of Louisiana between the Gulf and the 33rd parallel by half of the width of the Sabine River. Not only is this true as a legal proposition inherent in the fundamental law governing the relations between the United States of America and the individual states comprising its Federal Union; but certain actions of the United States authorities, as hereinafter related in greater detail, point to this as an inevitable conclusion. Consequently, when Congress, on July 5, 1848, permitted the Texas Legislature to extend the eastern boundary of Texas to the center of the Sabine River, it had no right or authority to do so, and it gave away something that it did not actually own. As a corrollary, the act of Texas of November 24, 1849 was negatory, null and void.

The western border of the "Louisiana Purchase" was, as you know, a matter of controversy for many years between Spain and the United States, during the course of which various states were admitted into the American Union and other changes took place in its component structure. Spain had always contended that the proper boundary between its lands on the North American continent and those of the United States of America was the Atchafalaya water system. Surely,

if Spain had finally secured the enforcement of its conception of the proper boundary in 1819 and the border had been placed by the Treaty on the Atchafalaya River instead of the western bank of the Sabine, it cannot be gainsaid that the State of Louisiana's western boundary (as originally fixed in 1812) would have ipso facto been changed to conform. Furthermore, there is no showing that there was any reason, intent or purpose for the United States (as distinguished from the individual states that comprised its Federal Union) to establish a thin strip of water and land as a "buffer territory" between one of its component states—Louisiana—and its neighbor on the west—the Territory of the Spanish Kingdom. Any argument to the contrary appears even more fallacious, when it is recalled that 30 years elapsed between the Treaty of 1819 and the Act of Congress of 1848 purporting to consent to Texas having half the Sabine, during which time Mexico supplanted Spain and the Republic of Texas, in turn, Mexico; and finally Texas was admitted as a state several years prior to the date of said Act.

Our argument on this score is reinforced by the fact that the Overton Commission, which actually ran the boundary line in the period between 1839 and 1841, physically established it on the western bank of the Sabine water system up to the 32nd parallel and, from that point, north to the 33rd parallel of latitude. This latter portion of the boundary (from approximately Logansport, Louisiana to the Arkansas-Louisiana line) has always, as a matter of public knowledge and

notorious opinion, been held to be the boundary between the states of Louisiana and Texas. No better illustration of this appears than the map of that portion of the boundary between the Republic of Texas and the State of Louisiana, a certified copy of which you sent me with your letter of November 25th. You will note on that very map that the territory to the east of the line is referred to as "State of Louisiana", and there is not the slightest intimation that the commissioners representing the United States and the Republic of Texas intended to project a narrow strip 150 feet wide running between the 32nd and 33rd parallels of north latitude and reserve it as federal territory. From all this, I am constrained to disagree with your observations on this question and the interpretation that you place on the Treaty of 1819 and the Act of Congress of 1848.

If the Sabine was, as stated by you, possibly wider in 1819 than it is today, this would redound to the benefit of the State of Louisiana. Whatever was the western bank at the time of the Treaty of 1819 would be the proper boundary, regardless of any shrinkage or expansion in the actual water level of the stream itself. In closing, I wish to point out that the land portion of the boundary from the 32nd to the 33rd parallel has been acquiesced in for 100 years or more by both the State of Louisiana and the State of Texas. Certainly this is true from and after the physical location of the line on the ground by the joint commission acting under the Convention of April 25, 1838. I know of no instance in which the United States of America has

claimed that any part of this boundary, land or water, is federal territory. Cetrainly it has never exercised any right of dominion over said territory; has collected no taxes therefrom, nor has it used same for any general, public, or federal purpose within the intent and under the requirements of the Constitution of the United States.

The exact opposite is true insofar as the State of Louisiana is concerned. The recognized western boundary has governed the actions of our citizens in the payment of taxes and the exercise of civil and original jurisdiction over the land adjacent to said boundary.

Lastly, I call your attention to the fact that in the Act of Texas of May 2, 1882 (Chapter XI—General Laws of Texas, 1882) and the Act of Congress of January 31, 1885 (Chapter 47, Second Session, 48th Congress) there is a recognition by both the State of Texas and the United States that the western bank of the Sabine from the Gulf to the 32nd degree of latitude, and thence due north to the 33rd degree, is the correct eastern boundary of Texas. While I do not contend that this alone is conclusive, it is undoubtedly a factor favorable to our contentions and adverse to yours.

For the foregoing reasons, I regret that I cannot agree with the contentions advanced in your letter of November 25th. I am asking Attorney General Stanley to prepare a formal exposition of the claims and demands of this State, of which you will be advised in due course.

Yours sincerely,
/s/ SAM H. JONES