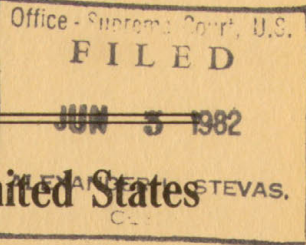


No. 92 Original



In the Supreme Court of the United States

October Term, 1981

STATE OF ARKANSAS,  
*Plaintiff,*

vs.

STATE OF MISSISSIPPI,  
*Defendant.*

**ANSWER**

**MOTION FOR LEAVE TO FILE COUNTERCLAIM  
COUNTERCLAIM**

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State of Mississippi

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June, 1982



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**No. 92 Original**  
**In the Supreme Court of the United States**

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STATE OF ARKANSAS,  
*Plaintiff,*

vs.

STATE OF MISSISSIPPI,  
*Defendant.*

---

**ANSWER**

COMES NOW the defendant, the State of Mississippi, by and through Bill Allain, the Attorney General of the State of Mississippi, and for its answer to the Complaint of the State of Arkansas, respectfully states as follows:

1. That it admits that the jurisdiction of this Court is properly invoked.

2. That it admits the material allegations of Paragraph II of the Complaint.

3. That it admits the material allegations of Paragraph III of the Complaint.

4. That the decision of the Supreme Court of the United States in the case styled *Arkansas v. Mississippi*, 250 U.S. 39 (1919), stands for itself, subject to further interpretation by this Court, and that Mississippi denies any conclusion of law regarding the holding or import of this particular case.

5. That it admits the allegations of sentence No. 2 and sentence No. 3 of Paragraph V of the Complaint regarding the status of Mississippi law concerning riparian

ownership of property abutting watercourses and the jurisdiction of the Supreme Court of the United States regarding interstate boundary disputes. Mississippi denies the conclusion of law contained in the first sentence of Paragraph V of the Complaint regarding the status of Arkansas law concerning ownership of the bed of the Mississippi River.

6. That it admits the material allegations of Paragraph VI of the Complaint.

7. That it admits that the case styled *Simon Zunamon v. Garland Allen, Jr., et al.*, No. DC80-150-LS-O, is now pending before, but has been stayed by, the United States District Court for the Northern District of Mississippi, Delta Division, and that this litigation concerns the ownership of lands riparian to the Mississippi River in the reach between Tunica County, Mississippi and Lee County, Arkansas. Mississippi further admits that the state boundary between Mississippi and Arkansas is in question in the aforementioned litigation, but Mississippi would affirmatively aver that the pleadings filed in the lower court are the best evidence of the allegations of the parties in said litigation. Mississippi therefore denies the rest and remainder of the allegations of Paragraph VII of the Complaint.

8. That it admits that the Supreme Court of the United States has jurisdiction over boundary disputes between states. Mississippi would affirmatively show that, upon motion of the State of Arkansas, a Stay Order was entered in *Simon Zunamon v. Garland Allen, Jr., et al.*, *supra*, by the United States District Court for the Northern District of Mississippi, Delta Division, on December 7, 1981. Mississippi denies each and every other allegation and conclusion of law contained in Paragraph X of the Complaint.

9. That it denies, in their entirety, the allegations of Paragraph IX of the Complaint.

10. That it denies, in their entirety, the allegations of Paragraph X of the Complaint.

11. That it denies, in their entirety, the allegations of Paragraph XI of the Complaint.

12. That it admits that property rights of the State of Arkansas are involved in the aforementioned litigation now pending before the United States District Court of the Northern District of Mississippi, Delta Division. Mississippi denies, in their entirety, the remaining allegations and conclusions of law contained in Paragraph XII of the Complaint.

13. That it neither admits nor denies the allegations of Paragraph XIII of the Complaint, inasmuch as, as aforementioned, a Stay Order in *Simon Zunamon v. Garland Allen, Jr., et al., supra*, was entered by the lower court on December 7, 1981.

14. That, regarding the prayers of the Complaint, process has already issued to all parties and that, as aforementioned, a Stay Order has already been entered in *Simon Zunamon v. Garland Allen, Jr., et al.*, No. DC80-150-LS-O. Mississippi denies that Arkansas is entitled to any other relief as prayed for in sub-paragraphs 3, 4, and 5 of the Complaint.

WHEREFORE, PREMISES CONSIDERED, the defendant respectfully prays:

1. That the Court appoint a Special Master in this original action;

2. That the Court grant the defendant, State of Mississippi, leave to file a counterclaim, as hereinafter set forth, against the State of Arkansas regarding the subject matter of the litigation;

3. That the prayer for relief contained in the Complaint be denied in its entirety;

4. That the Court, pursuant to this prayer and the prayer of the counterclaim for which leave to file is sought hereinafter, adjudicate that the subject lands are located wholly within the territorial boundaries of the State of Mississippi;

5. That all costs incurred in this original action be assessed against the plaintiff; and

6. That the Court grant such other and further relief as may be proper, equitable, and just.

Respectfully submitted,

BILL ALLAIN, Attorney General  
State of Mississippi

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(Counsel of Record)  
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June, 1982



**No. 92 Original**  
**In the Supreme Court of the United States**  
**October Term, 1981**

STATE OF ARKANSAS,  
*Plaintiff,*

vs.

STATE OF MISSISSIPPI,  
*Defendant.*

**MOTION FOR LEAVE TO FILE COUNTERCLAIM**

COMES NOW the State of Mississippi, defendant in the above styled and numbered cause, by and through Bill Allain, the Attorney General for the State of Mississippi, and files this its Motion For Leave To File Counterclaim against the plaintiff, State of Arkansas, and in support hereof respectfully states as follows:

1. A portion of the boundary between the State of Arkansas and the State of Mississippi, common to Lee County, Arkansas and Tunica County, Mississippi, is in dispute in the above styled and numbered cause.

2. This Court has now taken jurisdiction of the boundary dispute between the State of Arkansas and the State of Mississippi upon the allegations of the Complaint filed herein by the plaintiff, the State of Arkansas.

3. In order for this Court to render a final adjudication in this litigation predicated upon not only the factual allegations of the plaintiff, the State of Arkansas, but also the factual contentions of the defendant, the State of Mississippi, it is necessary for the State of Mississippi to be allowed to set forth its position not only regarding

the allegations of the plaintiff, but also the allegations in support of defendant's claim that the boundary between the State of Mississippi and the State of Arkansas along the reach of the Mississippi River in question is not located as charged by the State of Arkansas.

WHEREFORE, PREMISES CONSIDERED, the State of Mississippi respectfully prays that this Honorable Court grant leave for defendant, the State of Mississippi, to file its counterclaim against the plaintiff, the State of Arkansas, as hereinafter set forth. And if mistaken in the relief for which prayed in this motion, the State of Mississippi prays for such other, further, or more general relief as the Court may deem just and proper.

Respectfully submitted,

BILL ALLAIN, Attorney General  
State of Mississippi

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June, 1982

**No. 92 Original**  
**In the Supreme Court of the United States**

**October Term, 1981**

STATE OF ARKANSAS,  
*Plaintiff,*

vs.

STATE OF MISSISSIPPI,  
*Defendant.*

**COUNTERCLAIM**

COMES NOW the State of Mississippi, defendant-counterclaimant in the above styled and numbered cause, by and through Bill Allain, the Attorney General for the State of Mississippi, having fully answered the Complaint filed herein by the State of Arkansas, and files its Counterclaim against the plaintiff-counterdefendant, the State of Arkansas, and in support hereof would show unto the Court the following:

**I**

The State of Mississippi makes parties hereto the State of Arkansas and the following citizens of the State of Arkansas:

The Honorable Frank D. White  
Governor of the State of Arkansas  
State Capitol  
Little Rock, Arkansas 72201

The Honorable John Steven Clark  
Attorney General of the State of Arkansas  
Justice Building  
Little Rock, Arkansas 72201

## II

The original jurisdiction of this Court is invoked in this counterclaim under the Constitution of the United States, Article III, Section 2, and 28 United States Code, Section 1251, Ch. 646, Par. (a)(1), 62 Stat. 927 (June 25, 1948).

## III

The State of Mississippi was admitted into the Union of the United States of America by the Act of Congress found in 3 *Statutes at Large* 348, Ch. 23 (March 1, 1817), the boundaries of the state being 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 (Alabama); 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 31st degree of north latitude; thence west along the said degree of latitude to the Mississippi River; thence up the same to the beginning.”

## IV

Arkansas was admitted to the Union June 15, 1836 (5 *Statutes at Large* 50, 51, Ch. 100), by an Act of Congress which as to its boundaries, provided:

“Beginning in the middle of the main channel of the Mississippi river, on the parallel of thirty-six de-

grees north latitude, running from thence west, with the said parallel of latitude, to the St. Francis river; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west, to the north bank of Red river, by the lines described in the first article of the treaty between the United States and the Cherokee Nation of Indians west of the Mississippi, made and concluded at the city of Washington on the 26th day of May, in the year of our Lord one thousand, eight hundred and twenty-eight; and to be bounded on the south side of Red river by the Mexican boundary line, to the northwest corner of the state of Louisiana; thence east, with the Louisiana state line, to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said river, to the thirty-sixth degree of north latitude, the point of beginning."

## V

By virtue of their areal descriptions upon being admitted into the Union, the States of Mississippi and Arkansas share a common boundary—the Mississippi River—from the south boundary line of the State of Tennessee on the north to the north boundary of the State of Louisiana on the south. The Supreme Court of the United States has original jurisdiction of both suits to determine the boundaries between states and of parties adversely asserting title to the property of a state.

## VI

At the time of the 1820-1840 U. S. Land Surveys of Lee County, Arkansas and Tunica County, Mississippi,

the Bordeaux Point Peninsula, which then consisted of Bordeaux Island as well as the mainland peninsula, was located in Mississippi and was looped by the Mississippi River in the Walnut Bend meander. Bordeaux Point was then building in a northwesterly direction. A chart showing the geographical location of Bordeaux Point Peninsula and the Mississippi River during this time period is attached as Figure 1.<sup>1</sup>

In the period 1870-1880, the Mississippi River suddenly abandoned its former course through Walnut Bend and adopted a new and shorter channel through Bordeaux Island Chute. The MRC Chart showing the geographical location of Bordeaux Point Peninsula and the new location of the Mississippi River coursing through Bordeaux Island Chute as of 1890 is attached hereto as Figure 2, which clearly shows: Walnut Bend is much narrowed compared with its configuration in Figure 1; Whiskey Chute also has diminished; and old Bordeaux Island is now divided and consists of Whiskey Island to the north and Bordeaux Island to the south. This rapid, avulsive change in the course of the Mississippi River resulted in the state line between Mississippi and Arkansas becoming fixed as of that time in the thalweg of the abandoned bed of Old Walnut Bend looping Whiskey Island, Bordeaux Island, and Bordeaux Point, on the East, North and West as depicted on the 1890 chart. These severed islands, as well as Bordeaux Point Peninsula, were all located in Tunica County, Mississippi.

Prior to the 1870-1880 Bordeaux Cut-off, the meander looping Bordeaux Point and Bordeaux Island through Wal-

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1. Attached as Figures 1 through 5 are reproductions of the pertinent portions of a portfolio of maps prepared by the Mississippi River Commission (MRC), a division of the United States Corps of Engineers, entitled Progressive Changes in the Mississippi River at Mhoon River Bend, Mississippi from 1842 to 1932.

nut Bend had been migrating northwesterly. Following the Bordeaux Cut-off, in 1870-1880, the meander looping Bordeaux Point through Bordeaux Chute began migrating westerly and southwardly until it reached the geographical position recorded on the MRC 1916 Chart attached hereto as Figure 3. Figure 3 depicts the Old Walnut Bend meander looping Whiskey Island with Old Walnut Bend to the north of the abandoned sector of Bordeaux Peninsula. Figure 3 also labels the new live meander via Bordeaux Cut-off as Walnut Bend. This western-southern migration of the 1875 meander looping Bordeaux Peninsula was the natural result of both the gradual caving away of the Arkansas bank (right descending bank) and bar building, by the process of accretion, to the distal end of Bordeaux Peninsula. The alluvion this deposited against Bordeaux Point Peninsula to the south and west subsequent to the 1874 cut-off is located in Mississippi.

Prior to 1930, the Arkansas bank (right descending bank) was revetted in the upper end of New Walnut Bend and the westerly building of Bordeaux Point slowed, but the Peninsula continued to build slowly in a southerly-westerly direction. The distal end of Bordeaux Point consolidated so that it was now a continuous peninsula, all as shown by the Mississippi River Commission Survey of 1930, Figure 4 attached hereto. Bordeaux Point continued to remain in Tunica County, Mississippi. This western and southern migration of the meander resulted in the western and southward enlargement of the distal end of Bordeaux Peninsula by the gradual, natural process of accretion.

After 1930, the meander looping Bordeaux Peninsula passed through Mhoon Bend, coursing in a westerly direction around the distal end of Bordeaux Peninsula through New Walnut Bend, and then coursed eastward to pass

through Fox Island Bend, bounding the north side of Hardin Point, which was then in Lee County, Arkansas. Attached hereto as Figure 5 is a copy of the 1939 navigation chart of the U. S. Corps of Engineers, which shows the geographical location of Bordeaux Point Peninsula and Hardin Point Peninsula and the course of the Mississippi River looping these two peninsulas.

At the time of the 1939 Navigation Chart (Figure 6) the meander looping Bordeaux Peninsula, migrating westward and southward from its 1890 position, had caved away and destroyed the Lee County, Arkansas lands westward and southward from the "Meander Line 1823" (U. S. Land Survey) (Figure 6, Reference Letter "A") to the 1939 right descending Arkansas bank line (Figure 6, Reference Letter "B") a distance of some 8,000-11,000 feet. Likewise and concomitantly, alluvion was deposited against the Bordeaux Point Peninsula, Tunica County, Mississippi, by the natural process of accretion, westward and southward from the 1835 meander line to the 1939 distal end of the peninsula for a maximum distance of some 14,000 feet (Reference Numbers 1 and 2, Figure 6).

The U. S. Corps of Engineers, as a part of its comprehensive "cut-off" program aimed at shortening the length of the Mississippi River, constructed a cut-off across the neck of Hardin Point in 1942, diverting the Mississippi River from its former bed around Hardin Point into a new channel designated Hardin Point Cut-off (1942). Shortly after this cut-off was completed, navigation abandoned the old meander channel looping Hardin Point, which then bounded the south side of Bordeaux Point, and adopted the new channel through the 1942 Hardin Cut-off. Superimposed on Figure 6 is a dashed line with the letters "A", "B", "C" and "D". This dashed line follows with the live thalweg of the Mississippi River from Point "A" westward



to Point "B" and thence southward to Point "C" where it leaves the live thalweg, and thence eastward following with the fixed thalweg in the old abandoned bed of the Mississippi River to Point "D". This line represents the approximate 1982 state line between the States of Arkansas and Mississippi along the north, west and south bounds of Bordeaux Point, Tunica County, Mississippi land.

## VII

In the necessary and essential exercise of sovereign rights, the exact location of the boundary line between Mississippi and Arkansas in the area involved becomes of major and substantial significance to the respective states, in view of the great value of the lands involved, the necessity of determining the limits of each state's respective criminal jurisdiction and the fixing of the state boundary line for purposes of taxation. Heretofore, it has not been necessary to determine with preciseness the exact location of such boundary line.

WHEREFORE, PREMISES CONSIDERED, defendant-counterclaimant prays:

1. That on final hearing hereof, the Complaint filed herein by the State of Arkansas be dismissed and that the plaintiff-counterdefendant, the State of Arkansas, be denied the relief sought therein.

2. That on final hearing hereof, the boundary line of the State of Mississippi in the live bed of the Mississippi River between Points "A", "B" and "C" of Figure 5 aforesaid, and the fixed boundary between the State of Mississippi and the State of Arkansas in the abandoned bed of the Mississippi River along the approximate course of Points "C" - "D" of said Figure 5, be fixed and determined.

3. Defendant-counterclaimant also prays for such other and further relief, general or special, as the Court may deem meet and proper.

Respectfully submitted,

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*Attorneys for Defendant-  
Counterclaimant*

June, 1982

### **PROOF OF SERVICE**

I, BILL ALLAIN, Attorney General of the State of Mississippi, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 3rd day of June 1982, I served copies of the foregoing Answer, Motion For Leave To File Counterclaim, and Counterclaim, as follows:

(1) Upon the Supreme Court of the United States, by mailing sixty (60) copies in duly addressed envelope, with air mail postage prepaid, to the Clerk, United States Supreme Court, 1 First Street, N.E., Washington, D.C. 20543, and

(2) On the State of Arkansas, by mailing three (3) copies in duly addressed envelope, with air mail postage prepaid, to its Attorney General at his address as follows:

Attorney General of Arkansas  
Justice Building  
Little Rock, Arkansas 72201

**BILL ALLAIN**

Attorney General of Mississippi



DEPARTMENT

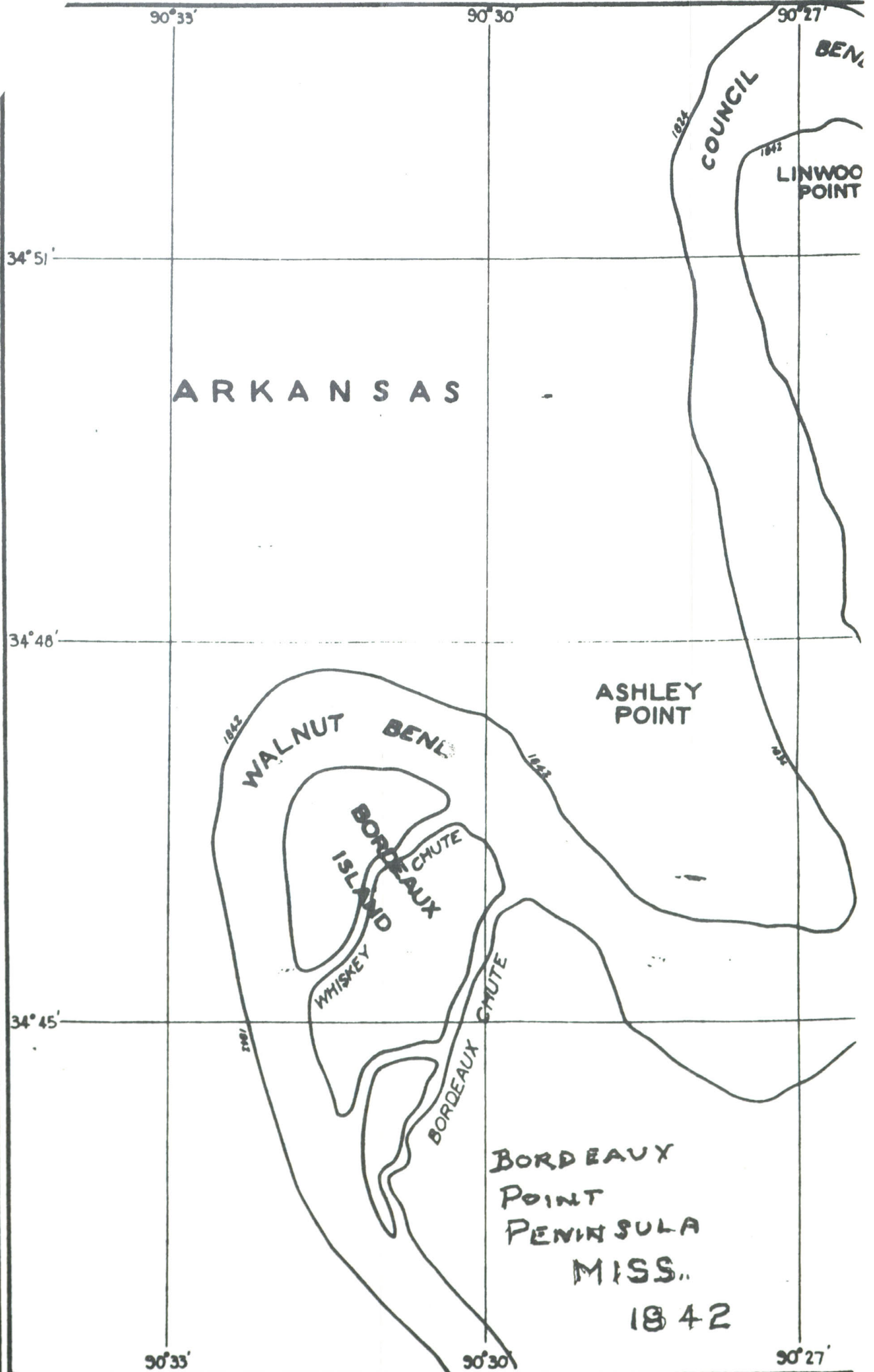


FIGURE No. 1

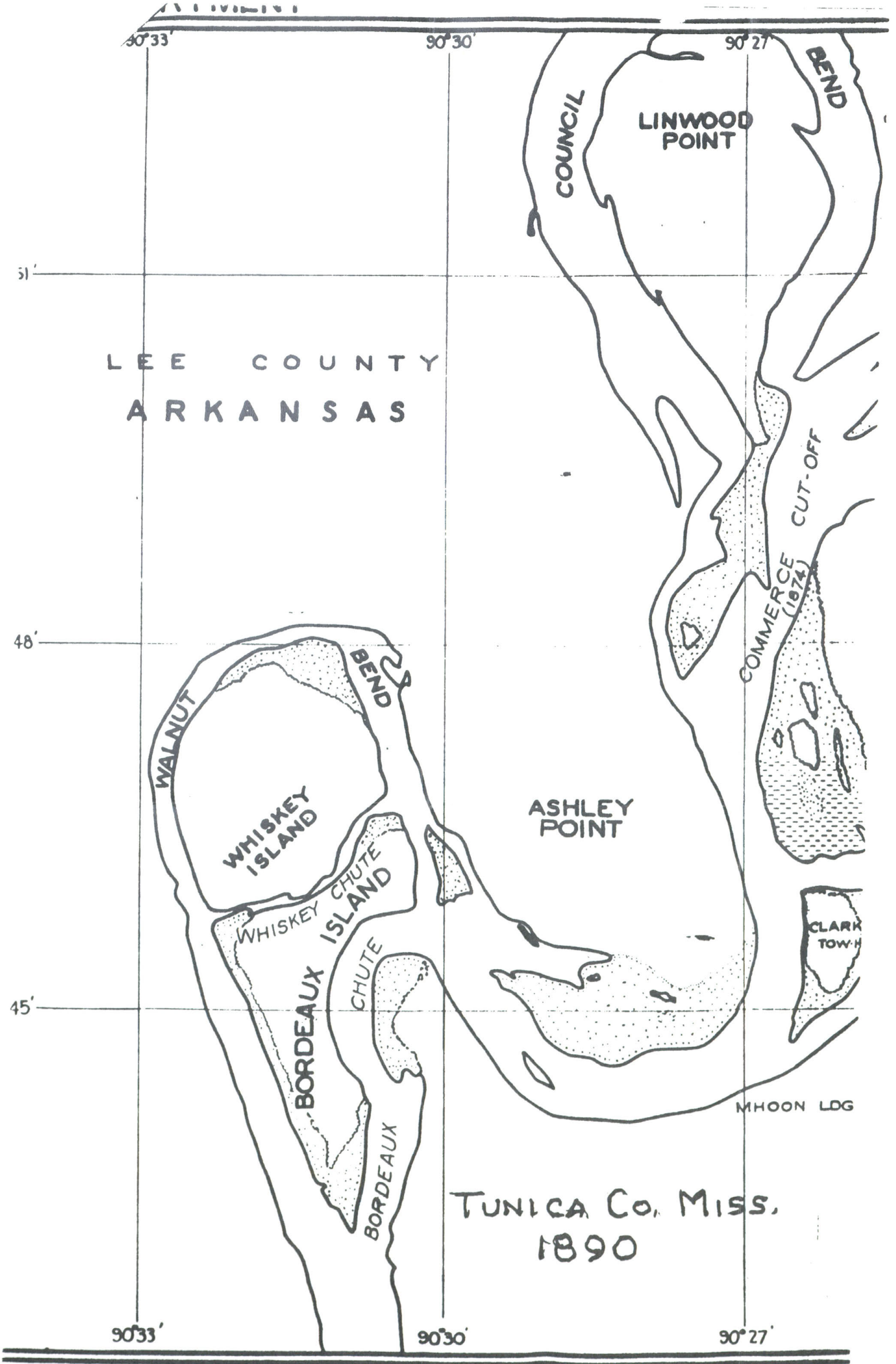


FIGURE NO. 2



DEPARTMENT

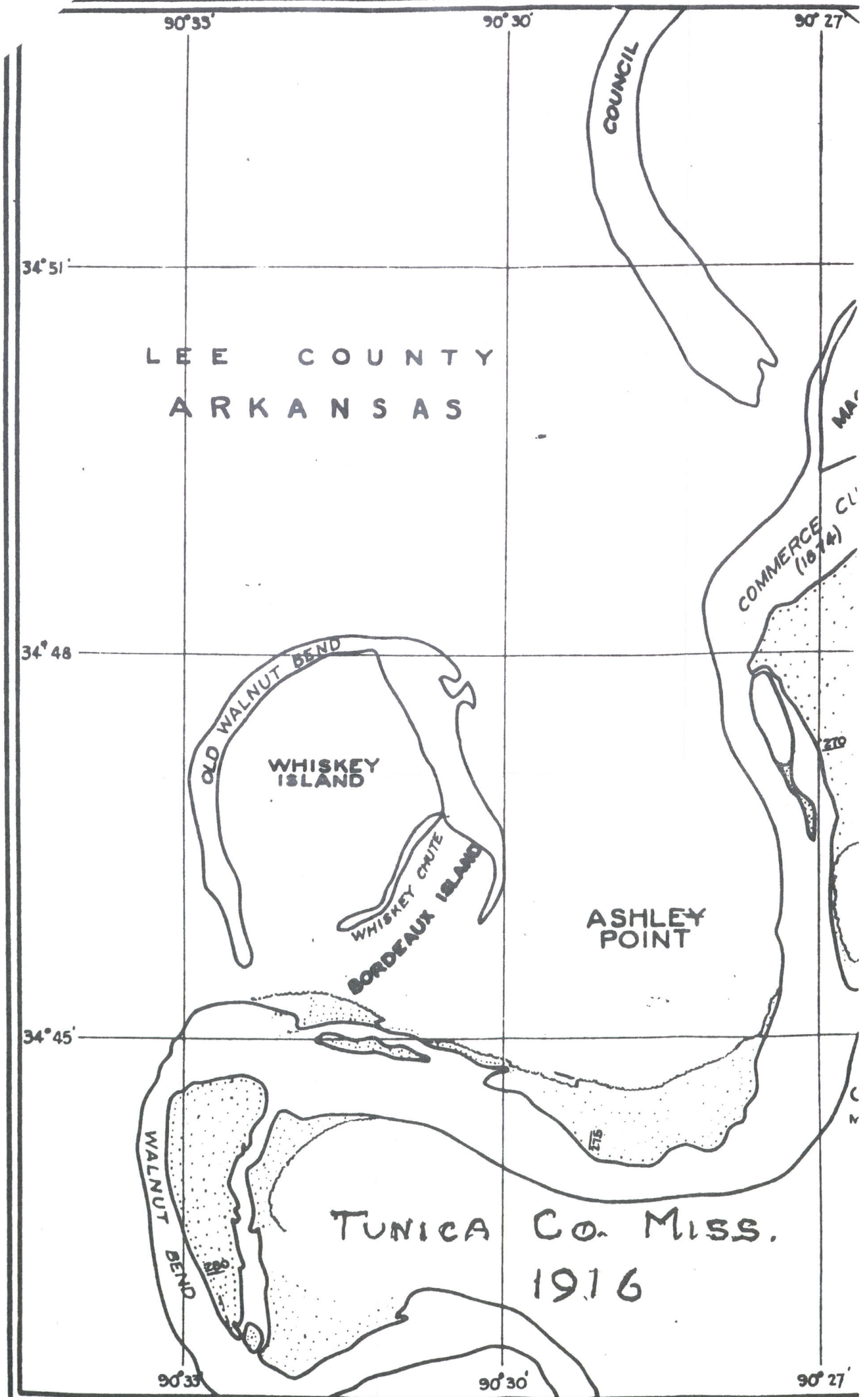


FIGURE No. 3

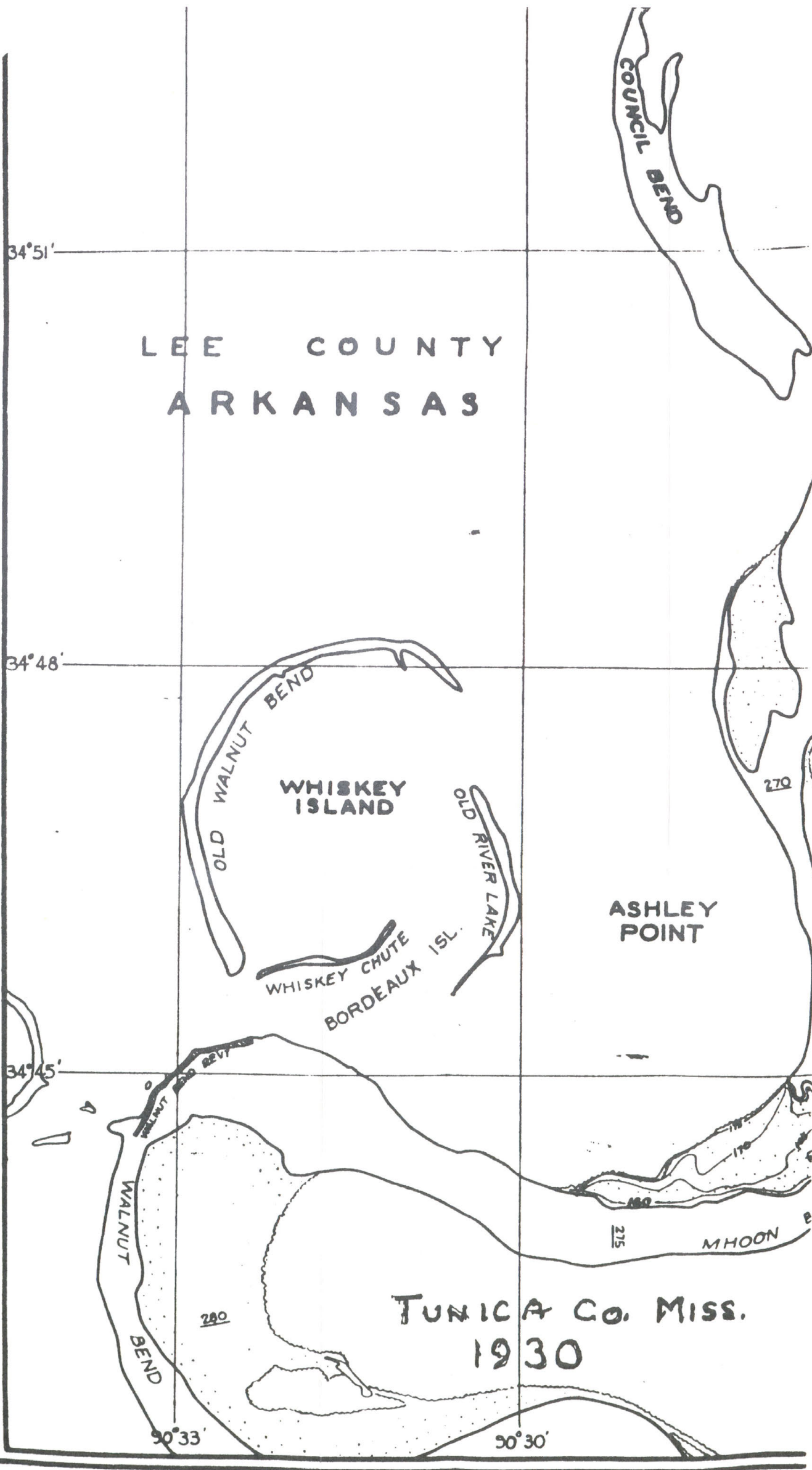
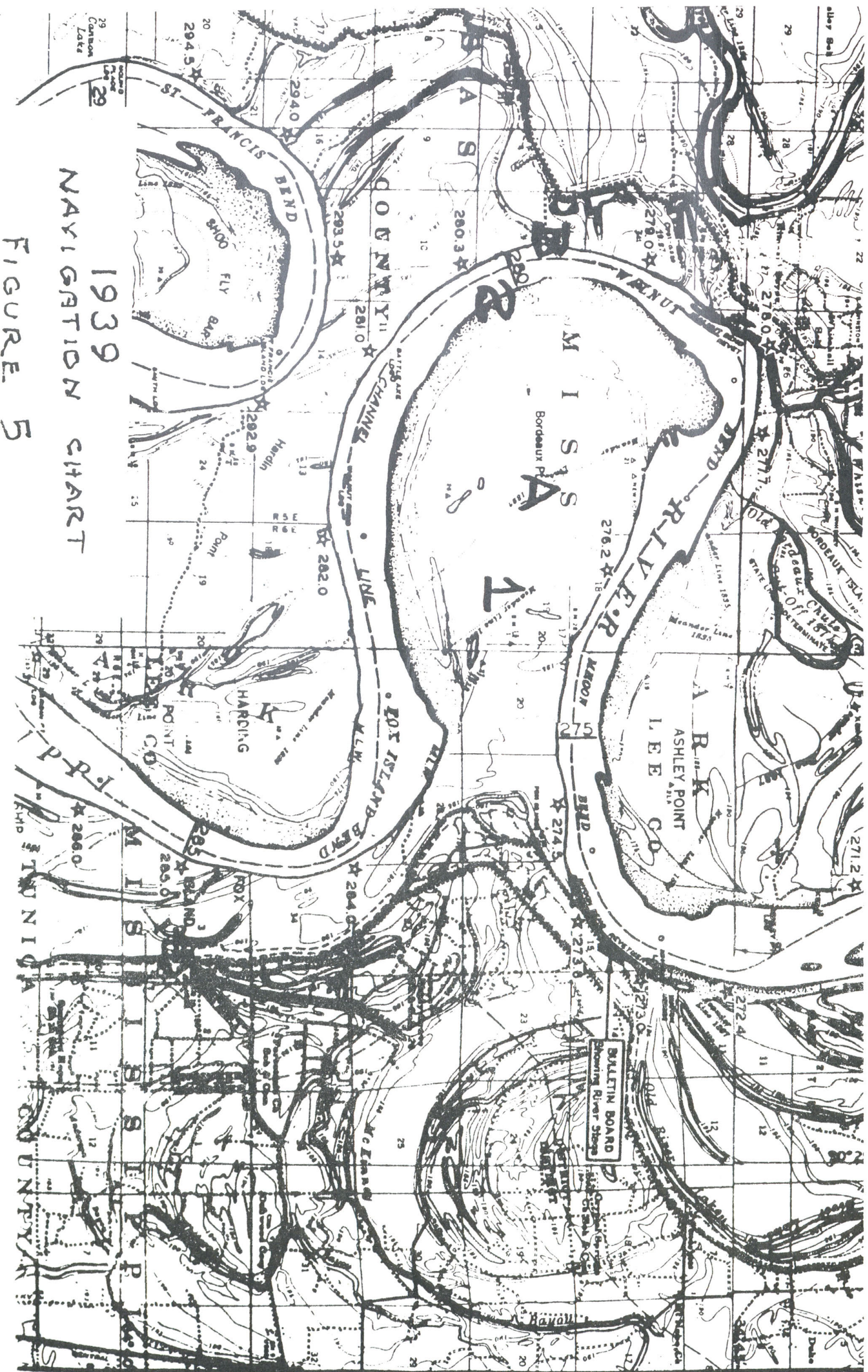


FIGURE No. 4.





1939  
NAVIGATION CHART  
FIGURE 5



1982 STATE BOUNDARY

FIGURE 6

