In The

Supreme Court of the United States

October Term, 1969

No. 36 Original

THE STATE OF TEXAS,
Plaintiff,

vs.

THE STATE OF LOUISIANA,
Defendant.

REPORT OF SPECIAL MASTER

ROBERT VAN PELT,
Senior U. S. District Judge,
Special Master.

JOE CHRISTENSEN, INC., 1540 Adams, Lincoln, Nebraska

Table of Contents

In The

Supreme Court of the United States

October Term, 1969

No. 36 Original

THE STATE OF TEXAS,

Plaintiff,

vs.

THE STATE OF LOUISIANA,

Defendant.

REPORT OF SPECIAL MASTER

ROBERT VAN PELT,
Senior U. S. District Judge,
Special Master.

This original action involves the determination of the boundary between the States of Texas and Louisiana insofar as the Sabine River,[1] extending from the Gulf of Mexico to the thirty-second degree of north latitude, constitutes the common boundary between the two States. Jurisdiction is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States. Your Special Master is of opinion, and reports, that this Court has jurisdiction of the parties.

---

1 In this report when your Master uses the term "Sabine River," he is including the river, Sabine Pass, and Sabine Lake, unless otherwise noted.

I. PRELIMINARY STATEMENT

There are two preliminary matters which should be discussed by the Special Master before turning to the merits of the controversy.

(1) By oral motion, and more specifically as set forth as the second defense in the answer of the State of Louisiana, the question is raised of whether the United States of America should be made a party to these proceedings.

On March 1, 1845, the United States Congress passed a resolution which consented to the Republic of Texas being made a new State. The resolution stated, in part:

> "*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.
>
> "2. *And be it further resolved,* That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit: *First,* Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments . . . ." 5 Stat. 797 (emphasis in original)

The various conditions given in the resolution were accepted by Texas.[2] By joint resolution of Congress,

---

2 1 Sayles Early Laws of Texas at 567-69, art. 1531.

approved December 29, 1845,[3] Texas was admitted as one of the States of the Union, again subject to the conditions given in the March 1, 1845 Resolution.

Louisiana argues that the first condition of the March 1, 1845 Resolution, that is, that all questions of Texas' boundary that "may arise with other governments" are subject to adjustment by the federal government, means that the United States must be joined as a party to this action.

The United States Supreme Court considered this March 1, 1845 Resolution in the case of *United States v. Louisiana,* 363 U.S. 1, 36-64 (1960). It seems clear from a reading of that case that the congressional intent behind the Resolution was to have the United States settle any boundary questions between Texas and Mexico, and thus the phrase "other governments" in the Resolution meant Mexico.

As stated in *United States v. Louisiana, supra,* 363 U.S. at 44-45:

> "[T]he precise fixation of the new State's [Texas'] boundaries was left to future negotiations with Mexico.
>
> "The circumstances surrounding the [March 1, 1845] Resolution's passage make it clear that this was the understanding of Congress. Congressional attention was focused primarily on the great political questions attending annexation—primarily the extent to which slavery would be permitted in the new territory and the possibility that annexation would embroil this country with Mexico—and the matter of boundary received little consideration except as it was related to the larger issues. Public agitation over annexation had become so great that some bills had proposed annexation virtually in the abstract, with all details to be worked out later. Although the Reso-

---

3 9 Stat. 108.

> lution as ultimately passed did settle the details of certain matters—notably slavery, the Texan debt, and the mode of annexation—the manifest purport of it and all the many other annexation bills introduced was to postpone the fixing of boundaries for the sake of achieving immediate annexation, and no apparent importance was attached to the particular verbal formula used to achieve such postponement." (footnotes omitted)

In *Oklahoma v. Texas,* 252 U.S. 372 (1920), involving a dispute over the Red River boundary between the State of Texas and the State of Oklahoma, the United States was allowed to intervene. However, in *New Mexico v. Texas,* 275 U.S. 279 (1927), involving the boundary between New Mexico and Texas, the United States was not a party, and there appears to be no question raised by either party or the Supreme Court as to whether the United States should have been made a party.

In addition, the March 1, 1845 Resolution can be read to mean that the provision requiring the United States to adjust "all questions of boundary that may arise with other governments" was limited to the territory included within the Resolution, which was specifically stated to be the "territory properly included within, and rightfully belonging to the Republic of Texas . . . ." Texas has never claimed, and Louisiana has not contended otherwise, that the western half of the Sabine River belonged to Texas at the time of the 1845 Resolution. Rather, Texas bases her claim to the western half of the river on the July 5, 1848 Act of Congress which authorized Texas to "extend her eastern boundary to include the Sabine River's western half,"[4] and to rights obtained by prescription and ac-

---

[4] The title to the July 5, 1848 Act read:
"An Act giving the Consent of the Government of the United States to the State of Texas to extend her eastern Boundary,

quiescence as hereafter discussed. Pursuant to this 1848 Act, the Texas Legislature did extend the State's boundaries on November 24, 1849. Appendix A, Item (8).

Thus, it would seem that the March 1, 1845 Resolution did not contemplate the United States' participation in Texas' boundary disputes, except as those disputes involved Mexico. However, even if this interpretation is not favored by the Court, the Resolution is not applicable to this controversy since Texas' claim is based on congressional action after 1845.

The United States has no interest in this litigation and thus it would serve no purpose to join the United States as a party. Any interest the United States might have had in the western half of the Sabine was given to Texas in the July 5, 1848 Act of Congress, which allowed Texas to extend her boundary. If Louisiana's contentions are correct, and Louisiana is entitled to the Sabine's western half, the United States still has no interest in the river. Therefore, your Master concludes that the United States is not a necessary party to this action.

(2) Texas filed herein a motion for summary judgment. This motion was briefed and following the introduction of evidence, as shown by the submitted record, was argued and submitted. Your Special Master concluded to reserve ruling on this motion because of the contentions of Louisiana that there were fact issues which were not resolvable on a motion for summary judgment. The case was then set for hearing on the merits. Such hearing has been had, the evidence

---

so as to include within her Limits one half of Sabine Pass, Sabine Lake, and Sabine River, as far north as the thirty-second Degree of North Latitude." 9 Stat. 245; Texas' Exhibit C, p. 4.

of both parties received, and the case stands ready for report by your Master. Your Special Master concludes, and reports, that the motion for summary judgment should be considered to be overruled and denied, since the decision on the merits, if the report of your Special Master is approved, will accomplish for the State of Texas all which sustaining of the motion for summary judgment would have accomplished.

II. THE ISSUES

The claims of the parties are set forth in the complaint, the answer and amended answer, the counterclaim of the State of Louisiana, and the answer to the counterclaim, each of which are on file in the office of the Clerk of the U. S. Supreme Court.

The claim made by the State of Texas is, in substance, that various acts of the United States Congress and the Louisiana Legislature demonstrate as a matter of law that the boundary between the State of Texas and the State of Louisiana is the geographic middle of the Sabine River. Texas also claims that the record shows undisputed exercise by Texas of dominion and jurisdiction over the western half of the Sabine River bed, including any islands located thereon, with acquiescence by the State of Louisiana sufficient to establish prescription and acquiescence as a matter of law.

The State of Louisiana claims ownership of the entire bed of the Sabine River, Lake, and Pass, to the west shore thereof. Louisiana contends this boundary was settled in favor of Louisiana's position, in the Treaty between the United States and Spain in 1819. Louisiana further claims ownership of all islands in the river whether on the east or west side of the middle of the river, regardless of whether its claim on the west half of the river is valid. Louisiana further claims that if it does not own the west half of the river, then it is owned by the United States of America and not by Texas. It is the further claim of Louisiana that the complaint filed by the State of Texas fails to state a claim upon which relief could be granted in that, as above mentioned, the United States should be a party to these proceedings. It further claims that there was an accord and satisfaction by reason of the

Treaty between the United States and Spain in 1819; that the Act of July 5, 1848 of the United States Congress transferred jurisdiction of criminal cases only; that there has been an acquiescence by the State of Texas in Louisiana's claim; that if it should be determined that the boundary between the two States is the "middle" of the Sabine River, the term "middle" calls for application of the thalweg doctrine, not the geographic middle. The boundary between Texas and Louisiana from the Sabine River north to Arkansas is not for determination in this case.

The claim of the parties can be resolved by answering three main questions:

1) Is Texas entitled, as a matter of law, to the western half of the Sabine River from the Gulf of Mexico to the thirty-second degree of north latitude by reason of the July 5, 1848 Act of Congress (9 Stat. 245)?

2) Does the doctrine of acquiescence and prescription apply to the claims of either State and if so, what is its application to the facts of this case?

3) What islands in the Sabine River became a part of the State of Louisiana under the Enabling Act of Congress of February 20, 1811, providing for the proposed State of Louisiana and under the Act of Congress of April 8, 1812, admitting Louisiana as a State?

Before discussing the facts, it is well to mention here the situation as to the exhibits offered and received in evidence and which become a part of this report by reference.

Many of the exhibits are immaterial. There is redundant or duplicate material in many of them and some are hearsay which nevertheless, when we are dealing with ancient maps, surveys, historical records,

and other exceptions to the hearsay rule, is not in the opinion of your Special Master ground for exclusion. They have all been examined and the recommendations are based upon the evidence specifically referred to herein.

Your Special Master received all exhibits offered in evidence by Texas and Louisiana. This was done for two reasons—1) in order that all of the exhibits would be in the record when the Special Master's report is reviewed; and 2) because your Special Master as a trial judge firmly believes in the correctness of the observation of Circuit Judge John B. Sanborn in *Builders Steel Co. v. Commissioner of Internal Revenue,* 179 F.2d 377, 379 (8th Cir. 1950), when he said:

> "One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received, and, since he will base his findings upon the evidence which he regards as competent, material and convincing, he cannot be injured by the presence in the record of testimony which he does not consider competent or material. Lawyers and judges frequently differ as to the admissibility of evidence, and it occasionally happens that a reviewing court regards as admissible evidence which was rejected by the judge, special master, or trial examiner. If the record on review contains not only all evidence which was clearly admissible, but also all evidence of doubtful admissibility, the court which is called upon to review the case can usually make an end of it, whereas if evidence was excluded which that court regards as having been admissible, a new trial or rehearing cannot be avoided."

Your Special Master will set forth herein the salient facts on which he relies in making the recommendations of this report. He includes as appendices a resume of exhibits which are material to the issues and attaches

a list of all exhibits which were offered and received in evidence. Some are very large and bulky maps which the Court may want to examine but which cannot at any reasonable cost be easily reproduced and attached to this report.

The various problems presented by this dispute lead your Special Master to point out the relevance of Mr. Justice Harlan's statement in *United States v. Texas,* 162 U.S. 1, 43 (1896):

> "It is a matter of regret that the question now presented, involving interests of great magnitude, should not have been determined, in some satisfactory mode, before or shortly after Texas was admitted as one of the States of the Union. It has remained unsettled for so long a time that it is not now so easy of solution as it would have been when the facts were fresh in the minds of living witnesses who had more intimate knowledge of the circumstances than any one can now possibly have upon the most thorough investigation."

III. HISTORICAL FACTS

Most of the facts, except as to the islands in the Sabine River in 1812, appear to your Special Master to be undisputed. The disputes largely center about the conclusions to be drawn from the facts.

General statements are sometimes made that the area in dispute was a part of the Louisiana Purchase. Such statements are not completely accurate. It is rather certain that President Jefferson, when the Louisiana Purchase was made, did not know the extent of the Purchase and that France did not know the exact boundary of the area it was selling. Jefferson and others contended for the Rio Grande as the west boundary (*See* Louisiana's Exhibit C, p.26), and, as late as the administration of President Jackson, claims were made for a boundary west of the area in dispute. Certainly this area is not within the Mississippi watershed, which arguably may be all LaSalle ever claimed for France.

The statement of Frank Bond, Chief Clerk of the U. S. General Land Office, contained in his historical sketch (Louisiana's Exhibit A, pp. 6-26) is doubtless correct that the views as to the extent of the Louisiana Purchase "are as diverse as their authorship is numerous."[5] Though many pages of exhibits are devoted to this matter, which is highly interesting reading, and one of the true rewards of this appointment was to read the many exhibits disclosing the early history of this great area, your Master concludes that whether the Sabine River area is or is not a part of the Louisiana Purchase is immaterial to a final decision herein.

---

5 The best historical account of the Louisiana Purchase in this area is to be found in Bond's Historical Sketch, Louisiana's Exhibit A, pp. 6-26, and in Texas' Exhibit H, being a Geological Survey Bulletin 1212 dealing with boundaries of the United States and the several States, pp. 34-41.

In an Enabling Act approved February 20, 1811,[6] the Congress of the United States authorized the inhabitants of that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the 30th day of April, 1803, between the United States and France, to form a government and seek admission to the Union under the name of Louisiana. The Act described the Sabine limits of the territory as "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude . . . ."[7]

---

6 2 Stat. 641; Louisiana's Exhibit A, pp. 66-68.

7 There is in evidence (Louisiana's Exhibit A, pp. 34-38; Texas' Exhibit L) a similar act dated February 16, 1811, which, according to the Index to Louisiana's Exhibit A, is Act 218 of the Third Legislature, Orleans Territory, 2d Session (1811). However, the Act contains the language *"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled"* and is signed by the President of the United States, James Madison. Therefore it is not clear that the Act was actually an Orleans Territory Act. It may only have been printed in the Territorial Legislative Session Laws.

There is some dispute over the translation of the boundary language in the so-called Act 218, from the original French into English. The Louisiana version (Louisiana's Exhibit A, pp. 34-38) states: "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its lands to the 32d deg. of lat. . . . ."

The Texas version (Texas' Exhibit L) reads: "beginning from the mouth of the Sabine River, from this point by means of an imaginary line in the middle of the river, all the land which is located within the said line as far as 32° latitude . . . ."

The debates relating to the adoption of the February 20, 1811 Enabling Act are set forth in Louisiana's Exhibit A, pp. 39-63. They cast no further light on the boundary question. However, it is interesting to observe, and your Master cannot refrain from pointing out as a matter of history, that Congressman Quincy of Massachusetts on January 14, 1811, in opposing the Act, said that if the bill was passed the bonds of the Union were virtually dissolved; that it was the duty of some States to prepare for separation amicably if they can, violently if they must. This may have been the first time where, on the floor of the Congress, a claim later espoused by the Southern States on a dissolvable Union was announced. It is interesting to note also that it was announced by a Massachusetts Congressman, not by a southerner. Upon being called to order for inviting a portion of the people to insurrection and the Speaker of the House ruling Congressman Quincy's com-

In November, 1811, a Convention met in New Orleans to draft a constitution and create a state. Its action resulted in the 1812 Louisiana State Constitution. The Preamble fixed the western boundary of the State as the middle of the Sabine River. Almost identical language to that found in the Congressional Enabling Act, above quoted, was used when it recited:

> "We, the Representatives of the People of all that part of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April 1803, between the United States and France, contained in the following limits, to wit: *beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty-second degree of latitude*— thence due north to the Northernmost part of the thirty-third degree of north latitude . . . ."[8]

The Congress of the United States passed an Act on April 8, 1812, for the admission of Louisiana into the Union,[9] which repeats the Sabine boundary in substantially the same language as found in the 1811 Enabling Act and in the 1812 Louisiana Constitution:

> "beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude . . . ."

During this period and for some time thereafter, as above mentioned, the western boundary of the Louisiana Purchase and the western boundary of the United States was in doubt. Negotiations continued between the United States and Spain from 1803 to 1819 relating

---

ments out of order, the House reversed the Speaker by a 53 to 56 vote and held Congressman Quincy's observations in order. Louisiana's Exhibit A, pp. 52-53.

8 Texas' Exhibit C, p. 1 (emphasis supplied).

9 2 Stat. 701; Texas' Exhibit C, p. 2.

both to Florida and to Texas, and culminated in the 1819 Treaty.[10] While the Treaty was signed by the United States on February 2, 1819, Louisiana's Exhibit A, page 69, indicates that it was not ratified by the King of Spain until October 24, 1820 or by the United States until February 10, 1821. By this agreement the United States relinquished all of Texas west of the west bank of the Sabine River, in exchange for Florida and the Spanish claim to the Oregon Territory. This agreement further provides: "All the islands in the Sabine . . . to belong to the United States . . . ." Louisiana's Exhibit A, p. 73.

Almost immediately the United States renewed its efforts to acquire Texas and in 1821, when Mexico declared its independence from Spain, the United States began negotiating anew for its purchase. Later, by an 1828 Treaty of Limits,[11] the United States and Mexico recognized the boundary of the 1819 Treaty with Spain. This Treaty of Limits also provided for the appointment of a boundary commission to run and mark the boundary line. This was not done. The United States continued to attempt to purchase Texas from Mexico and at one time indicated a willingness to pay as much as five million dollars.[12] In 1836 Texas declared its independence from Mexico and was recognized as an independent nation by the United States on March 1, 1837. In 1838 the Sabine portion of the boundary agreed upon with Spain in the Treaty of

---

10 Treaty of Amity, Settlement, and Limits (between the United States and Spain), February 22, 1819; 8 Stat. 252. *See* Louisiana's Exhibit A, pp. 69-90.

11 Treaty of Limits (between the United States and Mexico), January 12, 1828; 8 Stat. 372. *See* Louisiana's Exhibit A, pp. 94-96.

12 *See* II T. M. MARSHALL, A HISTORY OF THE WESTERN BOUNDARY OF THE LOUISIANA PURCHASE, 1819-1841 at 87 (1914), Louisiana's Exhibit M, a book recommended to the Special Master by both States.

1819 and with Mexico in 1828 was ratified by the Republic of Texas and the United States, who agreed "to run and mark that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulph of Mexico, to the Red river."[13]

The boundary was so marked. The report of the boundary commission is found in Louisiana's Exhibit A, pp. 120-64, 221-38. Texas was annexed into the United States in 1845 and admitted as a State on December 29, 1845.[14]

On March 16, 1848, the Louisiana Legislature passed a resolution requesting consent of the Congress to extend Louisiana's western boundary to the western bank of the Sabine. The resolution provided:

> "*Whereas the Constitution and the Laws of the State of Louisiana, nor those of any other State or Territory, extend over the waters of the Sabine River, from the middle of said stream to the western bank thereof*; and that it is of importance to the citizens living contiguous thereto, and to the people in general, that the jurisdiction of some State should be extended over said territory, in order that crimes and offences committed thereupon should be punished, and wrongs and damages inflicted should be redressed in a speedy and convenient manner:
>
> *Therefore, be it resolved, by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened*: 1st. That the constitution and the jurisdiction of the State of Louisiana shall be extended *over part of the United States*, embraced in the following limits (*whenever the consent of the Congress of the United*

---

13 Convention Between the United States of America and the Republic of Texas, for making the boundary between them, April 25, 1838; 8 Stat. 511. *See* Louisiana's Exhibit A, p. 97.

14 *See* 9 Stat. 108. For a concise historical analysis of this period in Texas' history, *see United States v. Louisiana*, 363 U.S. 1, 36-65 (1960).

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 States of Texas.*

2d, *Be it further resolved, etc.*: That our Senators be instructed, and our Representatives in Congress requested, to procure the passage of a law on the part of the United States, consenting to the extension of the constitution, and the jurisdiction of the laws of the State of Louisiana, over the territory in said river. . . ."[15]

On March 18, 1848, the Texas Legisature passed a similar resolution, reading in part:

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

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

SEC. 1. *Be it resolved by the Legislature of the State of Texas,* That our Senators be instructed, and our Representatives in Congress be requested, to use their efforts to have a law passed by Congress, extending the jurisdiction of Texas over one half of the waters of Sabine lake, Sabine pass, and Sabine river, up to the 32° of north latitude."[16]

On July 5, 1848, Congress passed an Act giving its consent to the State of Texas to extend its eastern

---

15 Texas' Exhibit C, p. 3; Louisiana's Exhibit A, pp. 288-88A (emphasis supplied).

16 S. Misc. Doc. No. 123, 30th Cong., 1st Sess. (1848) (emphasis in original).

boundary from the west bank of the Sabine to the middle of that stream. The Act states:

> "*An Act giving the Consent of the Government of the United States to the State of Texas to extend her eastern Boundary, so as to include within her Limits one half of Sabine Pass, Sabine Lake, and Sabine River, as far north as the thirty second Degree of North Latitude.*
>
> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude."[17]

The report of the United States Senate action on the bill states:

> "Mr. Butler, from the Committee on the Judiciary, reported an act giving the consent of the Government of the United States to the State of Texas to extend the eastern boundary so as to include within her limits one-half of the Sabine Pass, Sabine Lake, and the Sabine River as far north as the 32° of north latitude.
>
> "Mr. B. asked for the immediate consideration of the bill, and briefly explained its character. The boundary of the United States, it was known, embraced the Sabine River and lake to its western shore. The boundary of the State of Louisiana extended to the middle of the Sabine; so that the half of the river and lake, to the western shore, belonged to the United States, and was not included in the State of Louisiana; therefore, the boundary of the State and that of the United States, was not identical. The bill before the Senate

---

17 9 Stat. 245 (emphasis in original). *See* Texas' Exhibit C, p. 4.

gives the half of the river beyond the boundary of the State of Louisiana to the State of Texas, for the purpose of enabling the latter to extend her criminal jurisdiction to the Louisiana boundary. There could be no objection to the bill, and he hoped it would now be passed.

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

"The bill was then read a third time and passed."[18]

---

18 Texas' Exhibit C, p. 4.

IV. IS TEXAS ENTITLED TO THE WESTERN HALF OF THE SABINE RIVER BY REASON OF THE FOREGOING FACTS?

It is Texas' claim that the February 20, 1811 Act of Congress, enabling Louisiana to become a State, the 1812 Louisiana Constitution, the 1812 Congressional Act admitting Louisiana as a State, and the 1848 Congressional Act permitting Texas to extend its boundaries to the middle of the Sabine, all conclusively establish that the boundary between Texas and Louisiana is the "middle" of the Sabine. It is Louisiana's contention that the Treaty of 1819 (between the United States and Spain), the Treaty of 1828 (between the United States and Mexico), and the Treaty of 1838 (between the United States and the Republic of Texas), all establish the western bank of the Sabine as the boundary between the two States. It is Louisiana's position that the United States was negotiating on behalf of Louisiana in drafting the various treaties and that when the treaties established the western bank of the Sabine as the boundary between the United States and Spain, Mexico, and the Republic of Texas, respectively, Louisiana automatically extended its boundaries to that bank. It is also Louisiana's contention that since its boundaries were automatically extended to the western bank of the Sabine in 1819, Congress had no authority in 1848 to allow Texas to extend its boundaries to the middle of the Sabine.

Louisiana's position essentially hinges on the contention that the United States was negotiating on behalf of Louisiana when it enacted the Treaty of 1819 and the other treaties which followed. Your Special Master believes this contention is without merit. The Treaty of 1819 does not mention the State of Louisiana, nor do the extensive negotiations and commen-

taries surrounding the Treaty. The same is true of the Treaty of 1828 with Mexico and the Treaty of 1838 with the Republic of Texas, in that they adhered to the boundary described in the 1819 Treaty.

It is clear from reading the 1819 Treaty that the agreement was made by the United States, as a sovereign entity, not as an agent acting on behalf of Louisiana. Clearly, the State of Louisiana could not have negotiated a boundary dispute, inasmuch as that right is within the exclusive province of the national government. United States Constitution art. I, § 10, cl. 1; art. II, § 2.

The 1819 Treaty states, in part:

> "The boundary line *between the two countries*, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude . . . ."[19]

The 1828 Treaty with Mexico was an agreement by the parties over the location of the boundary line "between the two countries." The Treaty consistently speaks of the United States as a sovereign representing its own interests, not those of any particular State such as Louisiana.

There was no reason for the United States to have been acting on behalf of the State of Louisiana. Both before and after the Treaty of 1819 with Spain, the United States made claim to Texas as a part of the Louisiana Purchase and also attempted to purchase it. Therefore, at the time of the February 20, 1811 Act enabling Louisiana to become a State, the United States was claiming a vast territory west of the Sabine, which might become a State. To establish the Louisiana

---

19 Louisiana's Exhibit A, pp. 71-73 (emphasis supplied).

boundary in the middle of the Sabine River was clearly in accordance with the policy and law of the United States relating to river boundaries between States and territories, so that any present or future States would be treated equally with respect to common boundary streams. This policy has been stated by the Supreme Court:

> "[T]he United States early adopted and constantly has adhered to the policy of regarding lands under navigable waters in acquired territory, while under its sole dominion, as held for the ultimate benefit of future States, and so has refrained from making any disposal thereof, save in exceptional instances when impelled to particular disposals by some international duty or public exigency. It follows from this that disposals by the United States during the territorial period are not lightly to be inferred, and should not be regarded as intended unless the intention was definitely declared or otherwise made very plain." *United States v. Holt State Bank*, 270 U.S. 49, 55 (1926). *See also Shively v. Bowlby*, 152 U.S. 1, 49, 57-58 (1894).

Thus it would appear that the United States was holding the western half of the Sabine as a territory of its own, to be given to Texas should it become a part of the United States. This was ultimately accomplished by the Congressional action of 1848, which specifically stated that the western half of the Sabine River belonged to the United States. Had it belonged to Louisiana, there would have been no need for Louisiana's Legislature to pass the resolution of March 16, 1848, which stated that the United States owned the western half of the Sabine. *See* Appendix A, Item (5). Louisiana's recognition of the United States' ownership of the western half of the Sabine is further shown by the express acquiescence of its United States Senators in the 1848 Congressional Act giving Texas that portion of the river. Appendix A, Item (7).

Louisiana argues that the United States could not possibly have exercised ownership over the west half of the Sabine because the area in controversy is a "slender strip of water—less than a stone's throw in width." Louisiana's Reply Brief, p. 13. This assertion ignores the realities of the situation. Although the Sabine River itself is only approximately 240 feet wide, Sabine Pass has an average width of 3,600 feet, while Sabine Lake has an average width of 34,000 feet in the major portion of its twenty-mile length. Thus the bed of the river, lake, and pass totals nearly 36,000 acres. This is more than one and one-half townships, making the fifty-six section area much more than a "slender strip of water." *See* Texas' Exhibit G, pp. 1-3.

Aside from any theory that the United States was acting on behalf of the State of Louisiana in 1819, Article IV, Section 3 of the United States Constitution states:

> "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.
>
> *The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States*; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State." (emphasis supplied)

This power of Congress over lands belonging to the United States is without limitation. *Alabama v. Texas*, 347 U.S. 272, 273, *rehearing denied*, 347 U.S. 950 (1954).

The fact that the territory in question here was finally established under the terms of a treaty does not alter the application of Article IV, Section 3. As stated by the Supreme Court in *Van Brocklin v. Tennessee*, 117 U.S. 151, 168 (1886):

> "[P]ublic and unoccupied lands, to which the United States have acquired title, either by deeds of cession from other States, or by treaty with a foreign country, Congress, under the power conferred upon it by the Constitution, 'to dispose of and make all needful rules and regulations respecting the territory or other property of the United States,' has the exclusive right to control and dispose of, as it has with regard to other property of the United States; and no State can interfere with this right, or embarrass its exercise." (citations omitted)

The Sabine River limits of the territory which eventually became the State of Louisiana were specifically stated in the Congressional Act of February 20, 1811, as "a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude . . . ." This language was repeated in both the Louisiana Constitution of 1812 and the Congressional Act of April 3, 1812, which admitted Louisiana as a State. Thus, up until the Treaty of 1819 with Spain, it must be conceded that Louisiana's western boundary was the middle of the Sabine River. Because of Article IV, Section 3 of the Constitution, the only way Louisiana could have obtained the western half of the Sabine was by congressional action. Louisiana maintains that Senate approval of the 1819 Treaty was "congressional action" sufficient to satisfy Article IV, Section 3 of the Constitution. This assertion is based on the claim that the United States was acting on behalf of Louisiana in negotiating the 1819 Treaty. Since your Special Master believes this latter conten-

tion is without merit for reasons discussed above, the Senate's approval of the 1819 Treaty cannot be construed as congressional action sufficient to give Louisiana the western half of the Sabine River. Neither can it be said that the Congress "impliedly" gave its consent to Louisiana's ownership of the western Sabine because the 1848 Congressional Act expressly gave *Texas* the western half. In addition, the Senate report on the Act clearly states that the western half of the Sabine did *not* belong to Louisiana.

Louisiana claims that if the 1848 Congressional Act is constitutional, it was not a conveyance of title to the western half of the Sabine River, but was only designed to allow Texas to extend its criminal jurisdiction. Louisiana bases this contention on the Report of the U. S. Senate Judiciary Committee of June 29, 1848 (Texas' Exhibit C, p. 4). Louisiana specifically refers to one sentence from that Report: "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." However, your Master believes that the clear language of the July 5, 1848 Act refutes Louisiana's argument. The Act specifically consented to Texas' extending its eastern boundary, "so as to include within her limits" the west half of the Sabine River. This broad, inclusive language weighs heavily against the isolated comment found in the Committee Report. The Report itself repeats the Act's language that allowed Texas to "extend the eastern boundary so as to include within her limits one-half of the Sabine Pass, Sabine Lake, and the Sabine River . . . ."

Texas' ownership of the lands underneath the west half of the Sabine River, in addition to any jurisdiction

on the river, is also supported by the rule that a State has the ownership of lands beneath the navigable waters legally embraced within its boundaries. *Pollard's Lessee v. Hagan,* 44 U.S. (3 How.) 212, 229 (1845); *Martin v. Waddell,* 41 U.S. (16 Pet.) 367, 410 (1842).

The February 20, 1811 Act enabling Louisiana to become a State, the Louisiana Constitution of 1812, the Congressional Act of April 8, 1812, admitting Louisiana as a State, the March 16, 1848 Resolution of the Louisiana Legislature, and the July 5, 1848 Act of Congress, all establish the "middle" of the Sabine River as the boundary between Texas and Louisiana. Congress did not transfer the western half of the river to Louisiana at any time as required by Article IV, Section 3 of the United States Constitution. Under such circumstances, your Special Master concludes that Louisiana's claim to all of the Sabine River bed is without merit and that the western half of the Sabine River bed belongs to Texas.

V. PRESCRIPTION AND ACQUIESCENCE

In addition to Texas' claim to the western half of the Sabine River as a matter of law, arising from the controlling treaties and statutes, your Special Master believes Texas is entitled to the western Sabine because of the doctrine of prescription and acquiescence. "The rule, long-settled and never doubted by this court, is that long acquiescence by one state in the possession of territory by another and in the exercise of sovereignty and dominion over it is conclusive of the latter's title and rightful authority." *Michigan v. Wisconsin,* 270 U.S. 295, 308 (1926) (citations omitted). *See also Arkansas v. Tennessee,* 310 U.S. 563, 569 (1940); *Louisiana v. Mississippi,* 202 U.S. 1, 53-54 (1906); *Virginia v. Tennessee,* 148 U.S. 503, 522 (1893). Your Special Master believes that Texas has claimed a mid-Sabine boundary for over a century and Louisiana has acquiesced in that claim. The various acts of prescription and acquiescence are listed in detail in Appendices A through E, attached to this Report.

On or about November 27, 1941, Louisiana Governor Sam Jones sent a letter to the Governor of Texas, asserting that Louisiana owned to the west bank of the Sabine River (Louisiana's Exhibit B, pp. 1-12). Louisiana claims that this letter prevents the use of any acts after 1941 to show Louisiana's acquiescence in a mid-Sabine boundary. However, it should be pointed out that Governor Jones recognized that Louisiana might have lost its claim to the western bank of the Sabine because of acquiescence. *See* Texas' Exhibit C, p. 49; Texas' Exhibit G, pp. 72-73. In addition, the fact that Louisiana did not participate in any *legal* proceedings until over twenty-seven years after Governor Jones' letter to the Governor of Texas weighs against its claim that any acts after 1941 must be

disregarded. *See* Texas' Exhibit C, pp. 25-27a. The necessary inference from such cases as *Indiana v. Kentucky*, 136 U.S. 479, 509-10 (1890) and *Michigan v. Wisconsin*, 270 U.S. 295, 318-19 (1926), is that only legal proceedings can effectively assert a State's opposition to a rival State's dominion and sovereignty over disputed territory. Therefore, your Special Master believes that post-1941 acts do have some significance to the dispute here, even though your Master, in reaching his conclusion, has not accorded them as much weight as those occurring before that date. Texas has claimed a mid-Sabine boundary from at least 1848, when the Texas Legislature extended the State's eastern boundary to include the western half of the Sabine River. Appendix A, Item (8). Texas has assessed taxes on the western half of the Sabine since at least 1914, while, according to the evidence before your Special Master, Louisiana has *never* taxed the western half. Appendix E, Part (B). The taxing of disputed land is to be given considerable weight in determining whether a State has acquiesced in the other State's ownership of the land. *Vermont v. New Hampshire*, 289 U.S. 593, 615-16 (1933); *Michigan v. Wisconsin*, 270 U.S. 295, 306, 317 (1926).

Since 1911, Texas has extended the boundaries of its cities located on the Sabine and reclaimed certain submerged lands in the Sabine, such as Pleasure Island near Port Arthur, Texas. Appendix E, Part (C). From 1930 to 1940, Texas prepared ten maps and seven leases which asserted a mid-Sabine boundary. Since 1940, there have been forty-three such leases and thirteen such maps. Appendix C, Part I; Appendix B, Part I.

Probably the earliest acquiescence by Louisiana in a mid-Sabine boundary, after Texas became a State, was the Louisiana Senators' acquiescence in the 1848 Con-

gressional Act giving the western half of the Sabine River to Texas. The Senate record states that the Louisiana Senators "expressed their acquiescence in the arrangement." Appendix A, Item (7). Prior to that time, Louisiana had acknowledged a mid-Sabine western boundary in the Preamble to the Louisiana Constitution of 1812. Appendix A, Item (3). In addition, the Louisiana Legislature's Resolution of March 16, 1848, requesting Congress' consent to extend Louisiana's western boundary to the Sabine's western bank (Appendix A, Item (5)), shows that up to that time Louisiana did not claim to own the west half of the Sabine. Before 1941, Louisiana executed seven leases which extended only to the middle of the Sabine, and issued, alone or in conjunction with the United States Geological Survey, at least twenty-four maps which show a mid-Sabine boundary. Appendix C, Part II; Appendix B, Part III.

During this same period, the Louisiana Supreme Court issued two opinions which recognized the mid-Sabine boundary as the boundary between Texas and Louisiana,[20] and the Louisiana Legislature created at least one parish which was expressly limited to the eastern half of the Sabine River. Appendix B, Part III(A). From 1943 to 1959, Louisiana issued twenty-

---

20 In *State v. Burton*, 105 La. 516, 29 So. 970 (1901) (Texas' Exhibit B, p. 86), the Louisiana Supreme Court reversed the conviction of a bootlegger operating on the western half of the Sabine River. In doing so, the court stated: "It cannot be contended that Louisiana courts have jurisdiction over Texas territory. . . . That the middle of the Sabine river is the boundary line between Louisiana and Texas, see act of congress approved March 26, 1804, . . . treaty between the United States and Spain made in 1819, Act. Cong. July 5, 1848; act of the legislature of Texas approved November 24, 1849, which act is under and in accordance with the act of congress of 1848; . . . preamble of the constitution of Louisiana of 1812."

This decision was reaffirmed in *State v. Burton*, 106 La. 732, 31 So. 291 (1902) (Texas' Exhibit C, pp. 21-22). *See* Appendix E, Part (E) (2).

two leases which extended only to the middle of the Sabine. Appendix C, Part II.

In addition, the federal government has recognized a mid-Sabine boundary between Texas and Louisiana. In 1848, Congress specifically gave the western half of the Sabine to Texas. Appendix A, Item (7). Prior to that time, Congress recognized Louisiana's western boundary as the middle of the Sabine in the 1811 Act enabling the people of Orleans to adopt a constitution (Appendix A, Item (2)), and the Act of April 8, 1812, for the admission of Louisiana into the Union. Appendix A, Item (4). As early as 1852, Congress made appropriations and authorizations for projects on the Sabine River which mention Texas as the State within which all or a portion of the projects were located. Appendix D, Part (A). From 1906 on, there are six Congressional acts in evidence, generally relating to bridges on the Sabine, which recognize a mid-Sabine boundary. Appendix D, Part (C).

From 1879 to 1940, there are at least twenty maps prepared by federal agencies which show either a mid-Sabine boundary between Texas and Louisiana or, in one instance, a boundary apparently on the *east* bank of the Sabine. Appendix B, Part II. After 1940, there are approximately thirty-five such maps in evidence. Such federal recognition of a disputed boundary has been given great weight by the United States Supreme Court. *See, e.g., Michigan v. Wisconsin*, 270 U.S. 295, 307 (1926); *Louisiana v. Mississippi*, 202 U.S. 1, 56-57 (1906).

All this leads your Special Master to conclude and to report that Texas, by reason of the doctrine of acquiescence and prescription, has further established its claim to the west one-half of the Sabine River.

VI. THE THALWEG DOCTRINE

Louisiana contends that if Louisiana does not own to the west bank of the Sabine, the thalweg doctrine should be applied. Thus, it would become necessary to determine not the geographic middle of the Sabine but rather its deepest and most navigable channel. A claimed exception to this is where there are islands in the river belonging to Louisiana. At such places Louisiana claims the thalweg would be the middle of the channel on the westernmost side of the westernmost island.

Your Special Master, however, does not believe that the thalweg doctrine should apply in this case for the reason that Louisiana's boundary, as above shown, was and is the geographic middle of the river and the doctrine of acquiescence and prescription applies with reference to what may be termed the west half of the river, as shown by the leases, the building of bridges and the other matters hereinabove mentioned.

The parties have stipulated before the Special Master that the Sabine River was and still is navigable.[21] The evidence bears out its navigability in 1838-1840 for distances of 300 to 500 miles from the Gulf. *See* Louisiana's Exhibit J and Exhibit A, p. 130. There is no evidence of recent navigation for such distances. There is evidence of great use of the Sabine-Neches Canal, which is a part of the Intracoastal Waterway through Sabine Pass and Lake. The canal is located on the Texas side and in part was constructed through Texas mainland. *See* Texas' Exhibit A, maps 23, 25 and 27. Its construction resulted in the forming of some man-made islands.

The general rule is that when a navigable river constitutes the boundary between two States, the juris-

---

21 *See* Special Master's pretrial order of September 9, 1970.

diction of each State extends to the middle of the main channel of the river. This is known as the "thalweg" or main navigable channel doctrine. The doctrine is based upon equitable considerations and is intended to preserve to each State its equal right in the navigation of the stream *Iowa v. Illinois*, 147 U.S. 1, 7-8 (1893); *Georgia v. South Carolina*, 257 U.S. 516, 521 (1922); *Arkansas v. Tennessee*, 310 U.S. 563, 571 (1940). Where navigation of the river is not involved, there is no reason to apply the thalweg doctrine and "in the absence of convention or controlling circumstances to the contrary, each takes to the middle of the stream." *Georgia v. South Carolina, supra.*

Both States concede that navigation on the Sabine River has always been open to each by reason of Section 12 of the Act of Congress dated February 15, 1811 (Texas' Exhibit G, pp. 47-50), the Congressional Act admitting Louisiana as a State (Texas' Exhibit C, p. 2), and the Treaty of 1819 between the United States and Spain (Louisiana's Exhibit A, p. 73), which was carried forward in the Treaty with Mexico in 1828 (Louisiana's Exhibit A, pp. 94-96) and the Treaty with the Republic of Texas in 1838 (Louisiana's Exhibit A, p. 97). Both States can use the Intracoastal Waterway, including the Sabine-Neches Canal. Since the right to navigation of the Sabine is not in issue here, having at all times been open to the citizens of each State, application of the thalweg doctrine is unnecessary.

In addition, the thalweg doctrine does not apply "when it is established that there has been acquiescence in a long-continued and uninterrupted assertion of dominion and jurisdiction over a given area." *Arkansas v. Tennessee*, 310 U.S. 563, 571 (1940). *See also Arkansas v. Tennessee*, 246 U.S. 158, 170 (1918);

Iowa v. Illinois, 147 U.S. 1, 10 (1893). As shown above, Texas has exercised long and continued dominion and jurisdiction over the western half of the Sabine, thus making the thalweg rule inapplicable.

Since Congress had provided for free navigation on the Sabine as early as February 15, 1811 (Texas' Exhibit G, pp. 47-50), the only logical meaning to the words "thence by a line to be drawn along the middle of said river," found in the congressional act which defined Louisiana's western boundary (Louisiana's Exhibit A, pp. 66-68), would be a *geographic* middle. This view is further supported by the Act passed by the Congress on July 5, 1848, giving consent for Texas to "extend her eastern boundary so as to include within her limits *one half* of Sabine Pass, *one half* of Sabine Lake, also *one half* of Sabine River . . . ." (emphasis supplied). "One half" can only indicate a geographic half of the Sabine, and thus has no relation to a thalweg or main channel of navigation.

Your Special Master therefore reports and recommends that the thalweg doctrine be held inapplicable to the Sabine River in the determination of the boundary between the States of Louisiana and Texas and that the boundary be established as the geographic middle of the river. In determining this geographic middle, which is defined as an imaginary line drawn equidistant between the shores of the river, the parties have by leases for oil and shells, particularly in Sabine Pass and Sabine Lake, determined such middle boundary. The U.S. Geological Survey has prepared maps of the area for many years. These maps have been used extensively both by Texas and Louisiana as the basis for their maps. Most of these maps have shown the boundary between the States as the geographic middle of the Sabine. The Special Master

would recommend, if the parties are unable to agree upon the exact boundary within a limited time to be fixed by the Special Master, that such boundary be determined by a competent surveyor selected by the Special Master, with such assistance as the surveyor deems necessary, with authority to the surveyor to use such leases, Geological Survey maps, and other guidelines, including an on-the-ground survey, as would usually be used by surveyors in making such a determination of the geographic middle. The Special Master recommends, if he is authorized to employ a surveyor as above recommended, that your Master and the surveyor be empowered to employ the U.S. Geological Survey or representatives thereof to assist in such survey if such employment would appear advantageous. The Special Master further recommends that a written report of such survey be delivered to the Special Master for filing at the earliest practicable date with this Court, together with your Master's report thereon, and that the cost of the survey be apportioned equally to the two States which are parties herein.

VII. ISLANDS

Testimony, both oral and documentary, has been introduced relating to islands in the Sabine River. The early maps and the 1839-1840 survey report show a limited number of islands in the river.

It is the conclusion of the Special Master that all islands which were in the river in 1812 belong to the State of Louisiana. This conclusion is based upon the language of the February 20, 1811 Enabling Act (Appendix A, Item (2)) and the April 8, 1812 Act creating the State of Louisiana. Appendix A, Item (4). The language "including all islands" is clear and unambiguous. There are no exceptions. Your Special Master concludes that it was the intent of the Congress to grant the islands in the Sabine to Louisiana and, except as some may have been lost by acquiescence, your Master recommends that it be determined that all islands in the Sabine on April 8, 1812, the date of the passage of the Act admitting the State of Louisiana into the Union, belong to Louisiana.

The problem is to determine whether any of the islands now in the river were in existence in 1812. The earliest maps in evidence showing islands are the result of the 1839 survey and are dated 1840. It is the contention of Louisiana that in the absence of other evidence the Special Master and this Court should presume that islands in existence in 1840 were in existence in 1812.

Another problem confronting the Special Master is evidenced by Louisiana's Exhibit K, p. 5, which shows that in 1840 there was an island at the mouth of the Neches River. Texas' Exhibit A, p. 25, which is a 1957 map, shows an island in the same general location known as Dooms Island, and sometimes called Johns

Island. There is evidence that this island does not exist today. *See* testimony of Robert A. Bowers, New Orleans Hearing Transcript, pp. 243-300. However, Louisiana claims it can be located. The Special Master is of opinion, if this Report is approved, that it will be necessary for the Master to make an actual inspection of the area either by boat or by helicopter, or by such other means as seems advisable, to actually determine the islands which now exist and which, if any, of the existing islands in the west half of the river were in existence in 1812. As to islands in the east half of the river only, since Texas makes no claim to their ownership, it would be unnecessary to determine whether they existed in 1812 or have formed since. As to islands in the west half of the river which have been formed naturally or artifically since 1812, they would, your Master believes, belong to Texas if the boundary is determined to be the geographic middle of the stream.

Your Special Master would recommend that, as to any islands in the west half of the Sabine River shown to exist at the time of the earliest credible map and nearest the date of 1812, it be presumed that they existed in 1812 but that the matter be open to the introduction of further evidence by the parties if there are surveys, reports, or ancient documents from which the location of islands at or near the year 1812 can be determined and that the Master's findings thereon be the subject of a special and separate report.

Your Special Master further believes that the doctrine of acquiescence and prescription is properly applicable to any islands in the river. If there are islands on the west side of the middle of the Sabine River, possession of which is shown by the evidence to have been in the Spanish or Mexican governments,

in the Republic of Texas, or in the State of Texas, since 1812, the doctrine of acquiescence and prescription should properly be applicable to such islands. Your Special Master refers particularly to the islands, if any, at the mouth of the Neches River and at the mouth of the Sabine River, and believes that a further hearing should be had and a report filed on the matter of acquiescence by the State of Louisiana in Texas' ownership and possession as to all islands in the river located on the west side of the middle of the Sabine, which are found to have existed in 1812 when Louisiana became a State.

Certain of the maps show what are known as oyster reefs or shell banks, particularly in Sabine Pass and Lake. The Special Master does not believe the oyster reefs or shell banks are islands and that the ownership of such reefs, and banks, if any, is to be determined by whether they are on the east or west side of the geographic middle of the river.

A school boy would define an island as a body of land entirely surrounded by water. This Court, in *United States v. California*, 382 U.S. 448, 449 (1966), has approved a definition reading: " 'Island' means a naturally-formed area of land surrounded by water, which is above the level of mean high water." The Special Master believes in determining and reporting whether an island exists in the Sabine River that such definition should be made the basis of the determination and so reports and recommends.

VIII. SUMMARY OF RECOMMENDATIONS

Your Special Master recommends in summary that an order be entered by the Supreme Court of the United States finding and determining:

1) That the United States Supreme Court has jurisdiction of this case and of the parties;

2) That the United States of America is not a necessary party to this case;

3) That the motion for summary judgment filed by the State of Texas be overruled;

4) That the "geographic middle" of the Sabine River is the true and correct boundary between the States of Louisiana and Texas;

5) That the thalweg doctrine is inapplicable to the Sabine River;

6) That a surveyor be selected and employed by the Special Master to determine the "geographic middle" of the Sabine River, Lake and Pass, unless within 30 days from the date of the order of the United States Supreme Court approving the Special Master's report, if it is approved, the parties have agreed upon such "geographic middle";

7) That all islands in the Sabine River on April 8, 1812, when Louisiana was admitted to the Union as a State, be awarded to the State of Louisiana subject to the right of the State of Texas to make claim to any such islands by reason of acquiescence and prescription; that all islands formed in the east half of the Sabine River since 1812 be awarded to the State of Louisiana and that all islands formed in the west half of the river since 1812 be awarded to the State of Texas; that the Special Master take evidence as to the

now existing islands in the Sabine River, which were in existence on April 8, 1812, and at the same hearing take evidence on the claim of Texas by acquiescence and prescription to any such islands, and report to this Court as to the existence of such islands, if any, and the right of the State of Texas thereto;

8) That the costs herein be taxed one-half to plaintiff and one-half to defendant and that no costs be taxed for the services of the Special Master herein;

9) That at the conclusion of all of the hearings the Special Master file a report setting forth the amount of money advanced by the parties for the payment of costs and expenses pursuant to the orders of the Special Master and of the disbursement thereof for approval by the Court, unless the parties have approved in writing the Special Master's report as to the disbursement of said moneys.

Respectfully submitted,

ROBERT VAN PELT
Special Master

APPENDIX A

Acts Prior to 1850

(1) There is in evidence an Act, claimed by Louisiana to be Act 218 of the Third Legislature, Orleans Territory, 2d Session (February 16, 1811), enabling the citizens of the Territory of Orleans to apply for statehood, which limits the Territory to the middle of the Sabine River. However, the Act states "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*" and is signed by the U. S. President James Madison. Therefore, it is uncertain whether the Act was actually an Orleans Territory Act or was only printed in the Territory Legislative Session Laws.

There is a dispute over the translation of the boundary language in the so-called Act 218, from the original French into English. The Louisiana version (Louisiana's Exhibit A, pp. 34-38) states: "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its lands to the 32d deg. of lat. . . . ."

The Texas version (Texas' Exhibit L) reads: "beginning from the mouth of the Sabine River, from this point by means of an imaginary line in the middle of the river, all the land which is located within the said line as far as 32° latitude . . . ."

(2) The United States Congress passed an Act on February 20, 1811 (Louisiana's Exhibit A, pp. 66-68), which enabled the people of the Territory of Orleans to adopt a constitution, form a government, and apply for admission into the Union. The Act gave the Sabine limits of the Territory as follows: "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude . . . ."

(3) The Preamble to the Louisiana Constitution of January 22, 1812 (Texas' Exhibit C, p.1) contains the following limitation: "We, the Representatives of the People of all that part of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April

1803, between the United States and France, contained in the following limits, to wit: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty-second degree of latitude . . . ."

(4) The Act for the admission of Louisiana into the Union (April 8, 1812; 2 Stat. 701; Texas' Exhibit C, p. 2) also fixed the State's western boundary in the middle of the Sabine River: "beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude . . . ."

(5) On March 16, 1848, the Louisiana Legislature passed a resolution (Texas' Exhibit C, p. 3; Louisiana's Exhibit A, pp. 288-88A) requesting the consent of Congress to extend Louisiana's western boundary to the western bank of the Sabine. The Resolution stated:

"Whereas the Constitution and the Laws of the State of Louisiana, nor those of any other State or Territory, extend over the waters of the Sabine River, from the middle of said stream to the western bank thereof; and that it is of importance to the citizens living contiguous thereto, and to the people in general, that the jurisdiction of some State should be extended over said territory, in order that crimes and offenses committed thereupon should be punished, and wrongs and damages inflicted should be redressed in a speedy and convenient manner:

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

(6) On March 18, 1848, the Texas Legislature passed a resolution similar to that passed by Louisiana:

"Be it resolved by the Legislature of the State of Texas, That our Senators be instructed, and our Representatives in Congress be requested, to use their efforts to have a law passed by Congress, extending the jurisdiction of Texas over one half of the waters of Sabine lake, Sabine pass, and Sabine river, up to the 32° of north latitude." S. Misc. Doc. No. 123, 30th Cong., 1st Sess. (1848).

(7) On July 5, 1848, Congress passed an Act giving its consent to the State of Texas to extend its eastern boundary from the west bank of the Sabine to the middle of that stream. The Act states:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude." Texas' Exhibit C, p. 4 (emphasis in original).

The report of the Senate action on the bill states:

"Mr. Butler, from the Committee on the Judiciary, reported an act giving the consent of the Government of the United States to the State of Texas to extend the eastern boundary so as to include within her limits one-half of the Sabine Pass, Sabine Lake, and the Sabine River as far north as the 32° of north latitude.

"Mr. B asked for the immediate consideration of the bill, and briefly explained its character. The boundary of the United States, it was known, embraced the Sabine River and lake to its western shore. The boundary of the State of Louisiana extended to the middle of the Sabine; so that the half of the river and lake, to the western shore, belonged to the United States, *and was not included in the State of Louisiana; therefore, the boundary of the State and that of the United States, was not identical.* The bill before the Senate gives the half of the river beyond the boundary of the State of

Louisiana to the State of Texas, for the purpose of enabling the latter to extend her criminal jurisdiction to the Louisiana boundary. There could be no objection to the bill, and he hoped it would now be passed.

"*Mr. Johnson, of La., and Mr. Downs in behalf of the State of Louisiana, expressed their acquiescence in the arrangement.*" (emphasis supplied) Texas' Exhibit C, p. 4, Henry Johnson and Solomon W. Downs were Louisiana's Senators in the 30th Congress, March 4, 1847, to March 3, 1849. BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS, 1774-1961 at 146 (1961).

(8) On November 24, 1849, pursuant to the congressional consent given on July 5, 1848, the Texas Legislature extended the State's eastern boundary to include the western half of the Sabine:

"*Be it enacted, etc.*, That in accordance with the consent of the congress of the United States, given by an act of said congress, approved July 5, 1848, the eastern boundary of the State of Texas be, and the same is hereby extended so as to include within the limits of the State of Texas the western half of Sabine pass, Sabine lake and Sabine river from its mouth as far north as the thirty-second degree of north latitude, and that the several counties of this state, bounded by said Sabine pass, Sabine lake and Sabine river from its mouth as far north as the thirty-second degree of north latitude, shall have and exercise jurisdiction over such portions of the western half of said pass, lake and river as are opposite to said counties respectively; and this act shall take effect from and after its passage." 2 Sayles Early Laws of Texas 1846-1866 at 207, art. 1919.

APPENDIX B

Maps

In *Louisiana v. Mississippi*, 202 U.S. 1, 57 (1906), the United States Supreme Court pointed out that maps made by the United States General Land Office, as well as maps made by the States themselves, can help establish whether a particular State has claimed a certain boundary over a period of years and the other State acquiesced in that line. *See also Michigan v. Wisconsin*, 270 U.S. 295, 307, 316-17 (1926).

The following is a chronological list of maps prepared by (1) the State of Texas; (2) the various agencies of the United States government; and (3) the State of Louisiana, which show the geographic middle, or at least "mid-stream", boundary between the two States.

I. MAPS PREPARED BY THE STATE OF TEXAS

(1) *August, 1886.* Louisiana's Exhibit F, p. 4. This is a Texas General Land Office map of Orange County, Texas, showing the county's eastern boundary on the *west* bank of the Sabine River.

(2) Louisiana's Exhibit F, p. 5. This is a map of Shelby County, Texas, showing that county's eastern boundary on the west bank of the Sabine. No date is given.

(3) *1896.* Louisiana's Exhibit F, p. 1. This exhibit is a photostat of several maps and a printed history of Texas and its geographical subdivisions with statistics, both historical and comparative. It appears to have been prepared by Z. I. Fulmore of Austin, Texas. There is no date on the exhibit but from the listing of Governors it would appear to have been made shortly after 1896. Louisiana claims the map was certified true and correct by the Commissioner of the Texas General Land Office. However, the map sheet itself bears no such certification. Although indistinct, one of Exhibit F's maps entitled "Texas since 1850" apparently has the Texas-Louisiana boundary marked on the *west* bank of Sabine Lake. In addition, the sheet contains this notation:

> "1819. The present boundary line between Texas and Louisiana, Arkansas, Indian Territory and Oklahoma was fixed by treaty between the United States and

Spain in 1819. By this treaty the United States gave up all her territory west of the 100th meridian as far north as the Arkansas river, and Spain gave up her territory east of the Sabine river, and the 'Neutral Ground' became a part of Louisiana. This was ratified in 1822 by Mexico. The boundaries so adjusted remained undisputed."

(4) *July 1, 1930.* A map prepared by the Texas State Highway Commission entitled "Official Map of the Highway System of Texas." This map shows the Texas-Louisiana boundary in the middle of Sabine Lake. Texas' Exhibit F, Map 67.

(5) Two maps apparently prepared by the United States Department of Interior, U. S. Geological Survey, with the cooperation of the State of Texas, dated "Edition of 1931," showing the Terry and Orange Quadrangles in Texas. The maps show the middle of the Sabine as the boundary between Texas and Louisiana. Texas' Exhibit A, Maps 16 & 17.

(6) *1935.* Maps 38-40 (Texas' Exhibit F) are Sheets 1, 4, and 7 of plans which, according to the Index to this exhibit, were approved by both the Texas and Louisiana Highway Departments for the Sabine River Bridge at Logansport, Louisiana. The sheets show a State boundary in the center of the Sabine River.

(7) In layout plans for a proposed Sabine River Bridge on Texas highway 21 and Louisiana highway 6, in the area of the Pendleton Ferry, the river boundary between the States is shown as the middle of the Sabine. The two maps showing this bear a revision of 4-5-36. Texas' Exhibit F, Maps 41 & 42. Map 43, dated April, 1936, is a layout for this particular bridge.

(8) There is a series of maps in Texas' Exhibit F, Maps 68-81, showing a mid-Sabine boundary along the various Texas counties adjoining that river:

(a) Map 68 is a map of Panola County, Texas, prepared by the Texas State Highway Department in cooperation with the United States Department of Agriculture, which shows a mid-Sabine boundary between Texas and Louisiana. This is a 1936 map. Map 69 is a newer edition of this map, dated 1951 but showing "State highways revised to January 1,

1956." It also shows the state boundary in the middle of the Sabine.

(b) Map 70 is a 1936 map of Shelby County, Texas, showing a mid-Sabine boundary. Map 71 is a 1954 update of Map 70.

(c) Map 72 is a 1936 Sabine County map, with the Texas-Louisiana boundary being the center of the Sabine. Map 73 is a 1953 revision of Map 72, also showing a centerline boundary.

(d) Maps 74-75 are 1936 general highway maps of Jasper and Newton Counties in Texas, again showing a mid-Sabine boundary. The 1954 revision of the Newton County map, Maps 76-77, also shows a mid-Sabine boundary.

(e) Map 78 is a 1936 highway map of Orange County, Texas. Map 79 is a revision of Map 78, also showing the middle-Sabine boundary.

(f) Map 80 is a 1936 map of Jefferson County, Texas, again clearly showing the center of the Sabine as the Texas-Louisiana boundary. Map 81 is a 1954 revision of Map 80, showing the same boundary.

(9) *May 10, 1949.* Map 6 (Texas' Exhibit F) shows certain state highway improvements in both Texas and Louisiana, pursuant to a federal aid project. The map shows the Texas-Louisiana boundary as the middle of the Sabine.

(10) *September 2, 1950.* Map 30 (Texas' Exhibit F) is a map of the Sabine River leases in Orange County, Texas. The map was prepared by the Texas General Land Office and shows a geographic middle boundary in the Sabine.

(11) *1953.* Map 31 (Texas' Exhibit F) is a map of Orange County, Texas and Calcasieu Parish, Louisiana, Survey Plat of Phoenix Lake Field, showing the middle of the Sabine as the boundary line. The map is dated 1953 and, according to the Index to Exhibit F, it is from the Texas General Land Office.

(12) *March 6, 1956.* Map 32 (Texas' Exhibit F) is a map of the west half of Sabine Lake prepared by the Texas General Land Office. A revised map showing this area is found in

map 33, dated December 17, 1959. At the New Orleans hearing, Hatley N. Harrison, Jr., Chief of the Lands and Surveys Division of the Louisiana State Land Office, claimed that the boundary line shown in map 33 is not in the equidistance or middle of Sabine Lake. New Orleans Transcript, pp. 378-82. *But see* Transcript, pp. 436-41 and Texas' Exhibit G, pp. 1-3.

(13) *1962.* Map 65 (Texas' Exhibit F) shows a portion of a federal aid project (*see* Map 64, dated 1962), which indicates that the Louisiana State line ends in the middle of the Sabine River. According to the Index to Exhibit F, these are the specifications for Louisiana and Texas "State Line" signs to be placed on the bridge at the center of the river. The pictures of these signs are found in Texas' Exhibit E, p. 100.

(14) *November, 1963.* Map 66 (Texas' Exhibit F) was apparently prepared by the "Sabine River Authorities of Texas and Louisiana," for the Toledo Bend Dam and Reservoir Project. The map clearly shows the dividing line between the two States as the middle of the Sabine. However, this map was prepared as a result of the Sabine River Compact between Texas and Louisiana, which received the approval of Congress. Louisiana's Exhibit A, pp. 351-54. Article IX of the Compact specifically states:

> "This Compact is made and entered into for the sole purpose of effecting an equitable apportionment and providing beneficial uses of the waters of the Sabine River, its tributaries and its watershed, without regard to the boundary between Louisiana and Texas, and nothing herein contained shall be construed as an admission on the part of either State or any agency, commission, department or subdivision thereof, respecting the location of said boundary; and neither this Compact nor any data compiled for the preparation or administration thereof shall be offered, admitted or considered in evidence, in any dispute, controversy or litigation bearing upon the matter of the location of said boundary.
>
> "The term 'Stateline' as defined in this Compact shall not be construed to define the actual boundary between the State of Texas and the State of Louisiana,"

Because of this provision, your Master believes that any acts done pursuant to the Compact cannot be used to show

Louisiana's acquiescence in a mid-Sabine boundary between the two States. At least four maps in evidence were made pursuant to this Compact. They are found in Texas' Exhibit F, maps 44, 45, 46, and 66.

(15) *November 9, 1968.* Map 46 (Texas' Exhibit A) is a map of Port Arthur, Texas and that city's property on Pleasure Island and in Sabine Lake. The map was prepared by the Texas General Land Office and clearly shows the middle of Sabine Lake as the boundary between the two States.

(16) *1970.* Map 37 (Texas' Exhibit F) is a 1970 edition of the Texas State Highway Map showing the mid-Sabine boundary.

II. Maps Prepared by the United States

Louisiana claims that the maps prepared by either the federal agencies or Louisiana itself should not be given any weight since the map makers never "intended" that the maps be used for this purpose. *See, e.g.*, Louisiana's Reply Brief, pp. 59-60. However, the fact that Louisiana officials claim that the making and using of their maps which portray the geographic center as the boundary line was not intended to establish the boundary is not the relevant point. A mid-stream boundary on these various maps shows the officials' recognition of the boundary line, irregardless of what their intent was when making the map. Obviously, none of the maps were prepared with the express purpose of establishing what the Texas-Louisiana boundary was, and thus the "intent" of the makers only concerned what the particular map concerned, for example, shell leases. However, this does not mean that the map cannot be used to show that the map makers recognized the middle of the Sabine as the boundary. Thus the maps are not used to fix or establish the true boundary, but are evidence of prescription to and acquiescence in such a line. *See Michigan v. Wisconsin*, 270 U.S. 295, 307, 316-17 (1926) ("[T]he line as claimed by Wisconsin has been, from the time of the Burt survey, accepted as the true boundary by the United States and, in its surveys, plats and maps, sales and other acts in respect of the public lands, continuously and consistently recognized, with the knowledge of

Michigan and without protest on her part."); *Louisiana v. Mississippi*, 202 U.S. 1, 53-57 (1906).

In its Reply Brief, pp. 59-60, Louisiana states: "Cartographers, like other technicians, have definite 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." In direct reply to this assertion, Texas has filed an affidavit from Robert H. Lyddan, the Chief Topographic Engineer of the U. S. Geological Survey (Texas' Exhibit G, pp. 16-17). In this affidavit Mr. Lyddan specifically refers to certain maps made by the Geological Survey in cooperation with the State of Louisiana (*see* Texas' Exhibit A, pp. 3-15, referred to under Item (9) in the list of Federal maps, *infra*), and also refers to Geological Survey maps of the Texas-Louisiana boundary in general. As stated in the affidavit:

"The location of the boundary line between Texas and Louisiana through the Sabine, as portrayed on Geological Survey maps, is based on statutes quoted and information contained in U. S. Geological Survey Bulletin 1212, 'Boundaries of the United States and the Several States,' and its predecessor editions published by the Geological Survey at various intervals since 1885." The 1966 edition of Bulletin 1212 is found as Texas' Exhibit H. The affidavit continues: "In our compilations, the boundary line is positioned one-half way between the stream banks as determined from aerial photography or in the center of the old river channel as can be determined by reference to original General Land Office plats or other evidence accepted on the ground.

"To the best of my knowledge the Geological Survey has not received any objections from either the State of Louisiana or the State of Texas to the manner in which these topographic maps position the boundary line above mentioned."

In addition, the U. S. General Land Office has recognized the boundary as claimed by Texas in two letters from that office dated June 25, 1903 and March 1, 1932. Texas' Exhibit B, pp. 43, 46-49. The document referred to in the last paragraph of the 1932 letter is an opinion of the Assistant Secretary of the Interior, found in Texas' Exhibit B, pp. 1-8, which also recognizes the "middle" of the Sabine as the State boundary.

Some of the following maps were prepared in conjunction with either Texas or Louisiana and thus are also presented under the listings of maps prepared by those respective States, that is, under either Part I, *supra*, or III, *infra*.

(1) *1840.* Louisiana's Exhibit F, pp. 2-3. These are maps of the Sabine River showing the boundary between the United States and the Republic of Texas, as laid down in the survey in 1840. The boundary is shown on the west bank of the Sabine, but this is the western boundary of the United States, not Louisiana.

(2) *1879.* Louisiana's Exhibit F, p. 6. This map of Louisiana was prepared by the United States General Land Office. Louisiana's western boundary is apparently marked on the *east* bank of the Sabine.

(3) *1896.* Texas' Exhibit F, p. 1. This map was prepared by the U. S. General Land Office. The map is not entirely clear as to what the Louisiana-Texas boundary is, but the line in Sabine Lake would indicate that a mid-stream boundary was intended.

(4) *1913.* Texas' Exhibit F, p. 4. A soil map of Texas prepared by the United States Department of Agriculture clearly shows a mid-Sabine boundary line between the two States.

(5) *1916.* Texas' Exhibit A, p. 1. A map of the State of Louisiana prepared by the U. S. General Land Office clearly shows a geographic middle boundary in Sabine Lake. Presumably, on most of these maps the line in Sabine River would also be the geographic middle but the map is not detailed enough to show such a line.

(6) *1922.* (Reprinted 1948). Texas' Exhibit A, p. 2. A U.S. Geological Survey map of Louisiana showing the boundary in the middle of Sabine Lake.

(7) *1930.* Texas' Exhibit F, p. 6. A U. S. General Land Office map also showing the boundary as the geographic middle of the Sabine.

(8) *1931, 1932.* Texas' Exhibit A, pp. 16-17. These are two U. S. Geological Survey maps of the Terry and Orange Quadrangles in Texas, which show the boundary in the middle of the Sabine. These maps were prepared in cooperation with Texas.

(9) *1932-1936.* Texas' Exhibit A, pp. 3-15. These are U. S. Geological Survey maps prepared in cooperation with the Louisiana Board of State Engineers which show a geographic middle boundary in the Sabine.

(10) *1944.* Texas' Exhibit A, pp. 18-20. These are U. S. Geological Survey maps of three Quadrangles on the Sabine, all apparently showing a geographic middle boundary, although Maps 19 and 20 are somewhat unclear.

(11) *1947-1957.* Texas' Exhibit A, pp. 21-25. These are U. S. Geological Survey maps prepared by the U. S. Army Map Service for the U. S. Corps of Army Engineers. The maps show the boundary in the middle of the Sabine. These maps, and all other similarly prepared by the U. S. Geological Survey, are challenged by Louisiana on the grounds that the maps are incorrect in that there never was any actual "mid-stream" boundary at any fixed point on the maps. *See* Hatley N. Harrison's testimony at the New Orleans hearing, Transcript, pp. 365-419. Essentially, Mr. Harrison's testimony was that there was no definite pattern to the Geological Survey's setting of the boundary, and thus the maps are unreliable. However, on cross-examination, Texas attempted to show that Harrison's method was not necessarily the only method that might be used. Transcript, pp. 436-41. *See also* Texas' Exhibit G, pp. 1-3.

(12) *1954-1960.* Texas' Exhibit A, pp. 26-39. These again are U. S. Geological Survey maps showing the "approximate boundary" between Texas and Louisiana as the middle of the Sabine.

(13) *1959.* Texas' Exhibit F, p. 36. This is a U. S. Corps of Engineers map of a Port Arthur, Texas project. The map clearly shows a geographic middle boundary in Sabine Lake.

(14) *1960-1969.* Texas' Exhibit A, pp. 40-45. These are again U. S. Geological Survey maps portraying the middle of the Sabine as the Texas-Louisiana boundary.

(15) *1966.* Texas' Exhibit F, pp. 34, 34-A. These are Sheets 1 and 2 of the U. S. Corps of Engineers' plans for "High Level Bridge" over the Sabine-Neches Waterway. Sheet 2 shows a mid-Sabine boundary.

(16) *1967.* Texas' Exhibit C, pp. 71, 74-76, 82. This is a report prepared by the U. S. Corps of Engineers in cooperation with other Federal agencies and the States of Texas and Louisiana on the "Comprehensive Basin Study, Sabine River and Tributaries." The cover of the report (p. 71), Plate 1 (p. 74), Plate 6 (p. 75), Plate 7 (p. 76), and Plate 10 (p. 82), all show the State boundary in the middle of Sabine River.

(17) *1968.* Texas' Exhibit A, p. 48. This is a map of Louisiana by the U. S. Geological Survey which shows a mid-Sabine boundary.

(18) *1970.* Texas' Exhibit F, p. 35. This is a "Building Line Map" apparently prepared by the Port Arthur, Texas planning department and approved by the U. S. Corps of Engineers. Although it does not show a Texas-Louisiana boundary line, the fact that Port Arthur's activities in Sabine Lake were recognized by the federal government is of some significance.

NOTE: Geological Survey Bulletin 1212 (1966) (Texas' Exhibit H) contains a map (plate 1 found between pp. 34 and 35) and a historical diagram of Louisiana (p. 172) which show the boundary between Texas and Louisiana as the middle of the Sabine.

III. Maps Prepared by the State of Louisiana

Because the maps made by Louisiana showing a mid-Sabine boundary fall under so many different categories, they will be listed under the following headings:

(A.) *Parish Maps and the Acts creating those parishes*;

(B.) *United States Geological Survey maps which were made under contract with Louisiana and/or were publicly distributed by Louisiana State agencies*;

Appendix

(C.) *Other various maps prepared by Louisiana State agencies.*

* * * *

(A.) *Parish Maps and the Acts creating those parishes.*

According to the 1968 Louisiana State Map (Texas' Exhibit A, p. 48), there are now six Louisiana parishes which border on the Sabine River: Cameron; Calcasieu; Beauregard; Vernon; Sabine; and DeSoto. It should be noted that only one parish (Sabine Parish, created in 1843, found in Item (4)) specifies the western bank of the Sabine as its western boundary. Conversely, only one parish (Beauregard Parish, created in 1912, found in Item (9)) has the *middle* of the Sabine as its western boundary. The rest of the parishes either specify the western boundary as the "boundary line of the United States" (Caddo and DeSoto; Items (2) and (5)), or simply name the "Sabine River" as the western point (Natchitoches, Calcasieu, Rapides, Vernon, and Cameron; Items (1), (3), (6), (7), and (8)).

(1) *Natchitoches County*

The Legislative Act. September 5, 1812. Texas' Exhibit C, p. 9. This Act states: "For the better defining the Limits of the County of Natchitoches. . . . That the County of Natchitoches shall be, and is hereby bounded as follows, viz: . . . *on the west by the River Sabine* and the line running north from the 32d degree of latitude on said River Sabine until it intersects the northernmost part of the 33d degree of latitude . . . ." (emphasis supplied).

(2) *Caddo (Cado) Parish*

The Legislative Act. January 18, 1838. Texas' Exhibit C, p. 11; Louisiana's Exhibit A, pp. 276-79. "To create and establish the Parish of Cado . . . That all that Territory within the following boundaries to wit: . . . thence by a due south line until it intersects a direct line running from said western bank of Bayou Pierre Lake to the Sabine river, where the line between townships nine and ten strikes the same, thence pursuing *the boundary line of the United States* to Red river and down the same to the point of beginning, do form and constitute a new Parish, to be called the Parish of Cado." (emphasis supplied).

(3) *Calcasieu Parish*

The Legislative Act. March 24, 1840. Texas' Exhibit C, p. 10. "thence along said line to the Sabine River, thence down the Sabine River to its mouth, thence along the sea Coast to the place of beginning, shall form and constitute a new Parish to be called the Parish of Calcasieu."

Maps. The only official parish maps in evidence are found in Texas' Exhibit F, pp. 11-29. The 1937 official parish map of Calcasieu (Texas' Exhibit F, p. 19) shows a mid-Sabine boundary, as does the 1970 edition (Exhibit F, p. 28).

(4) *Sabine Parish*

The Legislative Act. March 7, 1843. Texas' Exhibit C, p. 13; Louisiana's Exhibit A, pp. 284-87. The Act states: "That all that tract of country in the County of Natchitoches, bordering on the Sabine river, and bounded as follows, to wit: Starting at the point where the line running south from the most western part of Messrs. Boudrige and Vascoue's plantation, on Bayou la Bonnechasse, intersects the line between the Parish of Natchitoches and Caddo, *thence westwardly on said line to the western bank of the Sabine river; thence southernly, following the line between the United States and the Republic of Texas . . .*" (emphasis supplied). As noted above, this is the only act which extends a Louisiana parish's boundary to the western bank of the Sabine. This extension was not carried forward in later acts or maps concerning Sabine Parish. In 1871, in the act creating Vernon Parish from a portion of Sabine Parish (Item (7), *infra*), Vernon Parish's western boundary is described as "the Sabine River," with no mention of the west bank. An official Sabine Parish map published in 1937 (Texas' Exhibit F, pp. 13-14) shows Sabine Parish's western boundary as the *middle* of Sabine River. The 1970 edition (Texas' Exhibit F, pp. 22-23) shows the same boundary as the 1937 map.

Maps. As mentioned above, the 1937 map (Exhibit F, pp. 13-14) shows Sabine Parish's western boundary as the middle of the Sabine, as does the 1970 edition (Exhibit F, pp. 22-23). This 1970 map was based on 1969 information.

(5) *DeSoto Parish*

The Legislative Act. April 1, 1843. Texas' Exhibit C,

p. 12; Louisiana's Exhibit A, pp. 280-83. "thence due west along said section line to the line between the United States and the Republic of Texas; thence due south along said line to the Sabine river; thence down said river to where the section line in the centre of township ten strikes the said river . . . ."

Maps. The official parish maps of 1937 (Texas' Exhibit F, pp. 11-12) show the western boundary of this parish as the middle of the Sabine River. The 1970 edition (Exhibit F, p. 21) also shows a mid-Sabine boundary.

(6) *Rapides Parish*

The Legislative Act. March 4, 1852. Texas' Exhibit C, p. 6. This act actually does not create Rapides Parish, but fixes that parish's boundary with the parishes of St. Landry and Calcasieu. The act does not give any definite line in or on the Sabine. It does state "to the mouth of the Anna-Coco creek where it empties into the River Sabine; thence up the Sabine to the Natchitoches lines."

(73 *Vernon Parish*

The Legislative Act. March 30, 1871. Texas' Exhibit C, p. 8. "That the following shall be the boundaries of the Parish of Vernon, viz: Commencing at the mouth of Bayou Toro, upon the Sabine River, thence up said Toro . . . thence west on said parish line to the Sabine River, thence up the Sabine River to the point beginning."

Maps. The official parish maps for 1937 are found in Texas' Exhibit F, pp. 15-16. The 1970 edition is found in the same exhibit, pp. 24-25. Both sets of maps show the middle of the Sabine as the parish's western boundary.

(8) *Cameron Parish*

The Legislative Act. March 15, 1870. Texas' Exhibit C, p. 7. "That the following shall be the boundaries of the Parish of Cameron, viz: Commencing at a point on the Sabine River, on the township line dividing townships eleven and twelve (11 and 12) south, thence east on said township line to the range line between ranges numbers two and three (2 and 3) west, thence south on said range line to the Gulf of Mexico, thence along the coast to the mouth of the Sabine River, thence up the Sabine River to the point of starting."

Maps. The 1937 parish maps (Texas' Exhibit F, p. 20) show Cameron Parish's western boundary as the middle of the Sabine. The 1970 revision also shows the mid-Sabine boundary (Texas' Exhibit F, p. 29).

(9) *Beauregard Parish*

The Legislative Act. June 12, 1912. Texas' Exhibit C, p. 5. This is the only legislative act which directly shows that the parish was limited to the middle of the Sabine River. The act specifically recognized the mid-Sabine boundary.

Maps. The 1937 parish maps (Texas' Exhibit F, pp. 17-18) show a mid-Sabine boundary for this parish, as does the 1970 edition (Exhibit F, pp. 26-27).

(B.) *United States Geological Survey maps which were made under contract with Louisiana and/or were publicly distributed by Louisiana State agencies.*

(1) In 1928, the Louisiana Legislature passed an act which authorized "the State Board of Engineers, cooperating with the Federal Government" to "make a topographical survey of this State and prepare and file with the Governor such report and map of said survey as will properly set forth the information to be derived therefrom, cause said report to be printed and distribute same to the members of the Legislature." Texas' Exhibit C, p. 37. On April 20, 1931, the Louisiana Chief State Engineer sent a form letter to all Louisiana parish "police juries" telling them that a new State map was being made and therefore the Board of State Engineers needed to know "detailed information attending boundary lines" of the various parishes, "which may be in dispute, if any." Texas' Exhibit C, p. 42.

The 1937 Official State Map of Louisiana, prepared pursuant to the 1928 Legislative Act, is found in Texas' Exhibit F, p. 8. It clearly shows the boundary between Texas and Louisiana in the middle of the Sabine.

On June 23, 1938, the Research Engineer for the Louisiana Board of State Engineers wrote a letter which discussed the Texas-Louisiana boundary. The letter states: "So it seems safe to conclude that the State Boundary is along the center of the Sabine, from its mouth upstream as far as its in-

tersection with the 32° of north latitude, all as correctly portrayed on our New State Map of Louisiana, and on the Sabine Pass, Port Arthur and other Quadrangle Maps successively northward thereof, so far completed." Texas' Exhibit C, pp. 47-48. For these latter maps, *see* Texas' Exhibit A, pp. 3-15.

The 1937 State Map was also discussed in the "Report of the Board of State Engineers of the State of Louisiana to His Excellency, Samuel H. Jones Governor of Louisiana from January 1st, 1938 to January 1st, 1940." Texas' Exhibit C, pp. 43-46. In that Report, the Board states: "[T]he 1937 Edition of the New State Map is the best, most complete, precise and valuable map ever made of Louisiana."

(2) At least since 1931, the United States Geological Survey, in cooperation with the Louisiana State Board of Engineers, has made topographic maps of Louisiana which show the Texas-Louisiana boundary in the middle of the Sabine. Copies of the 1931, 1932, and 1940 contracts establishing this relationship are found in Texas' Exhibit G, pp. 18-23. These contracts provide that Louisiana could object if the work was not executed in a satisfactory manner. The agreements specifically state that "political boundaries" were to be shown on the maps (Exhibit G, pp. 20, 22). Copies of similar agreements for 1962 to 1964, and 1970 to 1972 are found in Texas' Exhibit C, pp. 84-86. *See also* pp. 87-88 of Texas Exhibit C for a history of such cooperative map-making with the federal government.

There is no specific listing, except in Texas' briefs, of the maps which were made pursuant to these contracts. However, the contracts themselves give something of a clue in that they state that the maps were to contain headings which showed that the United States Geological Survey and the State of Louisiana cooperated in preparing the maps. The maps in evidence which may be construed to have such a heading are: Texas' Exhibit A, pp. 3-15 (maps prepared from 1932 through 1936. *See* the second paragraph on p. 87 of Texas' Exhibit C concerning these 13 maps.); pp. 21, 23-30, 32-38, and 40-45 (maps covering 1947-1969). In addition to listing either the Louisiana Board of State Engineers

or the State of Louisiana, the maps found on pp. 21-30, 32-45 in Texas' Exhibit A contain the following note: "This map complies with national map accuracy standards—For Sale by U. S. Geological Survey, Denver 2, Colorado or Washington 25, D. C. *And by the State of Louisiana, Department of Public Works, Baton Rouge 4, Louisiana*" (emphasis supplied). *See* Texas' Exhibit B, pp. 40-42.

(3) Texas' Exhibit C, pp. 71-80, contains portions of a "Report on Comprehensive Basin Study Sabine River and Tributaries Texas and Louisiana," prepared in 1967 by the U. S. Corps of Engineers in cooperation with other federal agencies and the States of Louisiana and Texas. The Report states that Louisiana was represented by the Louisiana Department of Public Works (Exhibit C, pp. 77, 79). The cover page to the report and plates 1 and 6 (Exhibit C, pp. 71, 74, 75) show a mid-Sabine boundary between Texas and Louisiana. The "Index and Summary" to Texas' Exhibit C claims "The cover and 9 plates in Vol. 1 show the State boundary to be in the approximate geographic center of Sabine Lake." However, only the cover page and two plates are included in the exhibit.

In 1967, the Assistant Director of the Louisiana Department of Public Works wrote a letter concerning this Report (Texas' Exhibit C, p. 81). Accompanying the letter was a plate from the Report which showed a mid-Sabine boundary between the two States (Exhibit C, p. 82).

(C.) *Other Various Maps Prepared by Louisiana State agencies.*

(1.) *Louisiana State Board of Agriculture and Immigration*

(a.) *1907.* Texas' Exhibit F, p. 2. On this map, a dark, heavy line was used to indicate the State boundary. It might be claimed that the Texas-Louisiana boundary in the Sabine River is shown on the *west* bank. However, the line in Sabine Lake and Pass clearly shows a geographic middle boundary.

(b.) *1913.* Texas' Exhibit F, p. 5. Same as the 1907 map.

(2) *The McKee Survey*

In 1930, the State of Texas leased approximately 1,900 acres

in the west half of Sabine Lake to a H. L. McKee. The map showing this lease is found in Texas' Exhibit F, p. 7. According to the Index to Exhibit F, this map was approved by the Louisiana Board of State Engineers and the Louisiana State Land Office Register. The map contains such approvals but the State of Louisiana is not named. However, Louisiana does not dispute that the signatures are those of the Louisiana Chief State Engineer and the Louisiana Register. In addition, a memo from the files of the Louisiana Department of Public Works shows that it was the Louisiana Chief Engineer who approved the map (Texas Exhibit C, p. 38; *see also* pp. 49, 52-53 of that same exhibit). However, the same memo, dated April 25, 1939, states that Louisiana was claiming to the west bank of the Sabine.

The affirmation of the Chief State Engineer on the McKee Survey Map is especially interesting in that it states: "The Survey of April 11, 1930—Revised September 12, 1930 by J. C. McVea, has been found correct and is hereby approved." The McKee Map is also apparently mentioned in the Report of the Louisiana Board of State Engineers for April 1, 1930 to April 1, 1932 (Texas Exhibit C, pp. 39-41).

(3) *Official State Highway Maps*

In 1937 an official road map was issued by Louisiana which showed a mid-Sabine boundary in Sabine Lake. (Texas' Exhibit F, p. 9). The 1937 map shows a *west bank* boundary for the Sabine River. In 1970, an official state highway map was prepared by the Louisiana Department of Highways which also shows a mid-Sabine boundary in Sabine Lake and in Toledo Bend Reservoir (Texas' Exhibit F, p. 10). The only other official map, not already mentioned, which does *not* show a mid-Sabine boundary is Louisiana's Exhibit F, pp. 8 and 9. This is the official 1943 map of Louisiana. A western bank boundary is indicated for the Sabine.

(4) *Louisiana Public Service Commission*

1947. Texas' Exhibit C, pp. 121-22. This is the title and southwest portion of the 1947 map of the State of Louisiana issued for the Louisiana Public Service Commission, which shows the State boundary in the geographic center of Sabine Lake.

(5) *Louisiana Department of Conservation, Louisiana Geological Survey, Louisiana Department of Public Works*

(a.) *1950.* Texas' Exhibit C, pp. 91-93. "The Corps of Engineers in Louisiana." This contains two maps which both show a geographic middle boundary in Sabine Lake.

(b.) *1955.* Texas' Exhibit C, pp. 94-95. "Water Resources Development by Corps of Engineers in Louisiana." This shows a geographic middle boundary in Sabine Lake.

(c.) *1958.* Texas' Exhibit F, p. 36(a). This is a geological map of Sabine Parish showing a mid-Sabine boundary.

(d.) The following Water Resources Bulletins or Pamphlets, listed in chronological order, support Texas' position:

(i) *1954.* Texas' Exhibit C, pp. 61-62. Water Resources Pamphlet No. 1, "An Analysis of Contour Maps of Water Levels in Wells in Southwestern Louisiana 1952 and 1953." The map (p. 62) shows a mid-Sabine boundary.

(ii) *1958.* Texas' Exhibit C, pp. 63-64. Water Resources Pamphlet No. 5. Map shows mid-Sabine boundary.

(iii) *1959.* Texas' Exhibit C, pp. 65-66. Water Resources Pamphlet No. 6. Map shows middle of Sabine as boundary.

(iv) *1963.* Texas' Exhibit C, pp. 67-68. Water Resources Pamphlet No. 12. Mid-Sabine boundary shown.

(v) *1965.* Texas' Exhibit C, pp. 54-55. Water Resources Bulletin No. 6: "The western border of Vernon Parish is the Sabine River, which also is the Louisiana-Texas boundary." No map is given with this comment, but the Index and Summary to the Exhibit states: "This Bulletin also contains a map (which is not reproduced here) showing the boundary in the center of Sabine River."

(vi) *1965.* Texas' Exhibit C, pp. 56-57. Water Resources Pamphlet No. 14. This pamphlet contains a map showing a geographic middle boundary in Sabine Lake.

(vii) *1965.* Texas' Exhibit C, pp. 69-70. Water Resources Pamphlet No. 16. Map shows mid-Sabine boundary.

(viii) *1967.* Texas' Exhibit C, pp. 58-60. Water Resources

Bulletin No. 10. This has two maps showing the boundary in the middle of Sabine Lake.

(6) *Louisiana Legislative Council*

1964. Texas' Exhibit C, pp. 19-20. A "Research Study" entitled "The history and the Government of Louisiana," contains a map showing a geographic middle boundary in Sabine Lake.

NOTE: On pages 28 and 29 of Texas' Exhibit C, there is reproduced the title page and map from "Exhibit A" of an "Agreement Between the United States of America and the State of Louisiana." The map shows a geographic middle boundary in Sabine Lake. However, the title page contains this notation: "This plat is for the limited purpose of delineating zones 1, 2, 3 and 4." The agreement related to leasing zones in the Gulf of Mexico.

(7) *Louisiana State Archivist*

1968. Texas' Exhibit C, pp. 117-20. "The Rivers and Bayous of Louisiana," edited by Edwin Adams Davis, Louisiana State Archivist. "Where the Sabine River enters Louisiana at a point 32° N. latitude and 94° W. longitude, the middle of the river becomes the Louisiana-Texas boundary. After flowing on a southeasterly course for about 150 miles and then turning toward the southwest for another 150 miles or so, the river finally enters the Gulf of Mexico via Sabine Lake and Sabine Pass." This book also contains a map which shows the middle of Sabine Lake as the Texas-Louisiana boundary.

APPENDIX C

Leases

I. Leases Given By Texas

The following leases executed by the State of Texas to various grantees support Texas' claim that it has asserted its boundary to the middle of the Sabine. The leases are divided into two categories and the leases in each category are listed chronologically. The categories are: (A.) sand, shell, and gravel permits issued by the Texas Game, Fish and Oyster Commission or its successors on Sabine River and Lake; (B.) oil and gas leases; (C.) pipeline easements.

(A.) *Sand, Shell, and Gravel Permits* (No Maps are included in most of the permits)

(1) *1930.* Texas' Exhibit E, p. 157. This allows the grantee to remove sand, shell and gravel from Sabine Lake and River. No mention is made of a mid-Sabine boundary. However, it does show that Texas granted permits in the Sabine as early as 1930.

(2) *1932.* Texas' Exhibit E, p. 156. Permit covers "Texas jurisdiction Sabine Lake and Sabine River."

(3) *1932.* Texas' Exhibit E, p. 158. The permit is for "The west half of Sabine Lake, which belongs to the State of Texas."

(4) *1937.* Texas' Exhibit E, p. 159. Permit covers "the bed of the Sabine and Neches Rivers and Sabine Lake."

(5) *1938.* Texas' Exhibit E, p. 155. Permission is given "to operate in the Sabine Lake, near the mouth of the Sabine River."

(6) *1940.* Texas' Exhibit E, p. 160. Permit allows removal "From the Beach Between Sabine Pass and Port Bolivar within the limits of the high and low tide of the Gulf of Mexico."

(7) *1948.* Texas' Exhibit E, p. 161. Permission to remove "mudshell" "From the south half of the west half of Sabine Lake in Jefferson and Orange Counties."

(8) *1950.* Texas' Exhibit E, p. 166. Permit covers "the north half of Lake Sabine on the Texas side."

(9) *1951.* Texas' Exhibit E, p. 170. "From an area from Port Arthur to the point where the Sabine River empties into Sabine Lake."

(10) *1951.* Texas' Exhibit E, p. 171. Same area as Item (9).

(11) *1951.* Texas' Exhibit E, p. 162. "The south half of the west half of Sabine Lake in Jefferson and Orange Counties, Texas." This is a renewal of the lease at Item (7), *supra.*

(12) *1951.* Texas' Exhibit E, p. 167. "the north one-half (½) of Lake Sabine on the Texas side."

(13) *1952.* Texas' Exhibit E, p. 163. "the south half of the west half of Sabine Lake in Jefferson and Orange Counties, Texas." This is a renewal of Item (11).

(14) *1952.* Texas' Exhibit E, p. 172. "Sabine Lake within the boundaries and jurisdiction of the State of Texas."

(15) *1953.* Texas' Exhibit E, p. 168. "the west one-half of Sabine Lake."

(16) *1953.* Texas' Exhibit E, p. 164. "the west half of Sabine Lake in Jefferson and Orange Counties."

(17) *1953.* Texas' Exhibit E, p. 169. "the west one-half of Sabine Lake." This is a renewal of Item (15).

(18) *1953.* Texas' Exhibit E, p. 173. "the west one-half of Sabine Lake."

(19) *1954.* Texas' Exhibit E, p. 165. "the west half of Sabine Lake in Jefferson and Orange Counties." This is a renewal of Item (16).

(20) *1955.* Texas' Exhibit E, p. 176. "the Sabine River within the boundary of Newton County, Texas."

(21) *1955.* Texas' Exhibit E, p. 174. "THE WEST ONE-HALF OF SABINE LAKE."

(22) *1956.* Texas' Exhibit E, p. 177. "the Sabine River, fifteen (15) miles above Deweyville, Texas, to Big Island, in Newton and Orange Counties."

(23) *1956.* Texas' Exhibit E, p. 175. "the west one-half of Sabine Lake." This is a renewal of Item (21).

(24) *1956.* Texas' Exhibit E, p. 178. "the Sabine River, one and one-half (1½) miles south of Highway Bridge U.S. #190 east of Bon Wier, Texas."

(25) *1958.* Texas' Exhibit E, pp. 182-83. "the west one-half of Sabine Lake except area 'A' as shown on attached plat." The attached plat shows a mid-Sabine boundary.

(26) *1958.* Texas' Exhibit E, pp. 184-85. "West One-Half Sabine Lake in Jefferson and Orange Counties, except the Area marked 'A' on the attached plat." The plat shows a mid-Sabine boundary.

(27) *1958.* Texas' Exhibit E, pp. 186-87. "the west one-half of Sabine Lake, except Area 'A' as shown by the attached plat, in Jefferson and Orange Counties." The plat shows a mid-Sabine boundary but does not have an "Area 'A'".

(28) *1959.* Texas' Exhibit E, pp. 188-89. "The west one-half of Sabine Lake; except Area 'A' as shown by the attached plat." The plat shows a mid-Sabine boundary.

(29) *1960.* Texas' Exhibit E, pp. 179-81. "TEXAS SIDE OF SABINE LAKE: Areas shown in red on attached map." Map shows a mid-Sabine boundary.

(30) *1963.* Texas' Exhibit E, pp. 190-91. "the Sabine River from the Naval Base at Orange, Texas to the Southern Pacific Railroad at Echo, Texas;" and "Sabine Lake, Jefferson County, Texas," with an exception unimportant to this case.

(31) *1966.* Texas' Exhibit E, pp. 192-95. "Sabine Lake with the exception of Tract No. 1, S-594 . . ."

(32) *1966.* Texas' Exhibit E, p. 196. "the Sabine River in Shelby County, Texas, adjoining Doyle English, East Hamilton Community." This permit is incorrectly described in Exhibit E's index as being for 1970.

(B.) *Oil and Gas Leases Executed by Texas*

Only one oil and gas lease executed by Texas is actually in evidence (Texas' Exhibit FF, dated December 11, 1958.

The attached map shows a mid-Sabine boundary.). However, there is in evidence an affidavit from Jerry Sadler, Commissioner of the Texas General Land Office, which lists the various Texas leases from 1950 to 1969 (Texas' Exhibit B, pp. 50-56). Some of these are tracts which Texas offered to lease but no bids were received. The tax records on these various leases are found in Texas' Exhibit B, pp. 76-83.

On April 16, 1964, the Louisiana State Mineral Board protested Texas' advertising certain tracts in the west half of Sabine Lake for oil, gas, and mineral leases (Louisiana's Exhibit B, pp. 49-53). The Louisiana Attorney General registered a similar protest with the Texas General Land Office on January 31, 1966 (Louisiana's Exhibit B, pp. 54-56).

(C.) *Pipeline Easements*

In 1937, Interstate Water Company entered into a written contract with Logansport, Louisiana, to supply water to that city. Logansport is located on the Sabine River. The water wells used were located in Texas. Logansport agreed to extend its water mains to the center of Sabine River and the Interstate Water Company was to pipe the water from the Texas wells to the center of the Sabine and make connection with the Logansport mains. The Texas Attorney General's office issued an opinion on the legality of a pipeline easement in the western half of the Sabine (Texas' Exhibit C, pp. 102-03). The opinion states, in part:

"The River bed of the Sabine River is a part of the public free school land of this State, and because of such fact the Land Commissioner has authority, under Sec. 1, Art. 6020-A above, to grant permission to construct this pipeline across said river at any point where the Highway Commission has not assumed jurisdiction by the construction of a bridge across said river."

This opinion was referred to in a letter from the Louisiana State Director of the Federal Emergency Administration of Public Works written August 16, 1937 (Texas' Exhibit C, pp. 100-01).

On October 6, 1937, Texas granted the pipeline easement to the Interstate Water Company (Texas' Exhibit C, pp. 104-

08). The easement provided a right-of-way "across the bed of the sabine river at any point opposite and adjacent to the H. L. Brooks or J. Blankenship Surveys. files 3.189 & 3.333, respectively." The plat accompanying the lease shows the pipeline's position in the Sabine.

NOTE: Concerning all of these leases by Texas, an affidavit of Robert L. Cross, State Law Enforcement Coordinator for the Texas Parks and Wildlife Department, states (Texas' Exhibit B, pp. 58-59):

> "The Texas Health Department in recent years has closed portions of the western one-half of Sabine Lake to oystering, because of pollution conditions. Louisiana has done likewise on the eastern half of the Lake.
>
> "The Texas Parks and Wildlife Commission has for at least fifteen years granted permits to shell dredgers for the taking of shell from the bed of Sabine Lake on the western half thereof, and thousands of tons of shell have been dredged from the bed of the western half of the Lake under these permits, with compensation therefor being paid to the State of Texas. These, like all the activities of our agency on the western half of Sabine Lake, Sabine Pass and Sabine River, were conducted in full view of our counterpart officers of Louisiana whose boats patrolled their eastern half of the streams, and I never heard of any objection or assertion by them against our rights and jurisdiction over the waters and beds of the western half of the streams. On the contrary, as indicated above, they worked in complete cooperation and recognition of our rights and jurisdiction west of the center of the streams and confined their similar activities east of the center of the streams. This has been true not only during my personal knowledge of the facts since November 1958, but according to my predecessors and the records of this agency, such activities by Texas officials on the western half of these streams and complete acquiescence therein by Louisiana officials has existed since the predecessor of this agency, The Texas Game, Fish and Oyster Commission, was created in 1929."

II. Leases Given By Louisiana

A. The following leases executed by the State of Louisiana generally support Texas' assertion that Louisiana acquiesced in a mid-stream boundary between the two States:

Appendix

(1) A mineral lease (No. 62) from the State of Louisiana as lessor to the Arkansas Natural Gas Co. as lessee, dated January 13, 1922, leasing "All the bed of Sabine Lake, east of the Louisiana-Texas boundary line, situated in Cameron Parish, Louisiana." There is no map attached to this lease. Texas' Exhibit D, pp. 1-4.

(2) A mineral lease (No. 272) from the State of Louisiana as lessor to C. A. King as lessee, dated April 19, 1933, leasing "The bed and bottom of Sabine River . . . ." The map attached to the lease shows that the lease only goes to the mid-stream of the Sabine. Texas' Exhibit D, pp. 79-81. However, *see* Louisiana's Exhibit E, pp. 7-9.

(3) A mineral lease (No. 369) from the State of Louisiana as lessor to the Gulf Refining Company, dated April 21, 1938, leasing "The South Eight Thousand Two Hundred and Eighty-Five (8,285.00) acres, more or less, in the East half of Sabine Lake, Cameron Parish, Louisiana, as per map and full description on file in the State Land Office." Texas' Exhibit D, pp. 5-9. The map enclosed with the lease clearly shows the Texas-Louisiana boundary in the geographic middle of the Sabine. In addition, the field notes accompanying the lease contain the following description:

> "All of the following described land being a part of Sabine Lake in Cameron Parish, Louisiana. Beginning on the east shore of Sabine Lake, same being 3569.9 feet west of the common corner of fractional sections 21, 22 and 28 and section 27, T-14-S, R-15-W.
>
> "Thence North approximately 25° 45′ W to the center of Sabine Lake, same being the Texas-Louisiana boundary as set out in an act, approved, July 5, 1848, recorded in Volume IX., Page 245, United States Statutes at Large, giving the consent of the Government of the United States to the State of Texas to extend her eastern boundary, so as to include within her limits one-half of Sabine Pass, one-half of Sabine Lake, and one-half of Sabine River, as far north as the thirty-second degree of the north latitude;
>
> "Thence with the center of Sabine Lake, same being the Texas-Louisiana boundary line in a southerly direction to the foot of said Lake, same being the mouth of Sabine Pass . . . ." Texas' Exhibit D, p. 7.

(4) A mineral lease (No. 370) from the State of Louisiana

as lessor to the Shell Petroleum Corporation as lessee, dated April 21, 1938, leasing "The center ten thousand acres, more or less, in the east half of Sabine Lake, Cameron Parish, Louisiana, as per map and full description on file in the State Land Office." This lease contains the same map found in the preceding lease to the Gulf Refining Company. The field notes here also make reference to the center of Sabine Lake as the Texas-Louisiana boundary line. Texas' Exhibit D, pp. 10-14.

(5) A mineral lease (No. 371) from the State of Louisiana as lessor to the Humble Oil & Refining Company as lessee, dated April 21, 1938, leasing "The north ten thousand acres, more or less, in the East half of Sabine Lake, Cameron Parish, Louisiana, as per map and full description on file in the State Land Office." The map attached to the lease is again the same as the one found with the Gulf Refining Company lease and the field notes also note the center of Sabine Lake as being the Texas-Louisiana boundary. Texas' Exhibit D, pp. 15-19.

(6) A mineral lease (No. 376) from the State of Louisiana as lessor to Mr. Tom C. Igoe as lessee, dated April 21, 1938, leasing "That part of the Sabine River owned by the State of Louisiana beginning at the boundary line between the State of Louisiana and the State of Texas . . . ." There is no map attached to this lease. Texas' Exhibit D, pp. 82-83. On January 24, 1939, Lessley P. Gardiner, Second Assistant Attorney General of Louisiana at that time, wrote a letter to Mr. O. M. Grisham concerning the lease to Mr. Igoe. The letter states:

> "We reply to your letter of January 18, 1939, addressed to Hon. Gaston L. Porterie, Attorney General, wherein you advise that Mr. Tom C. Igoe has leased from the State for oil and gas development the following described property:
>
> "[The same description as given above is then stated.]
>
> "You desire to be advised first, whether or not Mr. Igoe has a lease on the land to the thread of Sabine River or the whole of the river bottom. Second, the number of acres included in the description.
>
> "In replying to your first question, we have had reference to Act of Congress, April 6, 1812 (2 Stat. 701), ad-

mitting Louisiana into the Union, fixing the Western boundary of the State as:

"'Beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude.'

"The Eastern boundary of Texas was defined by Act of Congress of July 5, 1848 (9 Stat. 245) which states that:

"'Congress consents that the Legislature of the State of Texas may extend her Eastern Boundary so as to include within their limits one-half of Sabine Pass, one-half of Sabine Lake, also one-half of the Sabine River, from its mouth as far North as the thirty-second degree of North latitude.'

"We enclose photostatic copy of decision of the Assistant Secretary of the Interior, dated June 17, 1910, which goes into the question very thoroughly.

"We are unable to answer your second question, and I should imagine it would be necessary to have a survey made in order to determine the number of acres included in the description." Texas' Exhibit C, p. 23.

(7) A mineral lease (No. 453) from the State of Louisiana, as lessor, to the Shell Oil Company, as lessee, dated November 20, 1939, leasing "All lands except tax lands owned by the State and also all of the property now or formerly constituting the beds and other bottoms of rivers, creeks, streams, bayous, lakes lagoons, bays, coves, sounds, inlets and other water bodies, including all islands, and not under lease from the State of Louisiana on September 27, 1939, as are located within Sections 15, 17, 20, 21, 22, 27, 28, 29, 32, 33 and 34, Township 10 South, Range 13 West, Calcasieu Parish, Louisiana, the above described area being specifically shown within red lines on that certain map on file in the State Land Office, being 'Toomey Quadrangle', published by the Department of the Interior U.S. Geological Survey. . . ." The red line on the enclosed U.S. Geological Survey map goes only to the geographic middle of the Sabine River. Texas' Exhibit D, pp. 84-86.

(8) A mineral lease (No. 557) from the State of Louisiana, as lessor, to W.S. Smith, as lessee, dated April 19, 1943, leasing "The beds and bottoms of Sabine River, Sabine and Vernon Parishes, Louisiana, . . . all according to a plat of said

area on file in the State Land Office." The map accompanying the lease clearly shows that the lease only extends to the geographic middle of the Sabine River and includes the following comment: "Includes all of the Louisiana portion of Sabine River Bed in Sections 1, 2, 9, 10, 11 & 12 of T2N, R12W, and Sections 6 & 7 of T2N, R11W." Texas' Exhibit D, pp. 87-89.

(9) A mineral lease (No. 790) from the State of Louisiana, as lessor, to The Texas Company, as lessee, dated September 9, 1946, leasing "Tract 1068—Cameron Parish—All the beds and bottoms belonging to the State of Louisiana of rivers, creeks, streams, bayous, lagoons, lakes, bays, coves, sounds, inlets, ponds, and all other beds and bottoms of water bodies and of tributaries or distributaries of said water bodies together with all islands and together with all other lands belonging to the State of Louisiana . . . included within the following described area located in Township fourteen (14) South, Ranges fourteen (14) and fifteen (15) West, projected, Southwestern Land District of Louisiana, Cameron Parish, La., which said area is outlined in red on a map attached . . . ." On the attached map the leased area does not go beyond the geographic middle of Sabine Lake. Texas' Exhibit D, pp. 20-22.

(10) A mineral lease (No. 1717) from the State of Louisiana, as lessor, to The Ohio Oil Company, as lessee, dated June 3, 1949, leasing "TRACT 4390—Calcasieu and Cameron Parishes, Louisiana—All the beds and bottoms now or formerly constituting the beds and bottoms of the Sabine River belonging to the State of Louisiana lying between Latitude 30° 09′ 12″ North and Latitude 30° 00′ 00″ North and West of Longitude 93° 40′ 00″ West . . . as shown outlined in red on plat on file in the State Land Office." The map accompanying the lease does not draw a red line in the Sabine to indicate the western limits of the lease, but it does have a line drawn in the geographic middle of the Sabine to indicate the Texas-Louisiana boundary. Texas Exhibit D, pp. 126-30.

On March 13, 1952, the lessee, Ohio Oil Company, made a pooling request involving lease No. 1717. The request mentions at several points that the desired pooling unit was re-

stricted to the "easterly half" of the Sabine River bed, up to the "Center Line of the Sabine River." In addition, the map attached to the request shows the line in the geographic middle of the Sabine (Texas' Exhibit N). On March 27, 1952, the Louisiana State Mineral Board approved Ohio Oil's pooling request, repeating the mid-Sabine language along with a map clearly showing the western boundary as the geographic middle of the Sabine. Texas' Exhibit O. A division order from the State Mineral Board relating to lease 1717 was signed on May 28, 1952, restricting the royalties from the leased property to the "East half of Sabine River." Texas' Exhibit P. *See also* Texas' Exhibit R. It may be noted here that an oil division order relating to a separate lease, No. 1716, dated June 20, 1952, between the Phillips Petroleum Company and the Louisiana State Mineral Board, also restricted royalties to the "Easterly Half of the Sabine River Bed." Texas' Exhibit Q.

(11) A mineral lease (No. 2384) from the State of Louisiana, as lessor, to W.W. Hawkins, as lessee, dated September 17, 1953, leasing "TRACT 5446—*Cameron Parish, Louisiana*—Sabine Lake Area—All of the lands now or formerly constituting the beds and bottoms of all water bodies including all islands and other lands formed by accretion or reliction, except tax lands, belonging to the State of Louisiana and not under lease on the date of this application . . . ." The plat attached to this lease shows that the lease lands do not go beyond the geographic middle of Sabine Lake. Texas' Exhibit D, pp. 23-27.

(12) A Unitization Agreement pertaining to Lease No. 2048 between the State of Louisiana and the Atlantic Refining Company, dated September 7, 1954, contains an attached plat, which was expressly made a part of the agreement, showing the geographic center of the Sabine River as the west line of the agreement. However, the agreement contains the following clause: "The execution of this pooling agreement by the State Mineral Board and its concurrence herein shall in no manner constitute an acknowledgment that the ownership of the State of Louisiana does not embrace the entire bed of the Sabine River extending to the right descending bank thereof, nor shall such execution and concurrence ever be

deemed or help to estop the State of Louisiana from claiming or asserting ownership of the entirety of said river bed nor shall same prejudice the rights of the State of Louisiana in any manner in claiming or asserting such ownership." Texas' Exhibit S.

(13) A mineral lease (No. 2762) from the State of Louisiana, as lessor, to The Texas Company, as lessee, dated July 23, 1955, leasing "TRACT 6090—*Cameron Parish, Louisiana*—All of the lands now or formerly constituting the beds and bottoms of all lakes, bays, coves, bayous, rivers and any other water bodies of every nature and description . . . owned by and not under mineral lease from the State of Louisiana on . . . the date of this application . . . ." Although it is not entirely clear, the attached plat seems to limit the lease to the eastern half of Sabine Lake. Texas' Exhibit D, pp. 28-32.

(14) A mineral lease (No. 2875) from the State of Louisiana, as lessor, to C. C. Steinberger, Jr., as lessee, dated December 15, 1955, leasing "*Cameron Parish, Louisiana*—All of the lands now or formerly constituting the beds and bottoms of all lakes, . . . rivers and other water bodies of every nature and description . . . owned by and not under mineral lease from the State of Louisiana on . . . the date of this application, situated in Cameron Parish, Louisiana, within the following described boundaries . . . all more fully shown outlined in red on a plat on file in the State Land Office. . . ." The plat accompanying the lease clearly shows that the leased area was only to the geographic middle of Sabine Lake. In addition, the map shows a geographic middle boundary line in Sabine Pass. Texas' Exhibit D, pp. 33-37.

(15) Mineral lease No. 2876 is a second lease to C.C. Steinberger, Jr., very similar to No. 2875, just mentioned. It also contains a map showing that the second lease only went to the geographic middle of Sabine Lake. Texas' Exhibit D, pp. 38-42.

(16) A mineral lease (No. 3459) from the State of Louisiana, as lessor, to the Shell Oil Company, as lessee, dated March 4, 1959, leasing "*Cameron Parish, Louisiana*—All of the lands now or formerly constituting the beds and bottoms of all lakes, . . . rivers and other water bodies of every nature and

description . . . owned by and not under mineral lease from the State of Louisiana on . . . the date of this application, situated in Cameron Parish, Louisiana, within the following described boundaries . . . all more fully shown outlined in red on a plat on file in the State Land Office. . . ." The plat accompanying the lease again shows that the lease only pertains to the east half of Sabine Lake. Texas' Exhibit D, pp. 43-47.

(17) Lease No. 3460. This is another lease to Shell Oil Company, very similar to the one listed in Item (16). It also contains a map showing that the lease only goes to the geographic middle of Sabine Lake. This lease is also dated March 4, 1959. Texas' Exhibit D, pp. 48-52.

(18) Lease No. 3461. This is a lease very similar to the two previous ones to Shell Oil Company. This one is to The California Company and again contains a plat showing that the lease only affects the east half of Sabine Lake. Texas' Exhibit D, pp. 53-58.

(19) Lease No. 3462. This is another March 4, 1959 lease, this time to John W. Mecom, d/b/a/, Mecom Petroleums. The language of the lease is very similar to the previous three and also contains a map showing the limits of the lease to be in the eastern half of Sabine Lake. Texas' Exhibit D, pp. 59-63.

(20) Lease No. 3463. Another lease to The California Company in the same general area of Sabine Lake as the previous four leases. It is dated March 4, 1959, and again contains the map showing that this lease plus the previous four only go to the center of Sabine Lake. Texas' Exhibit D, pp. 64-68.

(21) Lease No. 3464. This is the last in this particular series of leases generally applying to the same area of Sabine Lake. This one is also dated March 4, 1959, and the Shell Oil Company is again the lessee. The same map used in the previous leases is also used here, showing that the leases do not extend beyond the eastern half of the lake. Texas' Exhibit D, pp. 69-73.

(22) A mineral lease (No. 3565) from the State of Louisiana, as lessor, to The California Company, as lessee, dated Sep-

tember 26, 1959, leasing "TRACT 7541—*Cameron Parish, Louisiana* . . . ." The accompanying plat shows that the leased area is only in the eastern half of Sabine Lake, and also shows a mid-stream boundary between the two states through Sabine Pass. Texas' Exhibit D, pp. 74-78.

(23) A mineral lease (No. 3561) from the State of Louisiana, as lessor, to The Atlantic Refining Company, as lessee, dated September 26, 1959, leasing "TRACT 7534—*Beauregard Parish, Louisiana*—All lands now or formerly constituting the beds and bottoms of all water bodies . . . belonging to and not under mineral lease from the State of Louisiana on . . . the date of this application . . . together with that portion of the bed and bottom of the Sabine River belonging to the State of Louisiana lying South of the North line of Section 5, [etc.], all more fully shown outlined in red on a plat on file in the State Land Office." The accompanying plat shows the lease extending to the *western* bank of the Sabine River. Texas' Exhibit D, pp. 166-70. However, in a resolution of the Louisiana State Mineral Board dated June 15, 1961, effecting a unitization agreement involving this lease, the description of the leased area limits it to the *center* line of the Sabine River. The accompanying plat also clearly shows a mid-stream Sabine boundary between the two States. The agreement was "Approved as to form and legality" by the Assistant Attorney General of Louisiana. Texas' Exhibit T. A similar resolution concerning a separate portion of lease No. 3561 also contains the center-line restrictions on the Sabine, as well as the map showing a mid-stream boundary. Texas' Exhibit U. This latter resolution is especially clear in showing that the Louisiana Attorney General's office found "no objections" to the resolution.

(24) In a resolution of the Louisiana State Mineral Board dated July 23, 1962, involving a Louisiana mineral lease No. 2730 and a Texas mineral lease in the Sabine River, a pooling agreement was drafted between the various parties. The agreement contains the following clause:

"WHEREAS, all of the parties, except The Atlantic Refining Company, who are below designated as 'Lease Owners' are the present owners of the following described lease *cov-*

ering land in the State of Texas in the Sabine River located between Westerly extensions of the North lines Fractional Section 22 and Section 34, Township 3 South, Range 12 West, Beauregard Parish, Louisiana . . . ." (emphasis supplied). However, the agreement also contains the following:

> "The parties hereto agree that the foregoing division and apportionment shall be and remain binding until, within the period of this agreement, any party may establish by definitive judgment of a court of competent jurisdiction, or in any other lawful manner, the exact limits of its claimed ownership, after which time, but not retroactively, the division and apportionment of interests within the unit shall be in proportion to the ownership, as so established, within the entire unit hereinabove described. If, at any time, any question or litigation should arise as to the ownership of any part of the property covered by any lease or leases herein concerned, neither this agreement nor anything herein contained, nor any of the data, maps, or exhibits considered in connection herewith, whether hereto attached or not, nor any course of conduct followed by any party hereto pursuant to this agreement shall ever be considered to be or permitted to serve as a basis of estoppel against any party hereto or prevent any party hereto from establishing its ownership, or having the boundaries or limits of its property determined, in ownership, or having the boundaries or limits of its property determined, in any lawful manner, anything herein contained to the contrary notwithstanding. However, the method of computing the royalty and other payments shall continue to be as specified above in sub-paragraphs (a) and (b)." Texas Exhibit V.

(25) A mineral lease (No. 4360) between the State of Louisiana, as lessor, to the Sohio Petroleum Company, dated August 31, 1964, leasing "TRACT 9176—*Calcasieu Parish, Louisiana*—All of the lands, islands and other lands formed by accretion or reliction . . . and all water bodies of every nature and description whether now or formerly existing, owned by and not under mineral lease from the State of Louisiana on July 3, 1964, situated in Calcasieu Parish, Louisiana, lying within the following described boundaries and more particularly described hereafter: Bounded . . . on the West by the boundary between the State of Louisiana and Texas . . . ." The attached map clearly shows that the boundary is the geo-

graphic middle of the Sabine River. Texas' Exhibit D, pp. 90-94.

NOTE: It should be pointed out here that the State of Louisiana did make certain "protests" about Texas leasing part of the western Sabine during the 1960's. *See, e.g.*, Louisiana's Exhibit B, pp. 49-52, 54-55, 57-66, 72-73.

(26) Louisiana Lease 4674, dated March 14, 1966. This lease only extended to the mid-stream boundary of the Sabine River, and the enclosed plat also showed a mid-stream boundary. However, the lease also contained the following clause: "the bed and bottom of the Sabine River included in the above described property, estimated to contain approximately *40 acres*, shall not extend at any point to the West of the center of the Sabine River. By so limiting the westward extension of said water bed and bottom of the Sabine River, so far as any lease awarded is concerned, shall not be construed as affecting or in any manner prejudicing the claim of Louisiana to the West bank of the Sabine River as being its boundary with the State of Texas, all of the above described property being more fully shown outlined in red on a plat on file in the State Land Office." Texas' Exhibit D, pp. 95-99.

(27) On either January 14, 1969, or January 14, 1970 (it is not clear from the instrument), the Louisiana State Mineral Board passed a resolution involving state lease No. 376, which also contains a map showing that the unit is limited to the eastern half of the Sabine. However, the resolution also contains the following limitation: "This agreement shall in no manner constitute an acknowledgment that the ownership of the State of Louisiana does not embrace the entire bed of the Sabine River, extending to the right descending bank thereof, nor shall this agreement ever be deemed or held to estop the State of Louisiana from claiming and asserting ownership of the entirety of said riverbed, nor shall same prejudice the rights of the State of Louisiana in claiming and asserting such ownership." Texas' Exhibit M.

(28) Louisiana Lease No. 5202, dated December 16, 1968. This lease only extended to the mid-stream boundary of the Sabine River, and is specifically limited to points *east* of the

center of Sabine River. However, there is the limiting clause found in Lease No. 4674, mentioned in item (26) above. In addition, the accompanying plat takes in *all* of the Sabine. Texas' Exhibit D, pp. 100-07.

(29) Louisiana Lease No. 5078, dated June 17, 1968. This is the same as Item (28), immediately preceding. Texas' Exhibit D, pp. 108-15.

(30) Louisiana Lease No. 5306, dated July 14, 1969. This lease is the same as Items (28) and (29) above. Texas' Exhibit D, pp. 116-23.

B. The following leases executed by the State of Louisiana generally do *not* support Texas' assertion that Louisiana acquiesced in a mid-Sabine boundary between the two States:

(1) An oyster shell lease dated March 13th, 1933, given by the State of Louisiana, as lessor, to the W. D. Haden Company of Galveston, Texas, leasing "Sabine Lake near Port Arthur, Sabine, and from Sabine Pass (Entrance to Sabine Lake) to the mouths of the Sabine and Neches Rivers. This is an exclusive lease for the above described property." There is no map with this lease. Louisiana's Exhibit D, p. 144. On March 13th, 1935, this same lease was extended for two more years (Louisiana's Exhibit D, p. 145), and on March 13th, 1937, for two more years. Louisiana's Exhibit D, p. 146.

(2) A mineral lease (No. 326) from the State of Louisiana, as lessor, to Wm. T. Burton, as lessee, dated October 22, 1935, leasing, in part, "All the bed and bottom of Sabine River lying south of the north line of section 16, T. 9 S., R. 13 W.; Calcasieu Parish . . . ." There is no map with this lease. Texas' Exhibit D, pp. 124-25; Louisiana's Exhibit E, pp. 9-10.

(3) An oyster shell lease (No. 223), from the State of Louisiana as lessor to Stevens Company, Inc. as lessee, dated July 6, 1947, leasing "Sabine Lake near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers. THIS IS AN EXCLUSIVE LEASE FOR THE ABOVE DESCRIBED PROPERTY." Louisiana's Exhibit D, p. 96.

NOTE: On August 7, 1946, the Texas General Land Office protested the Louisiana State Mineral Board's leasing certain

tracts in Sabine Pass, claiming that title to all or a portion of the tracts belonged to Texas. The Louisiana Mineral Board noted the protest but still received bids on the tracts. Louisiana's Exhibit B, pp. 36-48.

(4) A mineral lease (No. 1834) from the State of Louisiana, as lessor, to Midstates Oil Corporation, dated July 12, 1950, leasing "TRACT 4563—Calcasieu Parish, Louisiana—All of the water bottoms, including all islands and other lands formed by accretion or reliction, belonging to the State of Louisiana, and not under lease on the date of this application, being situated in the following described area, to-wit: The bed and bottom of the Sabine River from a west projection of the North line of Section twenty-four (24), Township eight (8) South, Range fourteen (14) West, on the north to the bridge across the Sabine River on State Highway No. 7 on the south . . . ." The attached map shows that the lease extends to the western bank of the Sabine. However, the same map shows a mid-stream boundary between the two States. Texas' Exhibit D, pp. 131-35; Louisiana's Exhibit E, pp. 18-22.

(5) Mineral lease (No. 1842) from the State of Louisiana, as lessor, to Lincoln Frost, Jr., as lessee, also dated July 12, 1950. This lease is very similar to the previous one in that the coloring on the map takes in the entire Sabine River, while the map shows a mid-stream boundary between the two States. Texas' Exhibit D, pp. 136-40; Louisiana's Exhibit E, pp. 23-27.

(6) An oyster shell lease (No. 262) from the State of Louisiana (acting through the Louisiana Department of Wild Life and Fisheries) as lessor, to the W.T. Burton Company, Inc., dated November 30, 1950, leasing "the beds or water bottoms of SABINE LAKE near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers." There is no map attached. Louisiana's Exhibit D, pp. 5-12.

(7) An oyster shell lease (No. 275) again to W.T. Burton Company, Inc., this one dated March 6, 1952. The area leased is "the beds or water bottoms of SABINE LAKE near Port Arthur, Texas and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers." No map ac-

companies this lease. Louisiana's Exhibit D., pp. 13-18. This is a renewal of Item (6).

(8) This is another oyster shell lease (No. 307) to W.T. Burton Company, dated September 14, 1954, leasing "the beds or water bottoms of 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." No map. Louisiana's Exhibit D, pp. 19-25.

(9) A mineral lease (No. 2730) from the State of Louisiana, as lessor, to The Atlantic Refining Company, as lessee, dated June 16, 1955, leasing "TRACT 6048—*Beauregard Parish, Louisiana*—All that part of the beds of Sabine River and other water bottoms belonging to the State of Louisiana . . . situated in Beauregard Parish, Louisiana . . . the entire area extending Westward to the boundary between the State of Louisiana and the State of Texas . . . all more fully shown outlined in red on a plat on file in the State Land Office." The accompanying plat shows that the red line goes to the western bank of the Sabine. However, the plat also shows a midstream boundary between the two States, south of the area leased. Texas' Exhibit D, pp. 146-50.

(10) A mineral lease (No. 2731) from Louisiana, as lessor, to John Mecom, as lessee, again dated June 16, 1955, leasing "PORTION OF TRACT 6049; Said portion being more fully described as follows: That part of Tract No. 6049 which lies between the left descending bank of the Sabine River and the center line of the main channel of said Sabine River, containing *333.50* acres, more or less. Entire Tract 6049 described as follows: TRACT 6049—*Cameron Parish, Louisiana* —All lands, except tax lands, now or formerly constituting the beds and bottom of the Sabine River . . . situated in Cameron Parish, Louisiana, being more fully described as follows to-wit: . . . all more fully shown outlined in red on a plat on file in the State Land Office." Even though the first portion of this language would indicate that the lease only goes to "center line of the main channel of" the Sabine, the accompanying plat *apparently* goes to the west bank. Texas' Exhibit D, pp. 151-55.

(11) A mineral lease (No. 2732) from Louisiana, as lessor,

to the Houston, Sinclair and Stanolind Oil Companies, as lessees, dated June 16, 1955, leasing "TRACT 6050—*Cameron Parish, Louisiana*—All lands, except tax lands, now or formerly constituting the bed and bottom of the Sabine River . . . owned by and not under mineral lease from the State of Louisiana on the date of this application, situated in Cameron Parish, Louisiana, being more fully described as follows, to-wit: . . . continuing, on the same bearing, across the Sabine River, . . . all more fully shown outlined in red on a plat on file in the State Land Office." The accompanying plat is the same as the lease discussed in Item (10), above. Texas' Exhibit D, pp. 156-60; Louisiana's Exhibit E, pp. 33-37.

(12) An oyster shell agreement (No. 314) between the State of Louisiana and the Lake Charles Dredging and Towing Company, Inc., dated February 25, 1955, in which the Lake Charles Company received the "right and privilege of taking and removing oyster shells from the beds or water bottoms of SABINE LAKE, Cameron Parish." There is no map with this lease. Louisiana's Exhibit D, pp. 48-53. It should be noted here that in a booklet entitled "The History and Regulation of the Shell Dredging Industry in Louisiana compiled by The Louisiana Wild Life And Fisheries Commission," (Louisiana's Exhibit I) several maps show the various oyster shell leases given by Louisiana since 1914. These maps follow page 15 of that booklet. On all the maps up to "Map 5—Location of Shell Leases 1959-1968," there are *no* leases shown in the Sabine and there is no division line indicating the state boundary. However, on Map 5, a distinct line is drawn in the middle of Sabine Lake.

(13) A mineral lease (No. 2874) to C.C. Steinberger, Jr., dated December 15, 1955, leasing part of Sabine Lake. It is Louisiana's contention that the accompanying plat extends beyond the middle of the Sabine. It certainly does not go to the west bank, but your Special Master is not sure it extends beyond the middle. Since the Texas side of the Sabine is not entirely given on the plat, it is very difficult to tell if the lease does go beyond the middle. Items (14) and (15) discussed in Part II(A), *supra*, supporting Texas' assertions, are similar leases to the one discussed here. For this particular lease, see Louisiana's Exhibit E, pp. 38-42. For the similar leases discussed in Part II(A), see Texas' Exhibit D, pp. 33-42.

(14) An oyster shell agreement between Louisiana and the Lake Charles Dredging and Towing Co., Inc., dated February 25, 1956. This is a renewal of the agreement discussed in Item (12) above. Louisiana's Exhibit D, pp. 131-37. This agreement was again renewed on March 8, 1957 (Louisiana's Exhibit D, pp. 55-60) and March 29, 1958 (Louisiana's Exhibit D, pp. 138-43), and again on February 10, 1959 (Louisiana's Exhibit D, pp. 68-74). The Lake Charles Dredging and Towing Co., Inc., received an additional lease January 28, 1959, in which it was allowed to take and remove "oyster shells from the beds or water bottoms of SABINE PASS in the area between Mesquite Point and Lighthouse Bayou, Cameron Parish, State of Louisiana." Louisiana's Exhibit D, pp. 61-67.

(15) A claim shell and reef shell agreement between the State of Louisiana and the W.T. Burton Company, Inc., dated February 25, 1957, in which W.T. Burton received "the right and privilege of taking and removing clam shell and reef shell from the beds or water bottoms of 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." Louisiana's Exhibit D, pp. 117-23. This lease is a renewal of an earlier one covering the same territory (Louisiana's Exhibit D, pp. 110-16). These leases were also renewed on April 9, 1958 (Exhibit D, pp. 26-32), March 10th, 1959 (Exhibit D, pages 33-38), and June 21, 1960 (Exhibit D, pp. 124-29).

(16) A reef and/or clam shell agreement between Louisiana and the Guarisco Construction Co., Inc., dated July 16, 1957, leasing "the beds or water bottoms of SABINE LAKE, Parish of Cameron, State of Louisiana." Louisiana's Exhibit D, pp. 82-88.

(17) An oyster shell agreement between Louisiana and the Bauer-Smith Dredging Co., Inc., dated November 7, 1957, leasing the "beds or water bottoms of SABINE LAKE, Parish of Cameron, State of Lousiana." Louisiana's Exhibit D, pp. 97-102.

(18) An oyster and clam shell agreement between the State of Louisiana and Smith Brothers Dredging Co., dated February 10, 1958, leasing the "Louisiana side of Sabine Lake,

Parish of Cameron, State of Louisiana." Although Louisiana attempts to show that this supports its position, it seems to your Special Master that it actually supports Texas' position, since the lease recognizes that it is not leasing the entire lake, but rather only "Louisiana's side." Louisiana's Exhibit D, pp. 147-53.

(19) A shell lease between Louisiana, as lessor, and Louis J. Deshotel, as lessee, dated September 23, 1958, leasing "the beds or water bottoms of SABINE LAKE, Parish of Cameron, State of Louisiana." Louisiana's Exhibit D, pp. 75-81.

(20) A mineral lease (No. 3485) between the State of Louisiana and the Sun Oil Company, dated March 4, 1959, leasing "TRACT 7432—*Sabine Parish, Louisiana,*—All of the lands now or formerly constituting the bed and bottom of the Sabine River . . . owned by and not under mineral lease from the State of Louisiana on . . . the date of this application, situated in Sabine Parish, Louisiana, said bed and bottom being restricted to and confined within the lands situated within and belonging to the State of Louisiana, and being more particularly described as follows to-wit: All that part of the bed and bottom of the Sabine River, belonging to the State of Louisiana, lying South of the North line of Township 8 North, and North of the North line of Section 16, Township 8 North, Range 14 West, Sabine Parish, Louisiana, estimated to contain approximately *110 acres,* all more fully shown outlined in red on a plat on file in the State Land Office." The accompanying plat shows that the entire Sabine was covered under the lease, but the plat also has a distinct line showing the mid-stream as the boundary between the two States. Texas' Exhibit D, pp. 161-65; Louisiana's Exhibit E, pp. 43-47.

(21) An oyster and clam shell lease between Louisiana and S.A. Smith & Associates, dated June 27, 1960, leasing "the beds or water bottoms of SABINE LAKE, Cameron Parish, State of Louisiana." Louisiana's Exhibit D, pp. 103-09.

(22) A shell lease from Louisiana to the Louisiana Towing and Dredging Co., Inc., dated February 8, 1961, leasing "the beds or water bottoms of SABINE LAKE, Cameron Parish, State of Louisiana." Louisiana's Exhibit D, pp. 89-95.

(23) A mineral lease (No. 3874) from Louisiana, as lessor, to the Sun Oil Company, as lessee, dated April 23, 1962, leasing "TRACT 8167—*Calcasieu Parish, Louisiana*—All of the lands now or formerly constituting the beds and bottoms of all water bodies of every nature and description and all islands . . . owned by and not under mineral lease from the State of Louisiana on February 27, 1962, situated in Calcasieu Parish, Louisiana, within the following boundaries: . . . all more fully shown outlined in red on a plat on file in the State Land Office." The accompanying plat clearly shows that the lease was intended to take in the entire Sabine, up to the west bank. Texas' Exhibit D, pp. 171-75; Louisiana's Exhibit E, pp. 75-79.

(24) A clam and reef shell agreement between Louisiana and the W.T. Burton Company, Inc., dated April 29, 1969, concerning "the beds or water bottoms of 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 . . . ." Louisiana's Exhibit D, pp. 40-47.

NOTE: As to the shell leases discussed in Items (1), (3), (6), (7), (8), (12), (14), (15), (16), (17), (18), (21), (22), and (24), in which they apparently cover the entire Sabine River, Texas attempts to show in its Exhibit G, pp. 168-84, that while Louisiana used descriptions of State boundary streams which, on the face of the leases, cover the entire streams between certain points, it is left up to the individual lessee to keep his operations within the Louisiana boundary lines. Your Special Master does not believe the various documents filed in the last portion of Texas' Exhibit G necessarily show this, but the affidavit of Robert L. Cross, Law Enforcement Coordinator of the Texas Parks and Wildlife Department (Texas Exhibit B, pp. 58-59) tends to support it:

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

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

III. PIPELINE EASEMENTS AND RIGHTS-OF-WAY BY LOUISIANA

A. Texas' Exhibit G, pp. 74-114, contains 9 pipeline easements given by the State of Louisiana from 1950 to 1966, which only go to the middle of the Sabine.

(1) *1950.* Texas' Exhibit G, pp. 74-76. This is an easement in Sabine Lake by Louisiana to the United Gas Pipe Line Co. The description of the lease does not limit the easement, but the accompanying map clearly shows the Texas-Louisiana boundary in the middle of Sabine Lake. The easements are all signed by the Louisiana governor.

(2) *1952.* Texas' Exhibit G, pp. 77-79. The plat with this lease states: "West ½ of River property of the State of Texas." However, the lease contains the following limitation: "This grant by the State of Louisiana shall in no manner constitute an acknowledgement that the ownership of the State of Louisiana does not embrace the entire bed of the Sabine River, extending to the right descending bank thereof, nor shall this grant ever be deemed or held to estop the State of Louisiana from claiming and asserting ownership of the entirety of said river bed, nor shall same prejudice the rights of the State of Louisiana in claiming and asserting such ownership."

(3) *1961.* Texas' Exhibit G, pp. 80-85. The easement itself only states that it covers "The Sabine River in Section 33,

Township 3 South, Range 12 West located approximately 3.25 miles West of Merryville." However, accompanying the easement is a sketch of the Sabine River showing a geographic middle boundary.

(4) *1962.* Texas' Exhibit G, pp. 86-94. The provisions of the easement make reference to four maps accompanying the easement, all four of which clearly show a geographic middle boundary in the Sabine. A companion lease, dated the same day, is found in Louisiana's Exhibit E, pp. 84-89.

(5) *1964.* Texas' Exhibit G, pp. 95-97. It is not entirely clear, but the map accompanying this easement appears to limit the grant to the eastern half of the Sabine. The language of the grant states: "1 - 20 inch pipeline crossing Sabine River a distance of 14 rods located in Section 6, Township 2 North, Range 11 West."

(6) *1964.* Texas' Exhibit G, pp. 98-100. The easement language states: "2-24" diameter pipelines crossing Sabine River a distance of 5 rods each located in Section 9, Township 9 South, Range 13 West." The accompanying plat has a small map of the Sabine River showing a mid-Sabine boundary.

(7) *1965.* Texas' Exhibit G, pp. 101-03. While this easement goes only to the geographic middle of the Sabine, it also contains this clear limitation: "It is understood and agreed that, while the State of Louisiana asserts that its boundary with the State of Texas extends to the west bank of the Sabine River and Sabine Pass, the rights granted herein by the State of Louisiana shall not extend westward and beyond the thread or main channel of the Sabine River. It is also understood that the limitation thus placed on the within grant, shall not be construed as abandoning Louisiana's boundary claim which extends to the west bank of the Sabine River."

(8) *1965.* Texas' Exhibit G, pp. 104-09. This contains the same limiting language as the previous easement.

(9) *1966.* Texas' Exhibit G, pp. 110-14. The easement grants "A right-of-way on, under and across the Sabine River in Township 12 South, Range 14 West, Cameron Parish, Louisiana, the centerline being more particularly described as fol-

lows, to-wit: BEGINNING at a point in the East Bank of the Sabine River having coordinate values of approximately S= 1,239,300 and Y=503,050; THENCE North 88°29'20" West 461.5 feet to the center of the Sabine River." The accompanying maps clearly show a mid-Sabine boundary line. However, a companion lease given by Louisiana to the *western* half of the Sabine at this location is found in Louisiana's Exhibit E, pp. 93-97. Thus, taken together, the two leases grant the entire Sabine to the lessee.

It appears to your Special Master that only five of the nine easements support Texas' position, that is, the ones for 1950, 1961, 1962, and the two for 1964. The others either have limitations which make them useless to show acquiescence or do not mean what Texas says they mean.

B. Louisiana has placed in evidence certain pipeline easements or rights-of-way (Louisiana's Exhibit E, pp. 81-107). However, these easements are not nearly as clear as Louisiana claims. Although some of them lease "the bed of the Sabine River," and the others simply list "Sabine River," all except two have accompanying maps showing a mid-Sabine boundary between the two States. Two of the easements (Items 4 and 6, below) clearly leased the *western* half of the Sabine.

(1) *1962.* Louisiana's Exhibit E, pp. 81-83. This easement leases "Sabine River" in Cameron Parish. However, the accompanying map clearly shows a mid-Sabine boundary between the two States.

(2) *1962.* Louisiana's Exhibit E, pp. 84-89. This is a companion lease to the one discussed under Item (4) above. It leases "The Bed of the Sabine River," in Calcasieu Parish, Louisiana. The various notes on the accompanying map indicate that the lease might be for the entire Sabine bed, but the map shows a mid-Sabine boundary line.

(3) *1964.* Louisiana's Exhibit E, pp. 90-92. This leases the "Underwater area contained in the river bed of Sabine River at the point where our pipelines cross said river, being located in fractional Section 22, Township 12 North, Range 13 West, Sabine Parish, Louisiana." The accompanying map

shows a mid-Sabine boundary. However, on all of these your Special Master is unable to tell if the State is leasing only the eastern half or all of the Sabine. The language would indicate all the Sabine, but the maps show a mid-Sabine boundary between the two States.

(4) *1966.* Louisiana's Exhibit E, pp. 93-97. This leases the *western* half of the Sabine, and the map shows the same. This lease is a companion to the lease described in Item (9) of Part (A) above, which leased the eastern half of the Sabine at approximately the same point. However, the map used still shows a mid-Sabine boundary between the two States.

(5) *1966.* Louisiana's Exhibit E, pp. 98-100. This leases "Across the Sabine River, in Lot 4, Section 6, Township 2 North, Range 11 West, Vernon Parish, Louisiana." The accompanying map cannot be said to show a boundary in either the mid-Sabine or the west bank.

(6) *1966.* Louisiana's Exhibit E, pp. 101-03. This leases "The West-half (W/2) of the Sabine River located in Section 33, Township 10 South, Range 13 West." With the following limitation: "It is understood that insofar and only insofar as this tract is concerned the grant herein is executed without warranty of title, even as to no return of consideration paid and futher [*sic*], that the area covered by this grant is limited to the waters and submerged lands being thereunder which lie within the boundary of the State of Louisiana." However, the accompanying map shows a mid-Sabine boundary between Texas and Louisiana.

(7) *1968.* Louisiana's Exhibit E, pp. 104-07. This allows laying "a dual 10.750: O.D. pipeline crossing the Sabine River approximately 100′ north of the Southern Pacific Railroad bridge, four miles north of Orange, Texas. The crossings approach the east bank in Section 32, T10S, R13W, of Calcasieu Parish, Louisiana, as more fully shown on the attached Corps of Engineers Application Plat and a drawing showing an enlarged view of the east bank." The accompanying map does not show either a mid-Sabine or west bank boundary.

It seems to your Special Master that only two of the leases (Items 4 and 6) *clearly* show Louisiana leasing the western

half of the Sabine, and even these two contain maps which portray the boundary as the middle of the Sabine. Of the remaining five, three have maps which also show a mid-Sabine boundary. It is not clear to your Special Master from the remaining two (Items 5 and 7) what portion of the Sabine was leased.

APPENDIX D

Federal Recognition of a Mid-Sabine Boundary between Texas and Louisiana

The following is a list of acts by federal agencies or the United States Congress which have not already been listed under such headings as maps, leases, etc.

(A.) *1852-1969.* Texas' Exhibit B, pp. 35-38, contains a list of the appropriations or authorizations in River and Harbor Acts passed by the United States Congress from 1852 to 1913, which relate to Sabine River improvements and specifically mention Texas as the State within which all or a portion of such projects are located. Sixty-one such appropriations or authorizations are listed. A similar list containing forty appropriations or authorizations by Congress from 1914 to 1969 is given in Texas' Exhibit E, pp. 19-23.

(B.) *1903.* Texas' Exhibit B, p. 43. On June 25, 1903, the Acting Commissioner of the United States General Land Office wrote a letter to a Texas resident in response to a request for a sketch of the Sabine River boundary between Texas and Louisiana. The letter states:

"In reply I have to state that this office has no map of that portion of the Texas boundary, nor any data showing the exact position of the boundary in the river.

"When Texas was annexed to the Union the boundary followed the *western bank* of Sabine River to the point where the parallel of 32° north latitude intersects the same, but by the act of July 5, 1848 . . . , Congress consented to an extension of the eastern boundary of Texas so as to include one-half of Sabine Pass, one-half of Sabine Lake, and one-half of Sabine River, from its mouth as far north as the thirty second degree of north latitude." (emphasis in original)

(C.) *1906-1951. Acts of the U.S. Congress.*

(1.) *1906.* Texas' Exhibit E, pp. 1-2. On January 25, 1906, Congress authorized the Jasper and Eastern Railway Company to construct a bridge "over and across the Sabine River, in the States of Texas and Louisiana, at any point where said river divides Newton County, in the State of Texas, and Calcasieu Parish, in the State of Louisiana . . . ."

(2.) *1906.* Texas' Exhibit E, pp. 3-4. On June 19, 1906, Congress created a new customs collection district in Texas, "beginning on the Gulf of Mexico at the center of the stream of Sabine Pass; thence north with the center of the stream of Sabine Pass to Sabine Lake; thence with the center of the stream of Sabine Lake to a point directly opposite to the Sabine River; thence north with the east shores of the Sabine River to the north boundary line of Shelby County, Texas . . . ."

(3.) *1912.* Texas' Exhibit E, p. 5. On April 27, 1912, Congress authorized a Texas corporation, the Port Arthur Pleasure Pier Company, to build a bridge across the Sabine-Neches Canal, "in front of the town of Port Arthur, in the county of Jefferson, in the State of Texas . . . ."

(4.) *1928.* Texas' Exhibit E, pp. 6-8. On May 18, 1928, Congress authorized H.L. McKee to build a bridge "across Lake Sabine . . . between a point at or near Port Arthur, Texas, and a point opposite in Cameron Parish, Louisiana . . . ." After completion of the bridge, either Texas or Louisiana, "within or adjoining which any part of such bridge is located," could purchase the structure. *See also* Appendix B, Part III(C)(2), "The McKee Survey."

Also on May 18, 1928, Congress authorized Texas and Louisiana to construct a bridge across the Sabine River at Pendleton's Ferry. Texas' Exhibit E, p. 8.

(5.) *1934.* Texas' Exhibit E, pp. 9-13. On June 18, 1934, Congress authorized the City of Port Arthur, Texas, to construct a bridge "across Lake Sabine, at a point suitable to the interests of navigation, between a point at or near Port Arthur, Texas, and a point opposite in Cameron Parish, Louisiana . . . ." A special "Port Arthur Bridge Commission" was created and, after payment of the Commission's obligations, it was authorized to deliver deeds to the State of Texas for "that part [of the bridge] within the State of Texas" and to the State of Louisiana for "that part within the State of Louisiana."

(6.) *1951.* Texas' Exhibit E, pp. 14-18. On October 30, 1951, Congress authorized the Sabine Lake Bridge and Causeway Authority to construct and operate bridges over Sabine Lake. Section 3 of the act created the Authority with seven members to be appointed—four from Jefferson County, Texas, and

three from Cameron Parish, Louisiana. Section 8 authorized the Authority to convey that portion of the bridges located in the State of Texas to Texas or Jefferson County, Texas, and that part located in the State of Louisiana to Louisiana or Cameron Parish, Louisiana.

(D.) *1932.* Texas' Exhibit B, pp. 46-49. On March 1, 1932, the Acting Assistant Commissioner of the U.S. General Land Office wrote a letter to a Louisiana title company in response to questions about the water boundary between Texas and Louisiana. After outlining the history of the Sabine boundary between the two States, the Commissioner made reference to an earlier controversy over islands in Sabine River where it was held that for purposes of the island question, "the west bank of the western channel of the river at this point will be recognized as the boundary between the States of Louisiana and Texas." The Commissioner then stated: "This would appear to fix the boundary line through Sabine Lake, no differentiation between the river and the lake having appeared in any of the treaties or acts of Congress, supra."

(E.) *1969.* Texas' Exhibit E, pp. 24-26. There is in evidence the cover and two maps from a U.S. Geological Survey booklet entitled "Ground-Water Data for Orange County and Vicinity, Texas and Louisiana, 1969." Both maps show a mid-Sabine boundary between Texas and Louisiana.

APPENDIX E

Other Acts of Prescription by the State of Texas or Acquiescence by the State of Louisiana

It is conceded by both parties that navigability on the Sabine River is, and always has been, open to both States. *See* Stipulation of facts found in the Special Master's pretrial order of September 9, 1970. Section 12 of an Act of Congress dated February 15, 1811 (Texas' Exhibit G, pp. 47-50) provides: "[A]ll navigable rivers and waters in the Territories of Orleans and Louisiana, shall be, and forever remain, public highways." The Congressional Act admitting Louisiana to the Union (Texas' Exhibit C, p. 2) provided: "[I]t shall be taken as a condition upon which the said state is incorporated in the Union, that . . . the navigable rivers and waters leading . . . into the gulf of Mexico, shall be common highways, and for ever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States . . . ." In addition, the Treaty of 1819 between the United States and Spain (Louisiana's Exhibit A, p. 73) states: "[T]he use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations." The boundary limits of this Treaty were reestablished in the Treaty of 1828 between the United States and the United Mexican States (Louisiana's Exhibit A, pp. 94-96) and the Treaty of 1838 between the United States and the Republic of Texas (Louisiana's Exhibit A, p. 97).

Louisiana argues that this reservation of navigation rights makes any acts relating to navigation immaterial for our purposes here (Supplemental Trial Memorandum, pp. 13-15). Of course, the question is what acts "relate" to navigation. The following miscellaneous acts are believed by your Special Master, when they are considered together, to show assertion by Texas or acquiescence by Louisiana in a mid-Sabine boundary.

(A.) BRIDGES

An affidavit (Texas' Exhibit B, pp. 99-101) of J. C. Dingwall, Texas State Highway Department Engineer, states:

> "My name is J. C. Dingwall, and I am State Highway Engineer for the State of Texas, having been with the State Highway Department for 38 years. I have personal knowledge of the facts and records of this Department relating to construction of bridges by the State of Texas and the State of Louisiana across the Sabine River. All of the bridges on the State Highway System across the Sabine River between Logansport, Louisiana (near the 32nd degree of north latitude), and the Gulf of Mexico were constructed with the State of Texas and the State of Louisiana each paying fifty percent (50%) of cost, except for Federal contributions, and except for the present crossing of Toledo Bend Reservoir on Texas State Highway 21 (Louisiana State Highway 6), which was paid for by the Sabine River Authorities of Texas and Louisiana as a replacement crossing necessitated by the reservoir construction."

See also the testimony of John B. Carter, former Chief Location and Design Engineer for the Louisiana Department of Highways, at the New Orleans hearing. Transcript, pp. 44-67, 85-89.

(1) *1897.* According to an affidavit (Texas' Exhibit E, p. 94) from Farland Bundy, Bridge Field Engineer for the Texas Highway Department, which in turn was based on the historical records and files of the Texas Highway Department, the first bridge across Sabine River was built in 1897 at Logansport, Louisiana. This bridge was built by local interests but was later purchased and operated jointly by Shelby County, Texas, and DeSoto Parish, Louisiana. A new bridge was constructed at this site in 1935. *See* Item (4) *infra.*

(2) *1926-1927.* On December 18, 1924, the governors of Texas and Louisiana signed an agreement to construct a bridge at Orange, Texas (*see* Texas' Exhibit E, p. 98 and New Orleans hearing transcript, pp. 53-54). First work on the bridge was begun in May, 1926, with the formal opening and dedication taking place on November 11, 1927. The bridge was dedicated to the soldiers of Texas and Louisiana who fought in World War I. According to the November 11, 1927 edition of the *Orange Leader* (Texas' Exhibit E, p. 99), Ruffin G. Pleasant, former governor of Louisiana and a personal representative of the Louisiana government, made the following remarks in his dedication speech: "This beautiful bridge, reaching across the

Sabine river, and half in Louisiana and half in Texas, is a symbolical handclasp of eternal friendship."

In his affidavit (Texas' Exhibit E, p. 95), Farland Bundy claims that the plans for the bridge were drawn up by the Texas State Highway Department and approved by the Louisiana State Highway Department, with each State sharing the cost. Two pages of the plans are found in Texas' Exhibit F, pp. 59-60. Both pages show the Texas-Louisiana boundary in the center of the Sabine.

(3) *December 15, 1928.* Texas' Exhibit E, p. 110. This bridge was built across the Sabine between Bon Wier, Texas, and Merryville, Louisiana. Texas and Louisiana were "joint owners" of the bridge. A maintenance agreement for the bridge was signed by Texas and Louisiana on May 20, 1957 (Texas' Exhibit E, pp. 128-31). Under the agreement, Texas was to pay the cost of maintenance of the bridge "from Station 30+51 to the west end of the bridge," and Louisiana was to pay the maintenance cost "from Station 30+51 to the east end of the bridge, including the channel pier at Station 30+51." Plans for the bridge are in Texas' Exhibit F, pp. 50-53. Because the plans are faded, it is difficult to determine the exact location on the bridge of "Station 30+51." Since Texas and Louisiana were "joint owners" of the bridge and the plan on page 51 shows a mid-Sabine boundary, it is fair to assume that it was at or near the middle.

(4) *August 9, 1935.* Texas' Exhibit E, pp. 112-13. In 1935, both Texas and Louisiana agreed to build a bridge at Logansport, Louisiana, to be constructed as a "joint highway bridge project." The project was handled by the Texas State Highway Commission, but all documents were to be approved by the Louisiana State authorities. All construction and maintenance costs of the bridge were shared equally by Texas and Louisiana, with part of the cost being paid by the federal government. Some of the plans for this bridge are found in Texas' Exhibit F, pp. 38-40. A mid-Sabine boundary is shown on pages 38 and 39.

(5) *October 21, 1935.* Texas' Exhibit E, pp. 132-33. This agreement provides for the construction of a bridge over the Sabine River between Starks, Louisiana, and Vidor, Texas. It

was a "joint highway bridge," constructed with federal and State funds. All construction and maintenance costs were to be "borne equally by the two States."

(6) *November 4, 1935.* Texas' Exhibit E, pp. 141-42. This bridge was constructed across the Sabine between Milam, Texas, and Many, Louisiana. The bridge was known as the Pendleton Ferry Bridge. Except for the federal funds used on the project, all construction and maintenance costs of the bridge were shared equally between Texas and Louisiana. Plans for the bridge are found in Texas' Exhibit F, pp. 54-58. Page 57 shows a mid-Sabine boundary.

Texas' Exhibit F, pp. 41-43, also contains plans which may pertain to this bridge. The federal highway project number on the plans (862) does not correspond to that given in the contract (822), but the site and date given on the plans correspond to the contract. The plans show a mid-Sabine boundary between the two States.

(7) *May 4, 1936.* Texas' Exhibit E, pp. 126-27. This Sabine River bridge, between Burr's Ferry, Louisiana, and Burkeville, Texas, was constructed by Texas and Louisiana as a "joint highway bridge project." Other than federal aid, the cost of building and maintaining the bridge was divided equally between the two States. A portion of the plans for this bridge are found in Texas' Exhibit F, pp. 47-49.

Under the maintenance agreement for this bridge, signed May 20, 1957, Texas and Louisiana each pay one-half of the cost of maintaining the bridge. Louisiana's Exhibit N.

(8) *March 4, 1949.* Texas' Exhibit E, pp. 134-40. This is an agreement between Texas and Louisiana to construct a new bridge on U.S. Highway No. 90 between Orange, Texas, and Lake Charles, Louisiana. Each State was to pay one-half of the cost of constructing the bridge and one-half of the maintenance expense. Plans for the bridge are found in Texas' Exhibit F, pp. 61-63. Page 61 clearly shows a mid-Sabine boundary between Texas and Louisiana. On April 9, 1954, the U.S. Army Corps of Engineers gave permission to the Texas Highway Department to remove the old bridge at Orange, pursuant to the March 4, 1949 contract between Texas and Louisiana. The permit is found in Texas' Exhibit E, pp. 143-44. The

attached maps show a mid-Sabine boundary line. Texas' Exhibit E, pp. 147-49.

(9) *September 22, 1961.* Texas' Exhibit B, pp. 72-75. Under this contract signed in 1961, a causeway and drawbridge was jointly constructed by Jefferson County, Texas, and Cameron Parish, Louisiana, across Sabine Pass. The bridge was to be located at the south tip of Pleasure Island. Each party was to bear fifty percent of the construction cost. A toll was to be charged for using the bridge and, after deducting necessary expenses, the toll proceeds were to be divided equally between Jefferson County and Cameron Parish. A photograph of the bridge and causeway is found in Texas' Exhibit E, p. 109.

Cameron Parish had originally been authorized to erect the bridge by an act of the Louisiana Legislature in 1955 (Texas' Exhibit C, pp. 125-26). The Louisiana portion of the bridge was to be "constructed from a point in Cameron Parish to a point where such bridge will meet a bridge constructed or to be constructed from the Jefferson County, Texas, side of such stream toward the Cameron Parish side." A 1956 act amended the original 1955 legislation but the quoted language was retained. Texas' Exhibit C, pp. 127-28.

(10) *October 3, 1962.* Interstate Highway 10 crosses the Sabine River at Orange, Texas. In 1962, Texas and Louisiana signed an agreement to erect signs showing the Texas-Louisiana boundary on the U.S. 10 bridge (Texas' Exhibit E, pp. 101-07). The contract provides: "The joint project shall include the following: (a) Construction of Louisiana State Line and Texas State Line Signs at the center of the bridge." Photographs of the bridge and the State line signs are found in Texas' Exhibit E, p. 100. Plans for the signs are found in Texas' Exhibit F, pp. 64-65.

(11) *November 29, 1965.* Texas' Exhibit E, pp. 116-25. This agreement was for the construction of a bridge across the Toledo Bend Reservoir. Because of the limitation placed in the Sabine River Compact (Louisiana's Exhibit A, pp. 351-54), your Special Master does not believe this 1965 agreement can be used to show Louisiana's acquiescence in a mid-Sabine boundary. *See* the discussion on this point in Appendix B (Maps), Part I, Item (14) and the discussion at the New Orleans hearing (Transcript, pp. 38-40).

NOTE: Louisiana's Exhibit B, pp. 29-31, contains an affidavit from A. D. Jackson, Assistant Director of the Louisiana Department of Highways, which states in part:

"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." In response to this argument, see the discussion on "intent" found in Appendix B (Maps), Part II.

(B.) Assessment of Taxes

In *Vermont v. New Hampshire*, 289 U.S. 593 (1933), involving a dispute over the boundary line between those two States, the United States Supreme Court gave substantial weight to the question of whether either State had taxed the land in controversy. As the Court stated:

> "Of persuasive force is the fact found by the Special Master that New Hampshire appears never to have asserted definitely any right to tax land or structures located on the west side of the river before 1909 or 1912. From 1909 to 1927, New Hampshire taxed structures on the west side of the river belonging to the Connecticut River Power Company at Vernon, the property of which appears also to have been taxed by Vermont from 1916 to 1927. . . . In 1912 the New Hampshire taxing authorities taxed seven corporations, three partnerships and persons unknown having structures located on the Vermont bank of the river near Bellows Falls, at a valuation in excess of $1,000,000. The same property appears to have been taxed by Vermont, the record of taxation of some of it belonging to the Bellows Falls Canal Company, going back to a date as early as 1820. . . . The Special Master's finding that it was this 'unprecedented' taxation by New Hampshire which precipitated the present suit is unchallenged. The fact that in the period of over a century following Vermont's admission to

statehood this is the first well authenticated instance of an effort on the part of the New Hampshire authorities to tax property located on the west bank of the river is of substantial weight in indicating acquiescence by New Hampshire in the boundary line restricting her jurisdiction to the river at the low-water mark." 289 U.S. at 615-16. *See also Michigan v. Wisconsin*, 270 U.S. 295, 306, 317 (1926).

There is no evidence of Louisiana's taxing facilities such as pipeline easements, railroad lines, etc., on the western half of the Sabine River. Indeed, Louisiana admits that it has not taxed beyond the middle of the Sabine River. Louisiana's Exhibit T. On the other hand, there are several items supporting the conclusion that Texas made tax assessments, either on the State or local level, of land or property extending to a mid-Sabine boundary.

1. *State Assessment*

The tax rate structure imposed by Texas on railroad companies, oil pipelines, and other facilities is outlined in an affidavit by Earl Rosell, Intangibles Tax Assessor and Assistant Director of the Ad Valorem Tax Division of the Texas State Comptroller's Office (Texas Exhibit E, pp. 27-28). The affidavit states:

> "With reference to the Sabine River boundary between Texas and Louisiana, it would appear that the State of Texas assesses its intangibles tax to the geographic middle of the Sabine River on railroads and oil pipelines which cross the River, as the distances for assessment and apportionment purposes are reported by the transportation companies concerned as being measured to such boundary line. The Intangible Tax has been levied on railroads since the Intangible Tax Law was enacted in 1905, and the railroads then, and now, in existence, which cross the Sabine River and to which this tax assessment has been applied since 1905 are now known as the Kansas City Southern Railway Company and the Missouri Pacific Railroad Company, which use the same railroad bridge at Orange, Texas, the Southern Pacific Transportation Company, which has bridges across the Sabine at Orange and Logansport and the Atchison, Topeka and Santa Fe Railway Company, which crosses in Newton County, Texas.
>
> "There are fifteen (15) crude oil pipelines which operate in the Texas Counties along the Sabine River and many

of these cross the Sabine at various places between Logansport, Louisiana, and the mouth of the River.

"The State has been assessing and collecting the intangibles tax on crude oil pipelines since they were made subject to the law in 1933.

"The above tax is in addition to the ad valorem taxes assessed and collected by the counties on behalf of the State and the counties on the real and personal properties of said railroad and crude oil pipeline companies."

Kansas City Southern Railway Company. An affidavit from Geo. H. McCright (Texas' Exhibit E, pp. 29-33), former General Tax Commissioner for the Kansas City Southern Railway Company, states:

"The Kansas City Southern Railway Company has a railroad bridge across the Sabine River on which I render and Texas assesses and collects taxes to the approximate geographic middle of the River. Louisiana accepts our rendition and assesses and collects taxes to the same mid-point on that portion of our property which is located within the eastern half of the River. This bridge, constructed in 1897-8, under authority granted by the 53rd Congress, 2nd Session crosses the Sabine River between Starks, Louisiana, and Mauriceville, Texas. Each State assesses and collects an intangible tax based upon the mileage of our lines located within its boundaries. My reports and renditions to each State are based upon the mileage measured to the approximate geographic middle of the Sabine River, which has been accepted by the Texas State Intangible Tax Board, Newton County, Texas, Tax Assessor, and by the State Tax Commission of Louisiana as the correct boundary line between the States for many years. These reports have been filed annually with the Board since the present Texas Intangible Tax was levied in 1905, and have been filed with the Louisiana State Tax Commission and its predecessor since 1898. With these original reports, we exhibit a map showing the boundary line to which the K.C.S. bridge and tracks are measured for each State. There is attached hereto a true and correct copy of that portion of the maps which shows the bridge and boundary line to which each State has been assessing and collecting taxes. Original copies of this map have been exhibited or filed with the above mentioned taxing agencies of both States since at least 1940.

"The Louisiana Tax Commission also assesses and collects ad valorem taxes on that portion of these bridges

and tracks located east of the mid-stream line referred to above *and has never assessed or collected any taxes west of such line.*

"The State of Texas, through the County Tax Assessor-Collector of Newton County, has assessed and collected both State and County ad valorem taxes on that portion of the bridges and tracks which lie west of the mid-stream line referred to above, and the State of Texas has not assessed or collected any taxes east of such line.

"The line referred to above as the approximate geographic middle of Sabine River is a line which has been accepted through the years by both States approximately equi-distant from the east and west banks of Sabine River. To my knowledge, there has never been any contention by either of the respective taxing agencies that the line marking the extent of their taxing jurisdictions should be based on any other method of measurement or ascertainment.

"The above outlined procedure of assessment and rendition of taxes on this bridge by K.C.S. Ry. Co. and by both States has been used since 1898, and the records of my office indicate the same procedure for previous years." Emphasis supplied.

The first attached map shows a mid-Sabine boundary while the second contains this notation: "KCS Newton Co. Taxes begin at center of Sabine River."

Atchison, Topeka & Santa Fe Railway Company. An affidavit from G. E. Schuler (Texas' Exhibit E, pp. 34-36), Regional Tax Commissioner of the Atchison, Topeka & Santa Fe Railway Company, states:

"Our company has one railroad bridge across the Sabine River on which we render and Texas assesses and collects taxes to the approximate geographic middle of the channel of the River, and Louisiana accepts our rendition and assesses and collects taxes to the same midpoint on that portion of our property which is located within the eastern portion of the River. This bridge was constructed in 1906, and crosses the Sabine approximately 1.2 miles east of Bon Wier, Texas. The State of Texas and Newton County assess and collect an intangible tax based upon the mileage of our lines located within its boundaries. Our reports and renditions to each State are based upon the mileage measured to the approximate middle of the channel of Sabine River,

which has been accepted by the Texas State Intangible Tax Board, by Newton County in behalf of itself and the State, and by the State Tax Commission of Louisiana as the correct boundary line between the States for many years. These reports have been filed annually with the said County and Board since the present Texas Intangible Tax, first levied in 1905, became applicable to the line in 1907, and have been filed with the Louisiana State Tax Commission and its predecessor since 1907. There is attached hereto a true and correct copy of that portion of the map which shows the bridge and boundary line to which each state has been assessing and collecting taxes. Original copies of this map have been exhibited to, or were available to, the above mentioned taxing agencies of both States since at least 1907.

"The Louisiana Tax Commission also assesses and collects ad valorem taxes on that portion of the bridge and tracks located east of the mid-stream line referred to above *and has never assessed or collected any taxes west of such line.*

"The State of Texas, through the County Tax Assessor-Collector of Newton County has assessed and collected both State and County ad valorem taxes on that portion of the bridge and tracks which lie west of the mid-stream line referred to above, and the State of Texas has not assessed or collected any taxes east of such line.

"The line referred to above as the approximate geographic middle of the channel of Sabine River is a line which has been accepted through the years by both States. To my knowledge, there has never been any contention by either of the respective taxing agencies that the line marking the extent of their taxing jurisdictions should be based on any other method of measurment or ascertainment.

"The above outlined procedure of assessment and rendition of taxes on this bridge by our company and by both States has been used since 1907, and the records of my office so indicate." Emphasis supplied.

The attached maps show a mid-Sabine boundary.

Gulf States Utilities Company. Texas' Exhibit E, pp. 46-47. The Gulf States Utilities Comany has three transmission lines (apparently carrying crude oil) across the Sabine River. Two of the lines were constructed in 1949, while the third was constructed in 1969. Since these years of construction, Texas has collected ad valorem taxes on the lines west of the geogra-

phic middle of the Sabine, and Louisiana has collected on those east of that line. According to the Assistant Treasurer of Gulf States (Texas' Exhibit E, p. 46), to his knowledge Louisiana has never assessed or collected taxes to the west of the geographic middle of the Sabine.

The affidavits from tax officials of thirteen other pipeline companies are found in Texas' Exhibit G, pp. 115-59. All of the affidavits show that Texas assessed and collected taxes on that portion of the companies' lines west of the approximate geographic middle of the Sabine River, and that Louisiana assessed and collected east of the geographic middle. The affidavits clearly show that the taxing officials of both Texas and Louisiana have accepted the geographic middle of the Sabine River, equidistant from the east and west banks, as the boundary between the two States. There are several maps attached to these affidavits which show a mid-Sabine boundary.

2. *Local Assessment*

Orange County, Texas assesses and collects ad valorem taxes on various privately owned docks, wharves, utilities, railroads, and pipelines located in Orange County on, over, or under the western half of Sabine River. As stated in the Orange County Assessor-Collector's affidavit (Texas' Exhibit E, pp. 48-49), among these taxed properties are:

> "1. The west half of the Levingston Shipbuilding Company's floating pontoon bridge across the Sabine from Orange to Louisiana Harbor Island, as well as a dock on wharf owned by Levingston on the west side of the River.
>
> "2. Marine ways, sheet piling and outfitting docks of the American Bridge Division of U. S. Steel Company extending from the west bank of the Sabine into the western part of the River.
>
> "3. Outfitting docks, marine ways, and floating dry dock of Weaver Shipyards located in Sabine River adjacent to the west bank.
>
> "4. That portion of the Southern Pacific Railroad bridge and tracks from the west bank of Sabine River, near Orange, to the geographic center of the Sabine River.
>
> "5. That portion of the Gulf States Utilities Company transmission line from the west bank of the Sabine to the geographic center of Sabine River where same crosses the river near Orange in Orange County.

"6. Various oil and gas pipelines which cross the west half of Sabine River in Orange County, Texas.

"Taxes on the above described properties have been assessed and collected annually since the improvements were constructed, some of which date back for more than 30 years."

Records of the tax assessment of Sabine Lake mineral leases by Jefferson County, Texas, and Newton County, Texas, are found in Texas' Exhibit B, pp. 76-83. *See also* Texas' Exhibit G, pp. 160-61.

The city of Orange, Texas, has assessed and collected ad valorem taxes on property located in the western half of the Sabine River since 1914 (Texas' Exhibit E, pp. 50-51). A map and photo of the properties taxed are found in Texas' Exhibit E, pp. 51a and 64. Port Arthur, Texas has also assessed and collected ad valorem taxes since 1951 on various facilities in the western half of the Sabine River. A list of the taxed properties is given in Texas' Exhibit E, pp. 65-67.

(C.) PLEASURE ISLAND

Beginning in 1911, Port Arthur, Texas began to extend that city's eastern boundaries to the middle of Sabine Lake. Texas' Exhibit A, pp. 46-47; Texas' Exhibit B, pp. 69-71A. In 1914, Orange, Texas also included within its boundaries a portion of the western half of Sabine River. Texas' Exhibit E, pp. 52-56. The boundary was extended to the Sabine's "centerline" in 1955 and 1957. Texas' Exhibit E, pp. 57-63.

Apparently sometime after 1911, Port Arthur started reclaiming certain submerged lands in Sabine Lake. This land was used to create the filled land now known as Pleasure Island, comprising approximately 3,202 acres. The original west bank of Sabine Lake, prior to man-made fills, was on the *west* side of Pleasure Island. *See* Texas' Exhibit A, p. 47; Texas' Exhibit F, p. 35. A picture of Pleasure Island is found in Texas' Exhibit B, p. 71A.

Port Arthur has spent over a million dollars developing Pleasure Island, which now contains a municipal golf course, a recreational area and pleasure pier, a public boat marina, the local headquarters of the U. S. Corps of Engineers (Texas' Exhibit E, p. 77), the U. S. Army Reserve Training Center

(Texas' Exhibit E, p. 86), the U. S. Navy and Marine Reserve Training Center (Texas' Exhibit E, p. 87), and an athletic stadium (Texas' Exhibit E, p. 88).

Approximately $489,600 was spent by Jefferson County, Texas and the State of Texas in building a hard-surface road on Pleasure Island, running from Pleasure Pier to Mesquite Point. Texas' Exhibit B, p. 70. There is at least one high-level, fixed-span bridge connecting Pleasure Island with the mainland. Texas' Exhibit E, p. 89. Most of the evidence concerning Pleasure Island is found in Texas' Exhibit E, pp. 68-92. *See also* Texas' Exhibit G, pp. 4-15.

In his affidavit (Texas' Exhibit B, pp. 69-71), Robert A. Bowers, City Engineer and Director of Planning for Port Arthur, Texas, states:

"Texas State, County and City law enforcement officers have for as long as I can remember enforced the laws of this State and the ordinances of Port Arthur on Pleasure Island. Louisiana officials have acquiesced in this. I have never heard of any protest from Louisiana against the City's ownership of, improvements on, or exercise of jurisdiction over the lands extending to the middle of Sabine Lake as shown on the map attached as Exhibit 'A' [Texas' Exhibit A, p. 46]." Mr. Bowers also testified at the New Orleans hearing. Transcript, pp. 243-300.

(D.) Texas Parks and Wildlife Commission

According to an affidavit from the State Law Enforcement Coordinator for the Texas Parks and Wildlife Department (Texas' Exhibit B, pp. 57-59) and testimony given at the New Orleans hearing (Transcript, pp. 534-36, 541-42), the Texas wildlife officials have enforced the Texas game and fish laws on the west one-half of Sabine River, Sabine Lake, and Sabine Pass. Violations of the Texas laws on the western half of the Sabine were prosecuted in the Texas counties "whose boundaries extended by law to the center of said streams." The Louisiana officials did not attempt to enforce the Louisiana game and fish laws on the western one-half of the Sabine.

In 1967-1968 and 1969, the Texas Parks and Wildlife Commission and the Louisiana Wildlife and Fisheries Commission

signed agreements (Texas' Exhibit B, pp. 60-68), authorized by the Louisiana Legislature (Texas' Exhibit C, pp. 15-18), which allowed the possessor of a fishing license from either State to fish anywhere in the "common boundary waters" of Texas and Louisiana. Louisiana claims these agreements cannot establish any legal boundary between the two States because they 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." Louisiana's Exhibit B, pp. 32-34. They are, however, items of evidence supporting the claim of assertion by Texas and acquiescence by Louisiana in a mid-Sabine boundary.

(E.) Other Items of Prescription and Acquiescence

(1) *1857.* On March 19, 1857, the Louisiana Legislature approved an act appropriating $15,000 "for the improvement of the Sabine River," on the condition that Texas would spend at least an equal amount for the same purpose. The title of the act states: "An Act to improve the navigation of the Sabine River." Texas' Exhibit C, p. 14; Louisiana's Exhibit H, pp. 34-35. On February 15, 1858, the Louisiana Legislature requested the Governor of Louisiana to forward to the Governor of Texas a copy of the March 19, 1857 Act. Louisiana's Exhibit H, pp. 11-12. *See also* Louisiana's Exhibit H, pp. 13, 27-28, 36-37.

(2) *1901-1902. State v. Burton.* In the case of *State v. Burton*, 105 La. 516, 29 So. 970 (1901), a Louisiana bootlegger was selling liquor from a boat anchored in the western half of the Sabine River, but tied by a rope to a floting gambling establishment, which was in turn tied to the Louisiana river bank. The bootlegger was convicted of selling liquor without a Louisiana license. The Louisiana Supreme Court reversed the conviction on the ground that the defendant had been in Texas territory when making the sales, thus depriving Louisiana courts of jurisdiction. The court stated:

> "It cannot be contended that Louisiana courts have jurisdiction over Texas territory. . . . That the middle of the Sabine river is the boundary line between Louisiana and Texas, see act of congress approved March 26, 1804, . . . treaty between the United States and Spain

made in 1819; Act Cong. July 5, 1848; act of the legislature of Texas approved November 24, 1849, which act is under and in accordance with the act of congress of 1848; . . . preamble of the constitution of Louisiana of 1812. . . . We do not see that the fact that the boat in question is tied to the Louisiana shore by means of a rope, and thereby made one, as it were, with a gambling establishment on the Louisiana shore, can make any difference in the matter. The jurisdiction of the Louisiana courts cannot be extended over Texas territory by means of a rope." Texas' Exhibit B, p. 86.

The Louisiana Attorney General's brief in the case (Texas' Exhibit B, pp. 87-98) contains the following: "The facts, therefore, are that the defendant sold liquor by retail on and from a boat *lying on the Texas side of the Sabine river,* a navigable stream, to citizens of Louisiana . . . . The mere fact that the boat, on which the whiskey was sold at retail, was not at the time on the eastern or Louisiana side *of a line drawn down and along the middle of the Sabine river, but was on the Texas side of the line,* does not militate against the right of the State of Louisiana to prosecute defendant . . . ." (emphasis supplied)

The decision was reaffirmed by the Louisiana Supreme Court in *State v. Burton,* 106 La. 732, 31 So. 291 (1902) (Texas' Exhibit C, pp. 21-22). This was a second prosecution against the bootlegger for selling liquor without a Louisiana license but this time he was found to have been selling on the *Louisiana* side of the river.

(3) *1910.* On June 27, 1910, the Assistant Secretary of the United States Department of Interior issued an opinion to the Commissioner of the General Land Office on a dispute over certain islands in the Sabine River, which were claimed by Louisiana, Texas, and the United States (Texas' Exhibit B, pp. 1-8). The opinion stated that Louisiana's western boundary was the middle of the westernmost channel of the Sabine River.

The brief filed in the dispute by the State of Louisiana (Texas' Exhibit B, pp. 9-34) argued that Louisiana's western boundary went to the "middle of the main or sailing channel, of Sabine Pass, Sabine Lake and Sabine river, 'including all islands.'" The brief claimed that until Congress gave the western Sabine to Texas in 1848, the "United States enjoyed

sovereignty and general jurisdiction over the remaining western half." Texas' Exhibit B, p. 19. *See also* Louisiana's Exhibit S ("Exhibit C" contained therein).

(4) *1959.* In 1959, Louisiana filed a brief in the dispute before the United States Supreme Court over certain offshore submerged lands in the Gulf of Mexico (*United States v. Louisiana,* 363 U.S. 1 (1960)). The brief argued that Louisiana's western boundary was the middle of the Sabine, including all islands *east* of this mid-Sabine boundary. Texas' Exhibit C, pp. 30-32a. The record in this case is not all supportive of Texas' claim.

A portion of the oral argument in the case is found in Louisiana's Exhibit H, pp. 1-8. In that argument, the Attorney General of Texas, Will Wilson, now an Assistant Attorney General of the United States, refers to "the treaty between Spain and the United States in 1819, *which fixed the boundary between Texas and Louisiana . . . .*" (emphasis supplied) This is the claim of Louisiana in this case. Your Special Master, however, cannot give this oral statement in argument as great weight as the written statement in a brief and would emphasize as to each that the other acts of the parties support, by a great preponderance of the evidence, the Texas claim of assertion by Texas and acquiescence by Louisiana.

(5) *1965.* Texas' Exhibit E, pp. 152-54. In July of 1965, the Texas Water Commission issued Bulletin 6516, "Geology and Ground-Water Resources of Orange County, Texas." The booklet was prepared by the United States Geological Survey in cooperation with several Texas agencies. The booklet contains a map showing a mid-Sabine boundary between Texas and Louisiana.

(6) *Texas and Louisiana State Highway Patrols.* An affidavit from C. L. Russell, Captain of the Texas Highway Patrol (Texas' Exhibit E, pp. 150-51), shows that Texas has enforced the Texas traffic laws and investigated traffic accidents west of the geographic middle of Sabine River. Captain Russell states that he has never heard of Louisiana officers seeking to enforce Louisiana law on the west half of the Sabine. "On the contrary, the middle of the river was recognized by the officers of both states and used as the state line boundary for all purposes."

Louisiana's Exhibit Q contains seventeen accident reports filed by the Louisiana Department of Public Safety, Division of State Police, one of which apparently occurred on the west side of Sabine River. Seven of the reports state that the accident took place east of the "LA-TEX LINE," "LA-TEXAS STATE LINE," or "Orange, Texas Line." The other nine reports only indicate that the accident occurred somewhere over the Sabine River.

INDEX OF EVIDENCE, INCLUDING EXHIBITS, ETC.

Texas Exhibit

A Map Folio (49 pages)

B Documents in support of Texas' Motion for Judgment (101 pages)

C Documents in support of Texas' Motion for Judgment (128 pages)

D Oil, gas, and mineral leases executed by the State of Louisiana (175 pages)

E Documents and maps allegedly showing recognition and use of the geographic mid-Sabine River boundary by the United States Congress and federal agencies and taxation by Texas and other exercise of jurisdiction to such line by the State of Texas (196 pages)

F Map Folio (81 pages)

G Documents in support of Texas' Motion for Judgment (184 pages)

H Geological Survey Bulletin 1212—"Boundaries of the United States and the Several States"

I There is no Texas Exhibit I

J Letter of December 31, 1970, from Price Daniel, Special Assistant Attorney General of Texas, to Robert Van Pelt, Special Master

K Documents accompanying letter of December 31, 1970 (Exhibit J, *supra*)

L Affidavit of William W. Kibler, Assistant Professor in the Department of French and Italian Languages, University of Texas at Austin

M Resolution and Agreement of the Louisiana State Mineral Board with accompanying plat and division order

N Pooling Agreement for certain leases executed by the State of Louisiana to the Ohio Oil Company, with attached plat

O Consent of the State of Louisiana to a pooling agreement by the Ohio Oil Company, with attached plat

P Oil Division Order dated May 28, 1952

Q Oil Division Order dated June 20, 1952

R Louisiana State Mineral Board Resolution with attached oil division order and letter

S Oil Unitization Agreement dated September 7, 1954, with attached plat

T Unitization Agreement dated June 15, 1961, with attached plat

U Unitization Agreement dated June 15, 1961, with attached documents and plat

V Resolutions of the Louisiana State Mineral Board with attached Gas Unit Pooling Agreement and Designation

W Map of Sabine Lake and entrance to the Gulf of Mexico with the notation "Portion of D. 965 Surveyed by George Gauld 1777."

X Profile of the water surface elevation of the Sabine-Neches Canal at the Port Arthur area office of the United States Corps of Engineers

Y Photograph taken over Stewts Island in Sabine Lake, May 27, 1971

Z Photograph taken above the Sabine-Neches Canal in the north end of Sabine Lake, May 27, 1971

AA Aerial photograph of a portion of Sabine Lake, dated "10/12/1964"

BB Map of Sabine Lake

CC Field notes and map or survey dated March 4, 1861

DD Map of Orange County, Texas, dated August, 1862

EE Map of Orange County, Texas, dated June, 1897

FF Oil and Gas Lease No. 49749, executed by the State of Texas, with accompanying plat

GG Map of southern Louisiana showing shell leases executed by the State of Louisiana

Louisiana Exhibit

A Documents in opposition to Texas' Motion for Judgment (354 pages)

B Documents in opposition to Texas' Motion for Judgment (72 pages)

C Documents in opposition to Texas' Motion for Judgment (193 pages)

D Documents in opposition to Texas' Motion for Judgment (153 pages)

E Documents in opposition to Texas' Motion for Judgment (107 pages)

F Map Folio (9 pages)

G Large folio in opposition to Texas' Motion for Judgment

H Documents in opposition to Texas' Motion for Judgment (69 pages)

I Booklet entitled "The History and Regulation of the Shell Dredging Industry in Louisiana" (32 pages)

J Letter of August 3, 1970, with accompanying documents and maps

K Map Folio (23 pages)

L Documents in opposition to Texas' Motion for Judgment (93 pages)

M THOMAS MAITLAND MARSHALL, II A HISTORY OF THE WESTERN BOUNDARY OF THE LOUISIANA PURCHASE, 1819-1841 (1914)

N Letter of December 26, 1970, with attached documents

O Letter of December 30, 1970, with attached exhibits O(1) through O(6)

P Letter of May 18, 1971, with attached documents

Q Letter of May 26, 1971, with attached accident reports

R Letter of June 1, 1971, with attached exhibits R(a), R(b), and R(c)

S Trial Memorandum on Behalf of the State of Louisiana and accompanying "Exhibits" A, B, and C

S(1) A Message from President Tyler to the United States Congress

T Affidavit of Gordon Johnson

U Index or Digest of Items in Evidence dated (a) before 1941 and (b) after 1941

V Map Folio (17 pages)

W(1) and
W(2) Stereoscopic photographs of a portion of Sabine Lake, December 1, 1930

X(1)-
X(4) "Aerial Mosaics" of portions of Sabine Lake, October, 1955

Y, Y(1), and
Y(2) Three Quadrangle Maps by the United States Geological Survey

Z(1),
Z(2) Stereoscopic photographs of a portion of Sabine Lake, November 17, 1955

AA(1),
AA(2) Stereoscopic photographs of a portion of Sabine Lake, March 23, 1968

BB(1), BB(2) and
BB(3) Official Louisiana Township plats

CC(1)-
CC(4) Map of the Sabine River around the "Narrows," together with copies of three maps drawn from the

notes of Survey of the Commission appointed to survey the boundary between the United States and the Republic of Texas under the Convention of April 25, 1838, which relate to the land portion of the boundary

Also in Evidence

State of Louisiana's Interrogatories to the State of Texas

State of Texas' Reply to the Interrogatories of the State of Louisiana

State of Texas' Requests for Admissions addressed to the State of Louisiana

State of Louisiana's Response to State of Texas' Requests for Admissions

For Oral Evidence, see:

Reporter's Transcript of Proceedings before Special Master in Houston, Texas, on December 16, 1970 (one volume)

Reporter's Transcript of Proceedings before Special Master in New Orleans, Louisiana, on June 9-10, 1971 (two volumes)

Items as to Which Counsel Agreed the Special Master Could Take Judicial Notice

A. TEXTBOOKS

2 ADAMS, HISTORY OF THE UNITED STATES

S. F. BEMIS, JOHN QUINCY ADAMS AND THE FOUNDATION OF AMERICAN POLICY (1956)

2 J. H. BROWN, HISTORY OF TEXAS, 1689-1892

1 CHAMBERS, HISTORY OF LOUISIANA

4 CHANNING, HISTORY OF THE UNITED STATES

CREASY, FIRST PLATFORM ON INTERNATIONAL LAW

4 GAYARRE, HISTORY OF LOUISIANA

J. K. HOSMER, HISTORY OF THE LOUISIANA PURCHASE (1902)

T. JEFFERSON, THE LIMITS AND BOUNDS OF LOUISIANA (1804), in DOCUMENTS RELATING TO THE PURCHASE AND EXPLORATION OF LOUISIANA (1904)

8 MANNING, DIPLOMATIC CORRESPONDENCE OF THE UNITED STATES

4 MEMOIRS OF JOHN QUINCY ADAMS

5 MEMOIRS OF JOHN QUINCY ADAMS

5 MESSAGES AND PAPERS OF THE PRESIDENTS (Polk, Inaugural Address, 1845)

3 MILLER, TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA (1934)

2 A. L. SHALOWITZ, SHORE AND SEA BOUNDARIES (Coast and Geodetic Survey, U. S. Department of Commerce 1962)

4 STATE PAPERS, FOREIGN RELATIONS

2 M. M. WHITEMAN, DIGEST OF INTERNATIONAL LAW (U. S. Department of State 1963)

19 THE WRITINGS OF THOMAS JEFFERSON, MONTICELLO EDITION (1904)

B. PERIODICALS

Cox, *The Louisiana-Texas Frontier,* 17 SW. HISTORICAL Q. 1-42, 140-87 (1913)

Manning, *Texas and the Boundary Issue, 1822-1829,* 17 SW. HISTORICAL Q. 217, 240-60 (1913)

Schwarzenberger, *Title to Territory: Response to a Challenge,* 51 AM. J. INT'L L. 308 (1957)

Stenberg, *Jackson's Neches Claim, 1829-1836,* 39 SW. HISTORICAL Q. 255

Stenberg, *The Texas Schemes of Jackson and Houston, 1829-1836,* 13 SW. SOCIAL SCI. Q. 264-86; 15 SW. SOCIAL SCI. Q. 299-350

C. MISCELLANEOUS

Compilation of River and Harbor Acts, three volumes, compiled and published by the United States Army Corps of Engineers (1913)

CONG. GLOBE, 24th Cong., 2d Sess. 270 (1837)

Douglas, *Boundaries, Areas, etc. of the United States and the Several States,* GEOLOGICAL SURVEY BULL. No. 817 (1930)

B. Hermann (Commissioner of the United States General Land Office), *The Louisiana Purchase,* H.R. Doc. No. 708, 56th Cong., 1st Sess. (1900)

U. S. DEPARTMENT OF THE INTERIOR, GEOLOGICAL SURVEY BULL. Nos. 13 (1885); 171 (1900); 226 (1904); 689 (1923).