

MOTION FILED
 NOV 17 1990

IN THE
Supreme Court of the United States

OCTOBER TERM, 1990

STATE OF MISSISSIPPI,
 v. *Plaintiff,*

THE UNITED STATES OF AMERICA; THE STATE OF LOUISIANA; UNITED STATES ARMY CORPS OF ENGINEERS; JOHN O. MARSH, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE ARMY; ROBERT W. PAGE, IN HIS OFFICIAL CAPACITY AS ASSISTANT SECRETARY OF THE ARMY, CIVIL WORKS; LTG. E. R. HEIBERG, III, IN HIS OFFICIAL CAPACITY AS CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY; AND COL. STEPHENSON W. PAGE, IN HIS OFFICIAL CAPACITY AS DISTRICT ENGINEER, VICKSBURG DISTRICT, U.S. ARMY CORPS OF ENGINEERS,
Defendants.

**MOTION FOR LEAVE TO FILE BILL OF COMPLAINT
 AND BILL OF COMPLAINT**

MIKE MOORE *
 Attorney General
 State of Mississippi
 WILSON CARROLL
 Special Assistant Attorney General
 R. STEWART SMITH
 Special Assistant Attorney General
 Office of the Attorney General
 Post Office Box 220
 Jackson, MS 39205-0220
 (601) 359-3680
 * Counsel of Record

IN THE
Supreme Court of the United States

OCTOBER TERM, 1990

No. —, Original

STATE OF MISSISSIPPI,

v.

Plaintiff,

THE UNITED STATES OF AMERICA; THE STATE OF LOUISIANA; UNITED STATES ARMY CORPS OF ENGINEERS; JOHN O. MARSH, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE ARMY; ROBERT W. PAGE, IN HIS OFFICIAL CAPACITY AS ASSISTANT SECRETARY OF THE ARMY, CIVIL WORKS; LTG. E. R. HEIBERG, III, IN HIS OFFICIAL CAPACITY AS CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY; AND COL. STEPHENSON W. PAGE, IN HIS OFFICIAL CAPACITY AS DISTRICT ENGINEER, VICKSBURG DISTRICT, U.S. ARMY CORPS OF ENGINEERS,

Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

The State of Mississippi, by and through Mike Moore, its Attorney General, respectfully asks leave of the Court to file its Complaint against the United States of America, the State of Louisiana, John O. Marsh, in his official capacity as Secretary of the Army; Robert W. Page, in his official capacity as Assistant Secretary of the Army; Civil Works, Lieutenant E. R. Heiberg, III., in his official capacity as Chief of Engineers, Department of the Army and Colonel Stephenson W. Page, in his official capacity as District Engineer, Vicksburg District, U. S. Army Corps of Engineers, submitted herewith.

STATEMENT IN SUPPORT OF MOTION

This is an action by the State of Mississippi against the United States of America; the State of Louisiana; John O. Marsh, in his official capacity as Secretary of the Army; Robert W. Page, in his official capacity as Assistant Secretary of the Army; Civil Works, Lieutenant E. R. Heiberg, III., in his official capacity as Chief of Engineers, Department of the Army and Colonel Stephenson W. Page, in his official capacity as District Engineer, Vicksburg District, U. S. Army Corps of Engineers, proposed to be instituted in this Court under the authority of Article III, Section 2, of the Constitution of the United States. The purpose of this proposed action is to obtain the restoration of water flow to the Pearl River, which forms the boundary between the States of Mississippi and Louisiana, and to preserve and restore the surrounding ecosystems to a viable and navigable fresh waterway as it existed prior to the diversion and obstruction of its flow by the Defendants.

The original jurisdiction of this Court is invoked since the State of Mississippi has named the State of Louisiana as a party defendant in this action.

Mississippi claims that as a result of the Defendants' acts and omissions, the waters of the Pearl River have been diverted from their natural, historic channel into the West Pearl River, historically a separate and distinct river system lying entirely within the State of Louisiana.

Throughout its history, the State of Mississippi and its citizens have used the Pearl River for navigation, commerce, agriculture and recreation. The Pearl River has also supported a natural ecosystem sustaining many kinds of freshwater wildlife and fisheries which have been used by the citizens of Mississippi and the United States. The State of Mississippi has also constructed public parks and other recreational facilities which depend upon the viability of the Pearl River.

Beginning in the 19th Century and continuing through this date, the Defendants herein have erected, or caused to be erected, obstructions, diversions, channels and canals along what was originally the main channel of the Pearl River. These structures tended to divert the flow of water from the Pearl River into the West Pearl River. Other structures, which tended to counteract this diversion, were allowed to fall into disuse and ruin.

As a result of these acts and omissions, the waters of the Pearl River have been diverted from their natural and historic flow and channel into the State of Louisiana. These diversions have diminished the flow of water in the main channel of the Pearl River to such an extent that it is no longer navigable and portions of the river are dry.

At the current time, increasing amounts of water are Flow measurements taken in the Pearl River indicate being diverted from the Pearl River into Louisiana. that the capture of flow by the West Pearl River at a point known as Wilson's Slough is increasing, and that total capture is eminent. Unless the diversion is enjoined and the waters of the Pearl equitably apportioned, the Pearl River will become, in a short time, a dead river. This will compound and exacerbate the harm already suffered by the State of Mississippi and its citizens.

In 1989, the Corps of Engineers released a report which acknowledged the possibility that the flow of the Pearl River could be totally diverted into Louisiana in the foreseeable future. This report contains several suggestions to preserve the navigability of the Pearl River which the Corps has made no effort to undertake.

Although the Corps of Engineers has failed to take action to protect and restore flow to the Pearl River, they have continually acted to promote and improve the navigability of the West Pearl River in Louisiana. The Defendants currently propose additional dredging in the

West Pearl which if implemented, would cause the water to flow more swiftly through the dredged channel and increase the loss of flow from the East Pearl River.

The environmental, economic and social consequences of the diversion of flows from the Pearl River to the West Pearl River have been catastrophic. The wetland and marine ecosystems dependent on the viability of Pearl River have been seriously degraded, and the problems are growing worse over time. The State of Mississippi and its citizens are in imminent danger of losing these valuable natural resources, and therefore request this Court to grant their motion for leave to file this claim, and protect their interests.

Respectfully submitted,

MIKE MOORE *

**Attorney General
State of Mississippi**

**WILSON CARROLL
Special Assistant Attorney General**

**R. STEWART SMITH
Special Assistant Attorney General**

**Office of the Attorney General
Post Office Box 220
Jackson, MS 39205-0220
(601) 359-3680**

*** Counsel of Record**

IN THE
Supreme Court of the United States

OCTOBER TERM, 1990

No. —, Original

STATE OF MISSISSIPPI,

v.

Plaintiff,

THE UNITED STATES OF AMERICA; THE STATE OF LOUISIANA; UNITED STATES ARMY CORPS OF ENGINEERS; JOHN O. MARSH, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE ARMY; ROBERT W. PAGE, IN HIS OFFICIAL CAPACITY AS ASSISTANT SECRETARY OF THE ARMY, CIVIL WORKS; LTG. E. R. HEIBERG, III, IN HIS OFFICIAL CAPACITY AS CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY; AND COL. STEPHENSON W. PAGE, IN HIS OFFICIAL CAPACITY AS DISTRICT ENGINEER, VICKSBURG DISTRICT, U.S. ARMY CORPS OF ENGINEERS,

Defendants.

BILL OF COMPLAINT

The State of Mississippi, by and through Mike Moore, its Attorney General, brings this suit for declaratory and injunctive relief, to require the Defendants to restore the Pearl River to a viable and navigable waterway, as it existed prior to its diversion and obstruction by the Defendants, and to equitably apportion the water of the Pearl River between the States of Mississippi and Louisiana, and in support would show the following:

PARTIES

1. The Plaintiff, State of Mississippi, is one of the fifty sovereign states. The Attorney General of the State of Mississippi brings this action on behalf of the State

of Mississippi under his constitutional and statutory authority as chief legal officer of the State, pursuant to Miss. Code Ann. § 7-5-1 (1972). He also brings this action on behalf of the citizens of the State of Mississippi affected by the actions of the Defendants.

2. The Defendant, the United States of America, may be served with process upon William Thornburgh, Attorney General of the United States, Washington, D.C. and Kenneth Starr, Solicitor General of the United States, Department of Justice, Constitution Avenue and Tenth Street, N.W., Washington, D.C. 20530.

3. The Defendant, the State of Louisiana, is one of the fifty sovereign states, and may be served with process upon William J. Guste, Jr., Attorney General of the State of Louisiana, P. O. Box 94095, Baton Rouge, Louisiana, 70804-9095.

4. The individual Defendants are sued in their official capacities: John O. Marsh, Secretary of the Army for Civil Works; Robert W. Page, Assistant Secretary of the Army, Civil Works; Ltg. E. R. Heibert, III, Chief of Engineers and Stephenson W. Page, District Engineer for the Vicksburg, Mississippi District of the United States Army Corps of Engineers. Each of these Defendants, in their own official capacity, has been, and is now, responsible for the maintenance and protection of the navigable waterways of the United States of America, including the Pearl River.

JURISDICTION

5. This Court has subject matter jurisdiction pursuant to Article III, Section 2, of the United States Constitution and 28 U.S.C. § 1251.

6. The State of Mississippi brings this action pursuant to the National Environmental Policy Act, (NEPA), 42 USC 4321, *et seq.*, The Fish and Wildlife Coordination Act, 16 USC 661 *et seq.*, and The Federal Water Pollu-

tion Control Act, 33 USC 1251, *et seq.* Additionally, the State of Mississippi seeks declaratory and injunctive relief pursuant to 5 U.S.C. §§ 701, *et seq.* and 28 U.S.C. § 2201.

FACTS

7. The State of Mississippi was admitted into the Union of the United States of America by the Act of Congress found in Chapter 23 of the United States Statutes at Large, Vol. 3, Page 348, approved March 1, 1817. The boundaries of this State were described as follows:

Beginning on the river Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same, thence east along the said boundary line to the Tennessee River, thence up the same to the mouth of Bear Creek, thence by a direct line to the northwest corner of the County of Washington, thence due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, *to the most eastern junction of Pearl River with Lake Borgne, thence up said river to the thirty-first degree of north latitude*, thence west along the said degree of latitude to the Mississippi River, thence up the same to the beginning.” (Emphasis added).

8. The Pearl River is an interstate stream having its origin in the central portion of the State of Mississippi and flowing southward, eventually forming the southwest border of Mississippi between the States of Mississippi and Louisiana.

9. There is no compact or decree of this Court apportioning the flow volumes of water of the Pearl River between Mississippi and Louisiana.

10. The Pearl River has been at all relevant times a “navigable” river within the meaning of Rivers and Harbors Act of 1899 (30 Stat. 1151) and Title 33, United States Code, supporting commerce, industry, agriculture, shipping, recreation and transportation for

the citizens of the State of Mississippi and the United States.

11. The State of Mississippi has important interests in protecting and encouraging municipal growth, agriculture, industry, shipping, and commerce and in conserving and maintaining the wildlife, ecology, recreational use, and unspoiled natural beauty of the Pearl River for the use of its citizens and the citizens of the United States. In addition, the State of Mississippi has constructed public parks, boat ramps, and other recreational facilities which depend upon the viability of the Pearl River.

12. The United States Army Corps of Engineers has erected obstructions, diversions, and other works in and along the Pearl River. In particular, they have placed earthen dams across the channel of the Pearl River, diverting substantial portions of the flow regime into the West Pearl River, historically a separate and distinct river system which lies totally within the State of Louisiana.

13. In times past, Congress appropriated funds to erect and maintain certain improvements to navigation on the Pearl River, to offset and counteract the aforementioned diversion of flows into the West Pearl River. However, Defendants wholly failed and refused to maintain these improvements; instead, they abandoned those projects and permitted them to fall into disuse and ruin, thereby reducing the flow of water in the Pearl River.

14. Defendants' acts and omissions, taken together, have directly and proximately caused a diminution in flows and related damages in the Pearl River.

15. The Corps has also undertaken certain actions and erected certain works in the West Pearl River system, including but not limited to the construction of the West Pearl River Barge Canal, which have accelerated and exacerbated the diversion of waters from the Pearl River to the West Pearl River.

16. Certain of these acts and omissions were made without the prior consent or affirmative authorization of the Congress of the United States and without recommendation by the Chief of Engineers and approval by the Secretary of the Army.

17. As a result of Defendants' acts and omissions, the waters of the Pearl River have been diverted into the State of Louisiana from their usual, natural, and historical channel. The State of Louisiana now wrongfully lays claim to said waters and has condoned, allowed and ratified said wrongful acts.

18. As a result of Defendants' acts and omissions, the Pearl River has been diverted to such an extent that several miles of the original channel of the river have been reduced from a viable, navigable stream to a dry river bed.

19. As a result of Defendants' acts and omissions, the flow in the Pearl River has diminished, causing in turn the encroachment or intrusion of saltwater from Lake Borgne. This fluctuation in the freshwater-saltwater interface has created water quality of such variability that it can sustain neither a riverine nor an estuarine ecosystem. As a result, the entire ecosystem of that portion of the Pearl River in issue has been seriously degraded.

20. As a result of Defendants' acts and omissions, what little water remains in the Pearl River below the aforementioned diversions and obstructions is continually being diminished, and will, in the near and foreseeable future, become either a dead river or intermittent stream, with a ruined ecology incapable of supporting its natural, historic habitat and useless for commerce, industry, municipalities, navigation, agriculture, and recreation, with resulting injury to Mississippi's economy, revenues, proprietary interests, navigation, recreational facilities, tourism, and natural and unspoiled beauty of the State.

21. As a result of Defendants' acts and omissions, the citizens of Mississippi have been and will continue to be denied use of that portion of the Pearl River in issue for recreation, agriculture, commerce, industry, municipalities, and navigation and as a source of community and industrial water supply.

22. Defendants have wholly failed and refused to remedy both the diversion of the waters of the Pearl River and the adverse effects thereof, and will, unless enjoined by this Court, continue to permit such diversions, depriving Plaintiff of its rights to use and enjoy the benefits of the waters of the Pearl River.

23. Neither the State of Mississippi nor the citizens thereof have acquiesced in any fashion in the aforementioned diversion of waters from the Pearl River into the West Pearl River. On the contrary, the State and citizens thereof have attempted on numerous occasions to remedy the diversion, to no avail.

COUNT I.

EQUITABLE APPORTIONMENT

24. Plaintiff realleges the facts contained in paragraphs 1 through 23 above.

25. The State of Mississippi has a right and a duty to secure for itself and its citizens an equitable share of the waters of all interstate streams arising within and passing through its boundaries, including the Pearl River.

26. Defendants, by their acts and omissions, have unlawfully deprived the State of Mississippi of its equitable share of the natural flow, use and benefits of the waters of the Pearl River.

27. Under the provisions of Mississippi Code, § 51-3-1, water occurring in any watercourse is among the basic resources of the State of Mississippi. The water of the

Pearl River is thus a basic resource of the State of Mississippi.

28. It is essential to the State of Mississippi and the welfare of its citizens that the equitable share of the State of Mississippi in and to the waters of the Pearl River be determined, so that the valid water related interests of Mississippi may be protected in such share.

29. The threatened and ongoing injury to the environment and natural resources of the State of Mississippi far outweigh any harm an injunction and apportionment would cause the Defendants.

COUNT II.

NATIONAL ENVIRONMENTAL POLICY ACT

30. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this Complaint.

A.

31. The National Environmental Policy Act ("NEPA") requires an environmental impact statement ("EIS") for all "major Federal actions significantly affecting the quality of the human environment." The EIS must include a detailed examination of the environmental impact of the proposed action, environmental effects which cannot be avoided should the proposal be implemented, and alternatives to the proposed action. 42 U.S.C. § 4332 (2) (C).

32. The Corps' past and present acts and omissions each amount to "major federal action significantly affecting the quality of the human environment" within the meaning of NEPA, 42 U.S.C. § 4332(2) (C). They also fall within the Corps' regulatory definition of actions normally requiring an EIS. 33 C.F.R. § 230.6.

33. The Corps, on or about September 7, 1984, published a notice of intent to prepare a draft EIS on oper-

ation and maintenance of the "Pearl River Waterway, LA and MS, Project." Nevertheless, an EIS was never prepared. Instead, the Corps prepared an "Environmental Assessment" ("EA") with a "Finding of No significant Impact" ("FONSI").

34. The Corps has violated NEPA by failing to prepare an adequate environmental impact statement addressing the impact of its dredging and other activities in the Pearl River Basin.

B.

35. NEPA requires the Federal Government to use "all practicable means, consistent with other essential considerations of national policy," to avoid environmental degradation, preserve "historic, cultural, and natural" resources, and promote "the widest range of beneficial uses of the environment without . . . undesirable and unintended consequences." 42 U.S.C. § 4331(b).

36. The Corps has violated this mandate of NEPA. By its acts and omissions, it has fostered the environmental degradation of the Pearl River; it has caused the virtual destruction of a significant part of Mississippi's historic, cultural and natural heritage (i.e., the lower reaches of the Pearl River); the consequences of its acts and omissions, whether intended or unintended, are clearly undesirable. These results could easily be avoided or remedied by readily available, and practicable, alternatives. The Corps has virtually ignored these and other environmental concerns raised by other Federal, and State, agencies, and by the interested public.

C.

37. NEPA requires the Corps to "utilize a systematic, inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision

making which may have an impact on man's environment". 42 U.S.C. § 4332(2) (A).

38. The Corps has violated this requirement of NEPA by (1) failing to respond to, and address, substantive concerns raised by the State of Mississippi, the Mississippi Department of Environmental Quality, the Mississippi Bureau of Land and Water Resources, and the Pearl River Basin Development District, as well as other knowledgeable agencies of the State of Mississippi, (2) failing to consult meaningfully with other federal agencies regarding the potential impacts of its projects on the flow levels in the Pearl River, and on the fish and wildlife population in and around the Pearl River; (3) failing to consult meaningfully with federal agencies and agencies of the State of Mississippi regarding the socio-economic impacts of the Corps' projects on the State of Mississippi and its future development.

D.

39. NEPA mandates that the Corps "identify and develop methods and procedures. . . which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations." 42 USC § 4332 (2) (B).

40. The Corps has violated this provision of NEPA by (1) failing to consider the data developed in its own Reconnaissance Report of November, 1989 on the, "Lower Pearl River Basin Flow Distribution"; failing to consider information made available to them by other Federal agencies and agencies of the State of Mississippi, as well as other entities with information regarding the environmental impact of the loss of flow in the Pearl River; (3) failing to balance fairly the interests of the downstream users of the Pearl River against the purported needs of the users of the West Pearl River; and (4) failing to

evaluate potential impacts upon the State of Mississippi as a result of the loss of flow in the Pearl River.

E.

41. As an actual and proximate result of the Corps' violation of these provision of NEPA, the State of Mississippi and its citizens have suffered, and will suffer, damages from the Corps' actions in the Lower Pearl River Basin which have resulted in the diversion of the flow from the Pearl River to the West Pearl River.

COUNT III.

FISH AND WILDLIFE COORDINATION ACT

42. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this Complaint.

43. The Fish and Wildlife Coordination Act ("FWCA") requires that fish and wildlife receive "equal consideration" with other project purposes in planning any water project licensed or funded by the Federal government. The FWCA calls for enhancing these values where possible. 16 USC § 661.

44. The FWCA further provides that whenever waters of a stream are to be diverted, or otherwise controlled or modified for any purpose, by any department or agency of the Federal government, or by any public or private agency under Federal permit, such department or agency must first consult with the United States Fish and Wildlife Service, the Department of Interior, and with appropriate State regulatory officials "exercising administration over the wildlife resources" in the state where the diversion is to occur, "with a view to the conservation of wildlife resources by preventing loss of and damage to such resources." 16 USC § 661(A).

45. The Mississippi Department of Wildlife, Fisheries and Parks (formerly, the Department of Wildlife Con-

servation) is the Mississippi agency responsible for administration of wildlife resources in the state of Mississippi. Miss. Code Ann. § 49-1-4 (Supp. 1989) and Miss. Code Ann. § 49-4-1 (Supp. 1989).

46. The FWCA further provides that Federal agencies proposing new or suppleemntal waterway projects must estimate the wildlife benefits and losses associated with the project, and the cost of providing wildlife benefits. 16 USC § 661(—).

47. The FWCA further provides that whenever the waters of any stream are to be diverted, “adequate provision” shall be made for the “conservation, maintenance and management” of wildlife resources and habitat. 16 USC § 662(A).

48. The Defendants have wholly failed and refused to comply with these provisions of Federal law.

COUNT IV.

FEDERAL WATER POLLUTION CONTROL ACT

49. Plaintiff realleges the facts contained in paragraphs 1 through 23 above.

50. The Federal Water Pollution Control Act (“FWPCA”) states that its purpose and objective is “to restore and maintain the chemical, physical, and biological intergrity of the nation’s waters”. This Act sets forth national goals consistent with the objective which include the attainment of water quality which provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water. 33 USC § 1251, *et seq.*

51. The Defendants, through their acts and omissions, have caused diminution of flow within the Pearl River to such an extent that it no longer is able to sustain the fish and wildlife and other natural resources which formerly abounded in the surrounding wetlands.

52. Not only have the Defendants failed to act to restore water quality adequate to protect and propagate fish and wildlife but, on the contrary, the Defendants' acts and omissions, both past and prospective, have depleted the flow in the Pearl River and degraded its ecosystem.

53. The Defendants' acts and omissions constitute a violation of the Federal Water Pollution Control Act and the rights of the Plaintiff.

COUNT IV.

COMMON LAW PUBLIC NUISANCE

54. Plaintiff realleges the facts contained in paragraphs 1 through 23.

55. Such obstructions and diversions constitute a public nuisance at common law which the State of Mississippi is authorized to enjoin on behalf of its citizens.

56. The State of Mississippi and its citizens are threatened with irreparable harm for which they have no adequate remedy at law.

57. The threatened and ongoing injury to the environment and natural resources of the State of Mississippi far outweigh any harm an injunction would cause the Defendants.

58. An injunction would serve the public interest because it would require the Defendants to follow the environmental policy of the National Environmental Policy Act, The Fish and Wildlife Coordination Act, and The Federal Water Pollution Control Act, and would result in restoration to the State of Mississippi and its citizens of their equitable share of the flow of the Pearl River, and end the long standing degradation of the Pearl River and surrounding wetlands.

COUNT V.**WRONGFUL TAKING**

59. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 above.

60. Defendants, by their acts and omissions, have unlawfully deprived Plaintiff and its citizens of lawful water rights in and to the natural flow, use, and benefits of the waters of the Pearl River.

61. Plaintiff and its citizens possess the right to and have enjoyed the use and benefits of the waters of the Pearl River from the time of its entry into the Union in 1817 until the interruption of the flow of the river by the wrongful diversion of the waters of the river from their natural and historic channel.

COUNT VI.**ABUSE OF DISCRETION**

62. Plaintiff realleges the facts contained in paragraphs 1 through 23 above.

63. Congress has on several occasions appropriated funds to improve navigation of the Pearl River.

64. Defendants have abused any discretion which they may have had in refusing to use such funds to maintain the character, navigability, and integrity of the Pearl River, and have expended same in an arbitrary and capricious manner.

COUNT VII.**QUIET TITLE**

65. Paragraphs 1 through 23 above are incorporated by reference herein.

66. At all times material to this lawsuit, under the law of the State of Mississippi, certain riparian owners,

all of whom are citizens of the State of Mississippi, have owned the bed, down to the point of mean high tide, of the Pearl River along and to the boundary line between the States of Mississippi and Louisiana. The State of Mississippi, below the point of mean high tide, has owned the bed of the Pearl River along and to the boundary line between the States of Mississippi and Louisiana. Under the law of Louisiana, the State of Louisiana has owned the bed of the Pearl River along and to the boundary line of the States of Louisiana and Mississippi.

67. Defendant, the State of Louisiana, claims some right, title or interest adverse to the State of Mississippi and its citizens in certain of the lands described above.

68. The claims of the Defendant State of Louisiana are a cloud upon the title of the State of Mississippi and its citizens which make it impossible for the Plaintiff to manage, utilize, and otherwise exercise the rights of ownership for the benefit of its citizens and the lands which are the subject of this action. The claims of the Defendant thus have caused and will continue to cause Plaintiff irreparable injury for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests:

1. That this Court declare that the Plaintiff is entitled, under the doctrine of equitable apportionment, to the natural flow, use and benefit of the waters of the Pearl River and is entitled to have these restored to the level of the natural flow prior to the actions complained of herein;

2. That this Court declare that the actions of the Defendants constitute a continuous and ongoing violation of the National Environmental Policy Act and the rights of the Plaintiff and its citizens;

3. That this Court declare that the actions of the Defendants constitute a continuous and ongoing violation of the Federal Water Pollution Control Act and the rights of the Plaintiff and its citizens;

4. That this Court declare that the actions of the Defendants constitute a continuous and ongoing violation of the Fish and Wildlife Coordination Act and the rights of the Plaintiff and its citizens;

5. That this Court declare that Defendants have failed to perform their duties in maintaining the navigability of the Pearl River;

6. That this Court declare that the Defendants have unlawfully obstructed the Pearl River;

7. That this Court declare that as a result of the obstructions and diversions, the waters of the Pearl River have been diverted from the natural channel of the river into the State of Louisiana, and the natural channel has been and continues to be silted up with sand, gravel, and debris to the extent that the flow in the river channel is seriously impeded;

8. That this Court declare that the Defendant's failure to maintain other improvements along the Pearl River have further contributed to the diversion of the waters of the river to the damage and detriment of the State of Mississippi and its citizens;

9. That this Court declare the Plaintiff has vested common law equitable rights in and to the natural flow, use and benefit of the waters of the Pearl River;

10. That the Court will enjoin the Defendants to take such actions as are necessary to fully restore the natural flow, current and channel of the Pearl River as such existed prior to the aforementioned unlawful diversions and obstructions;

11. That this Court confirm title to the State of Mississippi and its citizens claiming title to property along and to the thalweg of the Pearl River and adjudge that the Defendant State of Louisiana has no right, title or interest in or to said lands or any part thereof as of the date of such decree, and perpetually enjoin the Defendant State of Louisiana from asserting any right, title or interest in or to these lands, or any part thereof;

12. That this Court retain jurisdiction to entertain such further proceedings as may be necessary to establish the boundaries of other lands owned by the State of Mississippi and its citizens in the bed or former bed of the Pearl River, authorize the parties to submit to the Court for its approval any stipulation or stipulations they may enter into settling the boundaries of the lands owned by the parties in or adjacent to the bed of the Pearl River, and specify that, as to any portion of the bed or former bed of the Pearl River as to which the parties may be unable to agree, any party may apply to the Court for entry of a further and supplemental Decree;

13. That this Court will enjoin the Defendants from any further diversion, including any further dredging activity along the West Pearl River or barge canal, in order that the use and reputation of the Pearl River for navigation and recreation be protected;

14. That this Court will enjoin the State of Louisiana to abide by and take no actions which would delay, obstruct or otherwise be inconsistent with the terms, conditions and mandates hereof;

15. That this Court award Plaintiff reasonable attorney fees and costs for the prosecution of this action.

Plaintiff prays for such other general and equitable relief as the Court deems appropriate.

Respectfully submitted,

MIKE MOORE *

**Attorney General
State of Mississippi**

WILSON CARROLL

Special Assistant Attorney General

R. STEWART SMITH

Special Assistant Attorney General

Office of the Attorney General

Post Office Box 220

Jackson, MS 39205-0220

(601) 359-3680

*** Counsel of Record**

