No. 36 ORIGINAL

In the Supreme Court of the United States

(OCTOBER TERM, 1969)

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

BRIEF OF THE STATE OF LOUISIANA IN SUPPORT OF THE EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER AND IN SUPPORT OF THE MOTION FOR ORAL ARGUMENT

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PRELIMINARY STATEMENT

This is an original action instituted by the State of Texas (Texas) against the State of Louisiana (Louisiana) to establish its rights as against Louisiana to the jurisdiction and ownership of the west half of Sabine Pass, Sabine Lake and Sabine River (Sabine) from the mouth of the Sabine in the Gulf of Mexico to the 32° of north latitude and for a decree confirming the boundary of the two states in the middle of said stream.

After Texas was permitted to file this suit,[1] Louisiana filed motions, answer and counter-claim urging its boundary to be on the west bank of the Sabine from

[1] *State of Texas v. State of Louisiana*, 397 U.S. 931, 90 S.Ct. 939 (1970).

the Gulf of Mexico to the 32° of north latitude, thence north to the 33° of north latitude. Texas, by stipulation, removed any adverse claim to Louisiana's boundary from the 32° of north latitude to the 33° of north latitude.

The case was then referred to the Honorable Robert Van Pelt, Senior Judge of the United States District Court for the District of Nebraska, as Special Master, for further proceedings and "to submit such report as he may deem appropriate." [2]

The Special Master held hearings, received evidence and forwarded his report to this Court on the 4th day of May, 1972.[3] By order of this Court dated May 22, 1972, Texas and Louisiana were granted forty-five days to file exceptions to the report and supporting briefs. Louisiana files simultaneously with this brief its exceptions to the report of the Special Master.

We are not here dealing with a dispute over a boundary between two states of recent origin. Nor are we dealing with a water boundary that has been surveyed, established and recognized by both states. These facts are made clear by a statement of Mr. Jerry Sadler, Commissioner of the General Land Office of Texas, in his letter of December 14, 1964 to Mr. J. C. Bonne-

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[2] *State of Texas v. State of Louisiana*, 398 U.S. 934, 90 S.Ct. 1833 (1970).

[3] The Special Master found: "Most of the facts, except as to the islands in the Sabine River [the Master uses the term "Sabine River" to include the River, Pass, and Lake, unless otherwise noted] in 1812, appear to your Special Master to be undisputed. The disputes largely center about the conclusions to be drawn from the facts." Page 12, Report of Special Master.

carrere, Executive Secretary of the State Mineral Board of Louisiana, when he said:

> "It has long been recognized by officials of both Louisiana and Texas *that the exact location of the boundary between the two states has been in dispute* and from our past discussions and correspondence, it is apparent that both states recognize the seriousness of the problem and the need for a settlement." [4]

We briefly mention, in this introductory statement, the fact that this is an unusual boundary case between two sovereign states because it involves (1) navigable bodies of water in which the inhabitants of both states by treaty have the non-exclusive "use" and "navigation" of the water throughout the extent of these bodies of water and (2) Louisiana's western boundary was located by treaty on the west bank of the Sabine after Louisiana was admitted as a state and which boundary coincided with Texas's boundary when it was admitted as a state.

Louisiana takes exception to the Special Master's report; first, in finding that Louisiana's boundary was not located, and fixed by treaties after it was admitted into the Union and the boundary later surveyed and staked on the west bank of the Sabine and the finding that Texas acquired the bed and subsoil of the west half of the Sabine by Act of Congress of 1848; secondly, for holding that Louisiana lost title to the bed and subsoil of the west half of the Sabine by acquiescence and prescription; thirdly, in the alternative, for hold-

[4] Louisiana Exhibit B, Item 8.

ing the thalweg doctrine does not apply, and that Louisiana's boundary does not extend to the channel of the Sabine west of the most westerly islands in the Sabine; and lastly, in the alternative, in failing to hold Louisiana owned all of the islands in the Sabine whether or not they existed in 1812. The Special Master correctly held Louisiana owned all the islands in the Sabine in 1812.

This brief addresses itself to all of Louisiana's exceptions to the Special Master's report, but they shall not be taken up and pursued necessarily in the order presented. The reason for this departure from sequence is for the purpose of clarity, cohesive argument and to prevent repetition.

When the Republic of Texas was admitted as a state into the Union in 1845, Congress consented that the territory properly belonging to the Republic of Texas may enter the Union as a new state called the "State of Texas".[5] The Republic of Texas accepted the conditions,[6] and by joint resolution of Congress, approved December 29, 1845, Texas was admitted as one of the States of the Union.[7]

At the time the Republic of Texas was admitted as a state into the Union, its eastern boundary had been fixed on the west bank of the Sabine from the Gulf of Mexico to the 32° of north latitude and thence north to the 33° of north latitude, which coincided with the west boundary of Louisiana.

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[5] 5 U.S. Stat. 797.

[6] 1 Sayles Early Laws of Texas at pages 567-69, art. 1531.

[7] 9 U.S. Stat. 108.

SUMMARY OF POINTS FOR ARGUMENT

POINT "A"

The Special Master found that Texas legally extended its boundary which was fixed on the west bank of the Sabine to the geographical middle of these bodies of water from the Gulf of Mexico to the 32° of north latitude. This holding was based on an Act of the Legislature of Texas of November 24, 1849 and an Act of Congress of July 5, 1848. If Louisiana's west boundary is on the west bank of the Sabine from the Gulf to the 32° of north latitude, as established by the Treaty of Amity of 1819, then Texas could not extend its boundary so as to acquire from Louisiana title to the bed and subsoil of the west half of the Sabine and neither could the Congress of the United States authorize such a transfer. The first issue, therefore, before this Court is whether Louisiana's west boundary was fixed and established on the west bank of the Sabine by the Treaty of Amity of 1819, approved by later treaties, and surveyed and staked in 1839-41. The diplomatic correspondence, Acts of Congress, and Acts of the State of Louisiana support the fact that Louisiana's boundary *was* established on the west bank of the Sabine by the Treaty of 1819, which was later surveyed and staked in 1839-41.

POINT "B"

Louisiana maintains that the Act of the Texas Legislature of 1849, the Act of Congress of July 5, 1848, and Acts of the Legislature of Louisiana, merely

authorized Texas to assert criminal jurisdiction over the west half of the Sabine and did not transfer title to the bed and subsoil of the west half of the Sabine to Texas.

The Special Master held Louisiana lost title to the bed and subsoil of the west half of the Sabine by acquiescence and prescription. We are here dealing with a *water boundary*, as claimed by Texas, which has never been surveyed and staked. The only boundary between Texas and Louisiana that has been surveyed and staked is the boundary on the west bank of the Sabine, which was surveyed and staked in 1839-1841. There is no dispute over this fact. In passing on the question of acquiescence and prescription it will be necessary for this Court to consider the rights of the inhabitants of Texas and Louisiana (as established, first, by the Treaty of Amity of 1819 and later ratified by subsequent treaties) to the "use" and "navigation" of the waters of the Sabine. The inhabitants of both States had co-equal rights extending throughout the length and width of the Sabine, which meant, among other things, that they could construct wharves, fish and hunt in the waters and navigate the waters. Louisiana has exercised rights in the west half of the Sabine, consisting of granting shell leases and oil and gas leases and Texas has exercised rights in the west half of the Sabine. It is Louisiana's position that the acts Texas relies on to establish acquiescence and prescription were performed under the right to "use" and "navigate" the waters of the Sabine and under the "dominant servitude" of the United States over naviga-

ble waters. They did not have the effect of possessing the bed and subsoil adverse to Louisiana.

Louisiana has and continues to assert its ownership to the west half of the Sabine. We respectfully urge that the evidence, when interpreted in the above light, does not sustain the Special Master's holding that Louisiana lost the bed and subsoil of the west half of the Sabine by acquiescence and prescription.

POINT "C"

While Louisiana maintains that its boundary is on the west bank of the Sabine, nevertheless, if this Court disagrees and holds that Louisiana is bound by the statutory language of its Constitution of 1812, which provided:

> "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 .....",

then Louisiana maintains that its boundary should be along the main channel of the Sabine, west of the most westerly island in the Sabine as it existed in 1812. This Court, in many cases, has interpreted a phrase similar to "middle of said river" as being in the middle of the *main navigation channel.* The "Thalweg Doctrine" was applied to Louisiana's water boundary with the State of Mississippi.

There has never been any mid-stream boundary surveyed and accepted by Texas and Louisiana over a period of many years and the Special Master was in error in holding that a mid-stream boundary was established by acquiescence.

POINT "D"

The Special Master was correct in finding that Louisiana owned all of the islands in the Sabine in 1812, but the Special Master was in error in holding that Louisiana does not own all of the islands in the Sabine formed since that date. Once Louisiana's boundary was established in the channel of the Sabine west of the most westerly islands, this boundary was not lost by the erosion of the islands either by natural or artificial means. There was nothing in the act of admission of Louisiana, or Louisiana's Constitution, limiting the islands to those in existence in 1812. There was no mention of any islands in the Acts of the Texas legislature of 1849 or in the Act of Congress of July 5, 1848, which are relied on by Texas. Louisiana did not lose the islands to which it had title by erosion or by acquiescence.

ARGUMENT

POINT "A"

THE SPECIAL MASTER WAS IN ERROR IN HOLDING THAT TEXAS LEGALLY EXTENDED ITS BOUNDARY ON THE WEST BANK OF THE SABINE TO THE GEOGRAPHICAL MIDDLE OF THE SABINE FROM THE GULF OF MEXICO TO THE 32° OF NORTH LATITUDE BY ACT OF THE TEXAS LEGISLATURE OF NOVEMBER 24, 1849 (3 GAMMEL'S LAWS OF TEXAS 442) SO AS TO ACQUIRE TITLE TO THE BED AND SUBSOIL OF THAT PORTION OF THE SABINE, FOR LOUISIANA OWNED THE BED AND SUBSOIL OF THE

SABINE TO ITS WEST BANK, AS SURVEYED AND STAKED IN 1839-1841.[8]

It is evident from the facts, and was so found by the Special Master, that when the Republic of Texas entered the Union in 1845 as a state its boundary was on the west bank of the Sabine as established by the treaties between the United States and Spain in 1819,[9] between the United States and Mexico in 1828,[10] and between the United States and the Republic of Texas in 1838,[11] and which was surveyed and staked in 1839-1841 by a Joint Commission appointed by the United States and the Republic of Texas.[12]

In its brief filed with the Special Master, in support of motion for judgment, Texas stated:

> "This suit was instituted by the State of Texas for the purpose of establishing its rights as against the State of Louisiana to the jurisdiction over and ownership of the western half of the Sabine River from the mouth of the River on the Gulf of Mexico to the 32nd degree of north latitude, and for a decree confirming the boundary of the two States in the middle of said stream." [13]

Texas and Louisiana entered into a stipulation in this suit recognizing between themselves the landed portion of the boundary, namely:

> "The eastern boundary of the State of Texas

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[8] Pages 20-26, Report of Special Master.
[9] 8 U.S. Stat. 252.
[10] 8 U.S. Stat. 372.
[11] 8 U.S. Stat. 511.
[12] Louisiana Exhibits A (Item 13), and F (Items 2 and 3)
[13] Page 3, Brief for the State of Texas in Support of Motion for Judgment.

> between the 32nd and 33rd degrees of north latitude is a line marked on the ground in 1840-1841 by Commissioners appointed by the United States and the Republic of Texas from the junction of the west bank of the Sabine River with the 32nd degree of north latitude, thence north to the 33rd degree of north latitude, being the same line fixed by the Treaties between the United States and Spain in 1819, between the United States and Mexico in 1828, and between the United States and the Republic of Texas in 1838. This line has remained the same since it was so marked on the ground." [14]

The stipulation also provides:

> "That the Sabine River, Sabine Lake, and Sabine Pass are in fact navigable streams for the entire distance between the Gulf of Mexico and the 32nd degree of north latitude and were navigable in fact, carrying river boat transportation, in 1812, 1819, 1849 and during all other years since 1812." [15]

Interestingly, Texas, at one time, did assert a claim to the landed portion of the boundary between the 32° and 33° north latitude to the line stated in the 1812 Constitution of Louisiana. Bascom Giles, Commissioner of the General Land Office for Texas, wrote Honorable Sam H. Jones, Governor of the State of Louisiana, to this effect on November 25, 1941.[16]

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[14] Pre-Trial Order and Stipulation dated September, 1970, particularly stipulation 3(b).

[15] Pre-Trial Order and Stipulation dated September, 1970, particularly stipulation 3(a).

[16] Louisiana Exhibit B, Item 1, particularly pp. 5-8; also Appendix "A", Item 2.

Texas now recognizes the boundary as surveyed and staked in 1839-41 from the 32° of north latitude to the 33° of north latitude, the northwest corner of Louisiana. In this litigation, Texas is attempting to establish its boundary to the geographic middle of the Sabine, commencing at the Gulf of Mexico and extending to the 32° of north latitude. The lateral boundary between Texas and Louisiana in the Gulf of Mexico does not form part of this litigation, and still remains in dispute.[17]

On what basis does Texas claim a mid-stream boundary in the Sabine when its boundary, on its admission into the Union, was on the west bank of the Sabine?

Texas is basing its claim on an Act of Congress of July 5, 1848[18] and an Act of the Legislature of the State of Texas on November 24, 1849.[19]

What was Louisiana's boundary when this purported extension was made in 1848? Louisiana's western boundary was on the west bank of the Sabine, as surveyed and staked in 1839-1841 and coincided with the boundary of Texas when it was admitted into the Union as a state in 1845.

Even though Louisiana was admitted into the Union as a state in 1812, its western boundary was

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[17] Texas excluded from this suit the lateral boundary between Texas and Louisiana in the Gulf of Mexico. Now that the Special Master has filed his report Texas officials are publicly asserting the extension of the midstream boundary into the Gulf of Mexico. Appendix "A", Item 4.

[18] 9 U.S. Stat. 245.

[19] 3 Gammel's Laws of Texas 442.

not finally established until the United States entered into the Treaty of Limits with Spain in 1819, which was proclaimed on February 21, 1821.[20] The Treaty, in part, provided:

> "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; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River . . ."

Louisiana's position that this Treaty established its western boundary is not without precedent. It was recognized by the Congress of the United States, when Louisiana was admitted into the Union, that its western boundary was to be settled by a Treaty between the United States and Spain. There were two other instances mentioned in Congress at that time where the boundary between a state and a foreign nation was in dispute and the settlement of the boundary between the United States and a foreign nation became the boundary of the state without any further action on the part of Congress or the state.

The first instance involved Massachusetts and a treaty between England and the United States and the other involved Georgia and a treaty between Spain, the United States and England. In discussing these instances Congressman Poindexter had this to say:

"It has been contended by an honorable gen-

[20] 8 U.S. Stat. 252; Louisiana Exhibit A, Item 7.

tleman from Connecticut, (Mr. Pitkin) that inasmuch as the western limits of Louisiana remain undefined, the State to be formed of the present Territory of Orleans would extend its jurisdiction over the province of Texas to Rio Bravo, and down that river to its confluence with the sea, so as to include the Bay of St. Bernard, and the whole extent of country, supposed by the American Government to be transferred by the French Republic under the name of Louisiana. This circumstance, it is alleged, will enable the Government of the new State to involve the United States in war, for the establishment of the most western boundary, to which we have asserted a claim. The gentleman has himself referred to a fact which, in my estimation, furnishes a sufficient answer to this objection. He admits that the northern boundary of the State of Massachusetts was never definitely established until commissioners were appointed by the Government of Great Britain and the United States, to ascertain what was the true river St. Croix. Anterior to that event it was uncertain how far north the jurisdiction of Massachusetts extended; but the most scrupulous advocates for State sovereignty never imagined that the State could decide its own boundaries, and call upon the general Government to support that decision at the point of the bayonet. The difficulty was adjusted by amicable negotiation, and the river designated by the two nations became the permanent boundary of the State. Can the gentleman distinguish that case from the one which exists as to the western boundary of Louisiana? By the second section of the bill, it is provided, that the State shall be composed of all that part of the ter-

ritory or country ceded under the name of Louisiana by the treaty made at Paris on the 3rd day of April, 1803, between the United States and France, 'now contained within the limits of the Territory of Orleans, except that part lying west of the river Iberville, and a line to be drawn along the middle of the lakes Maurepas and Ponchartrain to the ocean.' *The Territory of Orleans is limited indefinitely by the western boundary of Louisiana; but by an arrangement made in the Autumn of 1806, between the Commander-in-Chief of the American Army and the Commander of the Spanish forces in that quarter it was agreed that for the present the Spanish should not cross the Sabine, and that the American settlements should not extend to the river. To carry this arrangement into effect, the Government of the United States has given instructions that the public lands should not be disposed of west of a meridian passing by Natchitoches. Beyond that line I am inclined to believe the Territorial Government of Orleans has not yet extended its authority.* It follows, therefore, by a fair construction of the section to which I have referred, that the State to be formed of that territory will be confined within the same limits, until by an act of the General Government the western boundary of the cession shall be finally adjusted. It belongs exclusively to the high contracting parties, to render that certain, which by the deed of cession is equivocal, and whatever line they may consent to establish as the western extremity of the country ceded under the name of Louisiana will constitute the permanent limit of the State, whether it extends to Rio Bravo or the Sabine, or a meridian passing by Natchitoches. This, sir, is conformable with usage. The

> southern boundary of Georgia was fixed by the Treaty of the 27th day of October, 1795, with the King of Spain; and, by the Treaty of 1794 with Great Britian, the true river St. Croix was determined. In these instance, the States whose interests were involved, existed prior to, and were parties in, the adoption of the Federal Constitution; and yet no one ever questioned the right of the Government of the United States to settle the line of demarcation between them and the colonies of Great Britain and Spain. I put it to the candor of the gentleman from Connecticut to say whether the difficulty which he suggests, is not entirely removed by a reference to the practice of the Government on these occasions, similar in their nature to the present, and differing only in circumstances which rendered them more favorable to the interposition of State authorities.'" (Emphasis ours.)[21]

This discussion is very pertinent to Louisiana's claim for it must be remembered that when the United States acquired the Louisiana Purchase from France in 1803,[22] the western extent of the Louisiana Purchase was not fixed and was generally thought to include the Mississippi watershed, although there were claims by the United States to a much more westerly boundary.[23]

In 1804 the Louisiana Purchase was divided into the Territory of Orleans,[24] which extended from the 33° of north latitude south and the Louisiana Terri-

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[21] Louisiana Exhibit A, Item 5, particularly page 57.
[22] 8 U.S. Stat. 200.
[23] Louisiana Exhibit A, Item 2 [Bond, "Historical Sketch of Louisiana and the Louisiana Purchase" (1933)].
[24] U.S. Stat. 283.

tory extending from the 33° of north latitude north. During this period of time there was considerable agitation between the United States and Spain around the Sabine. Spain and the United States, recognizing that the boundary was in dispute, entered into an agreement in 1806. The United States, represented by General Wilkinson, and Spain represented by Lt. Col. Herrera, created a neutral zone.

According to House of Representatives, Document 190, 25th Congress, Second Session,[25] the neutral zone consisted of an area bounded by the Sabine on the west to the 32nd parallel, thence a straight line north to the Red River as the west boundary; the Red River as the northern boundary; a straight line running from the Red River in a southeasterly direction to intersect the Mermenteau River a few miles from its mouth, thence the Mermenteau to the Gulf of Mexico, as the eastern boundary; and the Gulf of Mexico as the southern boundary, as more vividly shown by the following map.[26]

This neutral zone purported to encompass the western claim of the United States and the eastern claim of Spain. This agreement was still in effect when Louisiana was admitted into the Union in 1812. This fact was noted by Mr. Poindexter in his discussion in Congress on the admission of Louisiana. The neutral zone was not settled until the Treaty of Amity of 1819.

When Louisiana entered the Union all unappro-

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[25] Louisiana Exhibit A, Item 12.
[26] Louisiana Exhibit A, Item 12, p. 99.

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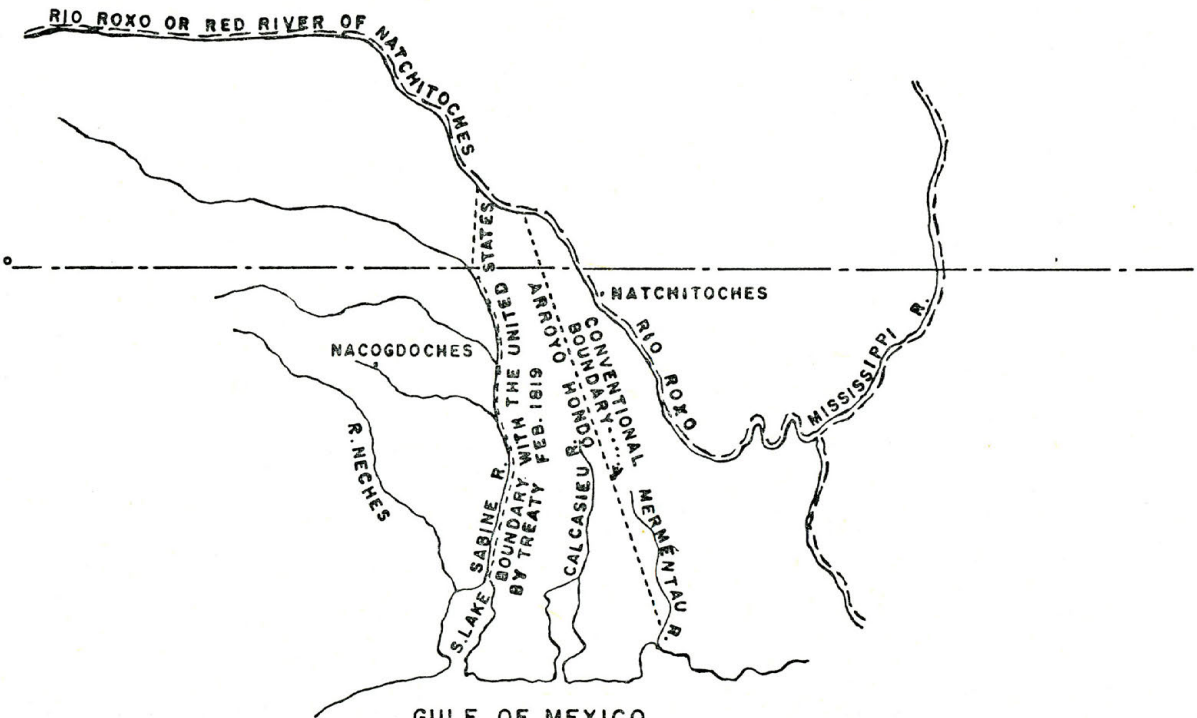
DOC. 190



SKETCH OF A PART OF THE BOUNDARY BETWEEN MEXICO & THE UNITED STATES AS FAR AS THE RED RIVER

priated lands vested in the United States, except the beds of navigable streams.[27] The United States, recognizing the limits imposed on it by the agreement of 1806, did not patent any lands in the neutral zone until after the Treaty of Amity in 1819. As a matter of fact, a Commission was appointed in 1821 to consider the lands formerly in the neutral zone.[28]

During the negotiations of the Treaty of 1819, the United States was represented by Secretary of State, John Quincy Adams, and Spain was represented by Count de Onis. The dispute not only concerned the boundary between the United States and Spain from the Gulf to the 33° of north latitude, but extended to the west coast and involved lands in Florida. Count de Onis urged that the boundary be established along the Mermentau River, while Adams urged that the boundary be established west of the Sabine. During the negotiations, Adams suggested, at one point, that the boundary be established along the east shore of the Sabine. He then urged that it be established in the middle of the Sabine and finally it was agreed that the boundary be established commencing at the Gulf on the west bank of the Sabine to the 32° of north latitude.[29] It must be remembered that *during these negotiations Louisiana had already been admitted as a*

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[27] Louisiana Exhibit A, Item 6 (2 U.S. Stat. 641).

[28] Louisiana Exhibit C, Item 3 (Document No. 445, 18th Congress, 2d Session), particularly pp. 135-137.

[29] (1) Louisiana Exhibit C, Item 2 (Haggard, "The Neutral Ground Between Louisiana and Texas, 1806-1821," *The Louisiana Historical Quarterly*, Vol. 28, No. 4, October, 1945). (2) *United States v. State of Texas*, 162 U.S. 1, 16 S.Ct. 725, 40 L.Ed. 867 (1896).

state. If the boundary had been established at the Mermentau River, as urged by de Onis on behalf of Spain, that would have become the western boundary of Louisiana even though the Constitution of Louisiana of 1812 called for a boundary "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 . . ." [30] If the boundary had been established on the east side of the Sabine, as one time suggested by Mr. Adams, that would have been the western boundary of Louisiana. Clearly, when the boundary was finally settled, Louisiana being the westernmost state, had its boundary established by that treaty. This was not a question of Louisiana acquiring title to additional land as found by the Special Master.[31] Louisiana was having its boundary established by the only authority that could establish its boundary with a foreign government.[32]

The Court of Civil Appeals of Texas in the case of *Fragoso v. Cisneros*, 154 S.W.2d 991 (1941) took this exact same position as to Texas' boundary on the Rio Grande. The court in that case had for consideration the question of whether treaties between the U.S. and Mexico, settling the boundary along the Rio Grande, established the boundary of Texas with Mexico as it affected certain lands without any additional action on the part of Texas and the United States. The question

[30] West's Louisiana Statutes Annotated, Constitution, Volume 3, p. 511.

[31] Pages 20-26, Report of Special Master.

[32] *State of Rhode Island v. Commonwealth of Massachusetts*, 37 U.S. 657 12 Peters 657, 9 L.Ed. 1233, 1260-1 (1838); Article I, Section 10, U.S. Constitution.

was when the disputed land became part of Texas and the Court said, after discussing the various treaties:

> "... in the adjustment of the boundary line by the Treaty of 1905, in our opinion the United States adjusted the boundary line of Texas as to the Republic of Mexico. This, we believe, from the moment of the effective date of the treaty constituted the eliminated bancos a part of Texas and that the territory was subject to both the civil and criminal laws of Texas. This is the common sense, practical construction. The United States had not the facilities to administer local government within the limited areas affected, the State of Texas did. The boundary fixed was the boundary of Texas as to Mexico, and her boundary as a member of the Union. Jurisdiction over the eliminated bancos was the right and duty of Texas from the moment of their elimination. This, in our opinion, accords with the obligations of the United States under the treaty. If the United States should acquire new citizens, by what courts could their rights be protected? If the election was otherwise, what court could protect the property rights of Mexican citizens?"

We are not here dealing with a question of Congress transferring the west half of the Sabine to Louisiana under Article 4, Section 3 of the United States Constitution, as the Special Master found in his report.[33]

The fact that the western boundary of Louisiana was established by the Treaty of Amity of 1819, and confirmed by the Treaty of Limits in 1828, is estab-

[33] Page 26, Report of Special Master.

lished by the statements of Henry Clay, as Secretary of State, in 1828, and John Quincy Adams, as President in 1828.[34] Both were thoroughly familiar with the admission of Louisiana into the Union, as Mr. Clay was in Congress at that time. Mr. Adams was thoroughly familiar with the Treaty of Amity of 1819 fixing the boundary between Spain and the United States in 1819 as he negotiated the treaty as the representative of the United States.

When Mexico seceded from Spain, the United States and Mexico entered into negotiations to reaffirm the Treaty of Amity of 1819. Congress was interested in the progress of this treaty and Mr. Clay, as Secretary of State, wrote a letter to Mr. Adams on January 14, 1928, in which he stated:

> "That the Minister of the United States at Mexico, when he was sent on his mission, was charged with a negotiation relating to the territorial boundary between that Republic and the United States in its whole extent; and, consequently, including that portion which divides Louisiana from the Province of Texas; but no definitive arrangement on that subject has been yet concluded; and it is respectfully submitted to the President, that, in the present stage of the negotiation, it would be premature to publish the correspondence that has passed between the two Governments."
>
> All which is respectfull[y] reported.
>
> H. Clay." [35]

In transmitting this letter to Congress, President

[34] Louisiana Exhibit A, Items 8 and 9; Appendix "A", Item 3.

[35] Louisiana Exhibit A, Item 9, p. 93; Appendix "A", Item 3.

John Quincy Adams addressed a memorandum to the House of Representatives of the United States, dated January 15, 1828, in which he stated:

> "In complicance with a resolution of the House of Representatives, of the 2d instant, requesting information respecting the recovery of debts and property in the Mexican States, from persons absconding from the United States; and, also, *respecting the boundary between the State of Louisiana and the Province of Texas*, I now transmit a report from the Secretary of State on the subject matter of the resolution.
>
> JOHN QUINCY ADAMS."
>
> (Emphasis Ours)[36]

It is apparent from this correspondence, that both Clay and Adams considered that the Treaty of Amity of 1819 fixed the boundary between Louisiana, the westernmost state of the United States from the Gulf to the 33° of North latitude, and the Province of Texas.

In the Treaty of Limits of 1828 between the United States and the United Mexican States,[37] it was stated:

"ARTICLE FIRST.

The dividing limits of the respective bordering

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[36] Louisiana Exhibit A, Item 8, p. 92; Appendix "A", Item 3; the interpretation of a treaty by the executive branch is entitled to great weight in evaluating the impact of the treaty and this Court, in constraining treaties such as involved in this matter may look to negotiations, diplomatic correspondence, etc. *Factor v. Laubenheimer*, 290 U.S. 276, 54 S.Ct. 191, 78 L.Ed. 315 (1933); *Kolovrat v. Oregon*, 366 U.S. 187, 81 S.Ct. 922, 6 L.Ed. 2d 218 (1961); and *Shaffer v. United States*, 273 F. Supp. 152 (S.D.N.Y., 1967), aff'd 400 F. 2d 584 (2d Cir., 1968).

[37] Louisiana Exhibit A, Item 10 (8 U.S. Stat. 372)

territories of the United States of America and of the United Mexican States, being the same as were agreed and fixed upon by the above mentioned Treaty" (Treaty of 1819).

This phrase indicates that the parties recognized that they were settling the boundary between the bordering territories of the United States (being the State of Louisiana) and the bordering territories of Mexico (being the Province of Texas).

This Court, in the case of *United States vs. State of Texas*, 162 U.S. 1, 16 S.Ct. 725, 40 L.Ed. 867 (1896), speaking through Justice Harlan, in discussing the diplomatic correspondence leading up to the same Treaty of 1819, had this to say:

> "Before examining those articles, it will be useful to refer to the diplomatic correspondence that preceded the making of the treaty. That correspondence commenced during the administration of President Madison, and was concluded under that of President Monroe. It appears that the negotiations upon the subject of the boundaries between the *respective possessions of the two countries* was more than once suspended because certain demands on the part of Spain were regarded by the United States as wholly inadmissible. 4 Am. St. P. 'Foreign Relations,' pp. 425, 430, 438, 439, 452, 464-466, 478." (Emphasis ours)[38]

Judge Harlan, speaking for the Court, considered that the Treaty under discussion was to settle "the boundary between the respective possessions of the two countries". This meant, as to the portion of the bound-

[38] This case involved a portion of the boundary of Texas along the Red River which was fixed by the Treaty of 1819 on the south bank of the Red River.

ary from the Gulf of Mexico to the 33°, the settlement was between the Province of Texas, a territory of Mexico, and the State of Louisiana, the most western territory of the United States between those points.

The boundary established in the Treaty of Amity of 1819 was finally surveyed and staked in 1839-1841 by a commission appointed by the Republic of Texas and the United States, of which Mr. Overton was chairman. On August 10, 1841, Mr. Overton wrote to Mr. Webster, who, at that time, was Secretary of State, stating:

> "Although about half of the western range of sections in the 16th range of townships, and the entire seventeenth range of townships in the State of Louisiana, have fallen by the determination of the boundary, within the limits of the republic of Texas, yet, the interest of the settler with a few exceptions, have not been prejudiced. The fostering policy of the neighboring Government, had in anticipation of such a result, liberally provided for, by donations of land to, the actual settler and cultivator. The exceptions alluded to are not numerous. They are those claiming under purchase from the United States, whose improvements have been severed by the course of the line, thereby rendering measureably valueless the portion left them. The reimbursement of the purchase money, as in ordinary cases would not, I am induced to believe, indemnify them for the loss they have sustained, and I therefore, at their earnest solicitation, beg leave through your Department to present to the President the consideration of their cases."

This clearly indicated that after the survey some of the territory formerly surveyed as being in Louisiana fell in the Republic of Texas and it was necessary to adjust the townships along the west boundary of Louisiana so as to comply with the survey of 1838-1841.[39]

With reference to the resurvey of these townships, George W. Moss, U. S. Surveyor General for Louisiana, wrote to the Register of the State Land Office of Louisiana at Natchitoches, Louisiana, stating:

> "Herewith you will receive 12 diagrams from T 12 to 23 inclusive of R. 16 W showing the conversion of *the boundary line between the States of Louisiana and Texas* with the public survey.
>
> Also Township map of T 16 N R 13 W which please acknowledge" (Emphasis Ours)

The *new* township plats show the boundary of Louisiana to coincide with its boundary located by the survey undertaken by the Commission in 1839-1841.[40]

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[39] Some of the territory thought to belong to Louisiana fell to the Republic of Texas. This was made up to some extent by Louisiana's boundary being established on the west bank of the Sabine. This is similar to the situation discussed by the Court of Civil Appeals of Texas in the case of *Fragoso v. Cisneros*, supra., for the Court said: "These minor adjustments changed the boundary line of the State of Texas in a certain sense, changed it in that it took property away from the State that had formerly been subject to her jurisdiction. *Equitably at least Texas was entitled to the gaining of territory which was occasioned by this loss of territory.*" (Emphasis Ours).

[40] In the report of E. W. Foster, Surveyor General of Louisiana, to the Commissioner of the General Land Office, Washington, D.C., dated August 30, 1873, it is stated "until the Treaty of 1819, no definite line had been agreed upon as the boundary between the United States, and the Spanish Province of Mexico; but, by this Treaty, the strip of country known at that time as 'neutral territory' lying between the Sabine

The map of the survey of 1840[41] shows that the Commissioners for the Republic of Texas and of the United States considered the western boundary of Louisiana as coinciding with the boundary between Texas and the United States. *The map prepared in conjunction with the Commission report consistently refers to the State of Louisiana and makes no mention or note of ownership by the United States of the west half of the Sabine.*

President Tyler in his annual address to Congress in 1841 had this to say:

> "The joint commission under the convention with Texas to ascertain the true boundary between the two countries has concluded its labors, but the final report of the commissioner of the United States has not been received. It is understood, however, that the meridian line as traced by the commission lies somewhat farther east than the position hitherto generally assigned to it, and consequently includes in Texas some part of the territory which had been considered *as belonging to the States of Louisiana and Arkansas.*" (Emphasis ours.)[42]

President Tyler was referring to the letter written by Mr. Overton, the Chairman of the Joint Commis-

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River and Red River, nearly as far down as Natchitoches, and the Rio Hondo and Calcasieu Rivers to the Gulf, *was admitted to be a part of Louisiana.*" (Emphasis Ours) This is evidence that Louisiana's boundary was established by the Treaty of 1819 and it was so believed in 1873 or twenty-five (25) years after Texas was allowed to extend its "jurisdiction" to the middle of the Sabine. Louisiana Exhibit G.

[41] Louisiana Exhibit K, Item 1—Appendix "A", Item 5.

[42] Louisiana Exhibit A, Item 15, pp. 256-275 and, particularly, p. 262.

sion, to Secretary of State Webster, to which we have previously referred. Nowhere is it asserted that the United States owned any part of this border land.

Louisiana adopted a new Constitution in 1845, after the survey of the Joint Commission of 1839-1841. The preamble to the new Constitution of Louisiana *did not* carry a description of the boundaries of Louisiana. This has been true in all subsequent Constitutions adopted by Louisiana.[43]

Texas officials must have thought the Treaty of 1819 settled its eastern boundary to coincide with the western boundary of Louisiana at least up to 1896.[44]

The legislators of Louisiana, during this time, were of the firm belief that Louisiana had received the benefit of the Treaty of 1819, as the western boundaries of several parishes were extended or fixed accordingly.

On January 18, 1838, an Act was approved to create and establish the Parish of Caddo[45] and the description contained therein of said parish reads, in part, as follows:

> ". . . 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*

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[43] West's Louisiana Statutes Annotated, Constitution, Vol. 3, pp. 485-903, but particularly pp. 511, 524, 544, 564, 565, 587, 611, 666, and 763.

[44] Louisiana Exhibit F, Item 1.

[45] Louisiana Exhibit A, Item 16.

> *United States* to Red River and down the same to the point of beginning . . ." (Emphasis Ours)

Act No. 46 of 1843 created the Parish of Sabine[46] and the description contained in that Act reads, in part, as follows:

> ". . . thence westwardly on said line to the *western bank of the Sabine River*; thence Southerly, *following the line between the United States and the Republic of Texas* . . ." (Emphasis Ours)

DeSoto Parish was also created in 1843 by the Louisiana Legislature[47] and the description of that parish reads, in part, as follows:

> ". . . 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 . . ." (Emphasis Ours)

It is obvious that it was the impression of the legislators of Louisiana, *subsequent to the Treaty of 1819*, that the boundary of "Louisiana" was identical to the boundary of the "United States", as provided for in the Treaty of 1819.

Other acts of the Louisiana Legislature asserting ownership of the Sabine River to its west bank were: Act No. 83 of 1845[48] which authorized the Governor of Louisiana to appoint pilots for the Sabine River, with no limitation noted therein as to the limits of their authority on the Sabine; Act No. 141 of 1842 granted to Thomas W. Reed the exclusive privilege of keeping a

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[46] Louisiana Exhibit A, Item 18.
[47] Louisiana Exhibit A, Item 17.
[48] Louisiana Exhibit H, Item 2.

ferry across Sabine River; Act No. 19 of 1843,[49] which was prior to Texas' admission into the Union, granted Thomas G. S. Godwin and William Godwin the privilege of keeping a ferry across the Sabine River and asserted therein that they, their heirs and assigns, "shall be bound . . . to keep and maintain . . . the banks on each side of said River . . .". It was further stated therein "that similar privileges and conditions, in all respects, be and the same are hereby granted to Green Berry Cook, to keep a ferry over the same River, in the Parish of Natchitoches, at the point on said River opposite the Town of Sabine, in Texas."

We respectfully urge Louisiana's boundary was on the west bank of the Sabine from the Gulf of Mexico to 32° north latitude when Texas was admitted as a state in 1845.

The United States Congress could not change the boundary of Louisiana after it was established by the Treaty of 1819 and transfer property belonging to Louisiana to Texas.[50] The Special Master was in error in holding that the Congress of the United States, by act of 1848, transferred title to Texas, to the bed and subsoil of the west half of the Sabine from the Gulf of Mexico to the 32° of north latitude.[51] This holding by the Special Master would make the Act of 1848 unconstitutional.[52] We will discuss this Act and the Acts of

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[49] Louisiana Exhibit H, Item 9, pp. 28-31.
[50] Article IV, Sec. 3, U. S. Constitution.
[51] Pages 20-26, Report of Special Master.
[52] Louisiana maintains that the Act of 1848 only authorized Texas to extend criminal jurisdiction to the middle of the Sabine so that Texas and Louisiana could enforce their

the Texas Legislature of 1848-1849 in more detail under the section of this brief dealing with acquiescence and prescription.

POINT "B"

LOUISIANA HAS NOT LOST TITLE TO THE BED AND SUBSOIL OF THE WEST HALF OF THE SABINE FROM THE GULF OF MEXICO TO 32° NORTH LATITUDE BY ACQUIESCENCE AND PRESCRIPTION AS FOUND BY THE SPECIAL MASTER.

This Court, at an early date, established rules by which a boundary, between two states, could be established by acquiescence and prescription. In the case of *State of Virginia v. State of Tennessee*, 148 U.S. 503, 13 S.Ct. 728, 37 L.Ed. 537 (1893), this Court said:

> "Independently of any effect due to the compact as such a boundary line between the states or provinces, as between private persons, which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original grant; and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary. Lord Hardwicke, in Penn v. Lord Baltimore, 1 Ves. Sr. 444, 448; Boyd v. Graves, 4 Wheat, 513; Rhode Island v. Mas-

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criminal jurisdiction over the whole of the Sabine in view of the "use" thereof by the inhabitants of both States, but that it did not change Louisiana's boundary so as to divest it of bed and subsoil of the west half of the Sabine.

sachusetts, 12 Pet. 657, 734; U. S. v. Stone, 2 Wall, 525, 537; Kellog v. Smith, 7 Cush. 375, 382; Chenery v. Waltham, 8 Cush. 327; Hunt, Bound. (3d Ed.) 306."

This same principle is stated in 49 American Jurisprudence 239, Section 19, which reads:

> "A boundary line between states which has been run out, located, and marked, and which thereafter has been recognized and acquiesced in by the states in question for a long couse of years, is conclusive, even though it is later ascertained that the line thus located and marked varies somewhat from the courses given in the original plat. In other words, states are bound by the practical lines that have been recognized and adopted as their boundaries."

The report of the Special Master will demonstrate without any contradiction that we are not here dealing with a landed boundary "which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by parties for a long course of years". The Special Master erred in applying the principles established by this Court, enunciated above for establishing a land boundary, to establish a water boundary by acquiescence and prescription.

Louisiana was the most westerly territory of the United States from the Gulf of Mexico to the 33° of north latitude from 1812 until Texas was admitted as a state in 1845.

The area of Louisiana adjacent to the Sabine, which was part of the neutral zone, was sparsely in-

habited and a wild country even at the time the survey was made in 1839-41.[53]

Since the inhabitants of Texas had the "use and navigation" of the Sabine, there arose some question as to whether Louisiana had criminal jurisdiction over the whole of the Sabine, even though its boundary was on the west bank.

The Special Master fell in error in not giving proper consideration to this unusual treaty provision giving the "use of the water" to the inhabitants of Texas and Louisiana. This phrase distinguishes this case from those relied on by the Special Master to sustain his finding that Louisiana lost the west half of the Sabine by acquiescence and prescription.[54]

This provision in the Treaty of 1819 provides

> ". . . but the *use* of the waters, and navigation of the Sabine to the sea, and of the said rivers Rio Roxo and Arkansas throughout the extent of the said boundary on their respective banks shall be common to the respective inhabitants of both nations." (Emphasis Ours)[55]

[53] Louisiana Exhibit A, Item 14 (Senate Document 199 of the 27th Congress, 2nd Session, which is a copy of the proceeding of the Joint Commission).

[54] Letter from Mr. Forsyth to Mr. Overton, dated April 8, 1840 (p. 173 of Louisiana Exhibit A); copy of letter from Mr. Memucan Hunt to Mr. John H. Overton, dated February 29, 1840 (p. 186 of Louisiana Exhibit A); copy of letter from Mr. Overton to Mr. Hunt dated February 29, 1840 (p. 186 of Louisiana Exhibit A); copy of letter from Mr. Hunt to Mr. Overton dated March 2, 1840 (p. 187 of Louisiana Exhibit A); and copy of letter from Mr. Overton to Mr. Hunt dated March 5, 1840 (p. 192 of Louisiana Exhibit A); Senate Document 199 of the 27th Congress, 2nd Session, which is a copy of the proceeding of the Joint Commission, (Louisiana Exhibit A, Item 14).

[55] For a very enlightening discussion of the diplomatic correspondence surrounding the Treaty of 1819 we particu-

This language was reaffirmed in the Treaty of Limits of 1828 and the Treaty between the United States and the Republic of Texas in 1838. The Court will note that the "use" and "navigation" of the Sabine to the sea throughout the extent of the said boundary on their respective banks shall be common to the respective inhabitants of both nations. This means that the inhabitants of Texas have equal use and navigation of the water of the Sabine. The inhabitants of both Texas and Louisiana have the right to use their respective banks of the Sabine in the use and navigation of these waters. Louisiana had no right to construct structures in the Sabine that would in any way interfere with the full use and navigation of the waters by the inhabitants of Texas over the objection of Texas. This same restriction would apply to the inhabitants of Texas if Louisiana objected. This joint use accounted for the fact that Louisiana recognized there was a question about it having full criminal jurisdiction over the full extent of the waters of the Sabine.

On March 16, 1848, the legislature of Louisiana, recognizing its boundary on the west side of the Sabine, sought to extend its criminal jurisdiction to the west bank of the Sabine River to remove this jurisdictional uncertainty, and passed an Act making such extension, if Congress gave permission.[56] The body of the Resolution reads as follows:

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larly call the Court's attention to the opinion of Judge Harlan in the case of *United States v. State of Texas*, 162 U.S. 1, 16 S.Ct. 725, 726, 40 L.Ed. 867 (1896).

[56] Louisiana recognized it could not effect treaty rights of the inhabitants of Texas without Congressional approval.

> "Therefore, be it resolved, by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened: first, That the Constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United States, embraced in the following limits (whenever the consent of the Congress of the United States can be procured thereto), viz.: Between the middle of the Sabine river and the western banks thereof, to begin at the mouth of said river, where it empties into the Gulf of Mexico, and thence to continue along the *said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the State of Texas.*" (Emphasis Ours).[57]

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

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

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

[57] Louisiana Exhibit A, Item 19 (Resolution No. 212 of the Louisiana Legislature of 1848).

Texas to the middle of the Sabine. The following appears:

> "The bill before the Senate gives the half of the river beyond the boundary of the State of Louisiana to the State of Texas, for the purpose of enabling the latter to extend her *criminal jurisdiction to the Louisiana boundary.* There could be no objection to the bill, and he hoped it would now be passed." (Emphasis ours).[58]

The act of the Texas Legislature dated November 24, 1849, accepting the extension mentioned above states that the several counties of Texas from the mouth of the Sabine to the 32nd degree of north latitude "shall have and exercise *jurisdiction* over such portions of the western half of said Pass, Lake and River as are opposite to said counties respectively;" (Emphasis Ours).

We have already quoted from the resolution of the Louisiana Legislature adopted on March 16, 1848 from which there can be no doubt that the sole objective thereof was to cure the existing hiatus in the criminal jurisdiction. As stated above, the resolution specifically declares that the western bank of the Sabine is "the boundary line between the State of Louisiana and the State of Texas." [59]

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[58] U. S. Senators Johnson and Downs of Louisiana acquiesced in the passage of the act extending Texas' criminal jurisdiction. These senators could not agree to a change of Louisiana's boundary or the giving up of Louisiana territory without the consent of the Legislature of Louisiana, which had just declared that Louisiana's boundary was on the west bank of the Sabine by Resolution No. 212. Louisiana Exhibit A, Item 19; Appendix "A", Item 1.

[59] These actions of Congress, the Texas Legislature, and

The fact of a state owning the bed and subsoil of a navigable stream, where there is some question of jurisdiction over the whole stream is not unusual. This same situation existed in the case of *State of Washington vs. The State of Oregon*, 214 U.S. 205, 29 S.Ct. 631, 53 L.Ed. 969 (1909).

This Court held that the granting of *jurisdiction* did *not* determine the boundary between two states, and in this connection said:

> "It must be borne in mind that an inquiry of this kind is attended with much difficulty. Here is a river of great width, 3 miles or so at certain places, whose bed is largely of sand, and whose channels have been naturally affected by the flow of the water, and also of late years by the jetties constructed by the government in order to facilitate navigation. Congress, evidently recognizing the difficulty which attended the location of the exact boundaries, provided that the states of Washington and Oregon should have concurrent 'jurisdiction in civil and criminal cases upon the Columbia river.' *Yet this provision does not determine the boundaries between the two states, and has proved insufficient to settle the disputes between them as to things done upon the Columbia river.* Nielson v. Oregon, 212 U. S. 315, 53 L. ed. _____, 29 Sup. Ct. Rep. 383." (Emphasis Ours)

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the Louisiana Legislature were in the nature of a compact to establish jurisdiction over the Sabine to regulate the "use" of the water by the inhabitants of both States without having the effect of changing Louisiana's boundary. These acts are similar to some extent to those acts by Louisiana, the U.S. Congress, and Texas in forming a compact to develop the Toledo Bend Project. Louisiana Exhibit A, Item 23.

The Special Master was in error when he adopted the argument of Texas, "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." [60]

This is similar to the position taken by Texas in its litigation with the United States and Oklahoma over its boundary along the Red River.[61] This Court held in that litigation that the Treaty of 1819, being the same treaty involved in this case, fixed the boundary of Texas along the south bank of the Red River and that Oklahoma's boundary extended to the south bank of the Red River. This Court said:

> "In the early stages of the suit the chief point of difference between the parties was that Oklahoma and the United States were claiming the south bank of the river as the boundary, while Texas was contending for the *thread or middle of the stream.* That difference was disposed of in an opinion delivered April 11, 1921, wherein this court recognized that in the earlier case of United States v. Texas, 162 U.S. 1, 16 Sup. Ct. 725, 40 L.Ed. 867, it had been adjudged that the boundary, as fixed by the treaty, is along the south bank. 256 U.S. 70, 41 Sup. Ct. 420, 65 L.Ed. 831. The purport of that opinion was embodied in an interlocutory decree of June 1, 1921, which also made provision for taking additional evidence and for a further hearing to determine what constitutes the south bank, where along that

[60] Page 22, Report of Special Master.

[61] *State of Oklahoma v. State of Texas,* 260 U.S. 606, 43 S.Ct. 221, 67 L.Ed. 428 (1923).

> bank the boundary is, and the proper mode of locating it on the ground—these being matters on which the parties were unable to agree. 256 U.S. 608, 41 Sup. Ct. 539, 65 L.Ed. 1114. Additional evidence filling several printed volumes was afterwards taken, and the further hearing was had near the close of the last term." (Emphasis Ours)

If the United States, as the Special Master found, was reserving half of the Sabine to be awarded to Texas, when and if it ever became a State, why didn't this Court accept this argument in the cases involving the Red River? The argument is unsound and was rejected by this Court in the cases involving the Red River boundary.

Texas never asserted any *positive* act of possession in the west half of the Sabine (such as the granting of oil, gas, and mineral leases and/or sand, shell and gravel permits, etc.), outside of those things necessary to enjoy the "use and navigation" thereof, as far as this record is concerned, until May 31, 1930, when the Game, Fish and Oyster Commission of Texas granted a sand, shell and gravel permit to J. C. Reynolds of Port Arthur, Texas.[62] From this date both Texas and Louisiana have leased the west half of the Sabine River, Sabine Lake and Sabine Pass for oil and for shell dredging.[63]

The dispute between Texas and Louisiana, once natural resources were extracted from the soil and subsoil of the Sabine, reached a point where the Gov-

[62] Texas Exhibit E, Item 23 (3)

[63] Louisiana Exhibits D and E, but see pp. 65-66, Report of Special Master [Appendix C(b)].

ernor of Louisiana, Honorable Sam H. Jones, advised the Governor of Texas, on or about November 27, 1941, that Louisiana asserted jurisdiction to the west bank of the Sabine as fixed by the Treaty of 1819 and finally surveyed and staked.[64] Louisiana went so far as to pass an act authorizing a suit to establish this boundary.[65]

This Court can take judicial notice of the fact that at the time of this controversy the United States was engaged in the World War II. Nothing further was done at that time, and in 1947 Louisiana and Texas became involved in a controversy with the United States over its tidelands. Louisiana asserted in this record, and it was not denied by Texas, that there was a tacit understanding that, pending the tidelands litigation, the boundary dispute would not be pushed.[66] Texas settled its tidelands issue on May 5, 1969,[67] and instituted this suit on the 10th day of December, 1969.[68]

Mr. Bonnecarrere, representing the Louisiana State Mineral Board for many years, testified that officials of Louisiana and Texas were familiar with the dispute over the boundary and that many of the leases introduced in evidence by Texas carried special provisions, providing that the granting of the leases, limited to a portion of the Sabine, were not to be construed as abandoning any right of Louisiana to

[64] Louisiana Exhibit B, Item 1; also Appendix "A", Item 2.
[65] La. Acts 1942, No. 295 (Louisiana Exhibit B, Item 5).
[66] Transcript, p. 109, pp. 145-148, and 236-238. (Testimony of C. J. Bonnecarrere, Executive Secretary of the State Mineral Board of Louisiana.)
[67] 89 S.Ct. 1614, 394 U.S. 836 (1969)
[68] 397 U.S. 931

the bed and subsoil of the Sabine to its west bank.[69] Some of the agreements were signed by Texas.

We fail to find in the Special Master's report where he considered the effect of the right of the inhabitants of Texas to the "use" of the water of the Sabine. This right is an important factor in distinguishing this case from the ones relied on by the Special Master to sustain his findings of acquiescence and prescription.

One of the cases relied heavily on by Texas as establishing acquiescence and prescription is the case decided by this Court, entitled, *State of Michigan vs. State of Wisconsin*, 270 U.S. 295, 46 S.Ct. 290, 70 L.Ed. 595 (1926). This was one of the cases cited by the Special Master in his report to sustain his finding of acquiescence and prescription. A portion of the boundary of Michigan in the Act creating Michigan out of the Territory of Wisconsin was erroneous. This erroneous description was discovered by Michigan in 1840-1841, prior to the time that Wisconsin was admitted as a state in 1848. Congress directed a survey of

> " 'so much of the line between Michigan and Wisconsin as lies between the source of Brulé River and the source of Montreal River, as defined by the (Wisconsin Enabling Act),' 9 Stat. 85, 97, c. 175, Sec. 4, and in pursuance thereof a survey was made by William A. Burt in 1847. Burt's line, which was marked with posts set at half-mile intervals and otherwise identified, substan-

[69] Transcript, pp. 90-98, p. 121, and pp. 178-181

> tially followed Cram's recommendation and is the line now claimed by Wisconsin."

Cram made the initial survey in 1840. The Court then went on to hold:

> "When admitted to statehood, Wisconsin was, and ever since has continued to be, in possession of the area in dispute, that is to say, of all lands within the boundary which she now claims. As early as 1850, county government was established upon the basis of this boundary. In 1874, taxes were assessed and collected by Wisconsin, and by 1886 practically the entire area had been subjected to such taxation. During this time, towns were built, highways constructed, public buildings erected, elections held, Wisconsin law enforced and other customary acts of dominion and jurisdiction exercised by that state within the disputed area."

The remainder of the case dealt primarily with islands that had been in possession of Wisconsin. The Court will be impressed in reading this case that it related to an established boundary where physical possession was taken on the landed portion up to the boundary.

In the instant case, we are dealing with water bodies. The only landed portion of the boundary established by the Treaty of Amity of 1819 was that from the 32° of north latitude to the 33° of north latitude, and as to this portion of the boundary, Louisiana has taken and exercised possession *up to the Treaty boundary, as surveyed and staked in 1839-1841.*

Another case relied on by the Special Master is *State of Arkansas vs. State of Tennessee*, 310 U.S. 563, 60 S.Ct. 1026, 84 L.Ed. 1362 (1940). In that case, the land in controversy was, in 1819, on the west side of the main channel of the Mississippi River and was part of the Territory of Arkansas. An avulsion at Needham's Cutoff occurred in 1821, and the main channel of the river flowed through the cutoff prior to 1836. In 1836, when Arkansas was admitted into the Union, the lands in controversy were on the east side of the main channel of the Mississippi River. The avulsion did not change the boundary line theretofore existing between Tennessee and the Territory of Arkansas. The Act of Admission of Arkansas included this territory. Tennessee had been admitted into the Union in 1796, with its western boundary in the main channel of the Mississippi River. The Special Master found that from 1926, to the date of filing the suit, Tennessee had continually exercised dominion and jurisdiction over the *lands* in controversy.

Here again, in that case, we are dealing with lands possessed by one State to the exclusion of another State. The facts in that case are distinguishable from the facts in the case now before the Court, since we are *not* here dealing with any *land* boundary, but with an unsurveyed and unstaked boundary in water bodies.

Other cases recognizing the doctrine of acquiescence and prescription relate to established *land boundaries.*

State of Indiana v. State of Kentucky, 136 U.S. 479, 10 S.Ct. 1051, 34 L.Ed. 329 (1890), involved the title to an island in the Ohio River and the question was whether the boundary was the north channel or the south channel. Kentucky proved that it had exercised control, jurisdiction and possession over the island.

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

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

State of Louisiana v. State of Mississippi, 202 U.S. 1, 26 S.Ct. 408, 50 L.Ed. 913 (1906), was a boundary action in which the determining factor was possession and control of the St. Bernard Peninsula.

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

lay between the branches; and possession of the island —not of any of the streams—was the deciding factor.

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

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

It is readily apparent that none of the foregoing decisions can possibly apply to the facts in the litigation at hand. The essential point is that not only could there have been no dominion over or control of the west half of the Sabine, but practically nobody knew where the middle of the river was at any given point or at any particular time.

Assuming that the thalweg rule applies, there would have been a constant change in the "main channel of navigation." Assuming pro arguendo that the geographic middle of the Sabine is correct in delin-

eating the "middle", it would have been impossible for a layman using the river or even a government official in granting a lease to know where the geographic middle was.

In *State of New Jersey v. State of Delaware*, 291 U.S. 361, 54 S.Ct. 407, 78 L.Ed. 847 (1934), there were two points at issue, involving the correct boundary between the States of New Jersey and Delaware. One of these points was the question of whether Delaware owned the entire bed of the Delaware River within a circle of 12 miles about the town of New Castle, referred to as the "Circle", or whether she owned only to the center. New Jersey contended that the proper boundary was the middle of the river.

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

New Jersey contended that riparian proprietors who were citizens of New Jersey and held their titles from her had been permitted by Delaware to build wharves and piers projecting into the Delaware River within "The Circle"; and that, as the structures were built and maintained without protest on the part of Delaware and, in fact, with her approval, this constituted an acquiescence in the ownership of New Jersey of half of the Delaware River comprised with-

in the 12-mile "Circle" about the town of New Castle.

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

> "The acts of dominion by riparian proprietors are connected with the building of wharves and piers that project into the stream. The structures were built and maintained without protest on the part of Delaware, and no doubt with her approval. There is nothing in their presence to indicate an abandonment by the Sovereign of title to the soil. *By the law of waters of many of our states, a law which in that respect has departed from the common law of England, riparian proprietors have very commonly enjoyed the privilege of gaining access to a stream by building wharves and piers, and this though the title to the foreshore or the bed may have been vested in the state.* Yates v. Milwaukee, 10 Wall. 497, 19 L.Ed. 984; Scranton v. Wheeler, 179 U.S. 141, 157, 158, 21 S.Ct. 48, 45 L.Ed. 126; Shively v. Bowlby, supra, at pages 24, 55 of 152 U.S. 14 S.Ct. 548; Town of Brookhaven v. Smith, 188 N.Y. 74, 80 N.E. 665, 9 L.R.A. (N.S.) 326; United States v. Dern, 289 U.S. 352, 357, 53 S.Ct. 614, 77 L.Ed. 1250. New Jersey in particular has been liberal in according such a license (State v. Jersey City, 25 N.J. Law, 525), and so, it seems, has Delaware (Harlan & Hollingsworth Co. v. Paschall, 5 Del. Ch. 435; State v. Reybold, 5 Har. 484, 486), though in Delaware, unlike New Jersey, title to the foreshore is in the riparian proprietor. From acquiescence in these improvements of the river front, there can be no legitimate inference that

> Delaware made over to New Jersey the title to the stream up to the middle of the channel or even the soil under the piers. The privilege or license was accorded to the owners individually and even as to them was bounded by the lines of their possession."

Texas and the Special Master place considerable reliance on the case of *State v. Burton*,[70] and other statements and written data by Louisiana officials which contain language to the effect that, within the context and circumstances of their utterances, the middle of the Sabine water system from the Gulf to the 32° of north latitude was believed to be the correct boundary between Louisiana and Texas. None of these statements estop Louisiana in any way, nor do they constitute any type of res judicata or binding administrative and/or judicial acts.

All of such statements were rendered in connection with litigation that did not involve or even concern the precise location of the boundary. They were uttered "en passant", and were not intended to be declarations determinative of the boundary location.

The boundary was a pertinent point in *State v. Burton*, supra. This was a criminal case and the record shows that the Supreme Court did not have the benefit of the authorities herein relied upon when it simply held that the *criminal jurisdiction* of Louisiana extended only to the middle of the Sabine.

This is evident when one considers that the Lou-

[70] 105 La. 516, 29 So. 970 (1901).

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

The Court will recall that in the resolution adopted by the Legislature on March 16, 1848,[71] this hiatus in the criminal law was dealt with. The Louisiana Legislature expressed the belief that the laws of Louisiana did not extend over the western half of the Sabine. It left no doubt that it thought the actual boundary was located on the Sabine's west bank, when it asked Congress to extend the state's jurisdiction to the western bank of the Sabine; i.e.:

> "And thence to continue along the *said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the State of Texas.*" (Emphasis Ours)[72]

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

This Court has made it clear that decisions of state courts taking an erroneous view of the law are

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[71] Louisiana Exhibit A, Item 19 (pp. 288-288A); also Appendix "A", Item 1.

[72] Louisiana Exhibit A, Item 19.

not binding in a direct action between states involving solely the issue of the location of the boundary between them.

In *State of Arkansas v. State of Mississippi*, 250 U.S. 39, 39 S.Ct. 422 63 L.Ed. 832 (1919), this court considered certain decisions and expressions by the Supreme Court of Mississippi concerning local questions in which that court stated its belief that the geographic middle of the river was the correct boundary. This Court disregarded such expressions in their entirety, declaring:

> "But whatever may be the effect of these decisions upon *local rights of property or the administration of the criminal laws of the state*, when the question becomes one of fixing the boundary between states separated by a navigable stream, it was specifically held in Iowa v. Illinois, supra, followed in later cases, that the controlling consideration is that which preserves to each state equality in the navigation of the river, and that in such instances the boundary line is the middle of the main navigable channel of the river." (Emphasis Ours)

In *State of Arkansas v. State of Tennessee*,[73] the Supreme Court of Arkansas had handed down an opinion that the boundary line between the two rivers was equidistant from the permanent banks of the channel. The Supreme Court of Tennessee had reached a similar conclusion. Furthermore, Tennessee's General Assembly appointed a commission to locate the line in an abandoned channel of the river. You held that none

[73] 246 U.S. 158, 38 S.Ct. 301, 62 L.Ed. 638 (1918).

of these decisions and legislative acts amounted to such acquiescence as would determine the true location of the boundary.

Apropos of the case of *State v. Burton*, supra,[74] upon which Texas and the Special Master place great reliance and which is discussed heretofore, it is interesting to note that this Court, in this case of *State of Arkansas v. State of Tennessee*, refused to follow an Arkansas state decision which, like *State v. Burton*, supra, involved prosecution for violation of the liquor laws. At page 304 of 38 S.Ct., the following appears:

> "It is said that Arkansas has interpreted the line to be at a point *equidistant* from the well-defined and permanent banks of the river, that Tennessee likewise has recognized this boundary, and that by long acquiescense on the part of both States, in this construction, and the exercise of jurisdiction by both in accordance therewith, the question should be treated as settled. The reference is to certain judicial decisions, and two acts of legislation. In Cessill v. State (1883) 40 Ark. 501, *which was a prosecution for unlicensed sale of liquors upon a boat anchored off the Arkansas shore*, it was held that the boundary line, as established by the original treaties and since observed in federal legislation, state constitutions, and judicial decisions was the 'line along the river bed equidistant from the permanent and defined banks of the ascertained channel on either side.' This was followed in subsequent decisions by the same court. Wolfe v. State (1912) 104 Ark. 140, 143,

[74] Also, 106 La. 732, 31 So. 291 (1902).

148 S.W. 641; Kinnanne v. State (1913) 106 Ark. 286, 290, 153 S.W. 262. The first pertinent decision by the Supreme Court of Tennessee is State v. Pulp Co. (1907) 119 Tenn. 47, 104 S.W. 437, in which a similar conclusion was reached, partly upon the ground that it had been adopted by the courts of Arkansas." (Emphasis Ours)

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

In *State of Oklahoma v. State of Texas*, 272 U.S. 21, 47 S.Ct. 9, 71 L.Ed. 145 (1926) the syllabus reads as follows:

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

In *State of New Jersey v. State of Delaware*, supra, this court disregarded proof of assessments for taxes, making of deeds, and service of process by New Jersey in the disputed area, inasmuch as there was no showing that Delaware had acquiesced.

Your Honors have never passed on the western boundary of Louisiana. In *United States v. State of*

Louisiana, et al,[75] decided in 1960 to determine the water boundaries of the Gulf Coast states under the Submerged Lands Act of 1953, in which both Texas and Louisiana were parties, Louisiana urged that the Treaty of 1819 and the subsequent treaties fixed its western boundary. In commenting on this contention of Louisiana, this Court said:

> "Certain treaties successively entered into from 1819 to 1838 by the United States with Spain, Mexico, and the Republic of Texas establishing the boundary between Texas and the United States are relied on as indicating that the State and Federal Governments thought that Congress had fixed a three-league maritime boundary for Louisiana. *Louisiana contends that the treaties fixed the beginning of the international boundary at a point three leagues from land, and that therefore the southwestern corner of Louisiana* as well as the southeastern corner of Texas must have been regarded as extending seaward to that distance. Whether or not such reasoning is valid, the language of the treaties refutes the premise that the international boundary began three leagues from land. Both the 1819 and the 1828 treaties recited that '[t]he 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 * * *.' The Treaty of 1838 referred to the Treaty of 1828, and provided for a survey of 'that portion of the said boundary which extends from the mouth of the Sabine, where that

[75] 363 U.S. 1, 80 S.Ct. 961, 4 L.Ed. 2d 1025, reh. den. 364 U.S. 856, 81 S.Ct. 36, 5 L.Ed. 2d 80, supplemented 382 U.S. 288, 86 S.Ct. 419, 15 L.Ed. 2d 331.

river enters the Gulph of Mexico to the Red river.' " (Emphasis Ours)

Texas must have thought that Louisiana's boundary was fixed by the Treaty of Amity in 1819, for Will Wilson, then Attorney General of Texas stated, in his argument before this Court in the preceding case made these comments:

> Argument on behalf of the State of Louisiana, Texas, Mississippi, Alabama and Florida, Defendants, by Will Wilson, Attorney General for Texas:
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> "Mr. Wilson: Mr. Justice Black, may it please the Court, the Solicitor has elected to pitch his case against Texas on the proposition that this three-league boundary shrunk when Texas came into the Union, and we join issue squarely with him on that on the facts.
>
> "When the Congress of Texas sat down in 1836, in December, to pass that Act, it was looking at several things. The thing that they were most conscious of was the treaty between Spain and the United States in 1819, *which fixed the boundary between Texas and Louisiana,* and it called it to commence 'on the Gulf, at the mouth of the Sabine, in the sea.' So the first thing they had to consider was that the boundary called to commence in the sea." (Emphasis Ours)[76]

This argument was considered by the Special Master.[77]

While there was some discussion in the brief of

[76] Louisiana Exhibit H, Item 1.
[77] Appendix E (E.), Item 4 (p. 108), Report of Special Master.

Louisiana in the 1960 case concerning the constitutional provision admitting Louisiana into the Union as a state in 1812, nevertheless, Louisiana was arguing that its western boundary was established by the Treaty of 1819. This fact was noted by this Court, as we have already indicated.

In testifying in this case, Mr. R. C. Wisdom, Director of the Surveying Division of the Texas General Land Office, admitted that maps introduced in evidence,[78] purporting to show a line in the Sabine as the boundary between Louisiana and Texas were different on the two maps. This indicates that there was no fixed, definite, determined boundary.

Mr. Hatley N. Harrison, Jr.[79] testified that the various maps prepared by the U. S. Coast and Geodetic, purporting to show lines in the Sabine, differ at times,[80] which again illustrates that there was no definite, established line to fix a water boundary between Texas and Louisiana by acquiescence and prescription.[81]

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[78] Transcript pp. 566-568.

[79] Chief, Lands & Surveys Division, Department of Public Works, State of Louisiana.

[80] Transcript pp. 372-388.

[81] It is very important for this Court to consider, now that the Special Master has filed his report, that Texas, which deliberately excluded from the relief sought in this Court the establishment of the lateral boundary between Texas and Louisiana in the Gulf of Mexico, has now publicly asserted the extension of a midstream boundary into the Gulf, disregarding the extension of the line on most of the maps relied on by Texas to establish a midstream boundary in the Sabine. For example, Texas Exhibit A, p. 3 (U.S. Geological Survey—Sabine Pass Quadrangle, 1932); p. 21 (Texas Point, Texas, La., 1948); and p. 26 (U.S. Geological Survey—Sabine Pass Quadrangle, 1957). For the contrary, see Appendix "A" to this Brief, Item 4.

The same is true of the area where the Sabine River enters into Sabine Lake, for Texas has taken various positions on maps as to what channel is to be used from the Sabine River into the Sabine Lake. This materially affects any line that is drawn, attempting to establish a boundary in Sabine Lake.

We urge all of Texas' exhibits dated after 1941,[82] are irrelevant, and Louisiana bases this assertion on Governor Jones' formal letter of protest of 1941,[83] and the informal agreement between officials of Louisiana and Texas that a decision on the Sabine boundary question would be held in abeyance pending the outcome of the Tidelands litigation with the United States. According to Louisiana Exhibit U, more than half of Texas' exhibits and maps are dated subsequent to 1941.

There can be no question that, even before 1941, and certainly since that time Louisiana has claimed and asserted ownership to the bed and subsoil of the Sabine to the west bank. Texas urged it has exercised possession and jurisdiction over the west half of the Sabine from 1849 to date, with the acquiescence of Louisiana. We urge that the uncontradicted evidence does not bear out these assertions.

We must remember, we are here dealing with navigable bodies of water. This fact has been stipulated to by both Louisiana and Texas.[84]

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[82] Louisiana Exhibit U.
[83] Louisiana Exhibit B, Item 1.
[84] Pre-Trial Order and Stipulation dated September, 1970, particularly stipulation 3(a).

The Special Master, in support of his finding that Louisiana had lost the bed and subsoil of the west half of the Sabine to Texas by acquiescence and prescription, relied, in large measure on works performed in these navigable waters, such as the construction of bridges,[85] pipe lines,[86] navigation channels[87] and a reclamation project adjacent to the City of Port Arthur.[88]

All of these works had to be authorized by the United States since it has a "dominant servitude" over these navigable streams to the ordinary high water mark.

The United States is authorized to permit these works if they are not objected to by Louisiana. This does not mean that the person constructing the works, including Texas, acquires title to the bed and subsoil of the Sabine, which belongs to Louisiana. There is no evidence in the record, and none was found by the Special Master, that the title of Louisiana to the bed and subsoil of the Sabine was placed at issue during the construction of these various works.

This Court, in *United States v. Rands*, 389 U.S. 121, 88 S.Ct. 265, 19 L.Ed. 2d 329 (1967), had this to say:

> "The Commerce Clause confers a unique position upon the Government in connection with navigable waters. 'The power to regulate commerce comprehends the control for that purpose,

[85] Appendix E(a), Appendix D(c), Report of Special Master.
[86] Appendix C, I(C) and III, Report of Special Master.
[87] Appendix D(a), Report of Special Master.
[88] Appendix E(c), Report of Special Master.

and to the extent necessary, of all the navigable waters of the United States***. For this purpose they are the public property of the nation, and subject to all the requisite legislation by Congress.' Gilman v. City of Philadelphia, 3 Wall. 713, 724-725, 18 L.Ed. 96 (1866). This power to regulate navigation confers upon the United States a 'dominant servitude,' FPC v. Niagara Mohawk Power Corp., 347 U.S. 239, 249, 74 S.Ct. 487, 493, 98 L.Ed. 686 (1954), which extends to the entire stream and the stream bed below ordinary high-water mark. The proper exercise of this power is not an invasion of any private property rights in the stream or the lands underlying it, for the damage sustained does not result from taking property from riparian owners within the meaning of the Fifth Amendment but from the lawful exercise of a power to which the interests of riparian owners have always been subject. United States v. Chicago, M., St. P. & P. R. Co., 312 U.S. 592, 596-597, 61 S.Ct. 772, 775, 85 L.Ed. 1064 (1941); Gibson v. United States, 166 U.S. 269, 275-276, 17 S.Ct. 578, 580, 41 L.Ed. 996 (1897). Thus, without being constitutionally obligated to pay compensation, the United States may change the course of a navigable stream. State of South Carolina v. State of Georgia, 93 U.S. 4, 23 L.Ed. 782 (1876), or otherwise impair or destroy a riparian owner's access to navigable waters, Gibson v. United States, 166 U.S. 269, 17 S.Ct. 578 (1897); Scranton v. Wheeler, 179 U.S. 141, 21 S.Ct. 48, 45 L.Ed. 126 (1900); United States v. Commodore Park, Inc., 324 U.S. 386, 65 S.Ct. 803, 89 L.Ed. 1017 (1945), even though the market value of the riparian owner's land is substantially diminished."

None of the works forming the category above noted could have been constructed without the authorization of the United States.

> "The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, break-water, bulkhead, jetty, or other structures, in any part, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same." [89]

The construction of bridges across navigable streams is regulated by the United States:

> "When, after March 23, 1906, authority is granted by Congress to any persons to construct and maintain a bridge across or over any of the navigable waters of the United States, such bridge shall not be built or commenced until the

[89] 33 U.S.C.A. §403.

> plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of the Army and Chief of Engineers for their approval, nor until they shall have approved such plans and specifications and the location of such bridge and accessory works; and when the plans for any bridge to be constructed under the provisions of sections 491 to 498 of this title, have been approved by the Chief of Engineers and by the Secretary of the Army it shall not be lawful to deviate from such plans, either before or after completion of the structure, unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of the Army." [90]

In addition to the "dominant servitude" of the United States over these navigable waters, the inhabitants of Texas likewise had a "servitude of use." The works constructed by inhabitants of Texas or under authority of Texas were constructed either by authority of the United States under its "dominant servitude" or under the "servitude of use" which was granted by the Treaty of 1819. Such acts do not constitute acts of possession adverse to the title of Louisiana to the bed and subsoil of the Sabine, which title is subject to these servitudes.

Texas urges various navigational improvements undertaken by the U. S. Corps of Engineers to show

[90] 33 U.S.C.A. §491.

acquiescence by Louisiana. The various documents that have been filed show that the first navigational channel at Port Arthur was constructed on private rights-of-way and in most instances west of the west bank of the Sabine.[91] Later this navigational channel was enlarged by the U. S. Corps of Engineers as part of the national waterway system. It was used by Louisiana in connection with the Port of Lake Charles from 1926 until the deep water channel was dug directly from Lake Charles through Cameron into the Gulf. There is nothing in any of the documents or maps relating to the works performed by the Corps of Engineers to show any acquiescence on the part of Louisiana to establish title in Texas to the bed and subsoil of the west half of the Sabine. All of this work was done under the right of "navigation", granted by the Treaty of 1819, and the "dominant" servitude of the United States over navigable waters.

The first time we have been able to find any question of title arising between Louisiana and Texas to the Sabine was at the "Narrows." Texas patented land on the island between the two channels of Sabine River at the "Narrows", as did Louisiana.[92] Texas retained title to all unappropriated public land when it was admitted as a State of the Union in 1845.[93]

The question of the "Narrows" was finally submitted to the Secretary of the Interior, General Land

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[91] Transcript, pp. 243-246 (Testimony of Robert A. Bowers, Planning Engineer, City of Port Arthur, Texas).

[92] Louisiana Exhibit S, particularly exhibits attached thereto.

[93] 9 U.S. Stat. 108.

Office, for his decision. The basic question was a determination of which channel of the Sabine was used in fixing the western boundary in the Treaty of 1819, which was later surveyed in 1840-41. It was held that the islands in Sabine River, at the point known as the "Narrows" had passed to Louisiana from the United States under its Swamp Lands Grants.[94] The west bank of the western channel of the River at this point was recognized as the boundary between Louisiana and Texas.[95] Obviously, this placed the lands claimed by Texas in Louisiana. The Texas patents were cancelled, as so testified by Mr. Ray Wisdom.[96] The question of ownership of the bed and subsoil of the Sabine to the western bank thereof was not at issue in that case.

Mr. Frank Pierce, First Assistant Secretary, Commissioner of the General Land Office, in his opinion dated June 27, 1910, stated:

"In the absence of any term limiting or re-

[94] Louisiana Exhibit N, p. 4; Texas Exhibit B, Item 1.

[95] Appendix D(d), Report of Special Master, which reads: "(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.'" (Emphasis Ours)

[96] Transcript, pp. 571-573.

> stricting the boundary to a particular channel of the river, the limits described would extend, by the plain language of the statute, to the farthest or western channel of the river, even if the other descriptive term, 'including all islands,' had been omitted; but when considered together those terms of description indicate with absolute certainty that the western boundary of the state is the farthest western branch or channel through which any part of the waters of the Sabine River may naturally flow." [97]

Texas has categorically stated that, if 1941 is fixed as the date on which Louisiana first established or initiated its claim to the west bank of the Sabine, there are still 92 years between that date and 1848 and Texas claims that Louisiana has acquiesced in its claim to a mid-stream boundary during that period of time. However, as we have hereinabove stated, the earliest evidences of any affirmative action (such as leasing parts thereof) taken by Texas in the Sabine (aside from the "Narrows" litigation), is around 1930. In that year Texas leased acreage in the Sabine to J. C. Reynolds.[98] If this deed or lease to Reynolds in 1930 was an assertion of ownership, then only eleven (11) years passed between that time and 1941 when Governor Jones asserted title to the bed and subsoil of the Sabine to its western banks on behalf of Louisiana. Additionally, Texas has not introduced any evidence tending to show that there was any affirmative action taken under this lease by Reynolds to possess the bed and subsoil of the Sabine

[97] Texas Exhibit B, Item 1.
[98] Texas Exhibit E, Item 23(3).

and the mere granting of a lease, of itself, cannot amount to an affirmative act of possession.[99]

Texas urged and the Special Master ruled that Louisiana should have been more vigorous in asserting its claim, even to the extent of instituting legal action. This finding is made in spite of the fact that the officials of the respective states tentatively understood that the boundary dispute would not be pushed, pending a decision in the Tidelands litigation.[100]

As we have indicated Texas bases its claim of acquiescence by Louisiana on innumerable maps,[101] oil and gas and shell leases,[102] and such presented in its exhibits. However, of those exhibits filed prior to the hearing in Houston in December, 1970, 184 items were dated *after* 1941, and 125 items dated before 1941.[103] Additionally, 71 maps were dated *after* 1941 and 63 maps dated prior thereto.

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[99] Texas Exhibit C, Items 18 and 24. Item 18 contains an addendum, dated April 25, 1939, in which it is stated that Louisiana was claiming the benefit of the 1819 Treaty and that the Act of 1848 authorizing Texas to extend its jurisdiction to the middle of the Sabine was unconstitutional, etc. This is another indication that, even prior to Governor Jones' letter of 1941, Louisiana officials were cognizant of the boundary problem and making a serious claim to the west bank of the Sabine.

[100] This Court has held that states being political subdivisions, do not act with the same promptness as individuals in asserting claims. *State of Vermont v. State of New Hampshire*, 289 U.S. 593, 53 S.Ct. 708, 77 L.Ed. 393 (1933).

[101] We again call to this Court's attention the inconsistent position now being taken as to maps relied on by Texas in this case and which Texas officials are now publicly asserting as to an extension of its boundary offshore. See Note 81.

[102] The Special Master found (and made note of it in the appendix to his report) that Louisiana executed leases covering the west half of the Sabine starting in 1922. Louisiana Exhibit E; Appendix C II, Report of Special Master.

[103] Louisiana Exhibit U.

Texas filed in evidence certain sand, shell and gravel permits issued by the Texas Game, Fish and Oyster Commission or its successors on Sabine River.[104] However, the earliest permit noted therein is dated May 31, 1930, which is only eleven (11) years prior to Governor Jones' letter in 1941. Only six (6) of the 32 permits noted therein were issued prior to 1941 and Texas has presented no evidence to show that sand, shell and/or gravel was ever removed from those bodies of water under these permits. The mere granting of these permits cannot, of itself, amount to an affirmative act of possession by Texas of the bed and subsoil of the Sabine.

Additionally, as can be seen from the affidavit of Mr. Jerry Sadler,[105] former Commissioner of the

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[104] Texas Exhibit E; Appendix C I(a), Report of Special Master.

[105] Texas Exhibit B, Items 7-8; but see statement at pp. 65-66, Appendix C I(b), Report of Special Master, which reads:

> "(B) Oil and Gas Leases Executed by Texas
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> 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.
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> 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)."

General Land Office of Texas, oil and gas leases have been granted by Texas but the earliest thereof seems to be dated December 9, 1950, or some nine (9) years *after* Governor Jones's letter of 1941.

There was no occasion for Louisiana to institute formal proceedings to dispossess Texas from any possession of the bed and subsoil of the Sabine until it, through its lessees, started digging for shell and/or drilling for oil. This was all of recent time and mostly during the period when Texas and Louisiana were involved in litigation with the United States over the Tidelands issue.

Texas, in cross-examining Mr. C. J. Bonnecarrere, introduced certain unitization agreements and division orders, which it contended showed Louisiana's acquiescence to Texas' claim to a mid-stream boundary. However, most of these agreements and orders contained a clause to the effect that nothing therein would be used as evidence in any litigation nor construed as establishing a boundary. Nonetheless, Texas urged these items to establish its claim of acquiescence. We have already shown Mr. Bonnecarrere, in his testimony, made it clear that, since 1941, Louisiana has attempted in every known instance, to formally protest the granting by Texas of oil, gas and mineral leases in the west half of the Sabine.

The only affirmative evidence presented that any possession occurred under any of the Texas oil, gas, and mineral leases, was in reference to the Phoenix Lake Field, which was developed about 1952 or some

eleven (11) years after Governor Jones' vigorous letter of 1941.

The right to "use" and "navigate" the waters of the Sabine required the cooperation of both sides in constructing structures in the Sabine so that there would be no interference with these joint rights.

To create some order out of this situation of joint use and navigation of the Sabine, Congress consented as we have shown that Texas be permitted to extend its criminal jurisdiction to the middle of the Sabine.[106] As a result, it was only natural for Texas and Louisiana, under these Acts, to cooperate in enforcing hunting and fishing regulations, as the inhabitants of both states had the right to hunt and fish in these waters, the building of bridges across the Sabine for the benefit of the inhabitants of both sides and in construction of other improvements for the benefit of both states. The participation by Louisiana in these acts was not intended to acquiesce in or recognize a mid-stream boundary.

In 1954, in order to "use" the water of the Sabine, Texas and Louisiana, for the first time, with the approval of the United States, entered into a formal

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[106] With this in mind it is easy to see why many maps had a line in the Sabine. The Special Master recognized these lines were not placed thereon to specifically establish a boundary when he said in his report: "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." Appendix B II, Report of Special Master.

compact which contained the following language, namely:

> "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 water shed, 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 'State line' as defined in this Compact shall not be construed to define the actual boundary between the State of Texas and the State of Louisiana." (Emphasis Ours)[107]

The result of this Compact is the Toledo Bend project, which has been most beneficial to both Texas and Louisiana.

Mr. John B. Carter, retired Chief, Location and Design Engineer, Louisiana Department of Highways, stated, that many of the bridges along the Sabine are owned in *undivided* ownership throughout their length. The first bridge at Orange was constructed

[107] Louisiana Exhibit A, Item 23. In the trial of this case Texas, in spite of the language contained in the compact, attempted to use acts executed under the compact to show acquiescence.

at practically the sole cost of Texas.[108] Mr. Carter further testified that in the negotiations between the respective highway officials, there was never any discussion of establishing or acquiescing in any mid-stream boundary between Louisiana and Texas.[109]

These facts are not disputed by Mr. J. C. Dingwall, Texas State Highway Engineer, who stated that the bridges over the Sabine "were constructed with the State of Texas and the State of Louisiana each paying fifty per cent of costs . . ." [110]

Until 1914 the City of Orange, Texas limits were fixed on the West bank of the Sabine. By ordinance passed November 10, 1914, the City Council of the City of Orange, Texas, for the limited purpose of securing land "by purchase, condemnation or gift for the improvement of navigation of said navigable streams or waters, either by the United States or by said City, or by any navigation or other improvement district, and for the purpose of establishing and maintaining wharves, docks, railway terminals, side tracks, warehouses or any other facilities or aids whatsoever to either navigation or wharves", attempted to extend its boundaries to include a portion of Sabine River.[111] As set forth in Section 4 thereof,

> ". . . after the passage of said ordinance adding said territory to said city, said city shall have and exercise within said limits the fullest and

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[108] Transcript, pp. 50-55.
[109] Transcript, pp. 55-56, 59-60.
[110] Texas Exhibit B, Item 17.
[111] Texas Exhibit E, Item 17, pp. 53-54.

> most complete *power of regulation of navigation and of wharfage and of wharfage rates* and of all facilities, conveniences and aids to wharfage or navigation consistent with the Constitution of *this State, and shall further have authority by criminal ordinances or otherwise, to police the navigation of said waters and the use of said wharves and facilities and aids to wharfage in navigation . . .*" (Emphasis Ours)[112]

Therefore, there seems to be no intent to take fee title ownership to the land underlying the portions of Sabine River over this extension of the boundary or city limit of Orange, Texas.

By ordinances dated November 24, 1955 and May 14, 1957,[113] the City of Orange, Texas, attempted to annex territory adjoining the City of Orange for the purpose of making it a part thereof for municipal purposes. Texas, of course, claims that these are additional acts which show acquiescence on the part of Louisiana to its claim to a mid-stream boundary. However, both of these additional ordinances were passed some *15 years after* Governor Jones placed Texas on notice of Louisiana's claim to the west bank of the Sabine in 1941, and, in fact, some years after Texas and Louisiana had informally agreed to await the settlement of its boundary, pending the outcome of the Tidelands litigation.

Under "A" in our argument, we mentioned various acts of the Legislature of Louisiana starting in

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[112] Texas Exhibit E, Item 17, p. 54.
[113] Texas Exhibit E, Item 17, pp. 57-63.

1848 asserting claims over the Sabine to the west bank.[114]

We respectfully urge that the undisputed facts do not sustain the findings of the Special Master that Louisiana lost title to the bed and subsoil of the west half of the Sabine.

POINT "C"

LOUISIANA TAKES EXCEPTION TO THE FINDINGS OF THE SPECIAL MASTER THAT THE "THALWEG DOCTRINE" DOES NOT APPLY. TEXAS MAINTAINED AND THE SPECIAL MASTER ERRONEOUSLY FOUND THAT THE BOUNDARY WAS IN THE GEOGRAPHIC MIDDLE OF THE SABINE.[115]

While Louisiana firmly asserts its boundary is on the west bank of the Sabine, nevertheless, if this Court holds otherwise, the boundary should be down the navigable channel on the west side of the most westerly island in the Sabine as it existed in 1812.

Texas must have considered that the thalweg rule applied for, as recently as August, 1946, Bascom Giles, Commissioner of the General Land Office and Chairman of the School Land Board, of Texas wrote to the State Mineral Board of Louisiana asserting that the thalweg rule applied as to the Sabine as a boundary between Texas and Louisiana.[116]

When Louisiana's boundary with Mississippi was

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[114] Louisiana Exhibit N (exhibits attached thereto).
[115] Pp. 31-34, Report of Special Master.
[116] Louisiana Exhibit B, Item 6, pp. 44-47.

in dispute,[117] this Court applied the thalweg rule and made the following observations:

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

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

> "When a navigable river constitutes the boundary between two independent states, the

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[117] *State of Louisiana v. State of Mississippi*, supra.

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

Texas relies on *State of Georgia v. State of South Carolina*, 257 U.S. 516, 42 S.Ct. 173, 66 L.Ed. 347 (1921), as did the Special Master.[118] That case can easily be distinguished from the case at bar. There this Court was dealing with a boundary established by *convention*—the Beauford Convention of 1787. Louisiana's boundary, as stated in the Act of Admission of April 8, 1812,[119] is "a line to be drawn along the

[118] Pages 31-32, Report of Special Master.
[119] 2 U.S. Stat. 701.

middle of said river, including all islands . . ." [120] The only "treaty boundary" or convention-fixed line was that fixed in the Adams-do Onis Treaty of 1819; and that boundary line was on the *western bank* of the Sabine water system.

In the *Georgia* boundary case, supra, this Court made this observation:

> "Thus, article II takes out of the case any influence which the thalweg, or main navigable channel, doctrine (Iowa v. Illinois, 147 U.S. 1, 13 Sup. Ct. 239, 37 L.Ed. 55; Arkansas v. Tennessee, 246 U.S. 158, 169, 170, 171, 38 Sup. Ct. 62 L.Ed. 638, L.R.A. 1918D, 258) might otherwise have had upon the interpretation to be placed on article I, by which the location of the line must be determined, and leaves the uncomplicated case of a boundary stream between two states quite unaffected by other considerations.
>
> "Thus again we have the case of a stream for a boundary between two states and with the precise location of the boundary line unaffected by the thalweg doctrine, or by other circumstances, and again the rule must be applied that the division line is midway between the banks of the stream—here between the island bank on the one side and the South Carolina bank on the other—its precise position to be determined when the water is at its ordinary stage."

While the Special Master followed the *Georgia* case in denying the application of the thalweg rule

[120] West's Louisiana Statutes Annotated, Constitution (1812), p. 511, states ". . . including all *its* islands." (Emphasis ours).

in this case, he failed to follow the teaching of this Court in the same case to the effect that where there are islands in the river belonging to one state "the line must be between them and the South Carolina shore, for otherwise the Georgia islands would be in the State of South Carolina."

In the *Georgia* case the treaty provides "reserving all islands in said Savannah and Tugalo to Georgia." Here Louisiana is entitled to all of the islands in the Sabine. The Special Master found Louisiana is entitled to all islands in the Sabine that were there in 1812, yet he disregarded the holding in the *Georgia* case that Louisiana's boundary must be a line between the islands and the Texas shore.

Since it has been stipulated the Sabine River, Sabine Lake and Sabine Pass are one continuous body of navigable water, the same rule stated in the *Georgia* case applies irrespective in which body of water the islands appear. No distinction was made in the Sabine Pass, Sabine Lake and Sabine River in the Treaty of 1819 and in the various Acts admitting Louisiana into the Union.

If the statutory language of the 1812 Louisiana Constitution is to govern, we are dealing with a line drawn down the "middle" of the river, including all its "islands". This is quite different from the treaty language in the *Georgia* case. The "middle" has been interpreted by this Court, on many occasions, to mean the middle of the main navigation channel. This is

exactly the same language as is used in *State of Iowa v. State of Illinois*, 147 U.S. 1, 13 S.Ct. 239, 37 L.Ed. 55 (1892), and *State of Louisiana v. State of Mississippi*, supra. In fact, the latter case involved the self-same Constitution of Louisiana of 1812 that concerns us in the case at bar. In the case dealing with the Mississippi River the right of navigation was assured to all of the states, but this did not preclude this Court from applying the "Thalweg Doctrine" to the boundary of the states bounded by the Mississippi River.

Texas' contention was erroneously adopted by the Special Master[121] that the whole basis for the thalweg rule is absent because of free navigation of the Sabine, is again refuted by *State of Arkansas v. State of Tennessee*, 246 U.S. 158, 38 S.Ct. 301, 62 L.Ed. 638 (1918). At page 305 the following language was used by this Court:

> "There is controversy with respect to the application of the foregoing rule to the particular circumstances of this case. It is insisted in behalf of the State of Tennessee that *since the rule of the thalweg derives its origin from the* equal rights of the respective States *in the navigation of the river*, the reason for the rule and therefore the rule itself *ceases* when navigation has been rendered impossible by the abandonment of a portion of the river bed as the result

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[121] Pages 31-32, Report of Special Master.

of an avulsion. In support of this contention we are referred to some expressions of Vattel, Almeda, Moore, and other writers; *but we deem them inconclusive, and are of the opinion, on the contrary, that the contention runs counter to the settled rule and is inconsistent with the declarations of this court,* in Nebraska v. Iowa, 143 U.S. 359, 367, 12 Sup. Ct. 396, 399 (36 L.Ed. 186), that 'avulsion would establish a fixed boundary, towit: the center of the abandoned channel,' or, as it is expressed on page 370 of 143 U.S. on page 400 of 12 Sup. Ct. (36 L.Ed. 186), 'the boundary was not changed, and it remained as it was prior to the avulsion, the center line of the old channel,' and in Missouri v. Nebraska, 196 U.S. 23, 36, 25 Sup. Ct. 155, 158 (49 L.Ed. 372) *that the boundary line 'must be taken to be the middle of the channel of the river as it was* prior to such avulsion'." (Emphasis Ours)

A late case entitled *Arkansas v. Tennessee,* 397 U.S. 88, 90 S.Ct. 784, 25 L.Ed. 2273, (1970),[122] decided on February 25, 1970 concerned the doctrine of the thalweg which was admittedly applicable; the question being whether an avulsion had existed. This Court followed the middle of the old abandoned channel holding it to be the correct boundary.

Many decisions of this court and lower federal courts leave no doubt that the term "middle of the river," without any other qualification, refers to the "thalweg." [123]

[122] Supplemented 399 U.S. 219, 90 S.Ct. 2222, 26 L.Ed. 2d 537.

[123] *State of Minnesota v. State of Wisconsin,* 252 U.S. 273, 40 S.Ct. 313, 64 L.Ed. 558 (1920); *State of Wisconsin v. State*

Texas has made reference on several occasions to the fixing of the boundary in the appropriate geographic middle of Sabine Pass, Lake and River. However, it fails to take notice of the maps prepared in conjunction with the survey of 1840-41, which show the various channels where Sabine River enters Sabine Lake.[124]

In the affidavit of Mr. Robert Lyddan, Chief Topographic Engineer of the U. S. Geological Survey, Department of the Interior,[125] he refers to the boundary line as portrayed on geological survey maps. It is important to note that Mr. Lyddan, in positioning the so-called boundary, relied on the book entitled "Boundaries of United States and the Several States". In this pamphlet reference is made to the authority of Congress to permit Texas to extend its jurisdiction and the extension of the jurisdiction by Texas. Clearly, Mr. Lyddan was in no position to interpret the legal effect of these acts since there were no court decisions interpreting them. He no doubt felt as a government employee he was bound to follow the wording thereof.

Nonetheless, the Port Arthur Quadrangle prepared by the U. S. Geological Survey, 1957 Edition, also referred to by Mr. Robert A. Bowers in his affi-

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of Michigan, 295 U.S. 455, 55 S.Ct. 786, 79 L.Ed. 1541 (1935); *Sherrill v. McShan*, 356 F.2d 607, (Ninth Cir., 1966); *Anderson-Tully Company v. Tingle*, 166 F.2d 224, (Fifth Cir., 1948); *Iselin v. LaCoste*, 139 F.2d 887, (Fifth Cir., 1944); *Anderson-Tully Company v. Franklin*, 307 F. Supp. 539 (N.D., Miss., 1969); and *Anderson-Tully Company v. Walls*, 266 F. Supp. 804, (N.D., Miss., 1967).

[124] Louisiana Exhibit K, Item 1; Appendix "A", Item 5.

[125] Texas Exhibit G, Item 3.

davit of August 31, 1970, clearly shows that the position of the boundary line at the Lake was not placed at the geographic middle of the River, but in Middle Pass, which completely ignored West Pass of the Sabine River, as shown on the map of the survey of the Joint Commission.

There were four passes at the point where Sabine River enters Sabine Lake.[126] As held by the Interior Department in the 1910 case involving the "Narrows", Louisiana was and is entitled to the "west bank of the west branch". If this Court recognizes Texas' claim to the "geographic middle" of the Sabine, the boundary should still be drawn in the westernmost pass.[127] This would be in keeping with this Court's holding in the *Georgia* case.

The affidavit of R. C. Wisdom, states that "for the purpose of these calculations the location of the boundary line between the western and eastern halves of Sabine Pass, Sabine Lake and Sabine River has been taken as the geographic middle, equi-distant from the east and west banks and shores, *as they existed on the earliest maps available.*" [128] Mr. Wisdom also uses the erroneous boundary line at the north end of Sabine Lake as shown on the U. S. Geological survey of 1957 described as the Port Arthur Quad-

[126] Louisiana Exhibit K, Items 1 (p. 2), 7, 12 (p. 20), and 13 (p. 23); also, Louisiana Exhibit N(a), particularly sheet 18 of 21 sheets attached thereto.

[127] Louisiana Exhibit N(a), Sheet 18, clearly shows the westernmost channel as navigable with water depths of approximately nine (9) feet.

[128] Texas Exhibit G, Item 1, p. 1.

rangle. Had Mr. Wisdom been familiar with the "Map of the River Sabine from its Mouth in the Gulf of Mexico in the Sea" prepared by the Joint Commission, he would have seen that the boundary was on the west bank of West Pass, not in the middle of Middle Pass.

The Special Master determined "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)." [129] He then went on to hold "that the boundary be established as 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 leases, building of bridges and other acts discussed in his report.

We respectfully suggest that the three opinions cited by the Special Master to sustain the doctrine of acquiescence to a geographical mid-stream boundary instead of the thalweg in the Sabine are inapposite and, as a matter of fact, sustain the position of Louisiana.

In the case of *State of Arkansas vs. State of Ten-*

[129] Pp. 32-33, Report of Special Master; also, Louisiana Exhibit B, Item 8 (Letter of December 14, 1964 from Mr. Jerry Sadler, Commissioner of the General Land Office of Texas, to Mr. C. J. Bonnecarrere, Executive Secretary of the State Mineral Board of Louisiana, that there had been a long-standing dispute over the boundary).

nessee, supra, decided in 1940, this Court, after finding that Tennessee had continuously exercised dominion and jurisdiction over the area in question from the year 1826 until the time of the suit and that there was no showing Arkansas ever asserted any claim to the land in controversy prior to the institution of the suit, went on to say:

> "On behalf of Arkansas it is argued that the rule of the thalweg is of such dominating character that it meets and overthrows the defense of prescription and acquiescence. That position is untenable. The rule of the thalweg rests upon equitable considerations and is intended to safeguard to each State equality of access and right of navigation in the stream. Iowa v. Illinois, 147 U.S. 1, 7, 8, 13 S.Ct. 239, 241, 37 L.Ed. 55; Minnesota v. Wisconsin, 252 U.S. 273, 281, 282, 40 S.Ct. 313, 318, 319, 64 L.Ed. 558; Wisconsin v. Michigan, 295 U.S. 455, 461, 55 S.Ct. 786, 788 79 L.Ed. 1541; New Jersey v. Delaware, 291 U.S. 361, 380, 54 S.Ct. 407, 413, 78 L.Ed. 847. The rule yields to the doctrine that a boundary is unaltered by an avulsion and in such case, in the absence of prescription, the boundary no longer follows the thalweg but remains at the original line although now on dry land because the old channel has filled up. Nebraska v. Iowa, 143 U.S. 359, 367, 12 S.Ct. 396, 398, 36 L.Ed. 186; Missouri v. Nebraska, 196 U.S. 23, 36, 25 S.Ct. 155, 157, 49 L.Ed. 372; Arkansas v. Tennessee, supra, 246 U.S. pages 173, 174, 38 S.Ct. 304, 305, 62 L.Ed. 638, L.R.A. 1918D, 258. And, in turn, the doctrine as to the effect of an avulsion may become inapplicable when it is established that there

> has been acquiescence in a long-continued and uninterrupted assertion of dominion and jurisdiction over a given area. Here that fact has been established and the original rule of the thalweg no longer applies."

In the case now before this Court we are not confronted with dry land formed by avulsion as in the Arkansas case.

In the other case of *State of Arkansas v. State of Tennessee*, supra, decided in 1918, this Court considered another portion of the boundary between Arkansas and Tennessee and held:

> "(1) The true boundary line between the States, aside from the question of the avulsion of 1876, is the middle of the main channel of navigation as it existed at the Treaty of Peace concluded between the United States and Great Britain in 1783, subject to such changes as have occurred since that time through natural and gradual processes.
> and
> "(2) By the avulsion of 1876 the boundary line between the States was unaffected, and remained in the middle of the former main channel of navigation, as above defined."

This decision was made in spite of the fact that both Arkansas and Tennessee had interpreted the line to be at a point equidistant between the well defined and permanent banks of the River. In making this determination, this Court said:

> "It is said that Arkansas has interpreted the line to be at a point equidistant from the

well-defined and permanent banks of the river, that Tennessee likewise has recognized this boundary, and that by long acquiescence on the part of both States in this construction, and the exercise of jurisdiction by both in accordance therewith, the question should be treated as settled. The reference is to certain judicial decisions, and two acts of legislation. In Cessill v. State (1883) 40 Ark. 501, which was a prosecution for unlicensed sale of liquors upon a boat anchored off the Arkansas shore, it was held that the boundary line, as established by the original treaties and since observed in federal legislation, state constitutions, and judicial decisions was the 'line along the river bed equidistant from the permanent and defined banks of the ascertained channel on either side.' This was followed in subsequent decisions by the same court. Wolfe v. State (1912) 104 Ark. 140, 143, 148 S.W. 641; Kinnanne v. State (1913) 106 Ark. 286, 290, 153 S.W. 262. The first pertinent decision by the Supreme Court of Tennessee is State v. Pulp Co. (1907) 119 Tenn. 47, 104 S.W. 437, in which a similar conclusion was reached, partly upon the ground that it had been adopted by the courts of Arkansas. The legislative action referred to consists of two acts of the General Assembly of the State of Tennessee (Acts 1903, p. 1215, ch. 420; Acts 1907, p. 1723, ch. 516), each of which authorized the appointment of a commission to confer and act with a like commission representing the State of Arkansas to locate the line between the States in the old and abandoned channel at the place that we now have under consideration; and the Act of 1907 further provided that if Arkansas should fail to appoint a

commission the Attorney General of Tennessee should be authorized to institute a suit against that State in this court to establish and locate the boundary line. These acts, far from treating the boundary as a line settled and acquiesced in, treat it as a matter requiring to be definitely settled, with the co-operation of representatives of the sister State if practicable, otherwise by appropriate litigation.

"The Arkansas decisions had for their object the establishment of a proper rule for the administration of the criminal laws of the State, and were entirely independent of any action taken or proposed by the authorities of the State of Tennessee. They had no particular reference to that part of the river bed that was abandoned as the result of the avulsion of 1876; on the contrary, they dealt with parts of the river where the water still flowed in its ancient channel. The decision of the Supreme Court of Tennessee in State v. Pulp Co., 119 Tenn. 47, 104 S.W. 437, sustained the claim of the State to a part of the abandoned river bed which, by the rule of the thalweg, would be without that State. *The combined effect of these decisions and of the legislation referred to, all of which were subsequent to the year 1876, falls far short of that long acquiescence in the practical location of a common boundary, and possession in accordance therewith, which in some of the cases has been treated as an aid in settling the question at rest.* Rhode Island v. Massachusetts, 4 How. 591, 638, 639, 11 L.Ed. 1116; Indiana v. Kentucky, 136 U.S. 479, 510, 514, 518, 10 Sup. Ct. 1051, 34 L.Ed. 329; Virginia v. Tennessee 148 U.S. 503, 522, 13

> Sup. Ct. 728, 37 L.Ed. 537; Louisiana v. Mississippi, 202 U.S. 1, 53, 26 Sup. Ct. 408, 571, 50 L.Ed. 913; Maryland v. West Virginia, 217 U.S. 1, 41, 30 Sup. Ct. 268, 54 L.Ed. 645."

In the case of *State of Iowa v. State of Illinois*, 147 U.S. 1, 13 S.Ct. 239, 37 L.Ed. 55 (1892), this Court was faced with the question of establishing the boundary in the Mississippi River between Iowa and Illinois. This Court held:

> "It is therefore ordered, adjudged, and declared that the boundary line between the state of Iowa and the state of Illinois is the middle of the main navigable channel of the Mississippi river . . ."

Iowa contended that the boundary line was in the middle of the main body of the river, taking the middle line between its banks or shores without regard to the "steamboat channel." On the other hand, Illinois claimed that its jurisdiction extended to the middle of the "steamboat channel" of the river, wherever that may be, whether on the east or west bank. This Court then, in substance, held: The expressions, "middle of the Mississippi river" and "the center of the main channel of the river," as used respectively in the enabling acts under which the states of Illinois and Wisconsin were admitted into the Union, and "middle of the main channel of the Mississippi river" as used in the enabling acts of Missouri and Iowa, all being descriptive of the boundaries of those states, are synonymous terms, and mean the middle of the main navigable channel, or channel most used, and

not the middle of the great bed of the stream, as defined by the banks of the river.

The Court will recall the Preamble of the Constitution of Louisiana of 1812 provides "beginning at the mouth of the river Sabine, thence by line to be drawn along the *middle of said river. . . .*" (Emphasis Ours) This Court in the Iowa case held the "middle of the Mississippi River" meant the middle of the main navigation channel.

Texas has made it clear, since the Special Master filed his report, why it wants its boundary in the geographical middle of the Sabine. Texas wants to use this mid-stream boundary as a point from which to extend the boundary into the Gulf of Mexico to acquire from Louisiana both sides of the Sabine Jetties and other areas to the east of the jetties, all of which Texas would not acquire under the "Thalweg Doctrine", and most of which has been in the control and possession of Louisiana.

The Special Master erred in not applying the "Thalweg Doctrine" in this case and that, where islands exist, the boundary should be between the islands and the Texas shore.

POINT "D"

THE SPECIAL MASTER WAS CORRECT IN RULING LOUISIANA OWNS ALL THE ISLANDS IN THE WEST HALF OF THE SABINE THAT EXISTED IN 1812, BUT WAS IN ERROR IN RULING LOUISIANA COULD LOSE THE IS-

LANDS BY ACQUIESCENCE AND EROSION. LOUISIANA OWNS ALL THE ISLANDS IN THE SABINE WHETHER THEY WERE THERE BEFORE 1812 OR HAVE BEEN FORMED SINCE.

When Louisiana was admitted as a state in 1812 its Constitution provided Louisiana owned all the islands in the Sabine. This has been so held by the Special Master in his report.[130]

This has been recognized by Texas for on November 25, 1941, Mr. Bascom Giles, Commissioner of General Land Office of Texas, in his letter to Governor Jones said:

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

Surely Texas did not doubt in 1941 that Louisiana owned *all* islands in the Sabine, regardless of what side of the stream they appeared, and whether

[130] Page 35, Report of Special Master.

they existed before or after 1812. This was written at the time Governor Jones put Texas on official notice of Louisiana's claim to the soil and subsurface of the Sabine to the west bank.

It was only after the present case was filed and after the first hearing before the Special Master that Louisiana became aware that Texas was claiming islands in the west half of the Sabine.

Louisiana had no knowledge that Texas laid any claim to the "Shell Island" in the mouth of Sabine Lake until on the trial of this case when such a claim was advanced, but Texas has changed its position and now admits it does not make any claim to "Shell Island."

The Treaty of 1819, the ruling of the Department of Interior in 1910 on the "Narrows", Louisiana's Constitution of 1812, and the interpretation by Mr. Giles, all establish Louisiana's title to all of the islands in the Sabine.

These assertions by Texas illustrate the fact that Texas never had a clear understanding as to a boundary between it and Louisiana, although in this proceeding it urges that at all times there was a definite understanding that a mid-stream boundary existed.

When Louisiana was admitted as a State of the Union in 1812, as we have previously mentioned, all public lands remained in the United States. The title to the beds of navigable streams vested in Louisiana.[131]

[131] Louisiana Exhibit P, particularly (n).

Mr. Ray Wisdom in his testimony made several references and discussed title to the islands formed by the forks of Sabine River as it enters Sabine Lake, especially the islands northwest of Middle Pass as shown on the Port Arthur Quadrangle (1957), which Pass is also sometimes designated as Middle Fork or West Fork.[132] Louisiana acquired public lands from the United States under the various Swamp Lands Acts and, more particularly, those islands to which Mr. Wisdom was referring. This particular area referred to by Mr. Wisdom was transferred by the United States to Louisiana, as follows:

1. A fractional Section 36, Township 12 South, Range 15 West was approved to Louisiana by the Secretary of Interior on January 23, 1930, list 229. This area includes the extreme West Fork and is called "2d West Fork" on the Township Plat.

2. Fractional Section 31, Township 12 South, Range 14 West; fractional Section 6, Township 13 South, Range 14 West; and fractional Section 1, Township 13 South, Range 15 West, were approved to Louisiana on May 5, 1852 under the Swamp Lands Act of March 2, 1849.

Included in the second grouping above is the island referred to by several of Texas' witnesses as "Shell Island".[133] Prior to the transfer of these islands to Louisiana, they were surveyed by U. S. Deputy Sur-

[132] Transcript, pp. 568-576.
[133] Louisiana Exhibit R(a-b).

veyor Thomas Bilbo, in the third quarter of 1838, and found to be in Louisiana.

The various maps introduced in evidence show Shell Island in Louisiana,[134] except for Texas Exhibits CC and DD, which are maps of Orange County, Texas, dated 1862 and 1897. These maps show no mid-stream boundary and, in fact, the heavy, darker line, which is usually used to indicate boundary, is placed on each of the maps on the western bank of the Sabine. These maps also show the island formed by the two channels of the Sabine at the "Narrows" as being in Texas. This island, of course, in the "Narrows" ruling in 1910, was determined to be in Louisiana and which ruling has been acquiesced in by Texas.

Attached to Mr. Bowers' affidavit[135] as Exhibit B is a section of the 1900 U. S. Coast & Geodetic Survey map, which taken together with later editions of the same map submitted with his affidavit as Exhibits C and D,[136] is U. S. Coast Survey Chart No. 517. This Chart No. 517 depicts John's Island in Sabine Lake, near the confluence of the Neches River, as a land area *above the high water line* and is so shown on all subsequent editions as being land above the high water line either under the name John's Island or as Doom's Island.

[134] John C. Tracy and H. D. Cox conveyed to the United States for the construction of the Sabine-Neches Channel, by deed dated May 23, 1912, portions of Fractional Section 36, Township 12 South, Range 15 West, and Section 1, Township 13 South, Range 15 West, being lands in the area of Little West Pass and Middle Pass of the Sabine and located in Cameron Parish, Louisiana. See Louisiana Exhibit R(c).

[135] Texas Exhibit J, p. 7.

[136] Texas Exhibit J, pp. 8-9.

In Shalowitz, *Shore and Sea Boundaries*, Vol. 2, Appendix F, pp. 327-328, figures 9 and 10 describe symbolization of the high and low water lines used on nautical charts prepared by the Coast Survey. On p. 327 thereof it is stated, "the high water line, which is the dividing line between land and sea, was always prominently displayed on the nautical chart as the heaviest, continuous black line inside the neat line . . . where the high water line is unsurveyed, a heavy, black dashed line is used."

John's Island or Doom's Island has always been shown on Coast Survey Charts 517 and 1279 as a land area above mean high water. Because of the foregoing, we assert that John's or Doom's Island is a true island in the Sabine.

On the map of Sabine-Neches Canal, Texas, dated March 5, 1910,[137] three islands are shown near the mouth of Taylor's Bayou. On the map of Port Arthur Ship Canal,[138] dated December, 1909, one of these three islands is clearly evident just north of the point where Taylor's Bayou intersects the Port Arthur Canal and enters Sabine Lake. Additionally, on the map of Sabine Pass and Lake, dated April, 1901,[139] two of the islands referred to above are clearly shown near the point where Taylor's Bayou enters Sabine Lake. There were large shell bank islands in Sabine Pass at the time of the survey by the Joint Commission (1840),[140]

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[137] Louisiana Exhibit K, Item 13, pp. 22-23.
[138] Louisiana Exhibit K, Item 9, pp. 15-16.
[139] Louisiana Exhibit K, Item 7, p. 12.
[140] Louisiana Exhibit K, Item 3, p. 5; Item 4, p. 6.

which are shown on maps which we have introduced into evidence dated about 1910.[141]

In considering the islands and Texas' early efforts towards dredging a channel along Sabine Lake, it is important to consider that the channel, to a large extent, was located on private rights of way west of the west bank of the Sabine Lake.[142] Later there was dredging in Sabine Lake under authority of the U.S. Corps of Engineers. Louisiana did not lose the area of the islands by this dredging.

The Convention on the Territorial Sea and Contiguous Zone, which was adopted by the United States, in defining what constitutes islands, in Article 10 provided:

"Art. 10"

> "10. An Island is a naturally formed area of land, surrounded by water, which is above water at high tide."

As long as an island is naturally formed, there is nothing in the above Article which requires that the island be formed of any particular material, whether sand, gravel or dirt. The Special Master was in error in holding shell banks and oyster reefs are not islands even if they meet the above test.[143]

We respectfully suggest Louisiana owns all the islands in the Sabine whether they were there in 1812 or formed later, and that Louisiana has not lost title

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[141] Louisiana Exhibit K.
[142] Louisiana Exhibit K, Item 7, 8, 9, and 10.
[143] Page 37, Report of Special Master.

to the islands or the area of the islands by acquiescence or erosion.

ORAL ARGUMENT

In view of the importance of this case to both States, we respectfully suggest it should be fixed for oral argument.

CONCLUSION

We respectfully urge that Louisiana's boundary should be recognized by this Court on the West bank of the Sabine from the Gulf of Mexico to the 32° of North latitude as surveyed and staked in 1839-41 so as to coincide with Louisiana's boundary from the 32° of North latitude to the 33° of North latitude and that Louisiana's title to all of the islands be recognized whether they existed in 1812 or were formed at a later date.

Respectfully submitted,

WILLIAM J. GUSTE, JR.,
Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General.

EDWARD M. CARMOUCHE,
Special Assistant Attorney General.

SAM H. JONES,
Special Assistant Attorney General.

JACOB H. MORRISON,
Special Assistant Attorney General.

EMMETT C. SOLE,
Special Assistant Attorney General.

OLIVER P. STOCKWELL,
Special Assistant Attorney General.

Attorneys for defendant.

CERTIFICATE

I, WILLIAM J. GUSTE, JR., Attorney General of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____day of_____, 1972, I served copies of the foregoing brief by transmitting conformed copies of the same, by first class mail, postage prepaid, to the Special Master, the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas, and upon the Solicitor General of the United States, in compliance with Rule 33.2(b) of the Rules of the Supreme Court of the United States, since the Report of Special Master has raised the question of the constitutionality of an Act of Congress of July 5, 1848 (9 U.S. Stat. 245).

WILLIAM J. GUSTE, JR.,
Attorney General,
State of Louisiana.

INDEX TO APPENDIX

Description

Item Number

which is referred to in Louisiana Exhibit A, Items 13 and 14 (Senate Document No. 199, 27th Congress, 2d Session).

APPENDIX "A"

Item No. 1

RESOLUTION

"No. 212.]

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.

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.

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

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

/s/ TRASIMON LANDRY,
Lieutenant Governor and President of the Senate.

Approved March 16, 1848.

/s/ ISAAC JOHNSON,
Governor of the State of Louisiana."

Item No. 2

STATE OF LOUISIANA

PARISH OF CALCASIEU

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

PERSONALLY CAME AND APPEARED:

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

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

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

Deponent further says that he received from Honorable Bascom Giles, Commissioner of the General Land Office of Texas a letter dated November 25th, 1941, copy of which is annexed hereto and made part hereof.

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

/s/ SAM HOUSTON JONES

Sworn to and Subscribed
before me this *30th* day
of September, 1970.

/s/ DOROTHY BRASWELL
Notary Public

C O P Y

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

Dear Sir:

I am writing you in the interest of setting at rest all doubts that may exist as to the correct boundary between the states of Louisiana and Texas. The true

boundary between our respective states is the western bank of the continuous body of water known as Sabine Pass, Sabine Lake and Sabine River from the Gulf up to the 32nd degree of latitude, and thence due north to the Louisiana-Arkansas boundary.

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

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

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

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

treaties of February 22, 1819 (between Spain and the U.S.) and January 12, 1828 (between Mexico and the U. S.).

By an act of Congress of July 5, 1848 (U. S. Statutes at Large, 30th Congress (1848), First Session, Chapter 94), the United States sought to extend the eastern boundary of the State of Texas so as to include one-half of Sabine Pass, Sabine Lake and Sabine River up to the 32nd degree of latitude. This act is clearly unconstitutional under the doctrine of Louisiana vs. Mississippi, 202 U. S. 1; 26 Sup. Ct. 408; decided in 1906.

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

To this effect, see:-

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

Oklahoma v. Texas, 356 U.S. 70; 41 Supreme Court 420;

Oklahoma v. Texas, 256 U.S. 682; 41 Supreme Court 539;

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

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

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

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

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

As Governor of the State of Louisiana, and under the authority in me vested by the Constitution and Statutes of this State, I hereby make formal demand for the recognition by the State of Texas, as the true and correct boundary between our respective states, of the western bank of Sabine Pass, Sabine River and

Sabine Lake up to the 32nd parallel, and of the line between the 32nd and 33rd parallel of north latitude as established by the joint commission in 1839-41 and as adhered to by the citizens of both states adjoining it.

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

Yours respectfully,

_____

Governor, State of Louisiana

_____

Attorney General, State of Louisiana

_____

Special Assistant to the Attorney General of the State of Louisiana

---

C O P Y

GENERAL LAND OFFICE
State of Texas
Austin

November 25, 1941

BASCOM GILES, Commissioner
Alvis Vandygriff, Chief Clerk

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

Dear Governor Jones:

It has come to my attention that you are contend-

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

It is possible that you have overlooked the following facts:

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

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

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

> "Beginning at the mouth of the River Sabine

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

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

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

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

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

its boundaries and include this area. For more detailed information I refer you to Geological Survey Bulletin 817.

I would like to point out, however, that my investigation into the boundary line between our two States has revealed an interesting situation between the 32° of latitude and the 33° of latitude. It appears that there is a strip approximately 150 feet in width and 70 miles long between the marked boundary of Texas of 1838 and the actual boundary of Louisiana as fixed in 1812, which is not owned by the State of Louisiana but is quite possibly owned by the State of Texas. This strip extends from Joaquin, Texas, opposite Logansport, Louisiana, to the Arkansas-Louisiana line and contains about 1300 acres.

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

cide with the boundary of the State of Louisiana, as fixed in 1812, by the width of one-half of the River.

To illustrate this point, I am enclosing a blue print of a sketch prepared by this office based on the original maps filed here by the Boundary Commission of 1838. You can at once see that there is a discrepancy between the Louisiana boundary line running due north from the center of the Sabine River at the 32° parallel and the boundary of Texas as surveyed and marked running north from the western bank of the Sabine River. Conceding that the Sabine River is only 300 feet wide at the point it intersects the 32° of latitude, the strip between the boundary line of Louisiana and the old surveyed boundary line of 1838 would be approximately 150 feet wide. I would like to point out, however, as reflected by the original surveyor's maps, that it is quite possible that the Sabine River is much wider at this point because of overflows and swampy land which might increase this strip to as much as a mile.

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

Because of the strong implications that this territory belongs to the State of Texas, I have examined all of the information I have been able to obtain on this matter and have transmitted it to Senators Tom Con-

nally and W. Lee O'Daniel of Texas so that they may take whatever action they think expedient to protect any rights the State of Texas might have in this strip.

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

1. Certified photostatic copy of Sheet No. 1 of the map of a part of the boundary between the Republic of Texas and the United States of America drawn from notes of survey made by the Joint Commission under the Convention of the 25th of April, 1838.
2. Certified photostatic copy of Plan B, Sheet No. 3, of the above named survey.

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

Sincerely yours

/s/ BASCOM GILES
Commissioner
of the General Land Office

Encls.

Giles:rlw

COPY

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

Dear Commissioner Giles:

Your letter of November 25th was duly received

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

Let me say that I appreciate the courteous, careful and complete summation of your state's position in this matter as set forth by you. I freely acknowledge that you have done a thorough and able job, both in research and in presentation of the material on this subject from your point of view. However, my original opinion has not been changed, modified or varied by the citations and forceful arguments advanced.

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

to be given these statutes and treaties and the proper construction to be placed upon them.

In the first place, we believe that the Act of Congress of July 5, 1848 (Chapter 94, 30th Congress—9 Statutes 245), which is your main reliance, is unconstitutional, null and void. The reason is that Louisiana was the beneficiary of the boundary agreement between the United States of America and the King of Spain, as set forth in the Treaty of February 22, 1819, the actual line having been marked out by a joint commission under the Convention of 1888 between the Texas Republic and the United States. We disagree entirely with your theory that the United States of America held title to a thin strip of water comprising the western half of the Sabine from the Gulf to the 32nd parallel and a thin strip of land equivalent to one-half of the width of the Sabine from the 32nd to the 33rd parallel (the Louisiana-Arkansas line). We believe that the only possible effect of the Treaty of 1819 was to extend the western boundary of the State of Louisiana between the Gulf and the 33rd parallel by half of the width of the Sabine River. Not only is this true as a legal proposition inherent in the fundamental law governing the relations between the United States of America and the individual states comprising its Federal Union; but certain actions of the United States authorities, as hereinafter related in greater detail, point to this as an inevitable conclusion. Consequently, when Congress, on July 5, 1848, permitted the Texas Legislature to extend the eastern boundary of Texas to the center of the Sabine

River, it had no right or authority to do so, and it gave away something that it did not actually own. As a corrollary, the act of Texas of November 24, 1849 was negatory, null and void.

The western border of the "Louisiana Purchase" was, as you know, a matter of controversy for many years between Spain and the United States, during the course of which various states were admitted into the American Union and other changes took place in its component structure. Spain had always contended that the proper boundary between its lands on the North American continent and those of the United States of America was the Atchafalaya water system. Surely, if Spain had finally secured the enforcement of its conception of the proper boundary in 1819 and the border had been placed by the Treaty on the Atchafalaya River instead of the western bank of the Sabine, it cannot be gainsaid that the State of Louisiana's western boundary (as originally fixed in 1812) would have ipso facto been changed to conform. Furthermore, there is no showing that there was any reason, intent or purpose for the United States (as distinguished from the individual states that comprised its Federal Union) to establish a thin strip of water and land as a "buffer territory" between one of its component states—Louisiana—and its neighbor on the west—the Territory of the Spanish Kingdom. Any argument to the contrary appears even more fallacious, when it is recalled that 30 years elapsed between the Treaty of 1819 and the Act of Congress of 1848 purporting to consent to Texas having half

the Sabine, during which time Mexico supplanted Spain and the Republic of Texas, in turn Mexico; and finally Texas was admitted as a state several years prior to the date of said Act.

Our argument on this score is reinforced by the fact that the Overton Commission, which actually ran the boundary line in the period between 1839 and 1841, physically established it on the western bank of the Sabine water system up to the 32nd parallel and, from that point, north to the 33rd parallel of latitude. This latter portion of the boundary (from approximately Logansport, Louisiana to the Arkansas-Louisiana line) has always, as a matter of public knowledge and notorious opinion, been held to be the boundary between the states of Louisiana and Texas. No better illustration of this appears than the map of that portion of the boundary between the Republic of Texas and the State of Louisiana, a certified copy of which you sent me with your letter of November 25th. You will note on that very map that the territory to the east of the line is referred to as "State of Louisiana", and there is not the slightest intimation that the commissioners representing the United States and the Republic of Texas intended to project a narrow strip 150 feet wide running between the 32nd and 33rd parallels of north latitude and reserve it as federal territory. From all this, I am constrained to disagree with your observations on this question and the interpretation that you place on the Treaty of 1819 and the Act of Congress of 1848.

If the Sabine was, as stated by you, possibly

wider in 1819 than it is today, this would redound to the benefit of the State of Louisiana. Whatever was the western bank at the time of the Treaty of 1819 would be the proper boundary, regardless of any shrinkage or expansion in the actual water level of the stream itself. In closing, I wish to point out that the land portion of the boundary from the 32nd to the 33rd parallel has been acquiesced in for 100 years or more by both the State of Louisiana and the State of Texas. Certainly this is true from and after the physical location of the line on the ground by the joint commission acting under the Convention of April 25, 1838. I know of no instance in which the United States of America has claimed that any part of this boundary, land or water, is federal territory. Certainly it has never exercised any right of dominion over said territory; has collected no taxes therefrom, nor has it used same for any general, public, or federal purpose within the intent and under the requirements of the Constitution of the United States.

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

Lastly, I call your attention to the fact that in the Act of Texas of May 2, 1882 (Chapter XI—General Laws of Texas, 1882) and the Act of Congress of January 31, 1885 (Chapter 47, Second Session, 48th Congress) there is a recognition of both the State of

Texas and the United States that the western bank of the Sabine from the Gulf to the 32nd degree of latitude, and thence due north to the 33rd degree, is the correct eastern boundary of Texas. While I do not contend that this alone is conclusive, it is undoubtedly a factor favorable to our contentions and adverse to yours.

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

Yours sincerely,

STATE OF LOUISIANA
EXECUTIVE DEPARTMENT
BATON ROUGE

SAM H. JONES
GOVERNOR

December 17, 1941

Mr. Jacob H. Morrison
Attorney at Law
Maritime Building
New Orleans, Louisiana

Dear Jake:

I have your letter of December 15 and I am today mailing the letter to Commissioner Giles.

If you will prepare the proper form to be sent to the Louisiana delegation in Washington, we will be glad to write and mail these letters. I, too, think it is a good idea to apprise them of this matter.

Thanking you and with kindest personal regards, I am

Sincerely yours,

/s/ SAM H. JONES
Governor of Louisiana

SHJ/dg

Item No. 3

20TH CONGRESS, *1st Session.* [Doc. No. 61.] HO. OF REPS. *Executive.*

FUGITIVES FROM UNITED STATES TO MEXICO, &c. &c.

Message

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING THE INFORMATION REQUIRED

By a resolution of the House of Representatives of 2nd instant,

RESPECTING

THE RECOVERY OF DEBTS, &c. IN THE MEXICAN STATES,

FROM

PERSONS ABSCONDING FROM THE UNITED STATES:

ALSO, RESPECTING THE

BOUNDARY LINE BETWEEN THE UNITED STATES

AND THE

Province of Texas

JANUARY 15, 1828.

Read, and laid upon the table.

WASHINGTON:

PRINTED BY OALES & STATON.

1828.

To the House of Representatives of the United States:

WASHINGTON, *15th January*, 1828.

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

JOHN QUINCY ADAMS.

[Doc. No. 61.]

DEPARTMENT OF STATE,

Washington, D. C. 14th January, 1828.

The Secretary of State, to whom has been referred, by the President, the resolution of the House of Representatives of the 2d instant, requesting him "to inform that House, if it be not incompatible with the public interest, whether any representation or arrangement to or with the Mexican Government, has been made so as to enable citizens of the United States to recover debts and property belonging to them, from persons absconding from the United States and taking refuge within the limits of that Government; and whether any steps have been taken to establish the boundary of the United States between the State of Louisiana and the Province of Texas," has the honor to report:

That no such representation or arrangement, as the above resolution describes, has been made: that information reached the Department of State that some impediment existed, in some part of the United Mexican States, to the recovery of debts from the inhabitants due to foreigners; but the information was not very authentic; and, upon, inquiry of the Minister of those States, residing near this Government, he stated that he was not aware of the existence of any such impediment, but that, on the contrary, he believed the tribunals of his country were open alike to foreigners and inhabitants for the recovery of their debts and the prosecution of all their rights: that, since the adoption of the above resolution, an instruction has been addressed to the Minister of the United States at Mexico, to inquire into the true state of the fact, and, if necessary, to make such representations or remonstrances as its actual condition may call for.

That the Minister of the United States at Mexico, when he was sent on his mission, was charged with a negotiation relating to the territorial boundary between that Republic and the United States in its whole extent; and, consequently, including that portion which divides Louisiana from the Province of Texas: but no definitive arrangement on that subject has been yet concluded; and it is respectfully submitted to the President, that, in the present stage of the negotiation, it would be premature to publish the correspondence that has passed between the two Governments.

All which is respectfull[y] reported.

H. CLAY.

Item No. 4

Partly Cloudy

BEAUMONT ENTERPRISE

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YOUR HOME NEWSPAPER FOR NINETY-ONE YEARS

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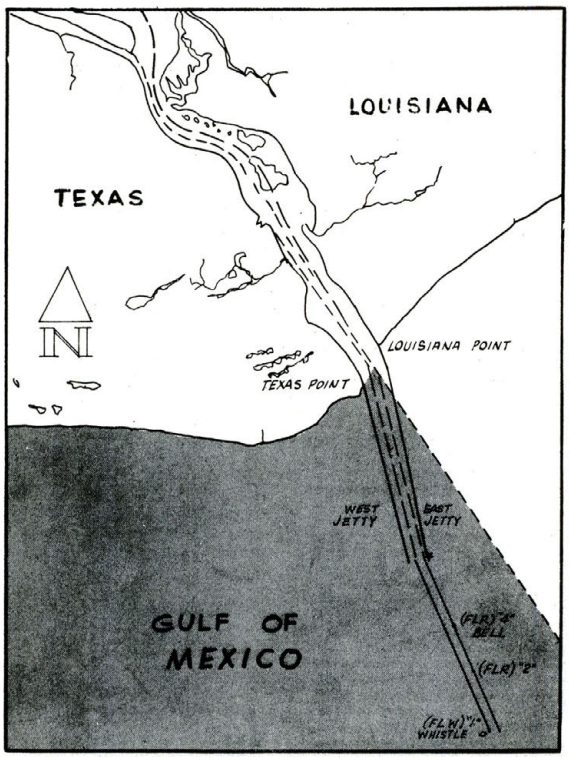


TEXAS LAW SPREADS EASTWARD — Texas is now enforcing game and fish law in all the shaded area shown here, which includes most of the east jetty at Sabine. A recent ruling, which is under appeal to the U.S. Supreme Court, set a new boundary line southeastward from the mouth of the old Sabine River channel, thus including some of the ship channel and a section of the Gulf of Mexico which previously was considered part of Louisiana.

Texas Law Rules East Jetty Now

BY ED HOLDER
Outdoors Editor

Texas game and fish laws now apply to waters surrounding virtually all of the east jetty at the mouth of the Sabine River south of Sabine Pass, territory which has always been under Louisiana law until now.

Texas laws also apply to a big chunk of the Gulf of Mexico southeast of the Sabine jetties in another area previously considered part of Louisiana.

It's all the result of a recent ruling by a special master which, until finally judged by the U.S. Supreme Court, at least temporarily puts those waters in Texas.

The ruling established the border between Texas and Louisiana as following the middle of the old Sabine River channel.

Until that decision was made, the border was considered a line mid-way between the jetties, with the east jetty in Louisiana and the west jetty in Texas.

However, the new line does not follow the channel between the jetties. It slices southeastward across the east jetty and out into the Gulf.

All of which means that the Texas Parks and Wildlife Department now is charged with enforcing Texas game and fish laws in an area which traditionally has operated under Louisiana law.

James U. Cross, Austin, executive director of the Parks and Wildlife Department, told The Enterprise that enforcement of Texas game and fish laws in that area has begun.

"However, we do not plan to rush in there and create a lot of problems. For one thing, the ruling is being appealed. For another, we want to be reasonable about the whole thing and give people time to learn what has happened," Cross said.

Several laws, including shrimping regulations, differ between Texas and Louisiana.

The line forming the new border doesn't differ from what most people observed as the previous border at most points along the

(See LAW, Page 4)

LAW

(Continued From Page One)

Sabine River, through Lake Sabine and down the channel from Lake Sabine to the Gulf.

The big difference begins where the land ends.

The line forming the border leaves the mouth of the Sabine River about mid-way between Texas Point and Louisiana Point, which are the southernmost points of land in the two states, and runs southeasterly, roughly toward the 18-mile light.

The reason for this is the mouth of the old Sabine River traveled in that direction, thus establishing a southeasterly direction for the border extending into the Gulf.

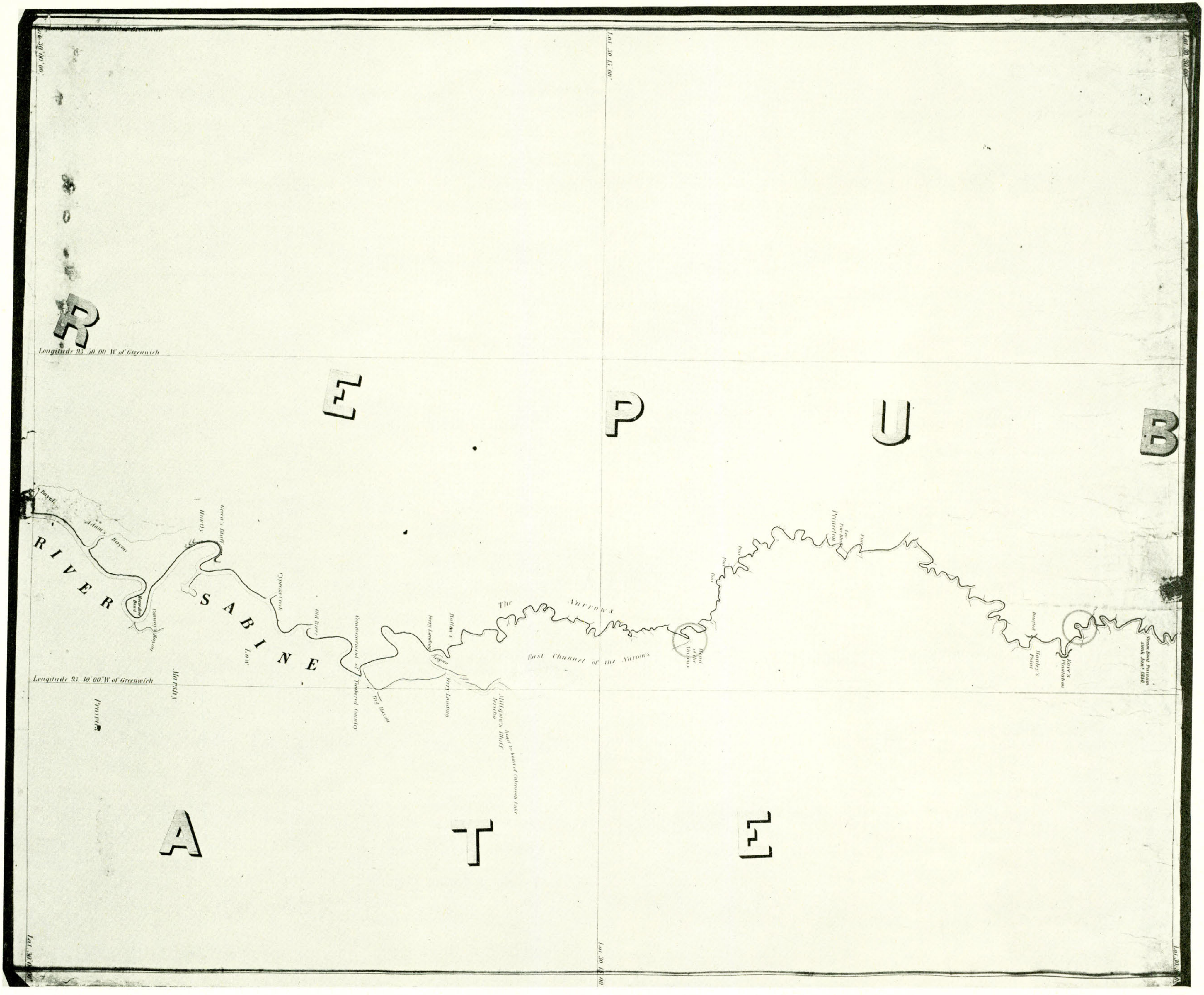
The jetties turn and run in a more southerly direction at that point. Thus the base of the east jetty and a short piece of the jetty extending into the Gulf still lies within Louisiana.

But the remainder of the East jetty, including the safety pass, is in Texas.

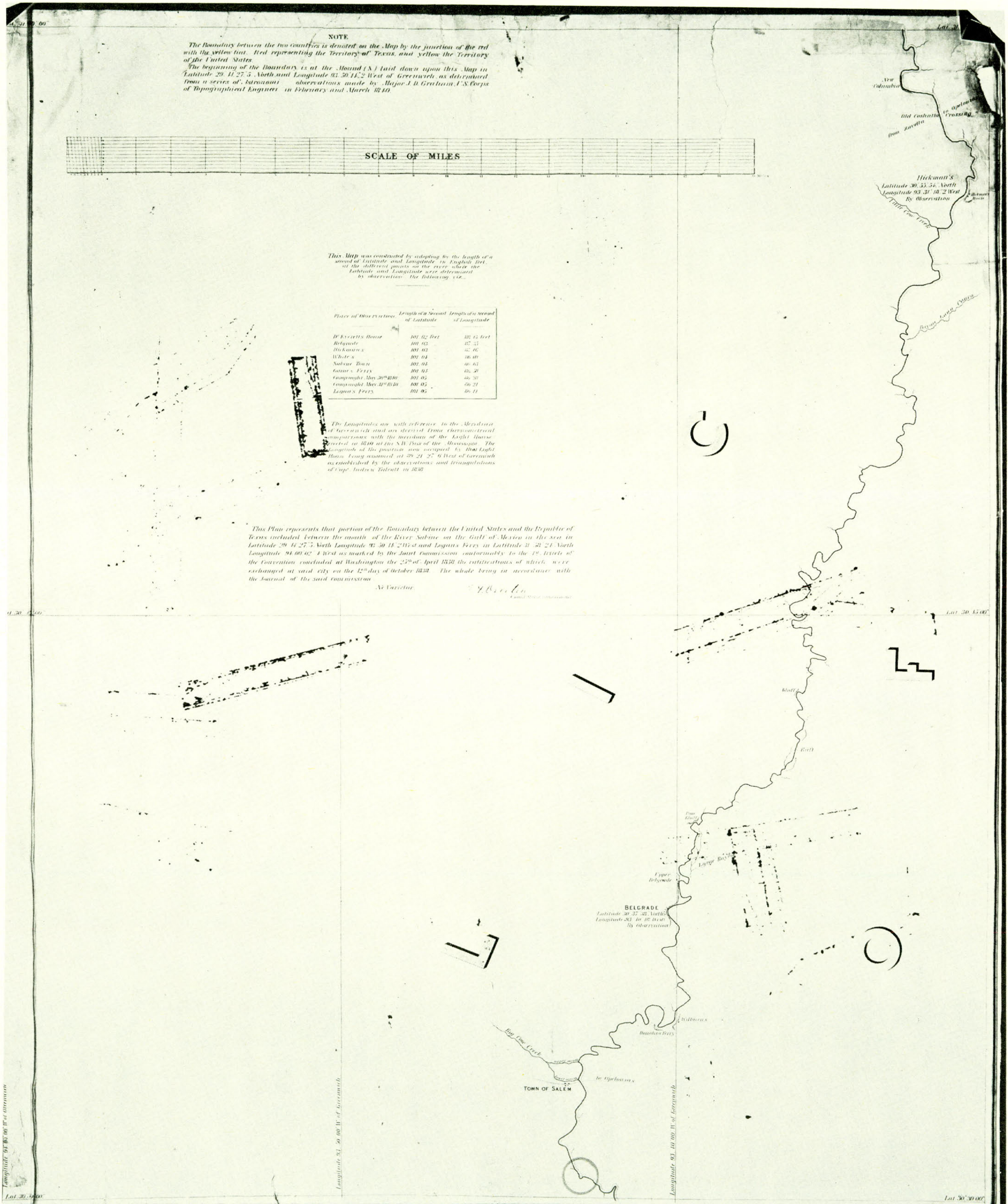
The new border is not marked by any visible means.

Cross indicated that Texas game management officers will start patrolling the newly acquired area.

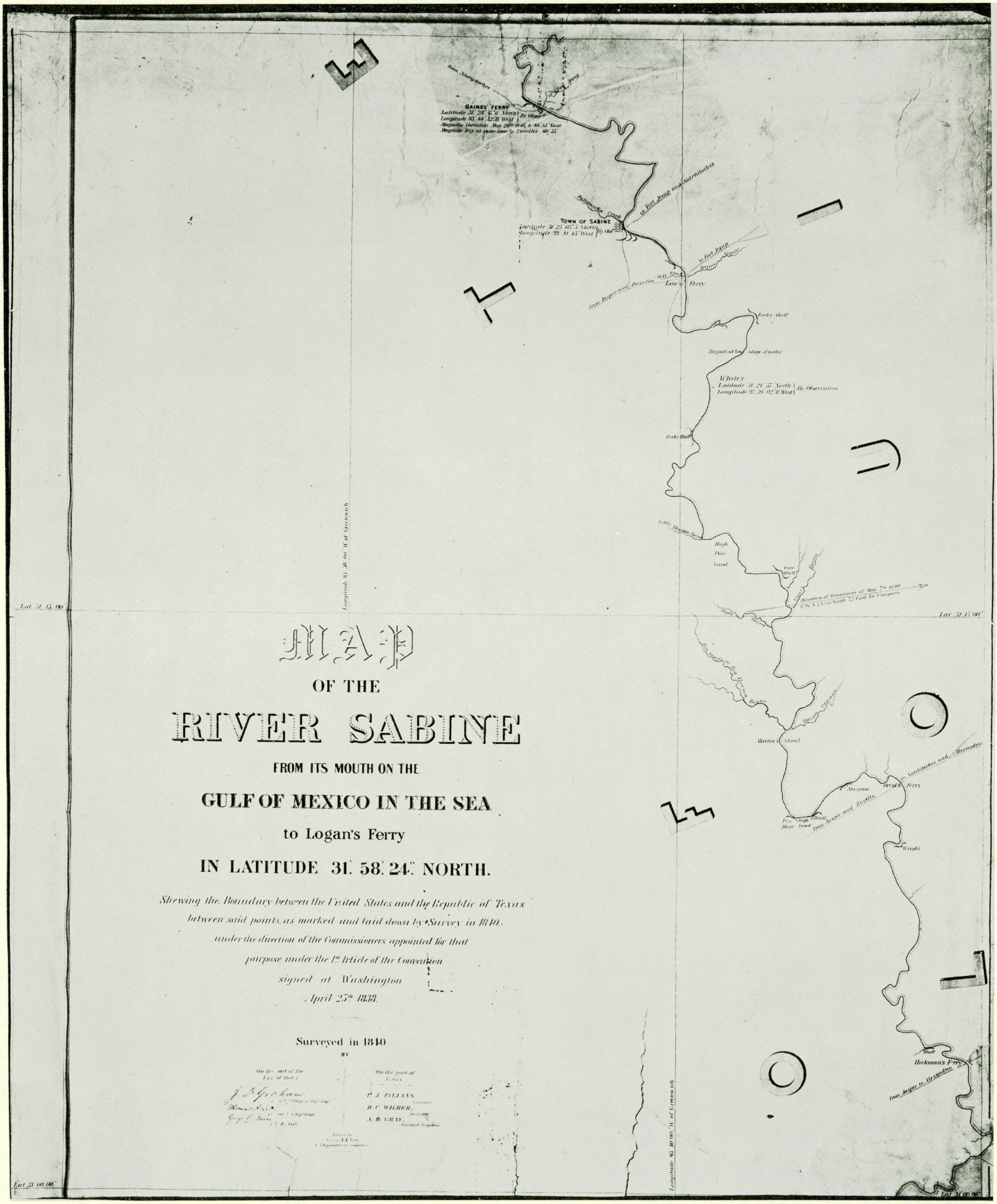
Anyone with questions on game laws which apply in the area can get information by calling the district office of the Parks and Wildlife Department in Beaumont, at 892-8666.

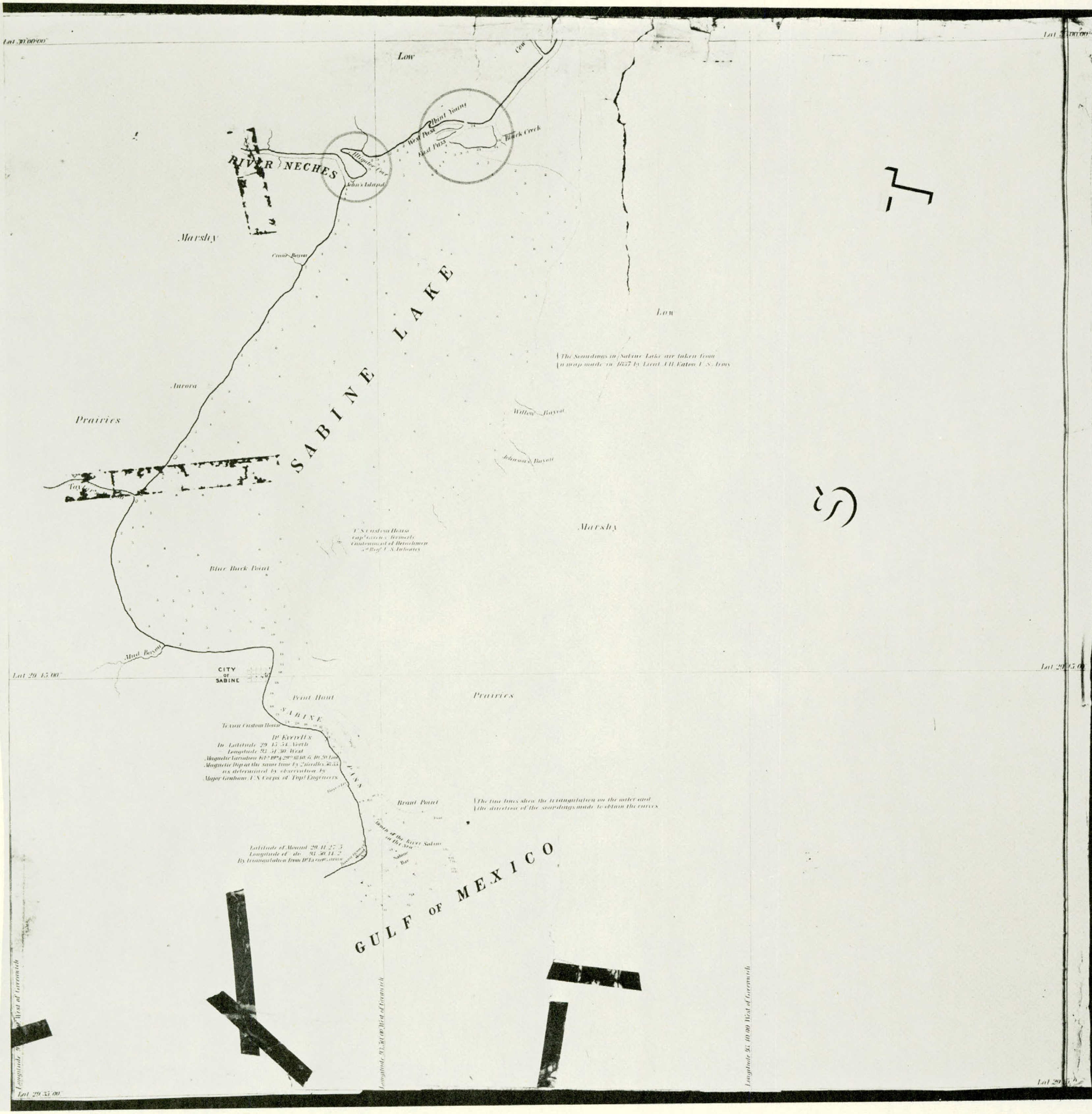


R
E
P
U
B
RIVER
SABINE
A
T
E
Longitude 93° 50' 00" W of Greenwich
Longitude 93° 40' 00" W of Greenwich
Adam's Bayou
Cypress Creek
Old River
Commencement of Timbered country
The Narrows
East Channel of the Narrows
Big Bayou
Low
Marsh
Prairie


NOTE
The Boundary between the two countries is denoted on the Map by the junction of the red with the yellow tint. Red representing the Territory of Texas, and yellow the Territory of the United States.
The beginning of the Boundary is at the Mound (X) laid down upon this Map in Latitude 29. 41. 27.5 North and Longitude 93. 50. 14.2 West of Greenwich as determined from a series of Astronomi observations made by Major J. D. Graham, U.S. Corps of Topographical Engineer in February and March 1840.
SCALE OF MILES
This Map was constructed by adopting for the length of a second of Latitude and Longitude in English feet, at the different points on the river where the Latitude and Longitude were determined by observation the following viz.
Place of Observation. | Length of a Second of Latitude | Length of a Second of Longitude
Wm Everetts House | 101. 02 feet | 88. 45 feet
Belgrade | 101. 03 | 87. 35
Hickmans | 101. 03 | 87. 46
White's | 101. 04 | 86. 80
Sabine Town | 101. 04 | 86. 63
Gaines Ferry | 101. 04 | 86. 38
Campsight May 30th 1840 | 101. 05 | 86. 30
Campsight May 31st 1840 | 101. 05 | 86. 21
Logans Ferry | 101. 05 | 86. 11
The Longitudes are with reference to the Meridian of Greenwich and are derived from chronometrical comparisons with the meridian of the Light House erected in 1840 at the S.W. Pass of the Mississippi. The Longitude of the position now occupied by that Light House being assumed at 89. 21. 27. 6 West of Greenwich as established by the observations and triangulations of Capt. Andrew Talcott in 1838.
This Plan represents that portion of the Boundary between the United States and the Republic of Texas included between the mouth of the River Sabine on the Gulf of Mexico in the sea in Latitude 29. 41. 27.5 North Longitude 93. 50. 14.2 West and Logans Ferry in Latitude 31. 58. 24 North Longitude 94. 00. 02. 4 West as marked by the Joint Commission conformably to the 1st Article of the Convention concluded at Washington the 25th of April 1838 the ratifications of which were exchanged at said city on the 12th day of October 1838. The whole being in accordance with the Journal of the said Commission.
Ne Varietur.
New Columbia
Old Coshatta Crossing
to Opelousas
from Zavalla
Hickman's
Latitude 30. 55. 54. North
Longitude 93. 31. 18. 2 West
By Observation
Little Cow Creek
Bayou Lana Canes
Large Bayou
Upper Belgrade
BELGRADE
By Observation
Big Cow Creek
Bounders Ferry
to Opelousas
TOWN OF SALEM
Longitude 93. 50. 00 W. of Greenwich
Longitude 93. 40. 00 W. of Greenwich
Longitude 94. 00. 00 W. of Greenwich
Lat. 30. 45. 00
Lat. 30. 30. 00

Item No. 5


MAP
OF THE
RIVER SABINE
FROM ITS MOUTH ON THE
GULF OF MEXICO IN THE SEA
to Logan's Ferry
IN LATITUDE 31° 58' 24" NORTH.
Shewing the Boundary between the United States and the Republic of Texas
between said points, as marked and laid down by Survey in 1840.
under the direction of the Commissioners appointed for that
purpose under the 1st Article of the Convention
signed at Washington
April 25th 1838.
Surveyed in 1840
BY
P. J. PILLANS
D. C. WILBER
A. B. GRAY
GAINES' FERRY
TOWN OF SABINE
to Fort Jesup and Natchitoches
Logan's Ferry
Rocky Shelf
Whites
By Observation
Martin's Shoal
Wright
Hickman's Ferry
Lat. 31 15 00
Lat. 31 00 00
Longitude 93 50 00 W. of Greenwich
Longitude 93 40 00 W. of Greenwich



Lat 30.00.00
Low
RIVER NECHES
John's Island
West Pass
East Pass
Black Creek
Marshy
SABINE LAKE
Low
The Soundings in Sabine Lake are taken from
a map made in 1837 by Lieut. J.H. Eaton U.S. Army
Aurora
Prairies
Willow Bayou
Johnson's Bayou
Marshy
Blue Buck Point
Mud Bayou
CITY OF SABINE
Lat 29.45.00
Prairies
Point Hunt
SABINE PASS
Texan Custom House
Brant Point
The fine lines show the triangulation on the water and
the direction of the soundings made to obtain the curves
Mouth of the River Sabine in the Sea
Sabine Bar
GULF OF MEXICO