
In the
Supreme Court of the United States

October Term, 1981

State of Arkansas
Plaintiff-Counter-Defendant

V.

State of Mississippi
Defendant-Counter-Claimant

STIPULATION

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i-iii
TABLE OF AUTHORITIES	iv-vii
STIPULATION	1-49
I. Summary of This Litigation	1
A. Chronology of Events and Actions	1
B. Arkansas	4
C. Mississippi	6
D. Discovery	8
E. Conclusions Regarding Bordeaux Point	9
F. Addition of Whiskey Island Area	13
II. The Applicable Law	15
A. The Doctrine of the Thalweg	15
B. The Doctrine of Accretion/Avulsion	20
C. The Doctrine of Acquiescence	27
III. Ownership of Riparian Lands	31
A. Arkansas	31
B. Mississippi	34
IV. The Whiskey Island/Bordeaux Island Area	36

V.	Authority of Attorneys General to Recommend Agreed Decree	41
A.	Arkansas	41
B.	Mississippi	42
VI.	Authority of Arkansas and Mississippi to Recommend Entry of Agreed Decree	47

EXHIBITS—

Exhibit A - Description of the geographical locus of the Arkansas-Mississippi state boundary looping Bordeaux Point, including the truncated Bordeaux Island and Whiskey Island, from the upper end of Mhoon Bend to the upper end of the old Fox Island Bend	50
Exhibit B - Proposed agreed map depicting locus of Arkansas-Mississippi boundary looping Bordeaux Point	See Map Pocket
Exhibit C - Affidavit of Austin B. Smith Regarding Bordeaux Point	58
Exhibit D - Affidavit of Richard Lewis Elgin Regarding Bordeaux Point	60
Exhibit E - Reproduction of 1947 St. George Richardson Survey	See Map Pocket
Exhibit F - Reproduction of W.H. Guyer Survey	See Map Pocket
Exhibit G - Affidavit of Johnnie A. McClendon, Tax Assessor, Lee County, Arkansas	63

Exhibit H - Affidavit of W. H. Webb, Tax Assessor, Tunica County, Mississippi	67
Exhibit I - Affidavit of Austin B. Smith Regarding Whiskey Island/ Bordeaux Island	71
Exhibit J - Affidavit of Richard Lewis Elgin Regarding Whiskey Island/ Bordeaux Island	73
Exhibit K - Proposed agreed map depicting locus of Arkansas-Mississippi state boundary looping Whiskey Island/Bordeaux Island	See Map Pocket

TABLE OF AUTHORITIES

CASES	Page
<i>Anderson-Tully Co. v. Murphree</i> , 153 F.2d 874, 879 (8th Cir. 1946)	32
<i>Anderson-Tully Co. v. Tingle</i> , 166 F.2d 224 227-228 (5th Cir. 1948)	17-18, 36
<i>Archer v. Greenville Sand and Gravel Co.</i> , 233 U.S. 60, 66-69 (1914)	34-36
<i>Arkansas v. Mississippi</i> , 250 U.S. 39, 43-45 (1919)	18-20, 47
<i>Arkansas v. Tennessee</i> , 246 U.S. 158, 173 (1917)	24
<i>Arkansas v. Tennessee</i> , 310 U.S. 563, 567-572 (1940)	18, 27, 31
<i>Arkansas v. Tennessee</i> , 397 U.S. 88, 88-90 (1970)	18, 24-26
<i>Brown v. Boyle</i> , 119 Ark. 377, 380, 178 S.W. 378, 379 (1915)	32
<i>California v. Nevada</i> , 447 U.S. 125, 130-132 (1980)	27, 30-31, 47
<i>Capitol Stages v. State</i> , 157 Miss. 576, 128 So. 759, 763 (1930)	44-45
<i>Clarke v. Montgomery County</i> , 268 Ark. 942, 946, 597 S.W.2d 96, 97-98 (1980)	32
<i>County of St. Clair v. Lovington</i> , 90 U.S. 46, 68 (1874)	21-22

<i>Dunn Const. Co. v. Craig</i> , 191 Miss. 682, 2 So.2d 166 (1941)	44
<i>Gandy v. Reserve Life Ins. Co.</i> , 279 So.2d 648 (Miss. 1973)	44
<i>Harrison v. Fite</i> , 148 F. 781, 783 (8th Cir. 1906)	32
<i>Hayes v. State</i> , 254 Ark. 680, 682, 496 S.W.2d 372, 374 (1973)	32
<i>Indiana v. Kentucky</i> , 136 U.S. 479, 509-519 (1890)	27, 29
<i>In re River Queen</i> , 275 F. Supp. 403, 408 (W.D. Ark. 1967)	32
<i>Iowa v. Illinois</i> , 147 U.S. 1, 7-9 (1893)	16-17
<i>Kansas v. Missouri</i> , 322 U.S. 213 (1943)	47
<i>Kennington-Saenger Theatres v. State</i> , 196 Miss. 841, 865, 18 So.2d 483, 486 (1944)	44
<i>Louisiana v. Mississippi</i> , 202 U.S. 1, 53-57 (1906)	18, 27
<i>Louisiana v. Mississippi</i> , 384 U.S. 24 (1966)	18
<i>Lutesville Sand & Gravel Co. v. McLaughlin</i> , 181 Ark. 574, 575, 26 S.W.2d 892, 893 (1930)	32
<i>Maryland v. West Virginia</i> , 217 U.S. 1, 41-46 (1910)	27, 29-30
<i>Mississippi v. Arkansas</i> , 415 U.S. 289 (1974)	18, 48
<i>Mississippi v. Louisiana</i> , 350 U.S. 5 (1955)	18
<i>Missouri v. Nebraska</i> , 196 U.S. 23, 34-35 (1904)	21, 22

<i>Nebraska v. Iowa</i> , 143 U.S. 359, 361-363, 370 (1891)	22-23, 26-27
<i>New Hampshire v. Maine</i> , 426 U.S. 363 (1976)	47
<i>New Jersey v. Delaware</i> , 291 U.S. 361, 379, 380 (1933)	17, 18
<i>Ohio v. Kentucky</i> , 410 U.S. 641, 648-651 (1973)	27, 28-29
<i>Oklahoma v. Texas</i> , 260 U.S. 606, 632 (1922)	22, 24
<i>Owen v. Johnson</i> , 222 Ark. 872, 876, 263 S.W.2d 480, 482 (1954)	32
<i>Rhode Island v. Massachusetts</i> , 4 How. 591, 638-639 (1846)	27, 28
<i>State v. Karston</i> , 208 Ark. 703, 187 S.W.2d 327, 329 (1945)	41-42
<i>State v. Mississippi Public Service Commission</i> , 418 So.2d 779 (1982)	45
<i>State v. Southern Sand & Material Co.</i> , 113 Ark. 149, 152, 167 S.W. 854, 855 (1914)	32
<i>State v. Warren</i> , 180 So.2d 293 (Miss. 1965)	44
<i>Tennessee v. Arkansas</i> , 454 U.S. 351 (1981)	18
<i>United States Gypsum Co. v. Uhlhorn</i> , 232 F. Supp. 994, 1001 (E.D. Ark. 1964)	31-32
<i>Vermont v. New Hampshire</i> , 289 U.S. 593, 611-619 (1933)	27

<i>Vermont v. New York</i> , 417 U.S. 270 (1974)	47
<i>Virginia v. Tennessee</i> , 148 U.S. 503 522-525 (1893)	27, 28, 29
<i>Wilson v. St. Regis Pulp & Paper Corp.</i> , 240 So.2d 137 (Miss. 1970)	36
<i>Wineman v. Withers</i> , 143 Miss. 537, 108 So. 708 (1926)	36
 CONSTITUTIONAL PROVISIONS AND STATUTES	
Constitution of the United States, Article III, §2, Clause 1	2
28 United States Code Annotated, §1251(a)(1) (1948)	2
3 Statutes at Large 348, Ch. 23 (March 1, 1817)	15
5 Statutes at Large 50, Ch. 100 (July 15, 1836)	15-16
Mississippi Constitution art.V §14 (1817)	44
Mississippi Constitution art. IV §25 (1832)	44
Mississippi Constitution art. VI §25 (1869)	44
Mississippi Constitution art. VI §173 (1890)	44
Arkansas Stat. Ann. §10-601 (Repl. 1976)	32
Arkansas Stat. Ann. §10-608 (Repl. 1976)	32-33
Arkansas Stat. Ann. §10-609 (Repl. 1976)	33
Arkansas Stat. Ann. §12-706 (Repl. 1979)	42

Mississippi Code Ann. §7-5-1 (1972)	45
Mississippi Code Ann. §7-5-37 (1972)	45-46
Mississippi Code Ann. §7-5-39 (1972)	46
OTHER AUTHORITIES	
7 Am.Jur.2d Attorney General §18 (1976)	43
7A C.J.S. Attorney General §12 (1952)	43

NO. 92 ORIGINAL

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State of Arkansas
Plaintiff-Counter-Defendant

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State of Mississippi
Defendant-Counter-Claimant

STIPULATION

COME NOW the States of Arkansas and Mississippi, parties to the captioned litigation, which agree and stipulate as follows:

I. SUMMARY OF THIS LITIGATION

A. CHRONOLOGY OF EVENTS AND ACTIONS

This litigation is an outgrowth of a suit to quiet title to lands riparian to the Mississippi River filed by one Simon Zunamon, an Illinois citizen, against Garland Allen, Jr., Clifford Allen, Thomas Allen, Carolyn Allen, and Ronald G. Allen, Sr., Arkansas citizens, in the United States District Court for the Northern District of Mississippi, Delta Division, No. DC80-150-LS-O. The land initially in question in this case consists of approximately 3,250 acres and is known as Bordeaux Point. In the District Court litigation, Zunamon asserted that Bordeaux Point has been at all times located in Tunica County, Mississippi, and he based his

claim of title thereto upon prior Mississippi deeds of conveyance. The Allens denied the claim of Zunamon as to the approximate western two-thirds ($\frac{2}{3}$) of Bordeaux Point, alleging by way of counterclaim that this western portion of the point was partly original Lee County, Arkansas land which had been "cut off" from Arkansas by an avulsive action of the Mississippi River in the 1891-1904 time frame, to which Arkansas remnant alluvion was thereafter deposited over the years as a result of the westward and southern migration of the Mississippi River by the gradual process of erosion and accretion. The Allens based their claim of title upon certain Arkansas deeds and forfeited State tax patents.

Inasmuch as the dispute involved not only the territorial jurisdiction of the State of Arkansas and a challenge to the State's taxation authority over the lands in controversy, but also a direct confrontation over the State-owned submerged lands in the Mississippi River below the "high water" mark, Arkansas successfully intervened in the District Court litigation and supported the position of the Allens. However, feeling that the District Court was not the proper forum for litigation of an interstate boundary dispute, the State of Arkansas subsequently announced to the District Court that she intended to file an original action in the United States Supreme Court against the State of Mississippi, seeking a judicial determination of the locus of the common state boundary under the provisions of Article III, Section 2, Clause 1 of the Constitution of the United States, and 28 U.S.C.A. § 1251(a)(1) (1948). Upon Arkansas' motion for a stay of proceedings, the District Court, on August 14, 1981, entered an order staying all proceedings before it until final disposition of the proposed original action to be filed by Arkansas.

On November 16, 1981, Arkansas filed in the United States Supreme Court her Motion For Leave To File Bill Of Complaint against the State of Mississippi, praying for an adjudication of the geographical locus of the state boundary

looping Bordeaux Point, to which Mississippi filed a brief in opposition on March 11, 1982. In support of her petition, Arkansas raised not only the State's general interest in protecting and defending the sovereignty of her borders, but also the fact that the State is the owner of submerged lands in the Mississippi River from the line of ordinary high water out to the interstate boundary, and has taxation authority over any other disputed lands found to lie within the State of Arkansas.

On April 5, 1982, the United States Supreme Court granted the Arkansas Motion, 456 U.S. 912, and docketed the Complaint as No. 92 Original. On June 5, 1982, Mississippi filed both her Answer and Motion For Leave To File Counterclaim, in which Mississippi prayed that the geographical locus of the state boundary be determined in such manner as would place all of Bordeaux Point in Tunica County, Mississippi. On July 2, 1982, the Supreme Court entered its Order, 488 U.S. 1119, appointing the Honorable Justice Paul C. Reardon (Retired) of Boston, Massachusetts, as Special Master, to take testimony, conduct hearings, and report his findings to the Court. Pursuant to orders of the Special Master, leave was granted for Mississippi to file her Answer and Counterclaim, to which Arkansas answered on October 6, 1982.

On October 8, 1982, a pre-trial conference was held in Boston, Massachusetts, attended by counsel for the Allens, counsel for Zunamon, and representatives of the offices of the Attorneys General of the States of Arkansas and Mississippi. At this conference the issues were identified, discovery procedures formulated, and a tentative trial date set.

Thereafter, the litigants commenced extensive and intensive investigations into available evidence and the applicable law. For clarity, synopses of the efforts of the States are separately described hereinafter.

B. ARKANSAS

In developing the scientific and other data pertinent to and in support of its claim, the State of Arkansas commissioned several studies. First, Mr. John Ross, a 29-year veteran District Forester of the Arkansas Forestry Commission, performed field studies on the area in dispute to determine the age, size, species, and species progression development of the trees and foliage then existing. With the assistance of several other State forestry personnel, Mr. Ross made numerous visits to Bordeaux Point between December, 1982 and September, 1983. He studied the soil composition, topography of the land, and the different species of vegetation in the entire area in controversy. Mr. Ross made a zig-zag traverse of a high-ground area of land which was of particular importance to the various litigants in the case, moving from west to east and then back in the opposite direction and covering an elliptical-shaped area of land which runs generally north to south. Mr. Ross took increment bores from many individual trees, and cut several trees to determine the number of annual growth rings in each tree for aging purposes.

Next, Dr. Edward C. Grubbs, a geotechnical engineer registered in six states and the Vice President of the Little Rock Division of McClelland Engineers, Inc., was retained to perform field and laboratory studies on the soil formations in the disputed area in order to determine the age, continuity, physical properties, and other characteristics of the soil in the area in dispute. During March 14-16, 1983, Dr. Grubbs and his crew drilled five test holes in the north-south elliptical-shaped area of high ground which had been traversed by Mr. Ross, three holes to a depth of eighty feet, one to a depth of forty feet, and one to a depth of thirty and one-half feet. Soil samples were captured at intermittent depths and brought to the surface during the boring process. Dr. Grubbs later performed laboratory classification, strength, volume and density tests on these samples, enabling him to graph the stratification of the soils in each

borehole area according to its composition (sand, silt, clay, etc.).

Dr. Richard L. Elgin, a Registered Professional Engineer and Land Surveyor and, at that time, an Assistant Professor in the Department of Civil Engineering at the University of Missouri at Rolla, performed survey and mapping work for the State of Arkansas. Dr. Elgin and his field crew visited the disputed area in October, 1982, and March, 1983. Dr. Elgin worked with Mr. Ross and Dr. Grubbs in locating the coordinates of their tree cuttings and soil borings. He and his crew also located other pertinent physical evidence and set out the ground control points for an aerial photograph.

Dr. Elgin obtained numerous maps and charts from the Mississippi River Commission (MRC), the Corps of Engineers (Corps), and other sources which depict the flow of the Mississippi River in the disputed area over different periods of time. He caused to be prepared an aerial orthophotograph of the land in question and, from the information he had gained from his study of all available maps, he had prepared a number of enlarged overlays of several of the maps which depict the River's channel at times crucial to the case.

Arkansas also retained two registered professional engineers who are Assistant Professors in the Civil Engineering Department at the University of Missouri at Rolla. Drs. Charles D. Morris and Roger H. Smith made several field trips to Bordeaux Point to personally view the disputed lands, and made several information gathering trips to the MRC and Corps offices in Memphis and Vicksburg. These men proposed two major study areas for their work. They gathered together MRC and Corps maps, charts, reports and other historical data; the soil boring, forestry, and surveying information compiled by the other Arkansas experts; and a large array of technical literature on hydraulics and alluvial rivers in order to make a

qualitative analysis concerning the nature of the Mississippi River's movements during the time frame at issue in the case. They also developed a quantitative computer model designed to illustrate their theories of how the River meandered during the crucial years in controversy.

In addition to these expert witnesses, the State of Arkansas interviewed several members of the Allen family (defendants in the case before the United States District Court) in order to develop lay testimony regarding the history of the disputed portion of Bordeaux Point.

At several times during the course of the field work conducted by the Arkansas expert witnesses, the Mississippi River reached flood stage, inundating considerable portions of Bordeaux Point to a depth of several feet. The lengthy duration of these floods, coupled with intolerable soil conditions immediately thereafter, caused major delays of several months. Since the forestry and soils investigations had to be essentially complete before the other investigations, as well as discovery, could ensue, the flood delays resulted in protraction of the entire litigation schedule.

C. MISSISSIPPI

Like Arkansas, the State of Mississippi retained several experts to undertake scientific investigations of Bordeaux Point. First, Mr. Austin B. Smith, a Potamologist, Registered Professional Engineer, and Land Surveyor of Vicksburg, Mississippi was commissioned to examine and investigate the entirety of the point and the history of its formation. Mr. Smith obtained and analyzed all available Corps and MRC charts, maps, and reports concerning the area covering the period 1820-1983. He focused on the meanderings of the Mississippi River over and around Bordeaux Point, particularly insofar as documented erosion/accretion patterns revealed prior locations of the thalweg of the River. Mr. Smith has been personally

familiar with Bordeaux Point since 1935. As a project engineer with the Corps and MRC, he actually participated in construction of the Hardin Point Cutoff in 1942, as well as the revetting of both Mhoon's Bend and Walnut Bend. He revisited Bordeaux Point as part of his investigation in this case in the fall of 1982.

The State of Mississippi also retained Dr. Roger T. Saucier, a Physical Scientist in the Environmental Laboratory at the U.S. Army Engineer Waterways Experiment Station, Vicksburg, Mississippi. Dr. Saucier privately consults in the fields of alluvial and deltaic geomorphology; mapping of the Lower Mississippi River Valley depositional environments and engineering soils distributions; and related fields. Dr. Saucier independently analyzed the historical maps, charts, reports, and other records gathered by Mr. Smith, as already mentioned. He personally conducted a field investigation of the entirety of Bordeaux Point to observe and document the types and areal extent of existing forests, as well as topographical features.

In order to thoroughly examine the forestry and silvicultural history and existing conditions of Bordeaux Point, the State of Mississippi retained Mr. J.S. McKnight, a consulting forester of Stone Mountain, Georgia. Mr. McKnight, personally familiar with alluvial lands along the Mississippi River by virtue of some 23 years' experience at the U.S. Forest Service Southern Hardwoods Laboratory in Stoneville, Mississippi, concentrated his investigation in the western portion of Bordeaux Point. He laid out north-south (three miles long) and east-west (three and one-half miles long) transects across his study area, and documented his investigation by field notes, increment borings from several selected trees, and cross-section cuts from other trees felled to conduct aging determinations. Mr. McKnight's initial field work was conducted during July 5-8, 1983, with follow-up visits on two occasions thereafter.

In addition to the investigations by retained experts, the State of Mississippi also obtained extensive historical

data regarding timber planting/harvesting activities in the disputed area on Bordeaux Point from Chicago Mill and Lumber Company, whose nominee, Mr. Simon Zunamon, was the plaintiff in the district court litigation already discussed. This data was assembled and analyzed by Mr. L.C. White, of Greenville, Mississippi, Registered Forester and retired Land Manager for Chicago Mill.

The field work conducted by expert witnesses retained by Mississippi was hampered substantially by flooding in the Bordeaux Point area, as already mentioned with respect to similar problems encountered by Arkansas.

D. DISCOVERY

In June, 1983, attorneys for both parties propounded to their opposition extensive and comprehensive sets of interrogatories and document production requests. Both parties were able to exchange most of the necessary requested information informally during June and July. Attorneys for the State of Mississippi took the oral discovery depositions of Mr. John Ross on August 18, 1983, and Dr. Edward C. Grubbs on August 19, 1983, both in Little Rock, Arkansas. Attorneys for the State of Arkansas orally deposed Mr. Joseph S. McKnight on August 23, 1983, in Atlanta, Georgia. The State of Mississippi scheduled additional discovery depositions in Rolla, Missouri for: Dr. Charles Morris, Hydrologic Engineer, Rolla, Missouri; and Dr. Roger Smith, Hydrologic Engineer, Rolla, Missouri; and Dr. Richard Elgin, Civil Engineer and Land Surveyor, Rolla, Missouri. The State of Arkansas scheduled additional discovery depositions in Vicksburg and Greenville, Mississippi for Dr. Roger T. Saucier, Geomorphologist, Vicksburg, Mississippi; Austin B. Smith, Civil Engineer and Potamologist, Vicksburg, Mississippi; J.B. Wiseman, General Manager of Chicago Mill and Lumber Company, Greenville, Mississippi; and L.C. White, Registered Forester and retired Land Manager of Chicago Mill and Lumber Company, Greenville, Mississippi.

By early September, 1983, attorneys for Arkansas and Mississippi, after thorough research of the applicable law (discussed fully hereinafter), concluded that the controversy would ultimately resolve itself into questions of fact only. Moreover, considering the rapidly escalating costs of discovery and the projected overall impact of the litigation upon the fiscal resources of the States, counsel for the parties held informal conferences in late September, 1983, in both Little Rock, Arkansas and Jackson, Mississippi to discuss the possibility of an agreed settlement of the case.

The preliminary results of the studies performed by the retained experts, clarified through the first round of discovery depositions already taken, were carefully and thoroughly discussed during the informal meetings. Reasoned negotiations led to an accord regarding the correct geographical locus of the disputed boundary, and the parties agreed, in principle, to recommend to the Special Master final disposition of the controversy through entry of an agreed decree without the additional expense of trial and formal prosecution of the litigation to judgment.

E. CONCLUSIONS REGARDING BORDEAUX POINT

The collective efforts of the expert witnesses yielded results showing that the truncated peninsula in question was, in its configuration in the early to mid-1800's, traversed by a number of "chutes," locally called by such names as "Bordeaux Chute," "Favorite Chute," and "Whiskey Chute." About 1874, the Mississippi River, which had theretofore coursed around the entire peninsula through "Walnut Bend" (north of the current position of Bordeaux Point), altered its principal course by cutting through Bordeaux Chute and greatly enlarging this passageway across the point. This major shift in the flow pattern of the River was avulsive in nature, causing river traffic to have to ultimately adopt Bordeaux Chute, rather than Walnut Bend, as the course of navigation.

During the time frame 1874-1883, the upper and lower termini of Walnut Bend filled rapidly. MRC and Corps depth soundings completely around this abandoned bendway were conducted for the last time in 1882, the 1883 official maps showing soundings to only about the mid-points of the upper and lower arms of "old" Walnut Bend. Official reports showing river depths at various stages indicate that depths at the termini of "old" Walnut Bend were reduced to approximately two feet in 1883, much too shallow for commercial traffic, which had already been utilizing Bordeaux Chute for several years. All navigation signals in "old" Walnut Bend had been removed by this time.

All experts agree that the avulsion through Bordeaux Chute, resulting in the closure of Walnut Bend to navigation, was essentially complete by 1883. However, official Corps maps indicate that the River at one or more times during the time frame 1880-1892 appears to have had a bifurcated channel below the lower arm of Walnut Bend, caused by rapid southwestward meanderings of the River around the remaining portion of the former peninsula now called Bordeaux Point. This southwestward migration of the River resulted from the conjunctive effects of the caving away of the right descending bank and concomitant bar building at the distal end of Bordeaux Point on the left descending bank.

While the configuration of Bordeaux Point changed considerably after the Bordeaux Chute cutoff, as a result of the natural processes of erosion and accretion just mentioned, completion of the Mhoon's Bend revetment along the north side of the point (left descending bank) and the (new) Walnut Bend revetment on the Arkansas side of the River opposite the distal end of the point (right descending bank) stabilized the River, arresting further dramatic meandering to the south and west. Careful analyses by both the Arkansas and Mississippi experts of all official government maps, charts, and reports led to agreement regarding the locus of the thalweg, the most probable course of downstream

navigation around Bordeaux Point at the time water ceased to flow around Walnut Bend (thus establishing the state boundary therein). The state boundary looping Bordeaux Point below the Bordeaux Chute cutoff followed the live thalweg thereafter.

The Corps cut Hardin Point in 1942, causing the state boundary along the south side of Bordeaux Point to become fixed in 1947, the year in which the closure of Fox Island Bend to flow was essentially complete (as had occurred in Walnut Bend). This man-caused avulsion across Hardin Point resulted in stabilization of the south bank line of Bordeaux Point. The location of the dead thalweg in Fox Island Bend was determined and field surveyed by Mr. St. George Richardson in February, 1947, and the Richardson line has been accepted as the state boundary by both Arkansas and Mississippi since that time.

These events, taken together, now yield an Arkansas-Mississippi state boundary around Bordeaux Point as described as Segment "A" and Segments "C" and "D" of the narrative description made Exhibit "A" and pictorially shown on Exhibit "B," both of which are attached hereto and incorporated herein by reference.

Having reached the conclusions just stated, the parties agreed that Mr. Austin B. Smith, retained as an expert witness by Mississippi, would prepare initial drafts of both a narrative description of the agreed boundary in the area in dispute and a suitable map on which the boundary would be depicted. It was further agreed, inasmuch as that portion of the agreed boundary in the "dead thalweg" of Fox Island Bend along the south side of Bordeaux Point (as it existed prior to the avulsive Hardin Point Cutoff in 1942) would be as determined by Mr. St. George Richardson in his 1947 survey, that a copy of the Richardson plat should be included in the settlement documents as a separate exhibit. Upon completion of the draft description and map by Mr. Smith, Dr. Richard Elgin, retained as an expert witness by

Arkansas, was to verify all geodetic coordinates specified in the description and shown on the draft map, and then prepare the final map showing the agreed boundary for submission to the Special Master.

Affidavits of Mr. Smith and Dr. Elgin confirming the correctness of both the description of the proposed agreed boundary and the map depicting it are attached hereto and incorporated herein by reference as Exhibits "C" and "D," respectively. A true and correct reproduction of the 1947 St. George Richardson Survey of the "dead thalweg" of the Mississippi River in Fox Island Bend, resulting from the 1942 cutoff of Hardin Point by the United States Army Corps of Engineers, is attached hereto as Exhibit "E" and also incorporated herein by reference.

Counsel for the parties then jointly announced to the Special Master the proposed settlement of this litigation by entry of an agreed decree, and requested a conference in Boston to discuss such a resolution of the controversy. The Special Master agreed to meet with counsel for the parties, and arranged the conference for November 3, 1983. At this meeting, the Special Master was thoroughly briefed regarding the status of discovery and the specific manner in which the proposed settlement should be presented to the Supreme Court.

At the conclusion of the Boston conference, the Special Master directed the parties to prepare for his review the pleadings by which the proposed settlement would be submitted to the Supreme Court, which specifically would contain the following: (1) the narrative description and pictorial depiction of the proposed agreed boundary looping Bordeaux Point; (2) a discussion of the authority of the Attorneys General of Arkansas and Mississippi to jointly move the entry of an agreed decree terminating this litigation; (3) a discussion regarding the law of both Arkansas and Mississippi regarding ownership of lands riparian to the interstate boundary in the Mississippi River; (4) a discussion

of the status of the boundary in the dead thalweg looping "old" Walnut Bend as a result of the Bordeaux Chute Cutoff, which was not at that time to be included in the proposed agreed decree; and (5) a discussion of United States Supreme Court precedent regarding agreed settlements of litigation involving interstate boundary disputes brought under the original jurisdiction of the Court. The litigants proceeded to comply with the directives of the Special Master.

F. ADDITION OF WHISKEY ISLAND AREA

In March, 1984, Counsel for Arkansas and Mississippi jointly submitted to the Special Master, according to the instructions just mentioned, the proposed final pleadings and exhibits. Upon careful study of these materials, the Special Master became concerned about the propriety of submitting to the Supreme Court an agreed boundary having, as shown on Exhibit "B," a gap between the two points of intersection of the current live thalweg of the River with the upper and lower extensions of the dead thalweg in "old" Walnut Bend looping the Whiskey Island/Bordeaux Island area. Further consideration of the matter, including a careful study of the prior original jurisdiction boundary litigation involving navigable rivers, led the Special Master to conclude that Arkansas and Mississippi should determine the location of their common boundary in the dead thalweg of "old" Walnut Bend in this case, so as not to leave any gap in the boundary recommended to the Supreme Court for approval. Since the geodetic coordinates used by Arkansas and Mississippi in their original pleadings indicated that this additional area was included within the scope of the litigation, the Special Master concluded that no formal amendment of either the Complaint or Counterclaim would be necessary.

Counsel for both States then proceeded to conduct extensive additional examinations of land ownership and tax assessment records in both Lee County, Arkansas and

Tunica County, Mississippi. All landowners of record on both sides of the state boundary were personally contacted in order to determine how the state boundary had been established and recognized among these parties.

Dr. Elgin and Mr. Smith were again retained to examine all available maps, charts, and documents pertaining to "old" Walnut Bend and the Whiskey Island/Bordeaux Island area, and to determine the locus of the dead thalweg in this abandoned bendway resulting from the Bordeaux Chute Cutoff. The conclusions of these two expert witnesses, as well as the detailed results of the investigations just mentioned, are set forth hereinafter in Section IV of this Stipulation.

Upon substantial completion of the additional work regarding the Whiskey Island area, the Special Master met with counsel for the parties in Memphis, Tennessee on September 26-28, 1984, to discuss all aspects of the litigation. The Special Master and counsel for both States took a private, low-level flight over the Bordeaux Point and Whiskey Island areas at the conclusion of this conference in order for the Special Master to obtain a personal view of all the land involved.

Subsequent to the Memphis conference, all investigations by the States, including a working meeting involving the tax assessors of Lee County, Arkansas and Tunica County, Mississippi, were concluded. The efforts of all involved yielded agreement that the state boundary in approximately the western one-half of "old" Walnut Bend would be established along the locus of the dead thalweg at the time flow ceased in the bendway subsequent to Bordeaux Chute Cutoff. The remainder of the boundary in approximately the eastern one-half of "old" Walnut Bend would be established along the private property lines in this area, to which both States have historically acquiesced, as discussed more fully hereinafter.

Counsel for the States then completed and submitted to the Special Master the final pleadings and exhibits to be forwarded to the Supreme Court.

II. THE APPLICABLE LAW

A. THE DOCTRINE OF THE THALWEG

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

Beginning on the Mississippi River 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.

The State of Arkansas was admitted to the Union of the United States of America by the Act of Congress found in the United States Statutes at Large, Vol. 5, Chapter 100, page 50, approved July 15, 1836, the boundaries of the State being described as follows:

Begin with the middle of the main channel of the Mississippi River, on the parallel of thirty-six degrees north latitude; running 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 the Red River by the lines described in the first article of the treaty between the United States and the Cherokee Nation of the Indians west of the Mississippi, made and concluded at the City of Washington on the twenty-sixth 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.

The congressional acts of statehood just quoted clearly reference both the eastern boundary of Arkansas and the western boundary of Mississippi to the Mississippi River. Since these boundary lines are, in reality, common to these adjacent states, the ambiguities in the language regarding the river left confusion from the beginning regarding the precise location of the shared border.

The rule of law adopted and consistently followed by the United States Supreme Court in resolving conflicting statutes fixing a common interstate boundary on a navigable river was first enunciated in the landmark case *Iowa v. Illinois*, 147 U.S. 1 (1893), as follows:

When a navigable river constitutes the boundary between two independent states, the line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream. The interest of each state in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest. It is, therefore, laid down in all the recognized treatises on 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

* * *

... If there be more than one channel of a river, the deepest channel is regarded as the navigable mid-channel for the purpose of territorial demarcation; and the boundary line will be the line drawn along the surface of the stream corresponding to the line of deepest depression of its bed.

147 U.S. at 7-9.

The Court in *Iowa v. Illinois*, *supra*, adopted as its touchstone for defining the "middle of the main navigable channel" the term "thalweg," explained subsequently in *New Jersey v. Delaware*, 291 U.S. 361, 379 (1933), thusly:

The Thalweg, or downway, is the track taken by boats in their course down the stream, which is that of the strongest current.

That there is no real conflict in the two definitions is demonstrated by the able discussion of the subject by Judge Sibley of the United States Court of Appeals, Fifth Circuit, in *Anderson-Tully Co. v. Tingle*, 166 F.2d 224 (5th Cir. 1948), wherein it is stated:

It appears that the older cases speak of the "center of the stream" or "the thread of the current" as the boundary. The center of the stream is assumed to be the same as the thread of the current if it is not shown otherwise. In *Iowa v. Illinois*, 147 U.S. 1, the term "thalweg" of the stream was used, and the later cases in Mississippi use that term, as did the district court. The word is German for "valleyway" and means the lowest part of the river bed in the direction of its flow, or the deep channel of the river. It can be, and in making charts is, accurately located by transverse soundings. The thalweg and the thread of the stream are related as

cause and effect. If the bed is hard, as rock, the thalweg will direct the thread of the stream. If the bed is sand and mud, the thread of the current will control the thalweg, shifting it by erosion as the current shifts. As boundaries the two signify the same thing, the thalweg being more accurately ascertainable. We will use that term.

166 F.2d at 227-228.

The basis for the foregoing rule of the thalweg was reemphasized by Justice Cardozo in *New Jersey v. Delaware, supra*, in the following language:

The underlying rationale of the doctrine of the Thalweg is one of equality and justice. "A river", in the words of Holmes, J. (*New Jersey v. New York*, 283 U.S. 336, 342, 75 L.Ed. 1104, 1105, 51 S.Ct. 478), "is more than an amenity, it is a treasure." If the dividing line were to be placed in the centre of the stream rather than in the centre of the channel, the whole track of navigation might be thrown within the territory of one state to the exclusion of the other.

291 U.S. at 380.

The doctrine of the thalweg has thus become well-entrenched in decisions involving boundary line disputes concerning navigable rivers. *Tennessee v. Arkansas*, 454 U.S. 351 (1981); *Mississippi v. Arkansas*, 415 U.S. 289 (1974); see additionally, *Arkansas v. Tennessee*, 397 U.S. 88 (1970); *Louisiana v. Mississippi*, 384 U.S. 24 (1966); *Mississippi v. Louisiana*, 350 U.S. 5 (1955); *Arkansas v. Tennessee*, 310 U.S. 563 (1940); *Louisiana v. Mississippi*, 202 U.S. 1 (1905).

The ambiguous references to the Mississippi River in the above-quoted acts of statehood for the litigants here were resolved in *Arkansas v. Mississippi*, 250 U.S. 39 (1919), wherein Mr. Justice Day, following the general rules just discussed, spoke for the Court as follows:

It will be observed that the language of the Mississippi act, so far as now important to consider, fixes the boundary upon the Mississippi River as "up the same to the beginning," and the language of the Arkansas act is: "beginning in the middle of the main channel of the Mississippi River . . . 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."

The State of Arkansas contends that these acts of Congress fix the middle of the channel of navigation . . . as the boundary line between the States. By the State of Mississippi it is contended that the boundary line is a line equidistant from the well defined banks of the river. Language to the same effect as that contained in the acts of admission now before us was before this court in the case of *Arkansas v. Tennessee, supra*, and in that case the subject was considered, and the meaning of the Arkansas act, and similar language in the act admitting the State of Tennessee, was interpreted. The rule laid down in *Iowa v. Illinois*, 147 U.S. 1, was followed, and it was held that where the States of the Union are separated by boundary lines described as "a line drawn along the middle of the river," or as "the middle of the main channel of the river," the boundary must be fixed at the middle of the main navigable channel, and not along the line equidistant between the banks. We regard that decision as settling the law, and see no reason to depart from it in this instance.

* * *

. . . (W)hen 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. In *Arkansas v. Tennessee, supra*,

p. 171, we said: "The rule thus adopted, (that declared in *Iowa v. Illinois*) known as the rule of the 'thalweg,' has been treated as set at rest by that decision. *Louisiana v. Mississippi*, 202 U.S. 1, 49; *Washington v. Oregon*, 211 U.S. 127, 134; 214 U.S. 205, 215. The argument submitted in behalf of the defendant State in the case at bar, including a reference to the notable recent decision of its Supreme Court in *State v. Muncie Pulp Co.* (1907), 119 Tennessee 47, 1045 W. 437, has failed to convince us that this rule ought now, after the lapse of twenty-five years, to be departed from."

We are unable to find occasion to depart from this rule because of long acquiescence in enactments and decisions, and the practices of the inhabitants of the disputed territory in recognition of a boundary, which have been given weight in a number of our cases where the true boundary line was difficult to ascertain. (See *Arkansas v. Tennessee*, *supra*, and the cases cited at p. 172.)

. . . (T)he applicable rule established in this court, and repeatedly enforced, requires the boundary line to be fixed at the middle of the channel of navigation

250 U.S. at 43-45.

The Arkansas-Mississippi common boundary has clearly been determined to be, for all time, the "thalweg" or "middle of the channel of navigation" of the Mississippi River. Of course, inasmuch as this giant alluvial stream meanders continuously throughout the full length of this common boundary, the precise location of the "thalweg" at any given time ultimately becomes a question of fact, depending upon whether changes in the locus of the main navigation channel resulted from gradual processes of erosion and accretion or the radical process of avulsion.

B. THE DOCTRINE OF ACCRETION/AVULSION

Where the course of a boundary stream changes, gradually and imperceptibly, the boundary follows the chan-

nel and remains the varying center (thalweg) thereof. In *Missouri v. Nebraska*, 196 U.S. 23, 34-35 (1904), Mr. Justice Harlan discussed the rules applicable to the gradual shifting of a river as follows:

The former decisions of this court relating to boundary lines between states seem to make this case easy of solution.

In *New Orleans v. United States*, 10 Pet. 662, 717, 9 L.Ed. 573, 594, argued elaborately by eminent lawyers, Mr. Webster among the number, this Court said: "the question is well settled at common law, that the person whose land is bounded by a stream of water, which changes its course gradually by alluvial formations, shall still hold by the same boundary, including the accumulated soil. No other rule can be applied on just principles. Every proprietor whose land is thus bounded is subject to loss by the same means which may add to his territory; and as he is without remedy for his loss, in this way, he cannot be held accountable for his gain." It was added—what is pertinent to the present case—that "this rule is no less just when applied to public than to private rights."

Almost all boundary cases involving alluvial rivers such as the Mississippi River entail either the shifting of the river as a result of erosion of one bank with a corresponding building up of the opposite bank by the process of deposition of alluvion ("accretion") or, alternatively, the sudden abandonment of the old bed and the adoption by the river of a new bed, which is termed "avulsion."

The classic definition of what constitutes accretion and erosion is found in the case of *County of St. Clair v. Livingston*, 90 U.S. 46, 68 (1874), where the Court held:

In the light of the authorities, alluvion may be defined as an addition to riparian land, generally and imperceptibly made by the water to which the land is contiguous. It is different from reliction, and is the opposite

of avulsion. The test as to what is gradual and imperceptible in the sense of the rule is, that though the witnesses may see from time to time that progress has been made, they could not perceive it while the process was going on. Whether it is the effect of natural or artificial causes makes no difference. The result as to the ownership in either case is the same

The key words here are "see" and "perceive." Unless one can see and perceive changes in a river at the moment that they take place, then all such changes are, by this definition, accretive in nature and not avulsive.

The Supreme Court has utilized the "visible and perceptible" test in all cases where it has been applicable. Where additions to the banks of a stream are not visible while the eye rests upon the stream, the Court has held that the law of erosion and accretion applies. Some of the cases wherein this rule has been followed are: *Missouri v. Nebraska, supra*; and *Oklahoma v. Texas*, 260 U.S. 606 (1922).

However, the same conclusion can be reached by stating the proposition in reverse, i.e., that there was no avulsion. Accretion "is the opposite of avulsion." *St. Clair v. Lovington, supra*. In other words, if the change did not take place as the result of an avulsion, it must, ex vi termini, have taken place as a result of accretion and erosion.

Avulsion was defined most succinctly in *Nebraska v. Iowa*, 143 U.S. 359, 361 (1891), thusly:

. . . (W)here a stream, which is a boundary, from any cause suddenly abandons its old and seeks a new bed, such change of channel works no changes of boundary; and that the boundary remains as it was, in the centre of the old channel although no water may be flowing therein. This sudden and rapid change of channel is termed, in the law, avulsion. In *Goult on Waters* § 159, it is said: "But if the change is violent and visible

and arises from a known cause, such as a freshet, or a cut through which a new channel is formed, the original thread of the stream continues to mark the limits of the two estates

As was further stated in *Nebraska v. Iowa, supra*, at 143 U.S. 362:

. . . (If deserting its original bed, the river forces for itself a new channel in another direction, then the nation, through whose territory the river thus breaks its way, suffers injury by the loss of territory greater than the benefit of retaining the natural river boundary, and that boundary remains in the middle of the deserted river bed. For, in truth, just as a stone pillar constitutes a boundary, not because it is a stone, but because of the place in which it stands, so a river is made the limit of nations, not because it is running water bearing a certain geographical name, but because it is water flowing in a given channel, and within given banks, which are the real international boundary.

The definitions just cited, along with many others, make it clear that when courts speak of an avulsion, they are referring to changes wherein a river seeks an entirely new bed. This is manifest in the following quotation from Vattel, one of the fathers of International Law, cited in *Nebraska v. Iowa, supra*, at 143 U.S. 363, as follows:

. . . (If, instead of a gradual and progressive change of its bed, the river, by an accident merely natural, turns entirely out of its course and runs into one of the two neighboring states, the bed which it has abandoned becomes thenceforward their boundary, and remains the property of the former owner of the river . . . and the river itself is, as it were, annihilated in all that part, while it is reproduced in its new bed and there belongs only to the State in which it flows.

A definitive summary of the rules regarding accretion and avulsion, as applied by the United States Supreme

Court, is given in the case of *Arkansas v. Tennessee*, 246 U.S. 158, 173 (1917), as follows:

... It is settled beyond the possibility of dispute that where running streams are the boundaries between states, the same rule applies as between private proprietors; namely, that when the bed and channel are changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying course of the stream; while if the stream from any cause, natural or artificial, suddenly leaves its old bed and forms a new one, by the process known as an avulsion, the resulting change of channel works no change of boundary, which remains in the middle of the old channel, although no water may be flowing in it, and irrespective of subsequent changes in the new channel...

The opinion in *Oklahoma v. Texas*, *supra*, restates the above language quoted from *Arkansas v. Tennessee*, *supra*, and also defines what is meant by the "bed" of a river, as follows:

... When we speak of the bed, we include all of the area which is kept practically bare of vegetation by the wash of the waters of the river from year to year in their onward course, although parts of it are left dry for months at a time; and we exclude the lateral valleys which have the characteristics of relatively fast land and usually are covered by upland grasses and vegetation, although temporarily overflowed in exceptional instances when the river is at flood.

260 U.S. at 632.

Finally, it should be noted that, even though the earliest pronouncements regarding avulsion indicate that this process is extremely rapid, the actual application of the rule shows that an avulsive change may take several years to complete itself. Such was the case in *Arkansas v. Tennessee*, 397 U.S. 88 (1970), where the Supreme Court noted:

This original action was commenced on October 13, 1967, by the State of Arkansas to settle a boundary dispute with the State of Tennessee. The disputed area extends six miles laterally along the west (Arkansas side) bank of the Mississippi River and encompasses some five thousand acres

The parties agree that the state line is the thalweg, that is, the steamboat channel of the Mississippi River as it flows west and southward between these States. The Master heard evidence and was presented exhibits and maps which showed that the migration of the Mississippi River northward and west continued until about 1912. At this time an avulsion occurred leaving Tennessee lands on the west or Arkansas side of the new or avulsive river channel. The Master found that thereafter, because of the avulsion, the water in the thalweg became stagnant and erosion and accretion no longer occurred. At this time the boundary between Arkansas and Tennessee became fixed in the middle of the old abandoned channel.

This is a classic example of the situation referred to in an earlier case between these States, *Arkansas v. Tennessee*, 247 U.S. 158, 173, where we said:

"It is settled beyond the possibility of dispute that where running streams are the boundaries between States, the same rule applies as between private proprietors, namely, that when the bed and channel are changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying course of the stream; while if the stream from any cause, natural or artificial, suddenly leaves its old bed and forms a new one, by the process known as an avulsion, the resulting change of channel works no change of boundary, which remains in the middle of the old channel, although no water may be flowing in it, and irrespective of subsequent changes in the new channel.

And, again, *Id.*, at 175:

An avulsion has this effect, whether it results in the drying up of the old channel or not. So long as that channel remains a running stream, the boundary marked by it is still subject to be changed by erosion and accretion; but when the water becomes stagnant, the effect of these processes is at an end; the boundary then becomes fixed in the middle of the channel as we have defined it, and the gradual filling up of the bed that ensues is not to be treated as an accretion to the shores but as an ultimate effect of the avulsion."

397 U.S. at 88-90.

It should also be noted that even though a boundary becomes fixed by an avulsive change in a river, this "permanent" boundary may subsequently vary, again, if the river returns to its old bed. This rule was clearly articulated in the case of *Nebraska v. Iowa*, *supra*, wherein the court recognized that a re-adoption of a former bed of the river, following an avulsion, would operate to thereafter change the boundary line, as follows:

Our conclusions are that, notwithstanding the rapidity of the changes in the course of the channel, and the washing from the one side and on to the other, the law of accretion controls on the Mississippi River, as elsewhere; and that not only in respect to the rights of individual land owners, but also in respect to the boundary lines between states. The boundary, therefore, between Iowa and Nebraska is a varying line, so far as affected by these changes of diminution and accretion in the mere washing of the waters of the stream.

It appears, however, from the testimony, that in 1877 the river above Omaha, which had pursued a course in the nature of an ox-bow, suddenly cut through the neck of the bow and made for itself a new channel. This does not come within the law of accretion, but of that of avulsion. By this selection of a new channel the

boundary was not changed, and it remained, as it was prior to the avulsion, the centre line of the old channel; and that *unless the waters of the river returned to their former bed*, became a fixed and unvarying boundary, no matter what might be the changed of the river in its new channel.

143 U.S. at 370 (emphasis added).

If the thalweg of a river remained in the same geographic location over time, there would be no boundary problems related thereto. However, in a dynamic fluvial system, the bed and banks are always changing in response to the varying flows in the river. With these changes, the thalweg necessarily moves, as well, giving rise to disputes regarding the precise location thereof at any given point in time.

C. THE DOCTRINE OF ACQUIESCENCE

In cases involving boundary disputes between States of the Union, the United States Supreme Court has consistently enunciated the well-established principle of law that long acquiescence by the States in the assertion of a particular boundary, and the exercise of dominion and sovereignty by each State over the territory within its portion of said boundary, should be accepted as conclusive in establishing the official boundary between the States. *Rhode Island v. Massachusetts*, 4 How. 591, 638-639 (1846); *Indiana v. Kentucky*, 136 U.S. 479, 509-519 (1890); *Virginia v. Tennessee*, 148 U.S. 503, 522-525 (1893); *Louisiana v. Mississippi*, 202 U.S. 1, 53-57 (1906); *Maryland v. West Virginia*, 217 U.S. 1, 41-46 (1910); *Vermont v. New Hampshire*, 289 U.S. 593, 611-619 (1933); *Arkansas v. Tennessee*, 310 U.S. 563, 567-572 (1940); *Ohio v. Kentucky*, 410 U.S. 641, 648-651 (1973); *California v. Nevada*, 447 U.S. 125, 130-132 (1980).

The Court first expressed the rationale underlying this principle in 1846 in the case of *Rhode Island v. Massachusetts, supra*, as follows:

No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory, and which consequently fade with the lapse of time and fall with the lives of individuals. For the security of rights, whether of States or individuals, long possession under a claim of title is protected. And there is no controversy in which this great principle may be invoked with greater justice and propriety than in a case of disputed boundary.

4 How. at 639.

In *Virginia v. Tennessee, supra*, the Court strongly stated the rule thusly:

(A) boundary line between 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.

148 U.S. at 522-523.

In *Ohio v. Kentucky, supra*, Mr. Justice Blackman characterized the doctrine of acquiescence as follows:

The rule, long-settled and never doubted by this court, is that long acquiescence by one state in the possession of territory by another and in the exercise of sovereignty and dominion over it is conclusive of the latter's title and rightful authority.

410 U.S. at 651.

The Court has been especially disposed to apply the law of acquiescence in cases where the rights of private landowners, long undisturbed, would be affected by the establishment of an official State boundary at a location other than that acquiesced in by the States over a long period of time. In *Indiana v. Kentucky*, *supra*, Mr. Justice Field stated:

The long acquiescence of Indiana in the claim of Kentucky, the rights of property of private parties which have grown up under grants from that State, the general understanding of the people of both states in the neighborhood, forbid at this day, after a lapse of nearly a hundred years since the admission of Kentucky into the Union, any disturbance of that State in her possession of the island and jurisdiction over it.

136 U.S. at 518.

Mr. Justice Field strongly reiterated this statement in writing the Court's decision in *Virginia v. Tennessee*, *supra*, where he held:

There are also moral considerations which should prevent any disturbance of long recognized boundary lines; considerations springing from regard to the natural sentiments and affections which grow up for places on which persons have long resided; the attachments to country, to home, and to family, on which is based all that is dearest and most valuable in life.

148 U.S. at 524.

In *Maryland v. West Virginia*, *supra*, Mr. Justice Day writing for the Court further expressed the Court's desire to leave long-established boundaries in tact, when he said:

Upon the whole case, the conclusions at which we have arrived, we believe, best meet the facts disclosed in this record, are warranted by the applicable principles of law and equity, and will least disturb rights and titles long regarded as settled and fixed by the people most to be affected. If this decision can possibly have a tendency to disturb titles derived from one state or the other, by grants long acquiesced in, giving the force and right of prescription to the ownership in which they are held, it will no doubt be the pleasure, as it will be the manifest duty, of the lawmaking bodies of the two states, to confirm such private rights upon principles of justice and right applicable to the situation.

217 U.S. at 46.

There is no requirement that there be a relationship between the origins of a particular boundary line and the legal consequence of two states' acquiescence in that line. In *California v. Nevada, supra*, the State of Nevada attempted to circumvent its clear acquiescence in a line drawn years earlier by the Federal Government, by arguing that the Government had no power to mark said line in the first place. In rejecting this argument, the Court held that long-term acquiescence by California and Nevada could give the survey lines the force of law, whether or not the Federal Government originally possessed the power to draw them. The Court stated:

It is enough that California claims and has always claimed all territory up to a specifically described boundary—the 120th meridian and the oblique line with which it connects—and that both States have long acquiesced . . . in particular lines marking that boundary. If Nevada felt that those lines were inaccurate and operated to deprive it of territory lawfully within its jurisdiction the time to object was when the surveys were conducted, not a century later.

447 U.S. at 132.

The Supreme Court has held that the doctrine of acquiescence will override the rule of the *thalweg* (discussed in Subsection II.A. of this Stipulation, *supra*) in establishing a state boundary in the area of a navigable river. In *Arkansas v. Tennessee*, *supra*, the State of Arkansas argued that the rule of the *thalweg* was so dominant that it overthrew the doctrine of acquiescence shown in that case. The Court held this rationale to be "untenable," Mr. Chief Justice Hughes stating:

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. (Citations omitted). 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. (Citations omitted). 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.* (Emphasis added).

310 U.S. at 571.

III. OWNERSHIP OF RIPARIAN LANDS

A. ARKANSAS

The nature and extent of riparian ownership along navigable rivers in Arkansas was succinctly addressed in *United States Gypsum Co. v. Uhlhorn*, 232 F. Supp. 994, 1001 (E.D. Ark. 1964) (which involved the Mississippi River), thusly:

It is also well settled that the State of Arkansas, unlike some states, owns the bed of the Mississippi along her borders from the thalweg to the point of ordinary high water mark. *Winford v. Griffin*, 1 F.2d 224 (8th Cir. 1924).

Accord, Clarke v. Montgomery County, 268 Ark. 942, 946, 597 S.W.2d 96, 97-98 (1980); *Hayes v. State*, 254 Ark. 680, 682, 496 S.W.2d 372, 374 (1973); *In re River Queen*, 275 F.Supp. 403, 408 (W.D. Ark. 1967); *Owen v. Johnson*, 222 Ark. 872, 876, 263 S.W.2d 480, 482 (1954); *Anderson-Tully Co. v. Murphree*, 153 F.2d 874, 879 (8th Cir. 1946); *Lutesville Sand & Gravel Co. v. McLaughlin*, 181 Ark. 574, 575, 26 S.W.2d 892, 893 (1930); *Brown v. Boyle*, 119 Ark. 377, 380, 178 S.W. 378, 379 (1915); *State v. Southern Sand & Material Co.*, 113 Ark. 149, 152, 167 S.W. 854, 855 (1914); *Harrison v. Fite*, 148 F. 781, 783 (8th Cir. 1906).

Moreover, several statutory enactments in Arkansas provide or follow the same rule. First, Ark. Stat. Ann. §10-601 (Repl. 1976) specifies:

All islands formed or *which may form in the navigable rivers or streams of this State*, subsequent to the admission of the State of Arkansas into the Union, *are hereby declared to be the property of the State* and subject to sale and disposition in the manner and form hereinafter provided. (Emphasis added.)

Additionally, Ark. Stat. Ann. § 10-608 (Repl. 1976), again dealing with the title to islands forming in the bed of navigable streams, provides:

When islands have been, or may be formed in the navigable rivers or streams of this State, subsequent to the admission of the State of Arkansas into the Union, which are or have been the property of the State as provided by Act 282 of the General Assembly of the State of Arkansas, for the year 1917, approved March 21, 1917, (repealed), a sale of any such island under the

provisions of said Act 282 of the General Assembly of the State of Arkansas for the year 1917, shall not carry title to any area which separates such island from the mainland or other islands when the separating area is below the line of ordinary highwater, as ordinarily defined by the line of timber growth; *but in all such cases the title of the purchaser of such islands, as the title of all other riparian owners, shall extend only to the line of ordinary highwater, as ordinarily defined by the line of timber growth.* (Emphasis added.)

Finally, Ark. Stat. Ann. § 10-609 (Repl. 1976), recites:

All sales heretofore made by the Commissioner of State lands under the provisions of said Act 282 of the General Assembly of the State of Arkansas for the year 1917, approved March 21, 1917 (repealed), are hereby confirmed and the title of all purchases under such deeds from the Commissioner of State Lands are hereby quieted, established and confirmed; *provided the area described in any such deeds as being conveyed shall extend only to the line of ordinary highwater, and shall not extend to the bed or channels of the chutes or adjoining area which lies below the line of ordinary highwater, the title to which formations below the line of ordinary highwater is reserved in the State of Arkansas,* and is subject to the provisions of section 1 of this act. It is expressly declared that said Act 282 of the General Assembly of the State of Arkansas for the year 1917 has never been repealed by inference or otherwise. (Emphasis added.)

It is clear, therefore, that owners of property riparian to navigable streams in or bordering the State of Arkansas, including the Mississippi River, may claim only down to the line of ordinary high water. The State, in the case of a stream forming the State line, then owns from the line of ordinary high water to the thalweg of the river.

B. MISSISSIPPI

It is well settled law in Mississippi that the owner of land riparian to, and bounded by, a freshwater (non-tidal) stream holds title to the "thread" of the watercourse. While this principle has been cited and consistently followed in numerous cases, its genesis was discussed by Mr. Justice McKenna in *Archer v. Greenville Sand and Gravel Co.*, 233 U.S. 60 (1914), thusly:

The law of Mississippi is an element in the case. It first found elaborate discussion and decision in *Morgan v. Reading*, 3 Smedes & M. 366, and it was held that the common law was adopted for the government of the Mississippi territory, and that the line of the territory was the middle of the Mississippi River, and that it hence followed that the rights of riparian owners on the east shore must be determined in the state of Mississippi by the common law, and that it was a principle of that law "that he who owns the bank owns to the middle of the river, subject to the easement of navigation." 3 Kent, Com. 5th ed. 427, and notes were cited.

The case involved the right of the owner of the bank of the river to charge for mooring purposes on the river above low water mark. The right was sustained upon the principle which we have stated above.

The same principle was announced in the *Magnolia v. Marshall*, 39 Miss. 109. The case was said by the court to be identical in its facts with *Morgan v. Reading*. The opinion is too long to review or to quote from at any length. It left no case or authority unreviewed, nor any consideration untouched, and carefully distinguished the public and private interest in the Mississippi river, the court saying: "There is therefore no inconsistency, but, on the contrary, as before suggested, perfect harmony between the *jus privatum* of riparian ownership in public fresh-water streams, to the middle of the river, and the *jus publicum* of free navigation thereof. The *soil* is granted to the riparian proprietor,

subject to this public easement." And, again, in criticism of what the court considered an untenable view expressed by the court of another state, it said: "This general doctrine is as old as the Year-books, that, *prima facie*, every proprietor on each bank of a river is entitled to the *land* covered with water to the middle of the stream." This being declared to be the law of the state, judgment was entered for charges for the use by the Magnolia of a landing on the river.

* * *

... The court deduced the right to charge for the occupation of the water between high and low water mark from the ownership of the soil to the middle thread of the stream. The elaborate reasoning and research of the opinion were directed to demonstrate that under the common law of the state, riparian ownership extends *ad filum*, and, as a consequence, embraces the right to charge for the use of the water between high and low water marks for landing purposes, although not for purposes of transit. The case is cited as having that purport in 3 Kent Com. 14th ed. *427, where the doctrine of riparian rights as they obtain in the states of the Union is considered and the cases collected. In the sixth edition of Kent the *Magnolia Case* is commended as "a frank and manly support of the binding force of the common law, on which American jurisprudence essentially rests." See also *Shively v. Bowlby*, 152 U.S. 1, 38 L.ed. 331, 14 Sup. Ct. Rep. 548, for a discussion by this court of riparian rights.

* * *

... This court has decided that it is a question of local law whether the title to the beds of the navigable rivers of the United States is in the state in which the rivers are situated or in the owners of the land bordering upon such rivers. *Packers v. Bird*, 137 U.S. 661, 34 L.ed. 819, 11 Sup. Ct. Rep. 210; *United States v. Chandler-Dunbar Water Power Co.*, 229 U.S. 53, 57

L.ed. 1063, 33 Sup. Ct. Rep. 667; *Kaukauna Water Power Co. v. Green Bay & M. Canal Co.*, 142 U.S. 254, 35 L.ed. 1004, 12 Sup. Ct. Rep. 173; *St. Louis v. Rutz*, 138 U.S. 226, 34 L.ed. 941, 11 Sup. Ct. Rep. 337; *Shively v. Bowlby*, 152 U.S. 1, 38 L.ed. 331, 14 Sup. Ct. Rep. 548; *Hardin v. Jordan*, 140 U.S. 371, 35 L.ed. 428, 11 Sup. Ct. Rep. 808, 838; *Jones v. Soulard*, 24 How. 41, 16 L.ed. 604.

233 U.S. at 66-69.

Accord, Anderson-Tully Co. v. Tingle, 166 F.2d 224 (5th Cir. 1948); *Wilson v. St. Regis Pulp & Paper Corp.*, 240 So.2d 137 (Miss. 1970); *Wineman v. Withers*, 143 Miss. 537, 108 So. 708 (1926).

IV. THE WHISKEY ISLAND/BORDEAUX ISLAND AREA

As already mentioned, prior to 1874, the Mississippi River meandered considerably to the north of the current north side of Bordeaux Point in a horseshoe-shaped reach of the River known as "old" Walnut Bend. The land mass or point looped by this bend was traversed at that time by several sloughs or chutes which sometimes contained enough water to separate the point into distinct areas, which became known locally as "Whiskey Island," "Favourite Island," "Bordeaux Island," and the like.

In 1874, the Mississippi River avulsively cut through this point, adopting "Bordeaux Chute" and abandoning "old" Walnut Bend, leaving the Arkansas-Mississippi boundary in the abandoned bend according to the doctrine of accretion and avulsion. The precise location of the Arkansas-Mississippi boundary in "old" Walnut Bend has never been judicially determined by these States.

While the western portion of the dead thalweg is indisputably the correct boundary and has long been recognized as such, as to the eastern side the two States

and property owners in the area have long recognized a different boundary, delineated on the W.H. Guyer Plat in 1975 somewhat to the east of the locus of the dead thalweg. Under the doctrine of acquiescence discussed above, this agreed line will prevail over that defined by the rule of the thalweg. The evidence supporting this finding follows hereinafter.

Following the 1874 Cutoff of the Mississippi River across Bordeaux Point, the first controlling survey by the Mississippi River Commission (MRC) was made of the Whiskey Island, Bordeaux Island and Bordeaux Point area. This was the 1883 MRC hydrographic survey, Mississippi River Chart No. 25. This chart is based upon field work done in 1880. The next MRC controlled survey was the 1892 Caving Bank and Bar Survey, Charts 25 and 26, which was followed by the 1913 hydrographic survey, Chart No. 24. These charts and surveys were not made for the purpose of showing private ownerships, nor were they made for the purpose of showing state boundaries; they were simply topographic surveys depicting the bed of the Mississippi River and the over-bank features.

The first private survey made for the purpose of showing property lines along the eastern portions of Bordeaux Island and Whiskey Island was the A. L. Cummings (sometimes Cummins) survey line of 1910 and 1912, sometimes described as the "Red Line." This survey is recorded at Plat Book 1, page 8, Tunica County, Mississippi, and Deed Book 81, Page 619, Lee County, Arkansas land records.

Thereafter, a controversy developed between Mississippi landowners, A.G. Wineman and Sons, and Arkansas landowners, W.D. Reeves, John P. Moore and others, resulting in a suit to quiet title filed by A.G. Wineman and Sons against W.D. Reeves and John P. Moore and others in the United States District Court for the Northern District of Mississippi, Delta Division, Cause No. 5

Equity. This litigation was terminated by a Consent Decree dated February 6, 1919. The Final Decree recites, "The Complainant, (sic) are the owners of and are to take and hold and are vested with title in, and title is hereby confirmed unto them, as to all the lands described in the Bill of Complaint in this cause lying on the Mississippi side, which is south and west of the lines above fixed; and that the Defendants do have, recover, be entitled to and own and have hereby confirmed unto them, so much of the land described in the Answers to the Bill of Complaint as lying on the Arkansas side of said land and which is north and east thereof."

Thereafter, the Arkansas landowners filed a partition suit in the Chancery Court of Lee County, Arkansas, seeking the partition of the Arkansas lands to the east of the line described in the 1919 Decree. The Court, finding that the lands could not be equitably divided in kind, ordered the lands to be sold and directed C.B. Bailey, Surveyor, to make a survey of the lands in litigation with the survey to be reported back to the Court. This survey was made by Bailey in 1924 and appears of record in Plat Book 1, Page 182 of the Lee County, Arkansas land records and in Plat Book 2, Page 26 of the Tunica County, Mississippi land records. This survey shows the eastern edge of Bordeaux Island and Whiskey Island as the eastern limit of the lands of A.G. Wineman and Sons (so designated). This Wineman east line is labeled "red line." The lands affected by the partition suit are shown lying to the east of the Wineman line and designated as "John P. Moore Est. and Daggett and Daggett."

In 1972, Myrtis S. Wineman and Wade S. Wineman filed a suit in the United States District Court for the Northern District of Mississippi, Greenville Division, against Shannon Brothers Lumber Company, Inc., Civil Action No. GC 72-24-S, wherein the Winemans sought to have confirmed in themselves title to Tunica County, Mississippi lands in Sections Five (5) and all of Section Seven (7), Township Four

(4) South, Range Twelve (12) West, together with all accretions thereto. It was alleged that the Defendant is the owner of lands in Lee County, Arkansas, adjacent thereto. This suit was brought primarily to apportion accretions which had formed along the southern limits of the lands of the parties. The Final Decree, dated September 27, 1973, is recorded in Deed Book 13, Page 324 of the land records of Tunica County, Mississippi, and in Deed Book V3, Page 324 of the land records of Lee County, Arkansas.

In October, 1974 and November, 1975, W.H. Guyer, Surveyor, registered in the States of Mississippi and Arkansas, made a resurvey of the Wineman lands in Mississippi, recovering and re-establishing the Cummings survey line, the C.B. Bailey line, and the Austin B. Smith line established in the *Shannon* case. A plat of the Guyer Survey is recorded in Plat Book 1, Page 183 of the Lee County, Arkansas Land Records, and in Plat Book 2, Page 25 of the Tunica County, Mississippi Land Records. A true and correct copy of the Guyer plat is attached hereto as Exhibit "F" and incorporated herein by reference.

In addition to those portions of the eastern boundary of Whiskey Island/Bordeaux Island settled among adjacent Arkansas and Mississippi landowners by the litigation just described, the northernmost (and last) segment of the private boundaries in this area was settled in 1976 by agreement recorded in Deed Book 23, Page 333 of the land records of Tunica County, Mississippi and in Record Book 268, Page 178 of the land records of Lee County, Arkansas. This agreement adopted that portion of the Guyer Survey described as follows:

Commencing at a point 300.7 feet south along the west line extended from the southwest corner of the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 6, Township 2 North, Range 6 East, Lee County, Arkansas; thence south along said line 86.8 feet for the POINT OF BEGINNING; thence south along said line

380 feet, more or less, to a point in the center of the Old River or Walnut Bend; thence southeastwardly along the center of the Old River or Walnut Bend 210 feet, more or less, to intersect with the northerly projection of the following call; thence South $00^{\circ}45'$ West to an iron pipe on the south shore of said Old River or Walnut Bend, said point being shown as "Point L" on Guyer's said plat; thence South $00^{\circ}45'$ West 2,817.4 feet to an iron pipe (Guyer point K); thence South $47^{\circ}28'$ East 1,323.5 feet to an iron pipe (Guyer point J); thence South $44^{\circ}19'$ East 2,218.9 feet to an iron pipe (Guyer point I) thence South $38^{\circ}27'$ East 4,959.5 feet to an iron pipe and an old bed rail (Guyer Point H); thence South $00^{\circ}10'$ East 2,868.3 feet to an iron pipe (Guyer point G), this point being at the center point of Section 5, Township 4 South, Range 12 West, Tunica County, Mississippi, located and designated as Point 1 in the W.B. Bailey's survey of 1924, a plat of which is recorded in the land records of the above said counties; thence South $11^{\circ}17'$ West 2,694.1 feet to an iron pipe (Guyer Point F); thence South $52^{\circ}17'$ West 1,824.7 feet to an iron pipe (Guyer point E); thence South $52^{\circ}41'$ West 2,203.4 feet to a concrete monument at the terminus of the dividing line between the properties owned by the parties hereto, said point also being the northwest corner of lands now owned by Shannon Bros. Lumber Co.

A thorough examination of the tax assessment rolls of both Lee County, Arkansas and Tunica County, Mississippi shows that both States have consistently accepted as the state boundary the private land lines that have emerged and been established along the eastern side of Whiskey Island/Bordeaux Island as a result of the litigation and boundary agreements just described. Current assessment rolls in both counties are consistent with the Guyer line finally monumented on the ground in 1975. The affidavits of Mr. Johnnie A. McClendon, Lee County, Arkansas Tax Assessor, and Mr. W. B. Webb, Tunica County, Mississippi Tax Assessor, attached hereto and incorporated herein by reference as Exhibits "G" and "H," respectively, confirm these conclusions.

The studies by both Dr. Elgin and Mr. Smith revealed that the locus of the dead thalweg in the eastern or upper arm of "old" Walnut Bend at the time the state boundary became fixed therein is not coincident with the Guyer line, which includes and traverses all the earlier surveys described hereinabove. Notwithstanding this irregularity, and as already mentioned, the States have long accepted and followed as the state boundary the private boundaries in that particular part of "old" Walnut Bend represented by the Guyer line. Thus, the state boundary in "old" Walnut Bend to be established in this case consists partly of the Guyer line, as the result of long years of acquiescence by both public and private parties, and partly of the true dead thalweg in this abandoned bendway.

Mr. Smith was directed to prepare drafts of both a description and appropriate map depicting the agreed boundary in "old" Walnut Bend. Dr. Elgin verified the coordinates in these drafts and drew the final map depicting the agreed boundary. Affidavits of Mr. Smith and Dr. Elgin regarding their work relative to the Whiskey Island/Bordeaux Island area are attached hereto and incorporated herein by reference as Exhibits "I" and "J," respectively. The agreed description of the "old" Walnut Bend state line is set forth as Segment "B" in the composite narrative description (Exhibit "A"), and is shown pictorially on Exhibit "K."

V. AUTHORITY OF ATTORNEYS GENERAL TO RECOMMEND AGREED DECREE

A. ARKANSAS

The specific authority of the Attorney General of Arkansas to settle lawsuits involving the State has not yet been particularly addressed by either statutory or decisional law in Arkansas. However, in *State v. Karston*, 208 Ark. 703, 187 S.W.2d 327 (1945), wherein the authority of the Attorney General to bring suit in equity to abate a

nuisance (a gambling establishment) was challenged, the Arkansas Supreme Court discussed the broad common-law powers of this particular public officer thusly:

The common-law duties of the Attorney General, as chief law officer of the state, when not restricted or limited by statute, are very numerous and varied. In England, the Attorney General was the chief legal advisor of the Crown and was entrusted with the management of all legal affairs and the prosecution of all suits, civil and criminal, in which the Crown was interested. He exercised the right of enforcing the public charities, possessed supervisory powers over the estates of lunatics, and could institute equitable proceedings for the abatement of public nuisances which affected or endangered the public safety or convenience and required immediate judicial interposition. Such being the nature of the rights and duties that attached to the position at its inception, *it is generally held that in the exercise of his common-law powers, an attorney general may not only control and manage all litigation in behalf of the state, but he may also intervene in all suits or proceedings which are of concern to the general public.* (Emphasis added).

187 S.W.2d at 329.

In support of its holding that the Attorney General of Arkansas does, indeed, possess the powers and duties of this office at common law, the Arkansas Supreme Court in *Karston* further drew upon the obvious implications of Ark. Stat. Ann. § 12-706 (Repl. 1979), as follows:

Nothing in this act shall relieve the Attorney General of discharging any and all duties now required of him under the common law, or by any of the statutes of this State, or to relieve the prosecuting attorneys of any duties required of them by the statutes of this State.

Regarding the prerogative of the Attorney General to compromise and settle litigation within his charge or, as is

the case here, merely to recommend entry of a settlement order, there is no Arkansas decision addressing this particular aspect of common-law authority. However, the encyclopedia verify and document the existence of such authority, absent specific statutory or constitutional constraints, and express the general rules as follows:

Ordinarily, the Attorney General, both under the common law and by statute, may control and manage all litigation in behalf of the state and is empowered to make any disposition of the state's litigation which he deems for its best interest. His power effectively to control litigation involves the power to discontinue if and when, in his opinion, this should be done *And the attorney general may enter into binding compromises and settlements of suits in which the state is an interested party where there is doubt and an honest dispute as to the state's rights, and the compromise or settlement is a bona fide one*, at least when he acts with the approval of the executive head of the department having charge of the matter involved in the suit. (Emphasis added).

7 Am.Jur.2d Attorney General § 18 (1976). *See also*, 7A C.J.S. Attorney General § 12 (1952).

Since the Arkansas Supreme Court has expressly recognized the common law authority of the Attorney General to control litigation involving the State, and since there is nothing in either the Arkansas Constitution or statutes to suggest that the Attorney General does not have the authority to settle such litigation, there is no impediment to the proposal of the Attorney General of Arkansas in the case at bar that settlement be effected by entry of an agreed decree.

B. MISSISSIPPI

The Attorney General of Mississippi is a constitutional officer ordained by the State's original Charter of 1817 and

continued in every State constitution since. (Miss. Const. art. V §14 (1817); Miss. Const. art. IV §25 (1832); Miss. Const. art. VI §25 (1869); Miss. Const. art. VI §173 (1890)). Although Section 173 of the Mississippi Constitution of 1890 is facially silent as to the powers and duties of the office of Attorney General, the Mississippi Supreme Court has consistently held that the constitutional creation of the office, even without further statutory enactment, vested in the Attorney General all powers which that office possessed at common law, and incorporated that common-law authority into the constitution itself.

The duties of the Attorney General were not prescribed by the Constitution, nor did it provide that they would necessarily have to be provided by the legislature. They existed at common law The creation of the office of Attorney General by the Constitution vested him with these common law duties, which he had previously exercised as chief law officer of the realm.

Kennington-Saenger Theatres v. State, 196 Miss. 841, 865, 18 So.2d 483, 486 (1944). *Accord, Gandy v. Reserve Life Ins. Co.*, 279 So.2d 648 (Miss. 1973); *State v. Warren*, 180 So.2d 293 (Miss. 1965); *Dunn Const. Co. v. Craig*, 191 Miss. 682, 2 So.2d 166 (1941); *Capitol Stages v. State*, 157 Miss. 576, 128 So. 759 (1930).

As thus defined by the Mississippi Supreme Court, the common-law power of the Attorney General, elevated to constitutional stature, is wide-ranging and encompasses the prerogative of this public officer to control an omnibus universe of litigation.

At common law the duties of the Attorney General, as chief law officer of the realm, were very numerous and varied. He was the chief legal adviser of the crown, and was entrusted with the management of all legal affairs, and the prosecution of all suits, civil and criminal, in which the crown was interested. He had

authority to institute proceedings to abate public nuisances affecting and endangering public safety and convenience; *he had the power to control and manage all litigation on behalf of the state*; he could intervene in all actions which were all suits necessary for the enforcement of the laws of the state, the preservation of order, and protection of the public rights. (Emphasis added).

Capitol Stages, supra, at 128 So. 763. *Accord, State v. Mississippi Public Service Commission*, 418 So.2d 779 (1982).

Broadening and strengthening the powers and duties of the Attorney General are several statutory provisions of noteworthy import. First, Section 7-5-1, Mississippi Code Ann. (1972), provides:

The attorney general provided for by section 173 of the Mississippi Constitution shall be elected at the same time and in the same manner as the governor is elected. His term of office shall be four (4) years and his compensation shall be fixed by the legislature. *He shall be the chief legal officer and advisor for the state, both civil and criminal, and is charged with managing all litigation on behalf of the state.* No arm or agency of the state government shall bring or defend a suit against another such arm or agency without prior written approval of the attorney general. *He shall have the powers of the attorney general at common law* and is given the sole power to bring or defend a lawsuit on behalf of a state agency, the subject matter of which is of statewide interest. His qualifications for office shall be as provided for chancery and circuit judges in section 154 of the Mississippi Constitution. (Emphasis added.)

Moreover, as to general suits against the Governor or touching upon his office (as in the case at bar), Section 7-5-37, Mississippi Code Ann. (1972), adds:

The attorney general shall, at the request of the governor or other state officer, in person or by his assistant, prosecute suit on any official bond, or any contract in which the state is interested, upon a breach thereof, *and prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of the state offices.* He may require the service or assistance of any district attorney in and about such matters or suits. (Emphasis added.)

Finally, regarding all other litigation against the State, Section 7-5-39, Mississippi Code Ann. (1972), specifies:

The attorney general shall also represent the state, in person or by his assistant, as counsel in all suits against the state in other courts than the supreme court at the seat of government, and he shall, in like manner, act as counsel for any of the state officers in suits brought by or against them in their official capacity, touching any official duty or trust and triable at the seat of government. He may pursue the collection of any claim or judgment in favor of the state outside of the state. (Emphasis added.)

Thus, both constitutionally and by legislative enactment, the Attorney General of Mississippi is vested with plenary authority, as the State's chief legal officer, to completely and independently control litigation within his jurisdiction.

As is the case in Arkansas, there is neither a statutory enactment nor a decision from the Mississippi Supreme Court addressing the specific authority of the Attorney General to compromise and settle litigation. However, in view of the clear statutory and decisional law cited and quoted hereinabove regarding the common-law powers of the Attorney General in Mississippi, the general rules set forth in those encyclopedia sections already quoted in connection with Arkansas law on this point no doubt apply.

As already discussed, under Mississippi law the title to the property in issue in this litigation lies in the private citizens situated riparian to the Mississippi River in the area in dispute. The State is a necessary party only because the western boundary of these lands also demarcates the state line common to Arkansas and Mississippi. The Governor and Attorney General of Mississippi, both named as defendants, represent, as *parens patriae*, all Mississippi citizens collectively affected by challenges to the sovereignty and territorial jurisdiction of the State. The Attorney General, managing the case not only for and on behalf of himself and the Governor but also for all Mississippians, possesses clear authority to recommend a disposition of the case as appears to be in the best interest of all whom he represents.

VI. AUTHORITY OF ARKANSAS AND MISSISSIPPI TO RECOMMEND ENTRY OF AGREED DECREE

The Supreme Court, on several occasions, has allowed litigating states to mutually resolve and settle pending cases, either wholly or partially, without the necessity of proceeding to final judgment by trial. *See, generally, California v. Nevada*, 447 U.S. 125 (1980); *New Hampshire v. Maine*, 426 U.S. 363 (1976); *Vermont v. New York*, 417 U.S. 270 (1974); *Kansas v. Missouri*, 322 U.S. 213 (1943). Moreover, while *New Hampshire v. Maine*, *supra*, involved a compromise in which the states were allowed to mutually resolve questions of both *fact* and *law*, such is not the case here, inasmuch as Arkansas and Mississippi propose a settlement regarding only disputed facts.

As already discussed, the fundamental question of law at bar is the definition of the common interstate boundary between Arkansas and Mississippi. That legal issue was resolved in 1919 in *Arkansas v. Mississippi*, *supra*. What was not—and has not been—decided is the precise geographical location of this boundary along its entire

length. Determinations regarding particular segments of this boundary, as is the situation in this litigation, have resulted in such earlier decisions as *Mississippi v. Arkansas*, 415 U.S. 289 (1974).

The proposed agreed decree merely resolves the ultimate fact question at bar—the geographical location of the Arkansas-Mississippi boundary, as described by appropriate geodetic coordinates, for that segment of the boundary looping the land masses known as Whiskey Island/Bordeaux Island and Bordeaux Point. Such an agreement, limited to the disputed facts in issue, is clearly consistent with earlier decisions of the Supreme Court cited above.

Respectfully submitted,

THE STATE OF ARKANSAS,
Plaintiff-Counter-Defendant

By: s/ John Steven Clark
JOHN STEVEN CLARK
Attorney General

THE STATE OF MISSISSIPPI,
Defendant-Counter-Claimant

By: s/ Edwin Lloyd Pittman
EDWIN LLOYD PITTMAN
Attorney General

STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)

PERSONALLY CAME and appeared this date before me, the undersigned authority in and for the state and county aforesaid JOHN STEVEN CLARK, Attorney

s/ Marilyn G. Vaughan
NOTARY PUBLIC

[illegible]

WITNESS MY SIGNATURE AND SEAL OF OFFICE,
this the 5th day of December, 1984.

s/ Linda M. Stone
NOTARY PUBLIC

My Commission Expires:
June 13, 1988

EXHIBIT "A"

NO. 92 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

STATE OF ARKANSAS
Plaintiff-Counter-Defendant

vs.

STATE OF MISSISSIPPI
Defendant-Counter-Claimant

DESCRIPTION OF THE GEOGRAPHICAL LOCUS OF
THE ARKANSAS-MISSISSIPPI STATE BOUNDARY
LOOPING BORDEAUX POINT, INCLUDING
THE TRUNCATED BORDEAUX ISLAND AND
WHISKEY ISLAND, FROM THE UPPER END OF
MHOON BEND TO THE UPPER END OF THE
OLD FOX ISLAND BEND

The common Arkansas-Mississippi state boundary looping Bordeaux Point between Lee County, Arkansas and Tunica County, Mississippi, from the upper end of Mhoon Bend to the upper end of Fox Island Bend, is described as follows, to wit:

a. Segment A

That portion of the Arkansas-Mississippi state boundary being the line of the live thalweg of the Mississippi River, points P1 through P8 as depicted on the accompanying map titled "Arkansas-Mississippi State Boundary in the Vicinity of Bordeaux Point," and being more particularly described as follows:

Beginning at point P1 on the live thalweg of the Mississippi River at Mhoon Bend, said point being at approximately River Mile 686.3, at longitude 90°28'00" west and at approximately latitude 34°43'36" north;

Thence westerly, downriver, coincident with the River's live thalweg (Arkansas being on the right and Mississippi being on the left) the following approximate courses:

Commencing at point P1,

thence westerly to point P2 at latitude 34°43'26" north, longitude 90°28'30" west,

thence westerly to point P3 at latitude 34°43'17" north, longitude 90°29'30" west,

thence westerly to point P4 at latitude 34°43'17" north, longitude 90°29'30" west,

thence westerly to point P5 at latitude 34°43'18" north, longitude 90°30'00" west,

thence westerly to point P6 at latitude 34°43'25" north, longitude 90°30'30" west,

thence westerly to point P7 at latitude 34°43'38" north, longitude 90°31'00" west,

thence westerly to point P8 at latitude 34°43'53" north, longitude 90°31'27" west,

Said point P8 being at the easternmost intersection of the River's live thalweg with the fixed thalweg of the abandoned Old Walnut Bend Channel which resulted from the 1874 Bordeaux Chute Cutoff.

b. Segment B

That portion of the Arkansas-Mississippi state boundary being the boundary line as surveyed and mark-

ed in October, 1974 and November, 1975 by W.H. Guyer, which plat of survey is recorded at Plat Book 1, page 183, Lee County, Arkansas land records; and at Plat Book 2, Page 25, Tunica County, Mississippi land records; AND said state boundary being the line of the 1883 fixed thalweg line in the sector of the Old Walnut Bend Channel that was abandoned after the avulsive Bordeaux Chute Cutoff; being Points A through L (the W.H. Guyer survey) and Points Pm through Pbb (the fixed thalweg line) as depicted on the accompanying map titled "Arkansas-Mississippi State Boundary in the Vicinity of Whiskey Island and Bordeaux Island" and being more particularly described as follows:

Beginning at said Point P8 at the intersection of the River's live thalweg with a line bearing geodetic South $35^{\circ}50'$ West from the southern terminus of the said W.H. Guyer survey line;

thence North $35^{\circ}50'$ East to point A at the southern terminus of the said W.H. Guyer survey line at approximately latitude $34^{\circ}44'20''$ north, and approximately $90^{\circ}31'03''$ west;

thence northerly coincident with the said W.H. Guyer survey line the following courses:

Commencing at point A,

thence northeasterly to point B of the W.H. Guyer survey at latitude $34^{\circ}44'40''$ north, and longitude $90^{\circ}30'46''$ west,

thence northeasterly to point C of the W.H. Guyer survey at latitude $34^{\circ}44'52''$ north, and longitude $90^{\circ}30'35''$ west,

thence northeasterly to point D of the W.H. Guyer survey at latitude $34^{\circ}45'04''$ north, and longitude $90^{\circ}30'17''$ west,

thence northeasterly to point E of the W.H. Guyer survey at latitude $34^{\circ}45'16''$ north, and longitude $90^{\circ}29'57''$ west,

thence northeasterly to point F of the W.H. Guyer survey at latitude $34^{\circ}45'27''$ north, and longitude $90^{\circ}29'39''$ west,

thence northerly to point G of the W.H. Guyer survey at latitude $34^{\circ}45'53''$ north, and longitude $90^{\circ}29'33''$ west,

thence northerly to point H of the W.H. Guyer survey at latitude $34^{\circ}46'21''$ north, and longitude $90^{\circ}29'34''$ west,

thence northwesterly to point I of the W.H. Guyer survey at latitude $34^{\circ}47'00''$ north, and longitude $90^{\circ}30'11''$ west,

thence northwesterly to point J of the W.H. Guyer survey at latitude $34^{\circ}47'16''$ north, and longitude $90^{\circ}30'30''$ west,

thence northwesterly to point K of the W.H. Guyer survey at latitude $34^{\circ}47'24''$ north, and longitude $90^{\circ}30'41''$ west,

thence northerly to point L of the W.H. Guyer survey at latitude $34^{\circ}47'52''$ north, and longitude $90^{\circ}30'40''$ west,

thence continuing north to the fixed thalweg line in the sector of the Old Walnut Bend Channel at point Pm at latitude $34^{\circ}47'54''$ north and longitude $90^{\circ}30'40''$ west,

thence westerly and southerly along the fixed thalweg line in the sector of the Old Walnut Bend Channel the following courses:

Commencing at point Pm,

thence westerly to point Pn at latitude $34^{\circ}48'00''$ north, longitude $90^{\circ}30'50''$ west,

thence westerly to point Po at latitude $34^{\circ}48'03''$ north, longitude $90^{\circ}31'00''$ west,

thence westerly to point Pp at latitude $34^{\circ}48'07''$ north, longitude $90^{\circ}31'16''$ west,

thence westerly to point Pq at latitude $34^{\circ}48'06''$ north, longitude $90^{\circ}31'35''$ west,

thence westerly to point Pr at latitude $34^{\circ}48'00''$ north, longitude $90^{\circ}32'00''$ west,

thence westerly to point Ps at latitude $34^{\circ}47'45''$ north, longitude $90^{\circ}32'27''$ west,

thence southwesterly to point Pt at latitude $34^{\circ}47'30''$ north, longitude $90^{\circ}32'39''$ west,

thence southwesterly to point Pu at latitude $34^{\circ}47'15''$ north, longitude $90^{\circ}32'46''$ west,

thence southwesterly to point Pv at latitude $34^{\circ}47'00''$ north, longitude $90^{\circ}32'52''$ west,

thence southeasterly to point Pw at latitude $34^{\circ}46'30''$ north, longitude $90^{\circ}32'47''$ west,

thence southeasterly to point Px at latitude $34^{\circ}46'15''$ north, longitude $90^{\circ}32'43''$ west,

thence southeasterly to point Py at latitude $34^{\circ}46'00''$ north, longitude $90^{\circ}32'37''$ west,

thence southeasterly to point Pz at latitude $34^{\circ}45'30''$ north, longitude $90^{\circ}32'26''$ west,

thence southeasterly to point Paa at latitude $34^{\circ}45'19''$ north, longitude $90^{\circ}32'22''$ west,

thence southwesterly to point Pbb at latitude $34^{\circ}45'02''$ north, longitude $90^{\circ}32'28''$ west,

thence continuing southwesterly along course Paa to Pbb extended to point P9 at approximately latitude $34^{\circ}44'20''$ north, longitude $90^{\circ}32'44''$ west.

Said point P9 being the westernmost intersection of the River's live thalweg with the fixed thalweg of the abandoned Old Walnut Bend Channel.

c. Segment C

That Portion of the Arkansas-Mississippi state boundary being the line of the live thalweg of the Mississippi River, points P9 through P18, as depicted on the accompanying map titled "Arkansas-Mississippi State Boundary in the Vicinity of Bordeaux Point," and being more particularly described as follows:

Beginning at point P9 which is the westernmost intersection of the River's live thalweg with the dead thalweg of the abandoned, truncated portion of Old Walnut Bend Channel resulting from the 1874 Bordeaux Chute Cutoff, said point being at approximately River Mile 681.5, approximately latitude $34^{\circ}44'20''$ north, and approximately longitude $90^{\circ}32'44''$ west;

Thence westerly and southerly, downriver, coincident with the River's live thalweg (Arkansas being on the right and Mississippi on the left) the following approximate courses:

Commencing at point P9,

thence westerly to point P10 at latitude $34^{\circ}44'23''$ north, longitude $90^{\circ}33'00''$ west,

thence westerly to point P11 at latitude $34^{\circ}44'21''$ north, longitude $90^{\circ}33'30''$ west,

thence westerly to point P12 at latitude $34^{\circ}44'16''$ north, longitude $90^{\circ}33'49''$ west,

thence southerly to point P13 at latitude $34^{\circ}44'06''$ north, longitude $90^{\circ}34'00''$ west,

thence southerly to point P14 at latitude $34^{\circ}44'00''$ north, longitude $90^{\circ}34'04''$ west,

thence southerly to point P15 at latitude $34^{\circ}43'30''$ north, longitude $90^{\circ}34'07''$ west,

thence southerly to point P16 at latitude $34^{\circ}43'17''$ north, longitude $90^{\circ}34'07''$ west,

thence southerly to point P17 at latitude $34^{\circ}43'00''$ north, longitude $90^{\circ}34'15''$ west,

thence southerly to point P18 at latitude $34^{\circ}42'46''$ north, longitude $90^{\circ}34'19''$ west,

Said point P18 being at the intersection of the River's live thalweg with a line bearing geodetic North $82^{\circ}41'$ West from the western terminus of the said St. George Richardson survey line.

d. Segment D

That portion of the Arkansas-Mississippi state boundary principally, being the 1947 survey line of St. George Richardson, points P18 through P32 as depicted on the accompanying map titled "Arkansas-Mississippi State Boundary in the Vicinity of Bordeaux Point," and being more particularly described as follows:

Beginning at point P18 at the intersection of the River's live thalweg with a line bearing geodetic North $82^{\circ}41'$ West from the western terminus of the said St. George Richardson survey line,

thence geodetic South $82^{\circ}41'$ East to point P19, at longitude $90^{\circ}34'00''$ west,

thence continuing geodetic South $82^{\circ}41'$ East to the said western terminus, being point P20, at latitude $34^{\circ}42'39''$ north, longitude $90^{\circ}33'34''$ west,

thence easterly coincident with the said St. George Richardson survey line the following courses:

Commencing at point P20,

thence easterly to point P21 at latitude $34^{\circ}42'30''$ north, longitude $90^{\circ}33'24''$ west,

thence easterly to point P22 at latitude $34^{\circ}42'14''$ north, longitude $90^{\circ}33'00''$ west,

thence easterly to point P23 at latitude $34^{\circ}42'00''$ north, longitude $90^{\circ}32'33''$ west,

thence easterly to point P24 at latitude $34^{\circ}41'55''$ north, longitude $90^{\circ}32'22''$ west,

thence easterly to point P25 at latitude $34^{\circ}41'47''$ north, longitude $90^{\circ}32'00''$ west,

thence easterly to point P26 at latitude $34^{\circ}41'44''$ north, longitude $90^{\circ}31'42''$ west,

thence easterly to point P27 at latitude $34^{\circ}41'44''$ north, longitude $90^{\circ}31'00''$ west,

thence easterly to point P28 at latitude $34^{\circ}42'00''$ north, longitude $90^{\circ}30'00''$ west,

thence easterly to point P29 at latitude $34^{\circ}42'15''$ north, longitude $90^{\circ}29'00''$ west,

thence easterly to point P30 at latitude $34^{\circ}42'19''$ north, longitude $90^{\circ}28'27''$ west,

thence easterly to point P31 at latitude $34^{\circ}42'08''$ north, longitude $90^{\circ}28'08''$ west,

thence easterly to point P32 at latitude $34^{\circ}42'00''$ north, longitude $90^{\circ}28'00''$ west.

EXHIBIT "C"

NO. 92 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

STATE OF ARKANSAS
Plaintiff-Counter-Defendant

vs.

STATE OF MISSISSIPPI
Defendant-Counter-Claimant

AFFIDAVIT OF AUSTIN B. SMITH

STATE OF MISSISSIPPI

COUNTY OF WARREN

PERSONALLY came and appeared this date before me, the undersigned notary public in and for the above and captioned jurisdiction, AUSTIN B. SMITH who, after being by me first duly sworn, deposes and states upon oath as follows:

1. My name is AUSTIN B. SMITH. My residence address is 2525 Cherry Street, Vicksburg, Mississippi 39180. I am a Civil Engineer-Consultant, specializing in potamology; shallow and deep-draft navigation; marine accidents; boundary determinations in navigable rivers; and related fields. I am a Registered Professional Engineer in both Mississippi and Louisiana, and a Registered Land Surveyor in Louisiana. I have been an active member of several engineering and other professional organizations for many years, and have over fifty (50) years' experience regarding navigation, flood control, and structural works of improvement in and along the Mississippi River and its major tributaries.

2. I prepared the initial drafts of both the narrative description and map displaying the proposed agreed Arkansas-Mississippi state boundary in the vicinity of "Bordeaux Point" in the captioned case. This portion of the state boundary appears as Segment "A" and Segments "C" and "D" of the composite narrative description. In connecting the westerly terminus point of the 1947 St. George Richardson Survey to the current live thalweg of the Mississippi River, I drew a line normal to the live thalweg from the end point of the Richardson survey. Moreover, I prepared my description of the proposed boundary, including that portion consisting of the Richardson survey, by converting all metes and bounds coordinates to geodetic coordinates.

I have thoroughly reviewed the final version of the description and map prepared by Dr. Richard Elgin after verifying my initial drafts, and hereby attest that these documents are accurate, correct and were prepared using accepted engineering principles, standards and practices.

s/ Austin B. Smith

AUSTIN B. SMITH

SWORN TO AND SUBSCRIBED before me, this the 1 day of November, 1984.

s/ Anita (Riddle) King

NOTARY PUBLIC

MY COMMISSION EXPIRES:

9-9-87

EXHIBIT "D"

NO. 92 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

STATE OF ARKANSAS
Plaintiff-Counter-Defendant

vs.

STATE OF MISSISSIPPI
Defendant-Counter-Claimant

AFFIDAVIT OF RICHARD LEWIS ELGIN

STATE OF MISSOURI

COUNTY OF PHELPS

PERSONALLY came and appeared this date before me, the undersigned notary public in and for the above captioned jurisdiction, RICHARD LEWIS ELGIN who, after being by me first duly sworn, deposes and states upon oath as follows:

1. My name is RICHARD LEWIS ELGIN. My address is 900 Pine Street, Rolla, Missouri 65401. I am a Registered Professional Engineer in Arkansas, Missouri and Kansas, and a Registered Land Surveyor in Arkansas, Missouri, Kansas and Oklahoma. I obtained my Doctor of Philosophy degree in Surveying from the University of Arkansas, and I am coauthor of the books *Legal Principles of Boundary Location for Arkansas* and the *Celestial Observation Handbook and Ephemeris*. I am currently the President of Elgin Surveying & Engineering, Inc. (Rolla, Missouri) and Vice President of Elgin & Knowles Surveying Consultants, Inc. (Fayetteville, Arkansas), and I teach as an Adjunct Professor

of Civil Engineering at the University of Missouri - Rolla. I am a member of numerous professional engineering and surveying associations and a member of the committee which writes and edits the National Surveyor's Examination.

2. I prepared the final draft of the narrative description of the proposed agreed Arkansas-Mississippi state boundary in the vicinity of "Bordeaux Point", and computed certain geodetic coordinates located therein, for inclusion in the Report of the Special Master and/or the final decree of the Supreme Court in this case. In order to pictorially display the proposed agreed boundary, I also prepared the final version of the map entitled "Arkansas-Mississippi State Boundary in the Vicinity of Bordeaux Point".

3. All points used in the description and on the map are described by geodetic coordinates. Calculations for such coordinates were made where necessary, notably along the 1947 St. George Richardson line along and defining state boundary on the south side of Bordeaux Point. The westerly terminus point of the Richardson survey was connected to the current live thalweg utilizing the accepted engineering principle of drawing a line from the end point of the Richardson survey normal to the current live thalweg. In all respects the legal description and map were prepared using accepted engineering principles, standards, and practices, and are accurate and correct to the best of my professional knowledge and belief.

s/ Richard Lewis Elgin

RICHARD LEWIS ELGIN

SWORN to and subscribed before me, this 24th day of November, 1984.

s/ Elsa M. Pittillo

NOTARY PUBLIC

MY COMMISSION EXPIRES:

11/30/86

EXHIBIT "G"

NO. 92 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

STATE OF ARKANSAS
Plaintiff-Counter-Defendant

vs.

STATE OF MISSISSIPPI
Defendant-Counter-Claimant

AFFIDAVIT OF JOHNNIE A. McCLENDON

STATE OF ARKANSAS

COUNTY OF LEE

Personally came and appeared this date before me, the undersigned, a notary public in and for the above-captioned jurisdiction, Johnnie A. McClendon, who, after being by me first duly sworn, deposes and states upon oath as follows:

1. My name is Johnnie A. McClendon. I am the duly elected and serving Tax Assessor of Lee County, Arkansas. I am responsible for assessing the value for tax purposes of real and personal property in Lee County. I am the custodian of records pertaining to tax assessments in Lee County and I am familiar with and have knowledge of all tax records kept by Lee County. I have served as Lee County Tax Assessor continuously since 1972.

2. During the period June, 1984 through October, 1984, I have met with representatives of the Arkansas Attorney General's Office, the Mississippi Attorney General's Office, and with the Tunica County, Mississippi Tax

Assessor and Collector, W.B. Webb. The purpose of these meetings was to research and review tax records, assessment records, aerial photographs, maps, plats, deeds and other documents pertaining to real property located in that portion of Lee County, Arkansas which has been historically known as the Whiskey Island and Bordeaux Island area. The purpose of this research and review has been to ascertain the location and description of all lands in the aforesaid area which are now being and have been assessed as lying and being within the State of Arkansas.

3. Court records and the various real property records on file in Lee County, Arkansas, show that beginning in the early 1900's various portions of the eastern boundary of the Whiskey Island and Bordeaux Island area have been settled by lawsuits and private agreements between land owners in that area. As the results of these lawsuits and agreements have become effective, Lee County officials have made their assessment and tax records conform to the results of those agreements and orders. The various settled portions of the boundary were all incorporated in the 1974 Guyer survey, a true and correct copy of which is attached hereto, which is recorded at Plat book one, page 183, Lee County, Arkansas land records. The Guyer survey describes the entire eastern boundary of the Whiskey Island/Bordeaux Island area. Lee County assesses and taxes only that real property which is shown by the Guyer survey to lie within Lee County, Arkansas, and does not assess or tax real property which is depicted by the survey to lie within Tunica County, Mississippi.

s/ Johnnie A. McClendon

JOHNNIE A. MCCLENDON
Lee County Tax Assessor

SUBSCRIBED AND SWORN to before me, a Notary Public, on this 15th day of November, 1984.

s/ Marilyn G. Vaughan

NOTARY PUBLIC

MY COMMISSION EXPIRES:

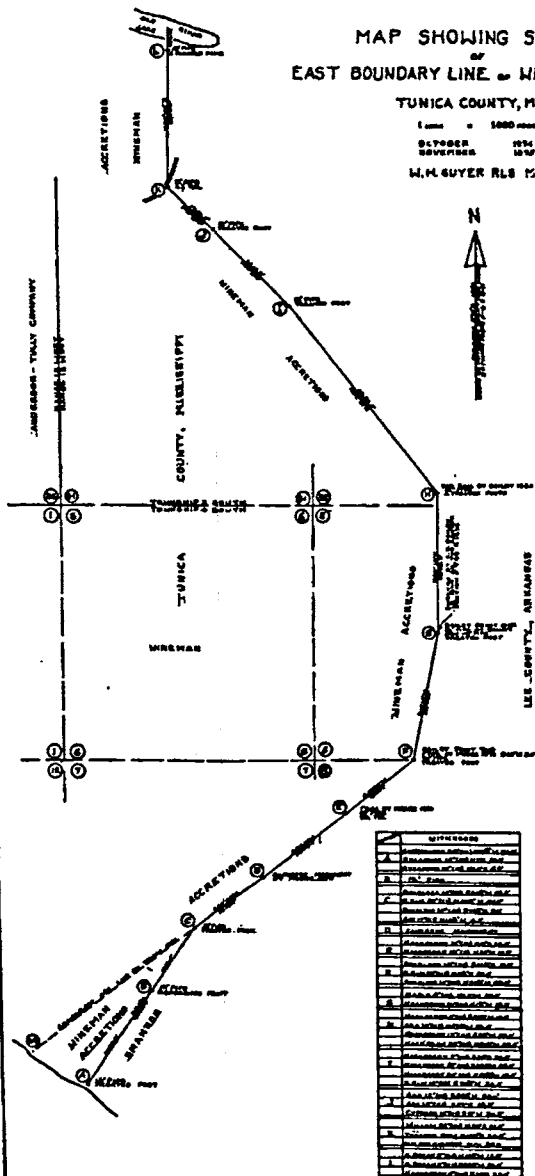
August 16, 1989

MAP SHOWING SURVEY
OF
EAST BOUNDARY LINE OF WINEMAN PROPERTY
TUNICA COUNTY, MISS.

1990-1991 1000 acres

DECLASS	1974
REVIEWED	1982

W.H. GUYER RLS MISS LARK



DOI: 10.1002/jbm.b

most of old Jones was on either side of the boundary line from Point 24 to a point built in 1924-1925 by the board of the survey on each side of the boundary shown between (Nagasaki on the west side and S. S. Smith on the east side). This board was Stephen Taylor and P. H. Smith and it's officers were Gordon Shaw, L. E. Tinsford and the Adams. The reason for this was that the survey was made by the Adams and they were afraid of losing any more of their land because it was not built on a permanent survey line, but several hundred feet into the town and north across what this survey ultimately determined to be the town boundary line on Point 24. The original purpose of the survey, especially the one made by the Adams, was to determine the location of the Adams' land in the town, north.

[illegible]

Incident involving, placed by E. S. Bailey and referred to in his plot recorded in Plot Two
 Top, Page 20, in Parker's diary. Handwritten, were found at Folio 40 and 41 and
 examined. Being found as a book, a few other are located and replaced on shelves at
 Folio 40. These volumes also showed the books for the Southern Standard Library.

Property boundary lines established by this survey were marked physically by iron pipes or discs. Between these iron pipes, trees and growth located proximal to the line were marked with a stake between two bushes (a bush, a stake and a bush - the thicket next but not your part). In addition, the line was physically marked by planting concrete fence posts at intervals varying from 100 ft. to 200 ft. Growth located within about the 100 ft. distance of the line was marked with the letter "A" during the 1940's.

The line was then painted with red paint from Point "A" to Point "B" and from Point "B" to Point "C" (from Point "B" to Point "C" a poorly defined field separated the line to the east, therefore no paint was required in 1974).

1996 In of Box 3475 they note that Field Station was done on this survey, with lying a of the line from Point 4th almost to Point 4th and been observed at 10% water and point lying east of the line but almost all been removed. Because the plots, points and marks on ground before both on the line and west of the line were in place and maintained.

[illegible][illegible]

and pointed from Point "B" to Point "C" and Point "C" to Point "D" are a resubmittal of a survey by G. B. Bailey in 1929 in connection with the Feb. 24, 1929 United States Census. See page 20 of the survey and attached plan.

Map 44 - 45 - 46: This property boundary line was surveyed and marked by us as above
conformity with the terms of the United States Grant for the Northern District of Alaska
Greenville Division, Dawson 15 Avenue West, Seattle Co., Wn. April 1904 No. 45-46-47

This line was painted in Dec. 1972 as a signal square on this sign, however the post and red paint were both used to distinguish it clearly from those signals placed above the sign.

2. That portion of John H. Stone's survey dated by and paid to him and his wife Edward, dated July 1899, entitled "The Boundary Between the Edwards River Prop." awarded to Lee Swartz, Adamson and others in New York State vs. 1, Sup. Ct.

This survey was prepared according to the above T. S. Marston Short Survey in the amount as projected the property line corner intersection found above Feb. 6, 1905 approximately South 29° East 90' (at the stipulated Feb. 6, 1905 land line) Point "b-b" (at the 1895 high water line).

2. That portions of my (H. H. Hays) survey line passed out to Mrs. MFL. This line was surveyed prior to later court cases that the division line be built to conform to the conditions, namely to originate at the west 30th foot (20 chains) from Point on the S. E. Hays's survey (west 4th on this tract) and to the rocky John S. Moore's

3. That Linn which was surveyed and plotted with this plan only in Nov. 1894, which was actually originated at a point 50 ft. E just from where a Survey Station is shown (100 ft.). This Linn Lane is a Post boundary of the Grant tree line.

It is noted that this film was released to the public in October 1955 and December 1955.

signed, evidence of old surveys still discoverable on the ground, court decisions and every testimony as to the location of various lines, and that this plot is a true representation of that survey.

(W.H. Brown)

[illegible]

Plat Book 1, Page 100, Lee County, Ark.
and _____

Plot Book 2; Page 25, The nice County, etc.

EXHIBIT "H"

NO. 92 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

STATE OF ARKANSAS
Plaintiff-Counter-Defendant

vs.

STATE OF MISSISSIPPI
Defendant-Counter-Claimant

AFFIDAVIT OF W.B. WEBB

STATE OF MISSISSIPPI

COUNTY OF TUNICA

Personally came and appeared this date before me, the undersigned, a notary public in and for the above-captioned jurisdiction, W.B. Webb, who, after being by me first duly sworn, deposes and states upon oath as follows:

1. My name is W.B. Webb. I am the duly elected and serving Tax Assessor and Collector of Tunica County, Mississippi. I am responsible for assessing the value for tax purposes of real and personal property in Tunica County. I am the custodian of records pertaining to tax assessments in Tunica County and I am familiar with and have knowledge of all tax records kept by Tunica County. I have served as Tunica County Tax Assessor and Collector continuously since 1972.

2. During the period June, 1984 through October, 1984, I have met with representatives of the Arkansas Attorney General's Office, the Mississippi Attorney General's

Office, and with the Lee County, Arkansas Tax Assessor Johnnie A. McClendon. The purpose of these meetings was to research and review tax records, assessment records, aerial photographs, maps, plats, deeds and other documents pertaining to real property located in that portion of Tunica County, Mississippi which has been historically known as the Whiskey Island and Bordeaux Island area. The purpose of this research and review has been to ascertain the location and description of all lands in the aforesaid area which are now being and have been assessed as lying and being within the State of Mississippi.

3. Court records and the various real property records on file in Tunica County, Mississippi, show that beginning in the early 1900's various portions of the eastern boundary of the Whiskey Island and Bordeaux Island area have been settled by lawsuits and private agreements between land owners in that area. As the results of these lawsuits and agreements have become effective, Tunica County officials have made their assessment and tax records conform to the results of those agreements and orders. The various settled portions of the boundary were all incorporated in the 1974 Guyer survey, a true and correct copy of which is attached hereto, which is recorded at Plat book two, page 25, Tunica County, Mississippi land records. The Guyer survey describes the entire eastern boundary of the Whiskey Island/Bordeaux Island area. Tunica County assesses and taxes only that real property which is shown by the Guyer survey to lie within Tunica County, Mississippi, and does not assess or tax real property which is depicted by the survey to lie within Lee County, Arkansas.

s/ W. B. Webb

W.B. WEBB

Tunica County Tax Assessor and
Collector

**SUBSCRIBED AND SWORN to before me, a Notary
Public, on this 15th day of November, 1984.**

s/ Hugh Hawkins

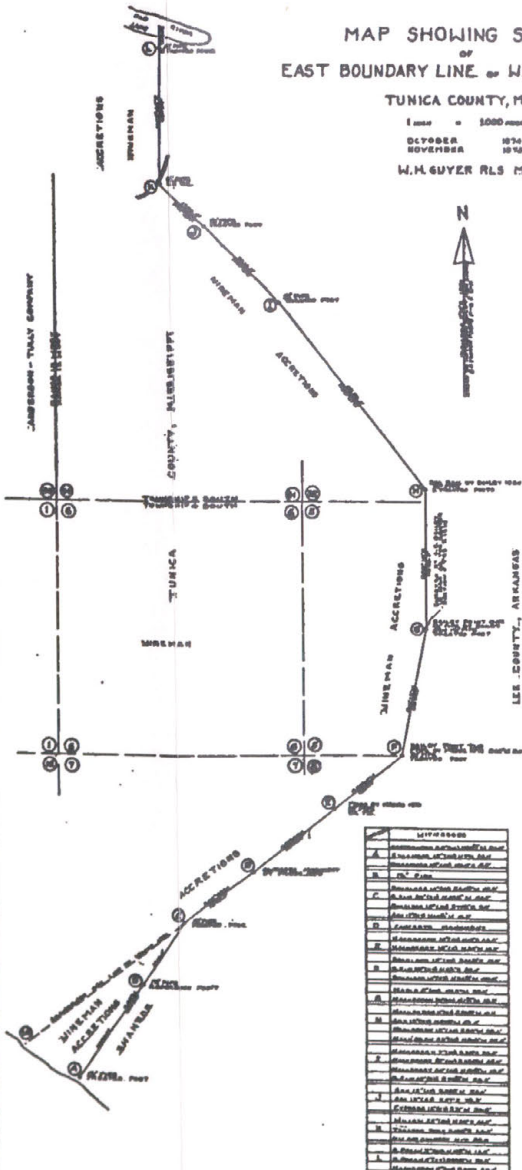
NOTARY PUBLIC

MY COMMISSION EXPIRES:

1/8/88

W.H. GUYER RLS MRS E. ARK

WALTER H. GUYER
Surveyor-General
LAND SURVEYOR
State of
Washington
NO. 814
W. H. Guyer
1900-1905



I certify that this line was surveyed by me in October 1994 and November 1995 using physical evidence of old surveys still measurable on the ground, court decisions and maps testimony as to the location of various lines, and that this plot is a true representation of that survey.

This plot is recorded at:
 Plat Book 1, Page 100, Lee County, Ark. land records,
 and
 Plat Book 2, Page 25, Tanica County, Miss. land records.

EXHIBIT "I"

NO. 92 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

STATE OF ARKANSAS
Plaintiff-Counter-Defendant

vs.

STATE OF MISSISSIPPI
Defendant-Counter-Claimant

AFFIDAVIT OF AUSTIN B. SMITH

STATE OF MISSISSIPPI

COUNTY OF WARREN

PERSONALLY came and appeared this date before me, the undersigned notary public in and for the above and captioned jurisdiction, AUSTIN B. SMITH who, after being by me first duly sworn, deposes and states upon oath as follows:

1. My name is AUSTIN B. SMITH. My residence address is 2525 Cherry Street, Vicksburg, Mississippi 39180. I am a Civil Engineer-Consultant, specializing in potamology; shallow and deep-draft navigation; marine accidents; boundary determinations in navigable rivers; and related fields. I am a Registered Professional Engineer in both Mississippi and Louisiana, and a Registered Land Surveyor in Louisiana. I have been an active member of several engineering and other professional organizations for many years, and have over fifty (50) years' experience regarding navigation, flood control, and structural works of improvement in and along the Mississippi River and its major tributaries.

2. I prepared the narrative description and initial map displaying the proposed agreed Arkansas-Mississippi boundary in the vicinity of "Whiskey Island/Bordeaux Island", looped by "Old Walnut Bend", in the captioned case. This portion of the state boundary appears as Segment "B" of the composite narrative description. In connecting the southerly terminus of the W.H. Guyer survey to the current live thalweg of the Mississippi River, I used the accepted engineering principle of drawing a line from the end point of the Guyer survey normal to the live thalweg. Moreover, I prepared my description of the proposed boundary, including that portion consisting of the Guyer survey, by converting all metes and bounds coordinates to geodetic coordinates.

Dr. Richard Elgin verified my description and map, and drew the final map for use as an exhibit to the record. I have thoroughly reviewed the final documents prepared by Dr. Elgin and hereby attest that they are accurate, correct and were prepared using accepted engineering principles, standards and practices.

s/ Austin B. Smith

AUSTIN B. SMITH

SWORN to and subscribed before me, this the 1 day of December, 1984.

s/ Anita (Riddle) King

NOTARY PUBLIC

MY COMMISSION EXPIRES:
9-9-87

EXHIBIT "J"

NO. 92 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

STATE OF ARKANSAS
Plaintiff-Counter-Defendant

vs.

STATE OF MISSISSIPPI
Defendant-Counter-Claimant

AFFIDAVIT OF RICHARD LEWIS ELGIN

STATE OF MISSOURI

COUNTY OF PHELPS

PERSONALLY came and appeared this date before me, the undersigned notary public in and for the above captioned jurisdiction, RICHARD LEWIS ELGIN who, after being by me first duly sworn, deposes and states upon oath as follows:

1. My name is RICHARD LEWIS ELGIN. My address is 900 Pine Street, Rolla, Missouri 65401. I am a Registered Professional Engineer in Arkansas, Missouri and Kansas, and a Registered Land Surveyor in Arkansas, Missouri, Kansas and Oklahoma. I obtained my Doctor of Philosophy degree in Surveying from the University of Arkansas, and I am coauthor of the books *Legal Principles of Boundary Location for Arkansas* and the *Celestial Observation Handbook and Ephemeris*. I am currently the President of Elgin Surveying & Engineering, Inc. (Rolla, Missouri) and Vice President of Elgin & Knowles Surveying Consultants, Inc. (Fayetteville, Arkansas), and I teach as an Adjunct Pro-

fessor of Civil Engineering at the University of Missouri - Rolla. I am a member of numerous professional engineering and surveying associations and a member of the committee which writes and edits the National Surveyor's Examination.

2. I verified the description of the proposed agreed Arkansas-Mississippi state boundary in the vicinity of Whiskey Island and Bordeaux Island, which is "Segment B" in the narrative description, initially prepared by Mr. Austin B. Smith in the captioned case, and then prepared the final version of the map entitled "Arkansas-Mississippi State Boundary in the Vicinity of Whiskey Island/Bordeaux Island" and the narrative description for inclusion in the report of the Special Master and/or the final decree of the Supreme Court. I calculated geodetic coordinates for the survey points of the W.H. Guyer survey. In connecting the southerly terminus point of the Guyer survey to the live thalweg of the Mississippi River, I, like Mr. Smith, used the accepted engineering principle of drawing a line from the end point of the Guyer line normal to the live thalweg. In all respects, the narrative description and map have been prepared according to accepted engineering principles, standards, and practices, and are accurate and correct to the best of my professional knowledge and belief.

s/ Richard Lewis Elgin

RICHARD LEWIS ELGIN

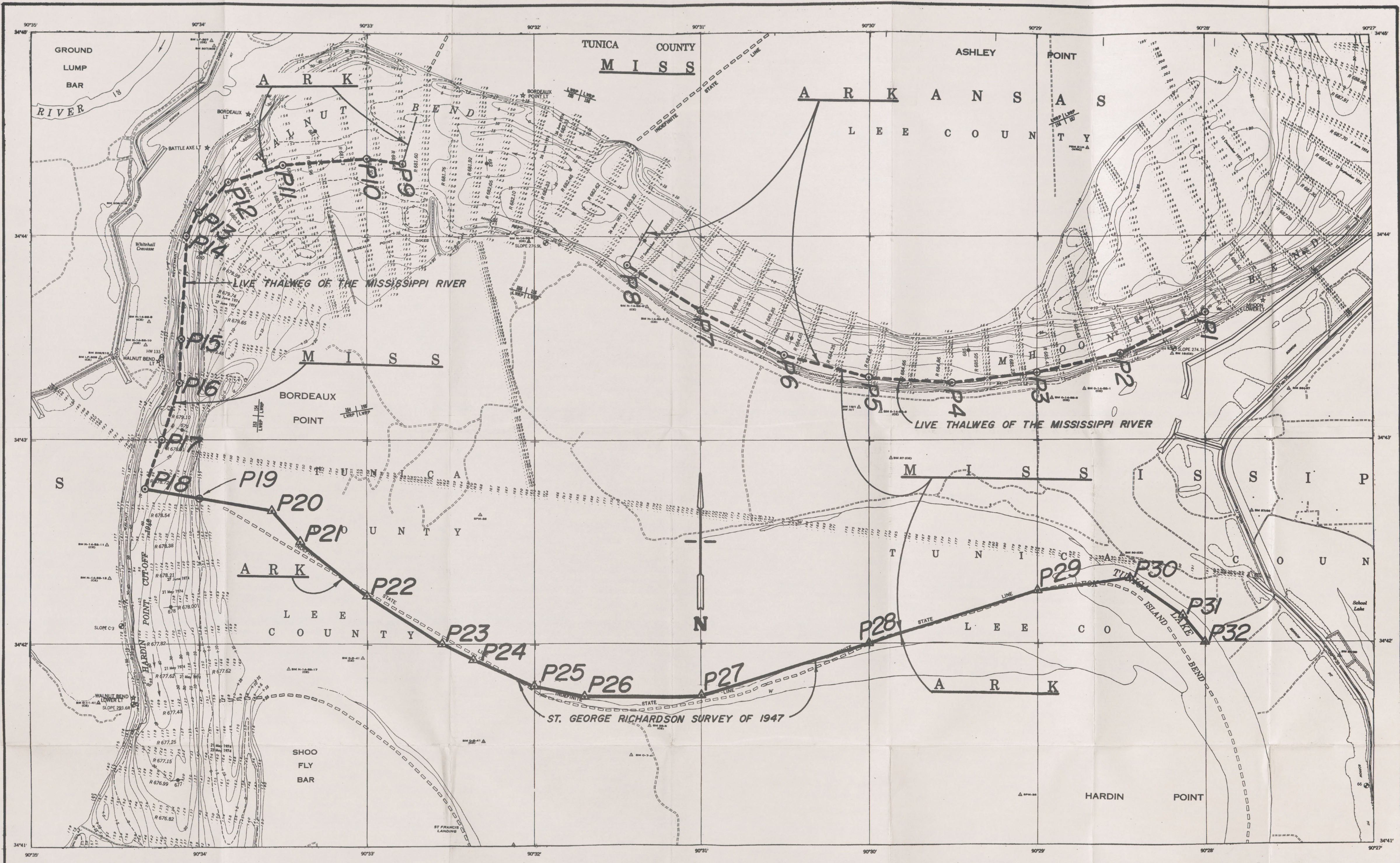
SWORN to and subscribed before me, this 24th day of November, 1984.

s/ Elsa M. Pittillo

NOTARY PUBLIC

MY COMMISSION EXPIRES:

11/30/86



MAP COMPILED FROM:
**MISSISSIPPI RIVER
 HYDROGRAPHIC SURVEY
 1973-1975**
 CAIRO, ILLINOIS TO MOUTH OF WHITE RIVER, ARKANSAS
 595 TO 954 MILES ABOVE HEAD OF PASSES
 IN 116 SHEETS
 U.S. ARMY ENGINEER DISTRICT, MEMPHIS, TENN.
 Prepared under the direction of
 THE DISTRICT ENGINEER
 Edition of 1976

Elevations, in feet, are referred to Mean Sea Level.
 Contours are referred to Low Water Reference Plane (LWRP) 1974
 5 foot interval above LWRP; 5 and 10 foot intervals below
 LWRP changing at 20 feet.
 Topography by photogrammetric methods from Aerial photographs
 taken 1962 and revised to Oct 1974.
 Hydrography taken from General Hydrographic Surveys 1973-1975.
 Polyconic projection, 1927 North American Datum. Corrections for
 MRC Datum is indicated by crossed marks within body of sheet.
 Universal Transverse Mercator grid for zone 15 and 16 is indicated
 by ticks inside the neatline at 1000 meter intervals.
 River Miles above head of Passes are shown at 1 mile intervals.

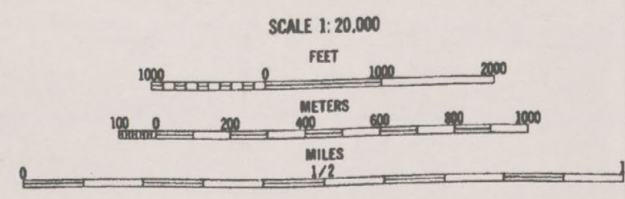
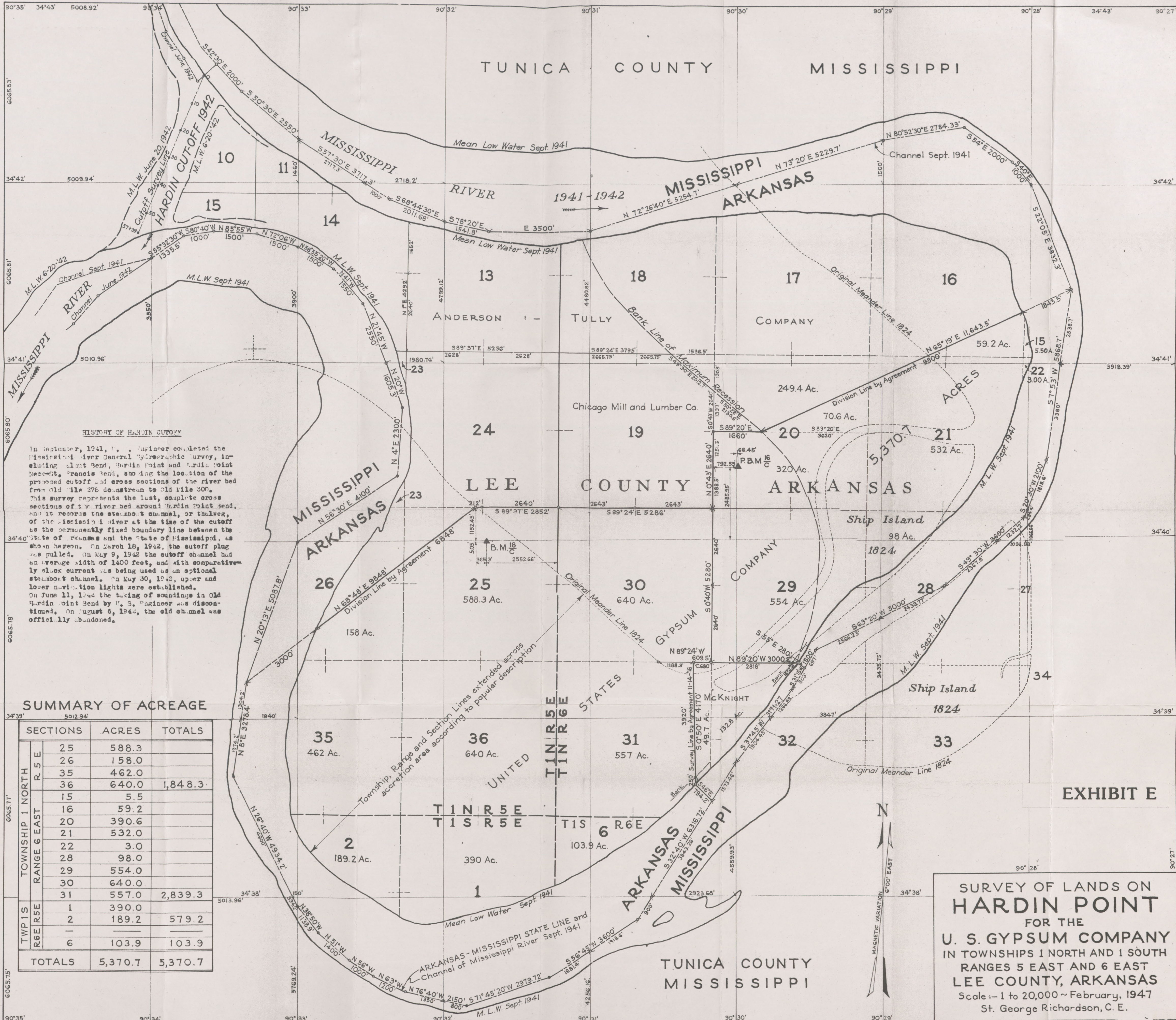


EXHIBIT B

RICHARD L. ELGIN
 REGISTERED
 LAND SURVEYOR
 STATE OF
 ARKANSAS
 NO. 870
Richard L. Elgin
 SIGNATURE



ELGIN & KNOWLES SURVEYING CONSULTANTS, INC.
 FAYETTEVILLE, AR.
**ARKANSAS-MISSISSIPPI STATE BOUNDARY IN THE VICINITY OF
 BORDEAUX POINT**
ARKANSAS v. MISSISSIPPI
U.S. SUPREME COURT
NO. 92 ORIGINAL
OCTOBER TERM, 1981



HISTORY OF HARDIN CUTOFF

In September, 1941, the U. S. Engineer completed the Mississippi River General Hydrographic Survey, including about 20 miles of the river bed from old mile 276 downstream to old mile 300. This survey represents the last, complete cross sections of the river bed around Hardin Point Bend, and it records the steamboat channel, or thalweg, of the Mississippi River at the time of the cutoff as the permanently fixed boundary line between the State of Arkansas and the State of Mississippi, as shown hereon. On March 18, 1942, the cutoff plug was pulled. On May 9, 1942 the cutoff channel had an average width of 1400 feet, and with comparatively slack current was being used as an optional steamboat channel. On May 30, 1942, upper and lower navigation lights were established. On June 11, 1942 the taking of soundings in Old Hardin Point Bend by U. S. Engineer was discontinued. On August 8, 1942, the old channel was officially abandoned.

SUMMARY OF ACREAGE

SECTIONS		ACRES	TOTALS
TOWNSHIP 1 NORTH RANGE 5 EAST	25	588.3	1,848.3
	26	158.0	
	35	462.0	
	36	640.0	
	15	5.5	5,370.7
	16	59.2	
	20	390.6	
	21	532.0	
	22	3.0	
	28	98.0	
TWP 1S R6E R5E	29	554.0	1,039.9
	30	640.0	
	31	557.0	
	32	49.7	
TOTALS		5,370.7	5,370.7

**SURVEY OF LANDS ON
HARDIN POINT**
FOR THE
U. S. GYPSUM COMPANY
IN TOWNSHIPS 1 NORTH AND 1 SOUTH
RANGES 5 EAST AND 6 EAST
LEE COUNTY, ARKANSAS
Scale: 1 to 20,000 ~ February, 1947
St. George Richardson, C. E.

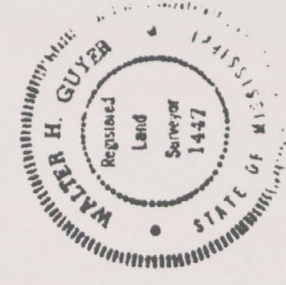
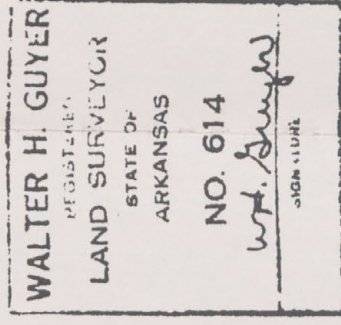
MAP SHOWING SURVEY
OF
EAST BOUNDARY LINE OF WINEMAN PROPERTY

TUNICA COUNTY, MISS.

1 INCH = 1000 FEET

OCTOBER 1974
NOVEMBER 1975

W.H. GUYER RLS MISS. & ARK.



ANDERSON - TULLY COMPANY

RANGE 12 WEST

COUNTY, MISSISSIPPI

TOWNSHIP 3 SOUTH

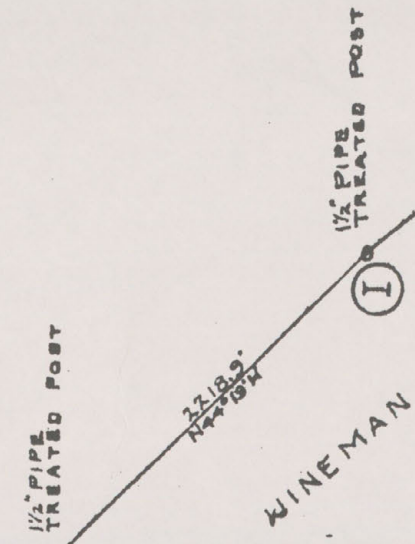
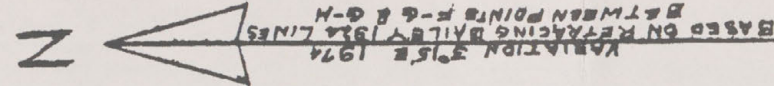
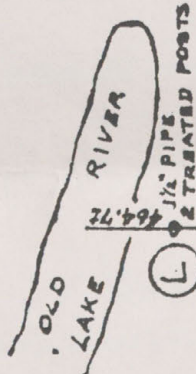
TUNICA

WINEMAN

ACCRETIONS

LINE 2

LEE COUNTY, ARKANSAS



ACCRETIONS

WINEMAN

RED RAIL BY BAILEY 1924

BAILEY POINT ONE

BAILEY POINT TWO

BAILEY POINT THREE

BAILEY POINT FOUR

BAILEY POINT FIVE

BAILEY POINT SIX

BAILEY POINT SEVEN

BAILEY POINT EIGHT

BAILEY POINT NINE

BAILEY POINT TEN

BAILEY POINT ELEVEN

BAILEY POINT TWELVE

BAILEY POINT THIRTEEN

BAILEY POINT FOURTEEN

BAILEY POINT FIFTEEN

BAILEY POINT SIXTEEN

BAILEY POINT SEVENTEEN

BAILEY POINT EIGHTEEN

BAILEY POINT NINETEEN

BAILEY POINT TWENTY

BAILEY POINT TWENTY ONE

BAILEY POINT TWENTY TWO

BAILEY POINT TWENTY THREE

BAILEY POINT TWENTY FOUR

BAILEY POINT TWENTY FIVE

BAILEY POINT TWENTY SIX

BAILEY POINT TWENTY SEVEN

BAILEY POINT TWENTY EIGHT

BAILEY POINT TWENTY NINE

BAILEY POINT THIRTY

BAILEY POINT THIRTY ONE

BAILEY POINT THIRTY TWO

BAILEY POINT THIRTY THREE

BAILEY POINT THIRTY FOUR

BAILEY POINT THIRTY FIVE

BAILEY POINT THIRTY SIX

BAILEY POINT THIRTY SEVEN

BAILEY POINT THIRTY EIGHT

BAILEY POINT THIRTY NINE

BAILEY POINT FORTY

BAILEY POINT FORTY ONE

BAILEY POINT FORTY TWO

BAILEY POINT FORTY THREE

BAILEY POINT FORTY FOUR

BAILEY POINT FORTY FIVE

BAILEY POINT FORTY SIX

BAILEY POINT FORTY SEVEN

BAILEY POINT FORTY EIGHT

BAILEY POINT FORTY NINE

BAILEY POINT FIFTY

BAILEY POINT FIFTY ONE

BAILEY POINT FIFTY TWO

BAILEY POINT FIFTY THREE

BAILEY POINT FIFTY FOUR

BAILEY POINT FIFTY FIVE

BAILEY POINT FIFTY SIX

BAILEY POINT FIFTY SEVEN

BAILEY POINT FIFTY EIGHT

BAILEY POINT FIFTY NINE

BAILEY POINT SIXTY

WITNESSES	WITNESSES
A. COTTONWOOD 20' (x) 17' 2 1/2"	SHANNON
B. SYCAMORE 15' (x) 17' 2 1/2"	WINEMAN
C. BOXELDER 14' (x) 17' 2 1/2"	ACCRETIONS
D. ASH 12' (x) 17' 2 1/2"	ACCRETIONS
E. HACKBERRY 10' (x) 17' 2 1/2"	ACCRETIONS
F. BOXELDER 12' (x) 17' 2 1/2"	ACCRETIONS
G. MAPLE 8' (x) 17' 2 1/2"	ACCRETIONS
H. HACKBERRY 10' (x) 17' 2 1/2"	ACCRETIONS
I. HACKBERRY 12' (x) 17' 2 1/2"	ACCRETIONS
J. ASH 12' (x) 17' 2 1/2"	ACCRETIONS
K. WILLOW 22' (x) 17' 2 1/2"	ACCRETIONS
L. SPICAN 5' (x) 17' 2 1/2"	ACCRETIONS
M. HACKBERRY 5' (x) 17' 2 1/2"	ACCRETIONS

EXHIBIT F

GENERAL INFORMATION ABOUT SURVEY

Remnant of old fence varies either side of the boundary line from Point "C" to Point "J". It was reportedly built in 1954-1956 by the tenant of the owners on each side of the boundary shown hereon (Wineman on the west side and C. M. Gooch on the east side). This tenant was Hughes Huttling and Fishing Club and it's officers were Gordon Brent, L. E. Vanderford and Sam Ashworth. This fence was not meant to delineate an exact or precise boundary line location at any one point or along any short distance because it was not built on a precise surveyed line, but instead meandered from tree to tree back and forth across what this surveyor ultimately determined to be the true boundary line as shown herein. The original purpose of the fence reportedly was to prevent cattle owned by Gordon Brent, located on the Gooch land, from straying onto Wineman lands.

However, using the fence's location and old paint line marks on trees by connecting them with a straight line over relatively long distances, this surveyor delineated the proper boundary line northerly from Point "H" to Point "J". Southerly from Point "H" to Point "C", boundary markers and/or line paint marks and blazes made by John T. Moore in his survey of 1970 (as recorded in Lee County, Arkansas land records at Plat Book No. 1, Page 26), were accepted as the boundary and utilized as part of the basis for it's extension from Point "C" thru Point "H" and Point "A" to the Mississippi River by court decree as explained herein in notations describing that line.

Ancient markers, placed by C. B. Bailey and referred to in his plat recorded in Plat Book Two, Page 28, in Tunica county, Mississippi, were found at Points "H" and "Q" and confirmed. Using these as a basis, a new marker was located and replaced as shown at Point "H". These markers also formed the basis for the bearings adopted herein.

Property boundary lines established by this survey were marked precisely by iron pipes as shown. Between these iron pipes, trees and growth located precisely on the line were marked with a blaze between two hacks (a hack, a blaze and a hack - the Wineman mark for many years past). In addition, the line was precisely marked by placing crescent fence posts at intervals varying from 100+ feet to 200+ feet. Growth located within about three feet either side of the line was marked with three hacks facing the line.

The line was then painted with red paint from Point "A" to Point "H" and from Point "H" to Point "J" (from Point "H" to Point "J" a newly cleared field adjoined the line to the east, therefore no paint was required in 1974).

NOTE: As of Nov. 1975 when some final field work was done on this survey, woods lying east of the line from Point "H" almost to Point "J" had been cleared and 1974 marks and paint lying east of the line had almost all been removed. However the pipes, posts and marks on growth lying both on the line and west of the line were in place and undisturbed.

Red painted lines from Point "H" to Point "K" are a reestablishment of that part of the A. L. Cummings survey line of 1910 & 1912 entitled "Center--Mississippi River Government Surveys (1823 & 1836) called the "Cummings Red Line," as described in the Consent Decree entered on Feb. 6, 1919 by the United States Court for the Northern District of Mississippi, Defta Division in A. G. Wineman and Sons VS W. D. Reeves, John P. Moore et al, recorded in Book X-2, Page 531 of the Tunica County, Mississippi land records, and at Book 81, Page 619, Lee County, Arkansas land records. The above A. L. Cummings 1910 & 1912 survey is recorded at Plat Book No. 1, Page 28, Tunica County, Mississippi.

From Point "K" through Point "J" to the thalweg of Old River the Wineman title to the land adjacent to and west of this boundary is supported by the following documents recorded in the Deed Books at the Chancery Clerk's Office in Tunica County, Mississippi U/255, X/185, G-2/524, 1-2/635, 1-2/408, R-2/285 (two deeds) and V-2/455 and in the Circuit Court, Tunica County Decree dated Jan. 21, 1932 and Complaint in Cause #2694 and testimony relative thereto, a certified copy of which is in the files of Wade S. Wineman, in December 1975. Maps relative to the above testimony are of record in the Chancery Clerk's Office of Tunica County, Mississippi and are, A. L. Cummings (1910-12) plat recorded in Plat Book 1, Page 28, and H. G. Martin plat of Jan. 1930 recorded in Plat Book 2, Page 15.

Red painted lines from Point "H" to Point "Q" and Point "Q" to Point "H" are a reestablishment of a survey by C. B. Bailey in 1924 in accordance with the Feb. 16, 1919 United States Court Decree A. G. Wineman VS W. D. Reeves et al described above.

Line "A" - "H" - "Q": This property boundary line was surveyed and marked by me as shown in conformity with the decree of the United States Court for the Northern District of Mississippi, Greenville Division, Wineman VS Shannon Bros. Lumber Co., Inc. Civil Action No. G6-72-24-S. This decree is recorded in county land records as follows: in Lee County, Arkansas at Record Book 258, Page 233; and in Tunica County, Mississippi at Book V-3, Page 324.

This line was painted in Nov. 1975 as explained elsewhere on this plat, however blue paint and red paint were both used to distinguish it clearly from three separate painted survey lines nearby. These lines are incorrect and meaningless and are described as follows:

1. That portion of John T. Moore's survey marked by red paint on trees and his plat thereof, dated July 1970, entitled "Plat Showing Brent and Shannon Bros. Prop." recorded in Lee County, Arkansas land records at Plat Book Record No. 1, Page 26. This survey was incorrect according to the above U. S. District Court Decree in that it extended or projected the property line across accretions formed since Feb. 6, 1919 approximately South 53°W from Point "C" (at the stipulated Feb. 6, 1919 bank line) to Point "A-A" (at the 1970 high bank line).
2. That portion of my (W. H. Guyer) survey line painted red in Aug. 1971. This line was surveyed prior to later court decree that the true division line be made to conform to two conditions, namely: to originate at a point 5874 feet (89 chains) from Point Two C. B. Bailey's survey (Point "H" on this Plat) and to lie along John I. Moore's painted line to this location.
3. That line which was surveyed and painted with blue paint only in Nov. 1974, which erroneously originated at a point 5901.8 feet from Point 2 Bailey's Survey instead of 89 chains (5874 feet). This line lies 8.6 feet westerly of the final true line shown herein.

CERTIFICATE:

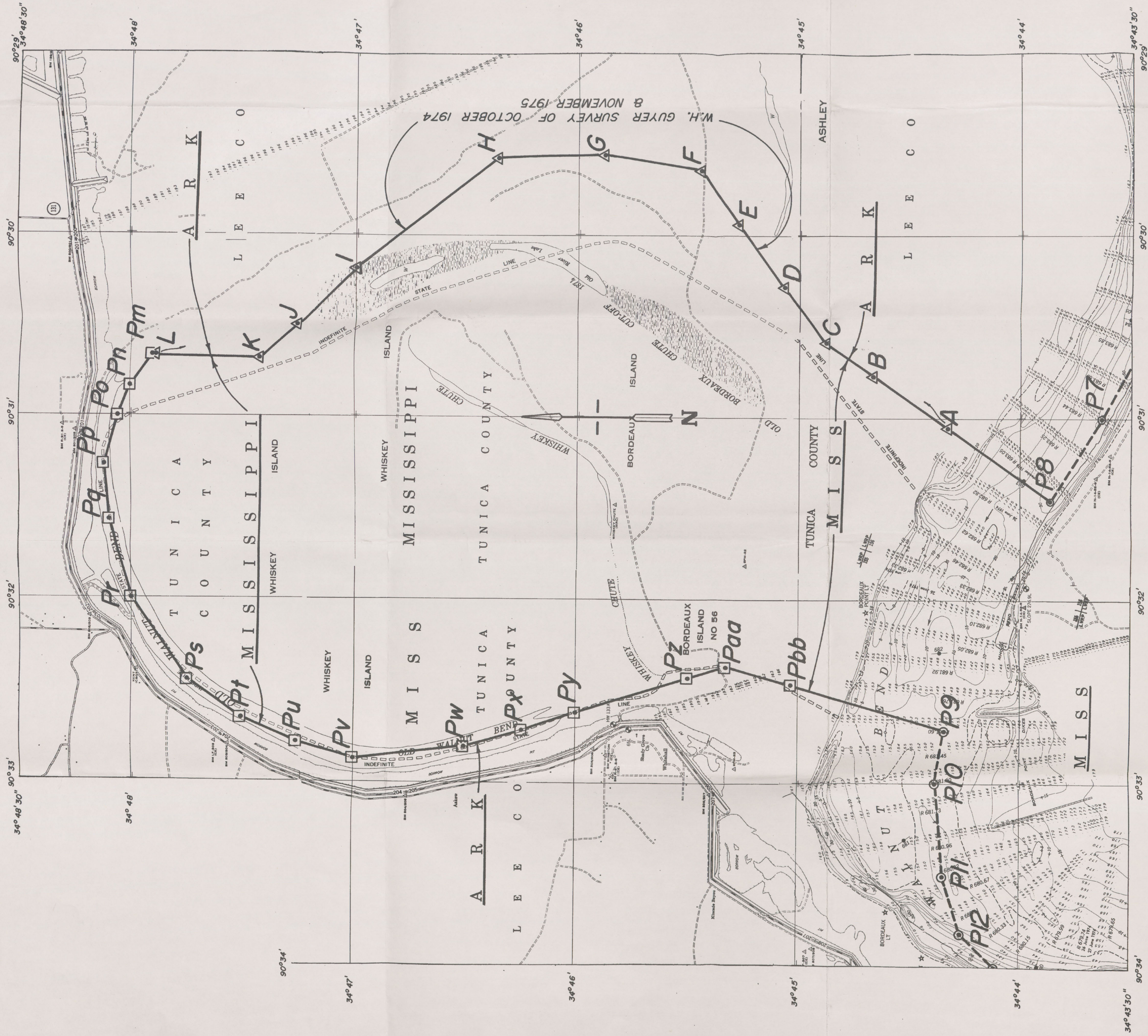
I certify that this line was surveyed by me in October 1974 and November 1975 using physical evidence of old surveys still discernible on the ground, court decisions and sworn testimony as to the location of various lines, and that this plat is a true representation of that survey.

W.H. Guyer
W. H. Guyer, RLS

This plat is recorded at:

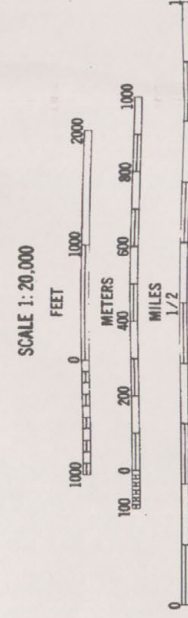
Plat Book 1, Page 183, Lee County, Ark. land records,
and

Plat Book 2, Page 25, Tunica County, Miss. land records.

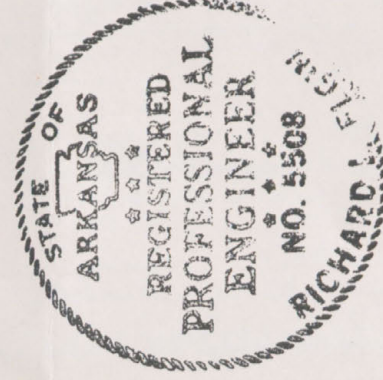


MAP COMPILED FROM:
MISSISSIPPI RIVER
HYDROGRAPHIC SURVEY
1973-1975
CAIRO, ILLINOIS TO MOUTH OF WHITE RIVER, ARKANSAS
595 TO 954 MILES ABOVE HEAD OF PASSES
IN 118 SHEETS
U.S. ARMY ENGINEER DISTRICT, MEMPHIS, TENN.
Prepared under the direction of
THE DISTRICT ENGINEER
Edition of 1976

Elevations, in feet, are referred to Mean Sea Level.
Contours are referred to Low Water Reference Plane (LWRP) 1974
5 foot interval above LWRP; 5 and 10 foot intervals below
LWRP changing at 20 feet.
Topography by photogrammetric methods from Aerial photographs
taken 1952 and revised to Oct 1974.
Hydrography taken from General Hydrographic Survey, 1973-1975.
Polyconic projection, 1927 North American Datum. Corrections for
MRC Datum is indicated by crossed marks within body of sheet.
Universal Transverse Mercator grid for zone 15 and 16 is indicated
by ticks inside the margin at 1000 meter intervals.
River miles above head of Passes are shown at 1 mile intervals.



RICHARD L. ELGIN
REGISTERED
LAND SURVEYOR
STATE OF
ARKANSAS
NO. 870
Richard L. Elgin
SIGNATURE



MAP PREPARED FROM DATA SUPPLIED BY AUSTIN SMITH WHICH WAS VERIFIED BY
DR. RICHARD L. ELGIN. MAP DRAWN BY DR. ELGIN.

ELGIN & KNOWLES SURVEYING CONSULTANTS, INC.
FAYETTEVILLE, AR.

ARKANSAS - MISSISSIPPI STATE BOUNDARY IN THE VICINITY OF
WHISKEY ISLAND AND BORDEAUX ISLAND

EXHIBIT K

ARKANSAS v. MISSISSIPPI
U.S. SUPREME COURT
NO. 92 ORIGINAL
OCTOBER TERM, 1981