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No. 92 Original

In the  
Supreme Court of the United States

OCTOBER TERM, 1981

*Filed Apr. 29, 1985*

STATE OF ARKANSAS,  
PLAINTIFF - COUNTER-DEFENDANT,

v.

STATE OF MISSISSIPPI,  
DEFENDANT - COUNTER-CLAIMANT.

REPORT OF SPECIAL MASTER

PAUL C. REARDON  
Hingham, Massachusetts  
*Special Master*



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**REPORT OF SPECIAL MASTER**

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TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES  
OF THE SUPREME COURT OF THE UNITED STATES:

This litigation concerns the correct location of the Mississippi-Arkansas boundary between Lee County, Arkansas, and Tunica County, Mississippi in the vicinity of Bordeaux Point and Whiskey Island/Bordeaux Island.

The undersigned was appointed on July 2, 1982, as Special Master in the case with authority relative to pleadings additional to those already filed. Authority was also granted to him to summon witnesses, issue subpoenas, take evidence, and finally to submit such reports as he deemed appropriate.

There followed a number of conferences with counsel at the first of which on October 8, 1982 issues were discussed, discovery procedures were established, and a tentative trial date was set. At a second conference with counsel on November 3, 1983, after elaborate discovery had taken place

and a number of conferences held by telephone, the Special Master was presented with a proposed settlement of the litigation. Various questions were raised by the Special Master at that time, particularly with reference to one portion of the proposed boundary between Arkansas and Mississippi which had been left undefined and, therefore, open to future litigation. The parties then embarked on further investigation relative to that portion. Counsel and the Special Master met again on September 26-28, 1984, in Memphis, Tennessee, in a comprehensive discussion designed to terminate the litigation in accord with the law and the facts. At this meeting the Special Master and counsel joined in a low-level flight over the area in controversy.

There followed additional study of remaining questions by the parties and then submission to the Special Master of a Stipulation with exhibits.

The Stipulation has been in process of preparation for many months and the Special Master has been in constant contact with the parties as revisions of earlier drafts have taken place. The Special Master hereby adopts completely and incorporates herein by reference the contents of the Stipulation as now presented as being a faithful report of the facts and a valid statement of the law governing the disposition of this action. In the interests of brevity, therefore, the Special Master does not repeat the history of this case in his report. Nor does he review in detail the applicable law which he submits is competently and thoroughly treated in the Stipulation.

As will be noted in the Stipulation, discovery has been exhaustive, hampered only by flood conditions in the vicinity of Bordeaux Point. The parties have agreed upon a settlement which establishes the boundary along a line described in Exhibit A as amended, attached to the Stipulation. Of course, the Court need not enter a consent decree and the Special Master ought not to recommend the entry of such a decree, merely because it embodies an agreement by the parties to the

litigation if such an agreement has “no relation to law” and where the parties might be “acting under compulsions and motives that have no relation to the performance of (the Court’s) Article III functions.” *Vermont v. New York*, 417 U.S. 270, 277 (1974). In *Maine v. New Hampshire*, 426 U.S. 363 (1976) this Court considered the proper standard to apply to proposed consent decrees which attempt to specify the concrete location of a boundary which has already been defined by general rules of law. In that case the Court deemed it appropriate to accept a proposed boundary agreement if it were not “wholly contrary to relevant evidence...even if we would reach a different conclusion upon the same evidence.” 426 U.S. at 369.

In this case, the Special Master has concluded that the parties have reasonably applied correct legal principles to the relevant facts and that their agreement should be given effect.

Consequently, the Special Master recommends that the boundary between Arkansas and Mississippi in the vicinity of Bordeaux Point and Whiskey Island/Bordeaux Island should be established on the line described in Exhibit A, as amended, and defined in the recommended decree. The law and facts which support that boundary may conveniently be considered in three segments.

1) The parts indicated on Exhibit B between points P1 and P8 and between points P9 and P18 constitute the live thalweg of the Mississippi River. The facts stipulated demonstrate that the thalweg of the River between these two sets of points is the result of a gradual process of erosion and accretion. The settled rule is that the Mississippi-Arkansas boundary in those areas lies in the thalweg of the River, *Arkansas v. Mississippi*, 250 U.S. 39 (1919), as it has been altered by accretive changes. *Arkansas v. Tennessee*, 397 U.S. 88, 89 (1970).

2) That part indicated on Exhibit B between points P18 and P32 constitutes the dead thalweg of the River as it existed

prior to 1942-1947, running easterly from the present locus of the live River to Fox Island Bend. The River abandoned this course as a result of an avulsion created by the cut-off of Hardin Point by the United States Corp of Engineers in 1942. Under established law, this avulsion fixed the boundary in the abandoned thalweg. *Arkansas v. Tennessee*, 397 U.S. 88, 89 (1970); *Missouri v. Nebraska*, 196 U.S. 23, 35 (1904); *Nebraska v. Iowa*, 143 U.S. 359, 361 (1892).

3) That part of the proposed boundary between points P8 and P9 on Exhibit B was originally omitted from the proposal settlement. As stated in the Stipulation at P13, "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." The Stipulation recounts at PPs13 and 14 the "extensive" and painstaking work in which the parties engaged relative to the location of the state boundary in this area north of the Mississippi River. Without more, it appeared initially that the location of the common boundary would, under settled law, be the dead thalweg of "old" Walnut Bend.

However, the investigation of the parties produced agreement that while the state boundary in the western portion of the "old" Walnut Bend area should be established along the line of the dead thalweg, the eastern line should be established somewhat to the east of the dead thalweg in that area as shown on Exhibit K. The history of this line, dating from the avulsive cutthrough of the Mississippi River in 1874 which abandoned the "old" Walnut Bend area, is thoroughly described in the Stipulation at PPs36-41.

It is apparent that Arkansas and Mississippi have for many years recognized as the eastern boundary in the eastern portion of "old" Walnut Bend the so-called "Guyer line" (Exhibit F)

based on a survey made in 1974 and 1975 by W. H. Guyer which in effect reasserted earlier lines of surveys made by A. L. Cummings in 1910 and 1912, and C. B. Bailey in 1924. In addition, a series of decisions in state and Federal courts and recorded agreements of private land owners have honored the Guyer line. The taxing authorities of the Arkansas and Mississippi counties involved have for years recognized as the state boundary the private boundaries resulting from litigation and agreement, and their current assessment rolls reflect their recognition of the Guyer line (Exhibits G & H).

Under the doctrine of acquiescence, the rule of avulsion and the rule of the thalweg both yield to this long acceptance of the Guyer line by all interested public and private parties. *Arkansas v. Tennessee*, 310 U.S. 563, 571 (1910). It follows that the boundary in the "old" Walnut Bend area should be shown on Exhibit K.

For greater convenience Exhibits F, K, E and B attached to the Stipulation are lettered respectively as Exhibits A, B, C, and D reproduced at pp. 17-20.

### Recommendations

In accord with the foregoing, I recommend as follows:

- 1) that the proposed consent decree appended be allowed and entered;
- 2) that the compensation of the Special Master, his legal assistant and clerical costs be proposed in a subsequent application, to be thereafter determined by the Court and to be borne equally by the States of Arkansas and Mississippi.

Respectfully submitted,

PAUL C. REARDON  
*Special Master*





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**DECREE**

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THIS CAUSE came on this date for final adjudication upon the Report of the Special Master and the Court, being fully advised in the premises, finds, that the Report of the Special Master should be adopted and approved as submitted, and a Final Decree entered accordingly.

IT IS NOW ORDERED, ADJUDGED, AND DECREED as follows:

1. The Report of the Special Master is hereby approved as submitted.

2. The common boundary between the States of Arkansas and Mississippi in the Mississippi River is the thalweg, which is the middle of the main navigable channel followed as the principal course of downstream navigation. This judgment determines the geographical location of this boundary in the reach of the Mississippi River, as more particularly described hereinafter, separating portions of Lee County, Arkansas and Tunica County, Mississippi in the vicinity of Bordeaux Point and Whiskey Island/Bordeaux Island.

3. Establishment of the common Arkansas-Mississippi boundary in "old" Walnut Bend, looping Whiskey Island/ Bordeaux Island, originated with the Bordeaux Chute Cutoff, which occurred in or about 1874 and was complete in or about 1883. The locus of that portion of the state boundary consisting of approximately the eastern one-half of "old" Walnut Bend has been subsequently established by long acquiescence by the States of Arkansas and Mississippi in private boundary lines resulting from prior litigation and agreements among the owners of lands adjacent thereto. The locus of these private boundaries, which the States of Arkansas and Mississippi have adopted by acquiescence as also being the locus of the interstate boundary, is as shown on the map of Mr. W. H. Guyer, a true and correct copy of which is attached hereto as Exhibit "A" and described by geodetic coordinates as Segment B, Points PA through PL, in the composite description set forth hereinafter. The remainder of the interstate boundary in approximately the western one-half of "old" Walnut Bend lies along the dead thalweg of the Mississippi River as it existed when the River's flow ceased in this abandoned bendway subsequent to, and caused by, the Bordeaux Chute Cutoff. The locus of this portion of the interstate boundary in "old" Walnut Bend is as shown in Exhibit "B" and described as Segment B, Points Pm through Pbb in the composite description set forth hereinafter.

4. Establishment of the common Arkansas-Mississippi boundary along the southerly limit of Bordeaux Point originated with the Hardin Point Cutoff, constructed by the United States Army Corps of Engineers in 1942. In 1947, when the Mississippi River ceased to flow in this abandoned bendway (Fox Island Bend), the locus of the state boundary along the dead thalweg was determined by Mr. St. George Richardson, whose plat thereof has been accepted since that time by the States of Arkansas and Mississippi as correctly depicting this portion of the interstate boundary looping Bordeaux

Point. A true and correct copy of the St. George Richardson survey is attached hereto as Exhibit "C" and described as Segment D in the composite description set forth hereinafter.

The common Arkansas-Mississippi 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, exclusive of that portion of this boundary in "old" Walnut Bend looping Whiskey Island/Bordeaux Island, is depicted on Exhibit "D" and described as Segment A and Segments C and D in the composite description set forth hereinafter.

5. 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, as depicted on Exhibits "B" and "D" hereto, is described using geodetic coordinates as follows:

a. SEGMENT A

That portion of the Arkansas-Mississippi state boundary line 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  $90^{\circ}28'00''$  west and at approximately latitude  $34^{\circ}43'36''$  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  $34^{\circ}43'26''$  north, longitude  $90^{\circ}28'30''$  west,

thence westerly to point P3 at latitude  $34^{\circ}43'20''$  north, longitude  $90^{\circ}29'00''$  west,

thence westerly to point P4 at latitude  $34^{\circ}43'17''$  north, longitude  $90^{\circ}29'30''$  west,

thence westerly to point P5 at latitude  $34^{\circ}43'18''$  north, longitude  $90^{\circ}30'00''$  west,

thence westerly to point P6 at latitude  $34^{\circ}43'25''$  north, longitude  $90^{\circ}30'30''$  west,

thence westerly to point P7 at latitude  $34^{\circ}43'38''$  north, longitude  $90^{\circ}31'00''$  west,

thence westerly to point P8 at latitude  $34^{\circ}43'53''$  north, longitude  $90^{\circ}31'27''$  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 marked 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 southwesterly 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 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 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, and longitude  $90^{\circ}33'24''$  west,

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

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

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

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

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

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

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

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

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

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

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

6. All lands now lying on the Arkansas side of the boundary line described hereinabove are wholly within, and a part

of, the State of Arkansas. All lands now lying on the Mississippi side of the boundary line described hereinabove are wholly within, and a part of, the State of Mississippi.

7. Certified copies of Exhibits A, B, C, and D in full size are to be filed upon entry of this decree with the Custodian of Official Land Records, in Lee County, Arkansas and Tunica County, Mississippi.

ORDERED, ADJUDGED, AND DECREED. the \_\_\_\_\_ day of

\_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_

TUNICA COUNTY, MISS.

C. T. COHEN 1974  
 COLEMAN 1972  
 J. H. GUYER JR. (1972) ARK



2004-2009-18-87-1-ET

[illegible]

However, using the Tamer's location and old point line below as lines by connecting them with a straight line over relatively long distances, this average delineated the proper boundary line northward from Point 1 to Point 2. Similarly, however, as the line point below and line as made by this survey line, the line as shown in the map is not a straight line, but a curve. The line as shown in the map is a curve, which was accepted as the boundary and utilized as part of the basis for the extension line from Point 1 to Point 2, and Point 2 to the Mississippi River by south degree as explained herein in connection describing that line.

ARMED BARBERS, killed by J. B. Bailey and referred to in the plot residing in Flat Room Two, Page 26, in Dulles County, Mississippi, were found at Points "B" and "C" and identified. These were a basis, a new house was located and revealed as shown at Point "D". These houses also formed the basis for the hearings adopted herein.

Proximity boundary lines established by this survey were marked previously by steel pipes as shown. Between these first pipes, trees and growth located previously in the line were marked with a line between the outer trees, a line and a tree - the western row for each, years past. In addition, the line was previously marked by placing iron rods fence posts at intervals, varying from 100 feet to 2 1/2 feet. Growth located within about 500 feet all or part of the line was marked with steel pipes along the line.

The lake was then divided with 200 pound iron Point "A" to Point "B" and from Point "B" to Point "C" from Point "B" to Point "A" a newly cleared field expressed the lake "D" the a. 1. therefore 11 Point was required in 1970.

Map 4-12 shows 1947 when five final field lines were done on this survey. While lying on the line from point 1 to point 11, it had been cleared and 1947 corn and grain lying east of the line had almost all been removed. However the area, grain and water at or about point 11 on the line and west of the line were in grain and undisturbed.

[illegible]

From PLANT 1, STRONG PLANT 1, to the TRAILING of 218 known the MINERAL title to the STATE of MASSACHUSETTS and part of this Boundary is supported by the following documents recorded in the MASSACHUSETTS RECORDS: 225, 245, 254, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 6

See painted lines from Point "A" to Point "B" and Point "C" to Point "D" are a reestablishment of a survey by J. B. Dotley in 1916 in accordance with the Feb. 19, 1909 United States vs. George A. L. et al. 16 S. Ct. 300 et al. described above.

Line 10 - 1 - 1/2. This property, including line was surveyed and located by me on June 10th 1911, with the decree of the United States Court for the Northern District of Texas, at Dallas, Texas, in and to the said James H. Lumber Co., Inc. Civil Action No. 10-1-1/2. This decree is recorded in county land records as follows: in Lee County, Arkansas at the

This line was painted in Nov. 1944 as explained elsewhere in this list. However the red and red paint were not used to distinguish it clearly from three separate painted areas

That portion of John L. Warren's survey dated by red paint in trees and the plat thereon dated July 1871, entitled "Flat Creek's Branch and Branches, new, Prop'd" situated in Sec. 24, Twp. 36 N., Range 10 E. and visible at Flat Lake Survey No. 1, Page 20. This survey was incorrectly referred to the Arvo L. J. District land Survey as the extended it occupied the property line which arbitrators formed since Feb. 9, 1914 approximately 22 1/2 ft. from Point 2-4 at the stipulated Feb. 9, 1914 town line. Point 2-4 at the 127' high town line."

20. The portion of the survey line between Point 1 and Point 10 is surveyed still to later about agrees that the line division line be made to conform to the structure, namely to originate at a point 40' feet to the east from Point No. 1, to follow the survey Point "T" in this Plot" and to the line along John T. Murray's painted line to this location.

2. That line which was surveyed and pegged out, close point only in Nov. 1876, which apparently originated at a point 341.1 feet from Point 2, mile 1.6, line 1 instead of 34 miles 10" feet. This line lies 1.5 feet anterior of the final true line which 1877-8.

I certify that this site was surveyed by me in October 1974 and November 1974 using ground evidence of old surveys still discernible on the ground, such as corners and survey testimony as to the location of various lines, and that this plot is a true representation of that survey.

Wm. H. Lupton  
Wm. H. Lupton, 1881

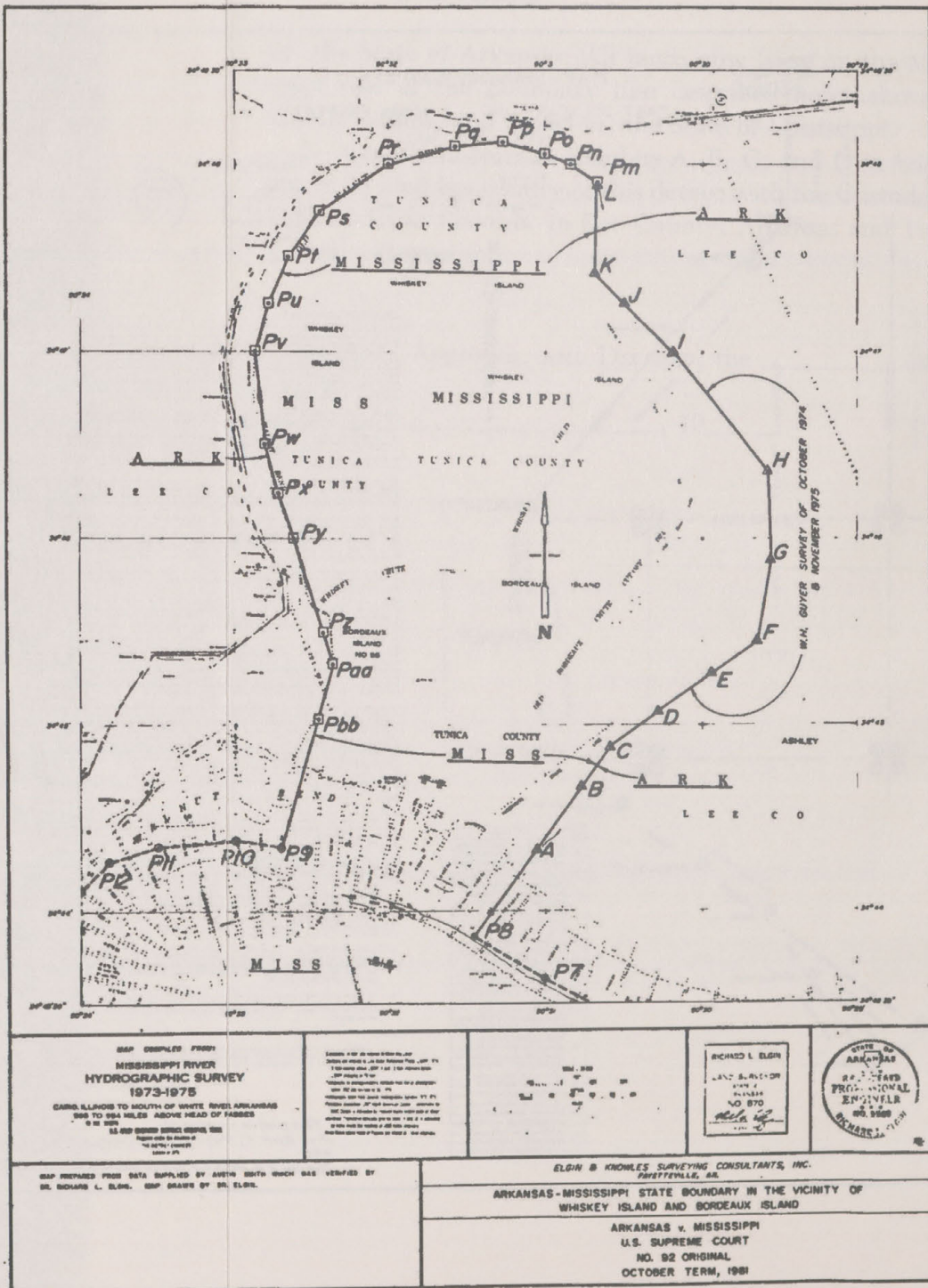
This plot is recorded at:

Plat Book 1, Page 103, Lee County, Ark.  
and

Plat Book 2, Page 25, Turner County, Ala.

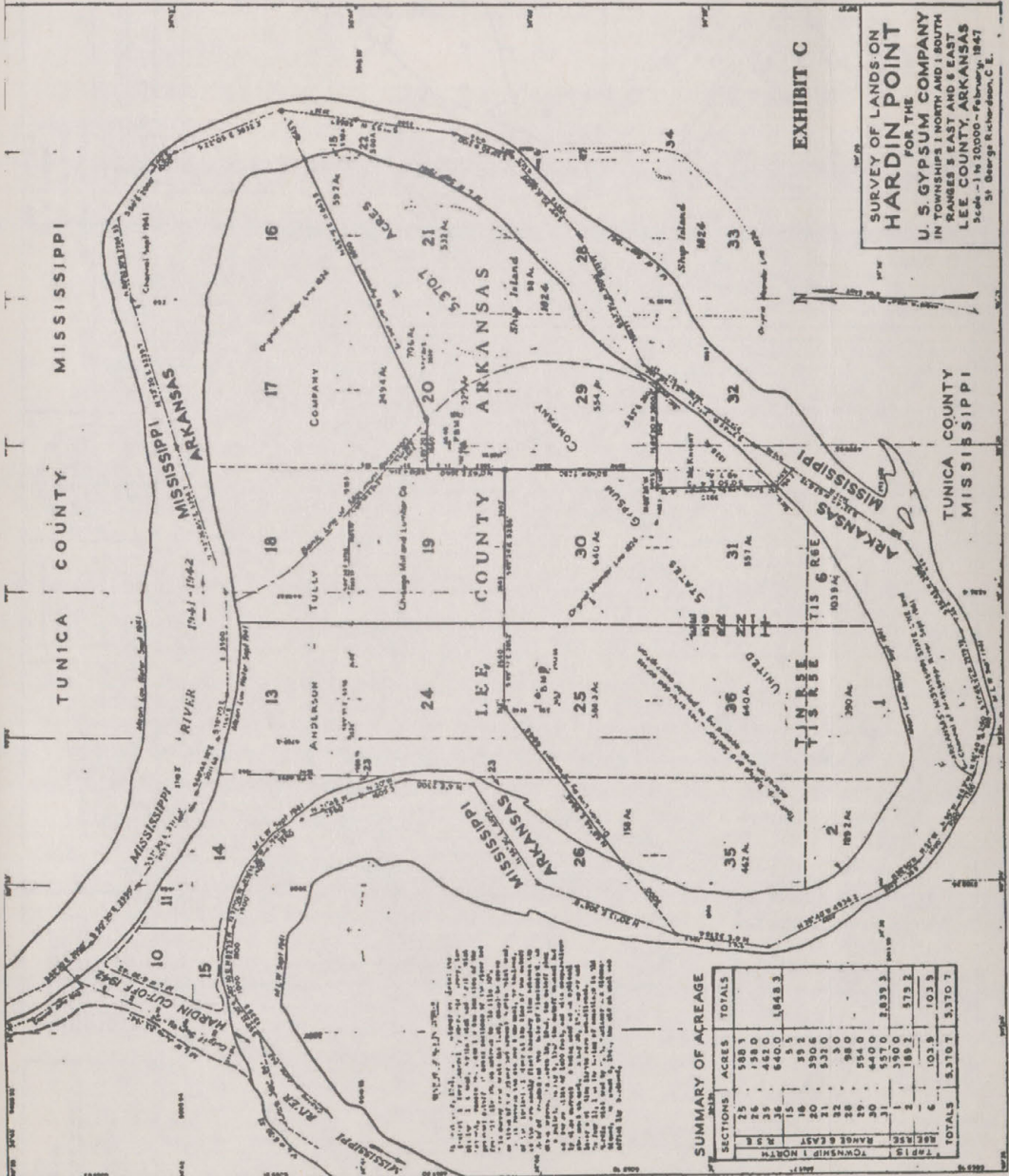
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This plat is recorded at:  
Plat Book 1, Page 183, Lee County, Ark. land records,  
and  
Plat Book 2, Page 25, Turner County, Miss. land records.

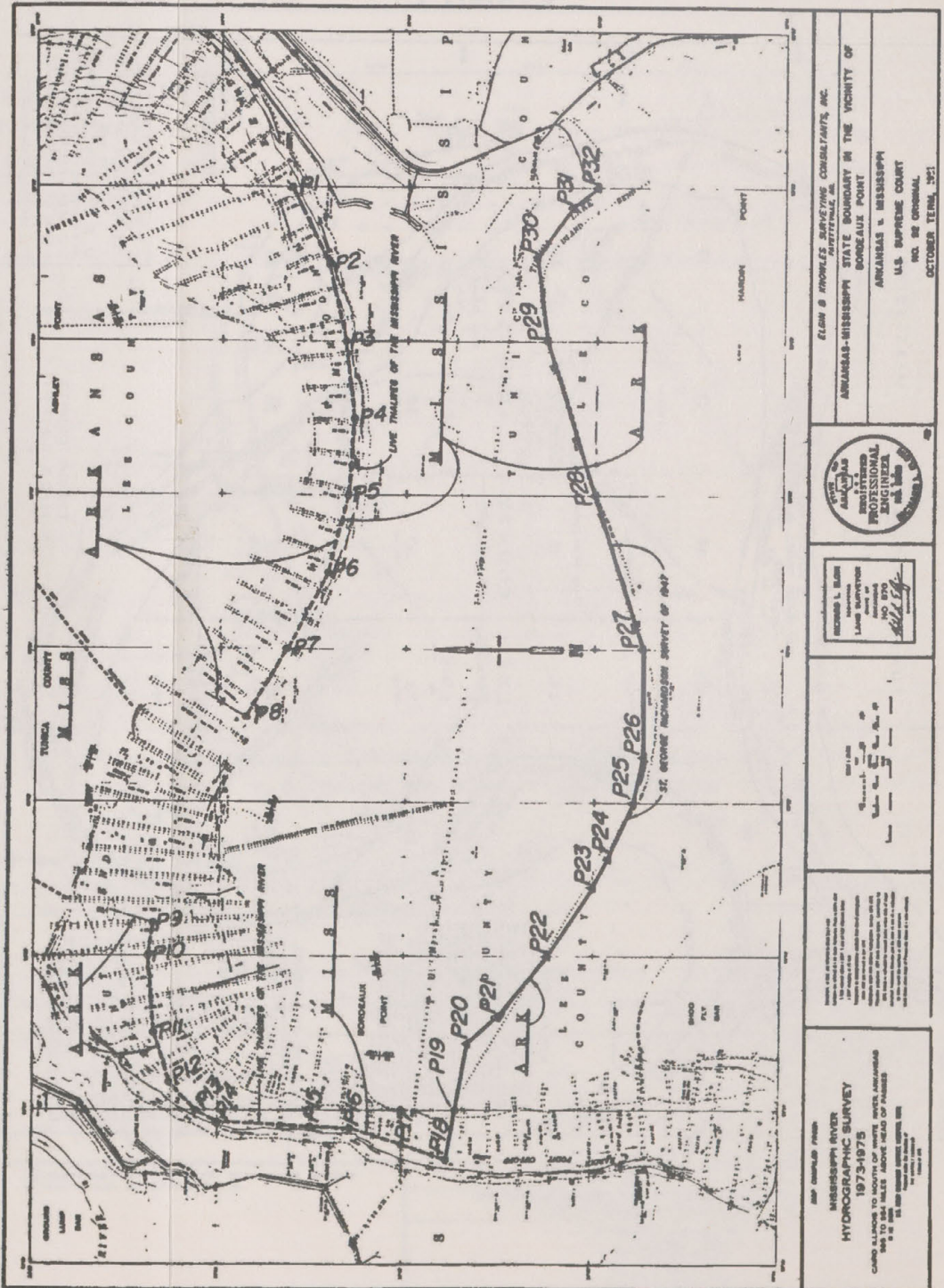




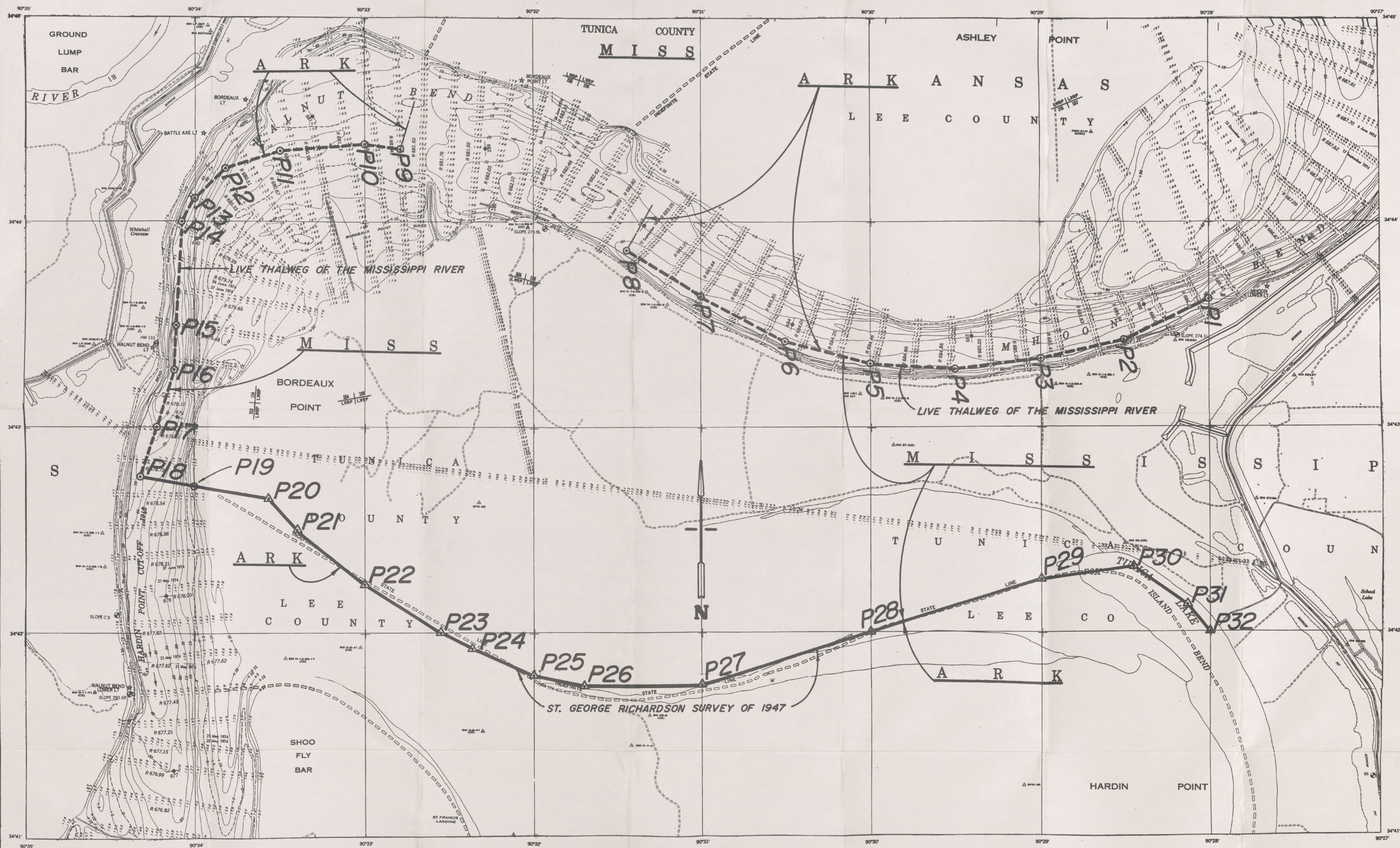
## EXHIBIT C



## EXHIBIT D







MAP COMPILED FROM:

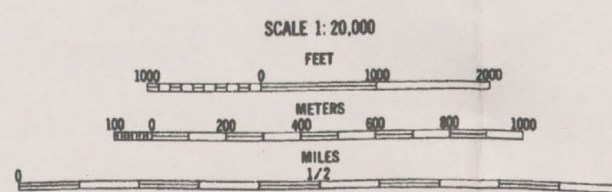
**MISSISSIPPI RIVER  
HYDROGRAPHIC SURVEY  
1973-1975**

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**

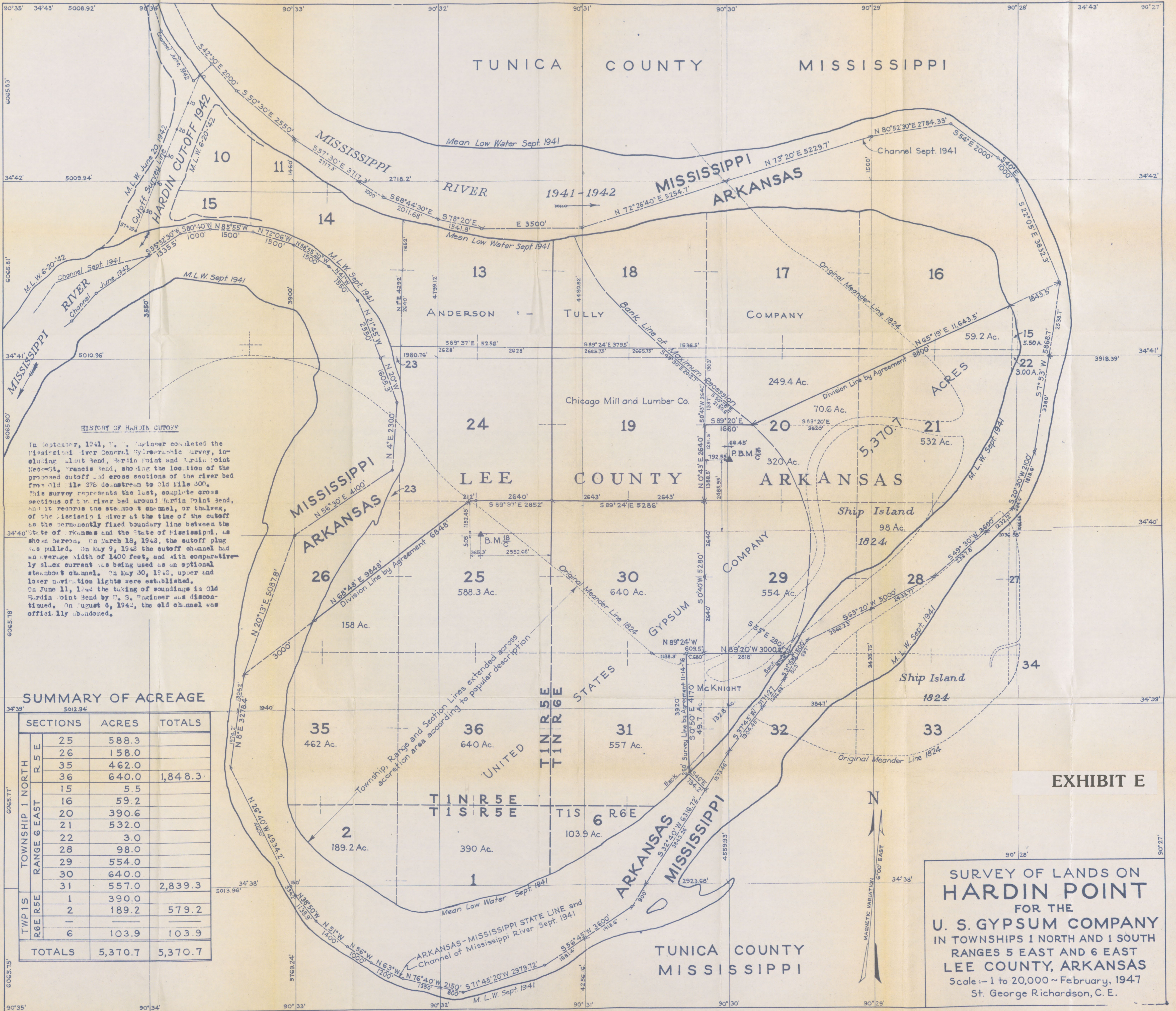
**ARKANSAS v. MISSISSIPPI**

**U.S. SUPREME COURT**

**NO. 92 ORIGINAL**

**OCTOBER TERM, 1981**





HISTORY OF HARDIN CUTOFF

In September, 1941, U. S. Engineer completed the Mississippi River General Hydrographic Survey, including about Bend, Hardin Point and Hardin Point Neck-St. Francis Bend, showing the location of the proposed cutoff and cross sections 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 6, 1942, the old channel was officially abandoned.

SUMMARY OF ACREAGE

SECTIONS		ACRES	TOTALS
TOWNSHIP 1 NORTH RANGE 5 EAST	25	588.3	
	26	158.0	
	35	462.0	
	36	640.0	1,848.3
	15	5.5	
	16	59.2	
	20	390.6	
	21	532.0	
	22	3.0	
	28	98.0	
	29	554.0	
TWP 1S R6E R5E	30	640.0	
	31	557.0	2,839.3
	1	390.0	
	2	189.2	579.2
TWP 1S R6E R6E	6	103.9	103.9
	TOTALS	5,370.7	5,370.7

EXHIBIT E

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

1 INCH = 1000 FEET

	OCTOBER	1974
	NOVEMBER	1975
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
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31		

W. H. GUYER RLS MISS. & ARK.

WALTER H. GUYER  
REGISTERED  
LAND SURVEYOR  
STATE OF  
ARKANSAS  
NO. 614  
*W. H. Guyer*  
JAN 11/94

ANDERSON - TULLY COMPANY

RANGE 13 WEST  
RANGE 12 WEST

COUNTY, MISSISSIPPI

TOWNSHIP 3 SOUTH  
TOWNSHIP 4 SOUTH

TUNICA

24523

MINE MAN

LEE COUNTY, ARKANSAS

BAILEY POINT TWP  
1" PIPE BY MOORE 1970  
1 1/2" PIPE  
TREATED POST

1" PIPE BY MOORE 1970  
1 1/2" PIPE  
RR TIE

NUMBER	WITNESSES
A	COTTONWOOD 20°(x) N 23°(x) W 30N SYCAMORE 15°(x) N 77°(x) E 70E SYCAMORE 10°(x) N 60°(x) E 59E
B	1 1/2" PIPE
C	BOXELDER 14°(x) S 63°(x) W 42S S.E. 1/4 20°(x) N 48°(x) W 24W BOXELDER 12°(x) S 77°(x) E 30E ASH 17°(x) N 14°(x) W 4E
D	CONCRETE MOUND
E	HACKBERRY 14°(x) N 41°(x) E 22E HACKBERRY 10°(x) N 34°(x) W 15W BOXELDER 12°(x) S 56°(x) E 21E S.E. 1/4 10°(x) N 11°(x) E 33E
F	BOXELDER 14°(x) N 24°(x) W 40W MAPLE 27°(x) N 63°(x) W 20W
G	HACKBERRY 10°(x) N 3°(x) W 13W
H	HACKBERRY 10°(x) S 23°(x) W 13W ASH 13°(x) N 27°(x) W 22E
I	HACKBERRY 13°(x) S 20°(x) W 33E HACKBERRY 22°(x) N 50°(x) W 27E HACKBERRY 7°(x) S 24°(x) E 30W HACKBERRY 17°(x) S 30°(x) W 45W HACKBERRY 20°(x) S 52°(x) W 18E S.E. 1/4 12°(x) S 54°(x) W 50E
J	ASH 12°(x) S 80°(x) W 32E ASH 13°(x) S 57°(x) E 13E CYPRESS 14°(x) S 71°(x) W 30E
K	WILLOW 22°(x) N 20°(x) E 21E TREATED POST 54°(x) E 66E NW END SAWYER 11°(x) E 60E
L	S.P. CAN 3°(x) N 11°(x) W 13E S.P. CAN 5°(x) S 59°(x) W 30E HACKBERRY 27°(x) S 27°(x) E 23E

# EXHIBIT F

## GENERAL INFORMATION ABOUT SURVEY

Remnant of old fence varies either side of the boundary line Point "C" to Point "U". It is reportedly built in 1954-1956 by the tenant of the owners on each side of the boundary shown hereon (Wipeman on the west side and C. M. Gooch on the east side). This tenant was Hughes Hunting and Fishing Club and it's officers were Gordon Brent, L. E. Vanderford and Sam Asenworth. 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 Wipeman land as shown

However, using the fence's location and olefant 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 "u" to Point "w". Southerly from Point "u" to Point "w", 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 "w" thru Point "u" and Point "u" to the Mississippi River by court decree as explained herein notations describing that line.

Ancient markers, placed by C. B. Bailey and referred to in his plat recorded in Flat Book *Two*, Page *26*, in Tunica county, Mississippi, were found at Points "H" and "G" 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, tracks 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 creosote 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 "E" and from Point "F" to Point "L" (from Point "E" to Point "F" 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 "y" almost to Point "u" had been cleared and 1974 marks and paint lying east of the line had almost all been removed. However the pipes, posts and marks were south lying both on the line and west of the line were in place and undisturbed.

A red painted line from Point "N" to Point "K" are a reestablishment of that part of the A. L. Cummings survey line of 1910 & 1912 entitled "center---Mississippi River Government Survey (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, Delta 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 61, Page 619, Iles 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 "W" through Point "I" 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 Dead Books at the Chancery Clerk's Office in Tunica County, Mississippi U/235 V/X/63, G-2/724, I-2/653, I-2/408, I-2/285 (two deeds) and V-2/455 and in the Circuit Court, Tunica County, Mississippi, Cause No. 2869 and 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 "M" to Point "G" and Point "G" 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 etal described above.

Line "A" - "B" - "C". 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, Wainman VS Shannon Bros. Lumber Co., Inc. Civil Action No. 06-72-24-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 5°-0'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 587.4 feet (89 chains) from Point Two C. B. Bailey's survey (Point "P" on this Plat) and to lie along John T. 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 (587.4 feet). This line lies 8.6 feet westerly of the final true line shown herein.

**CERTIFICATE:**

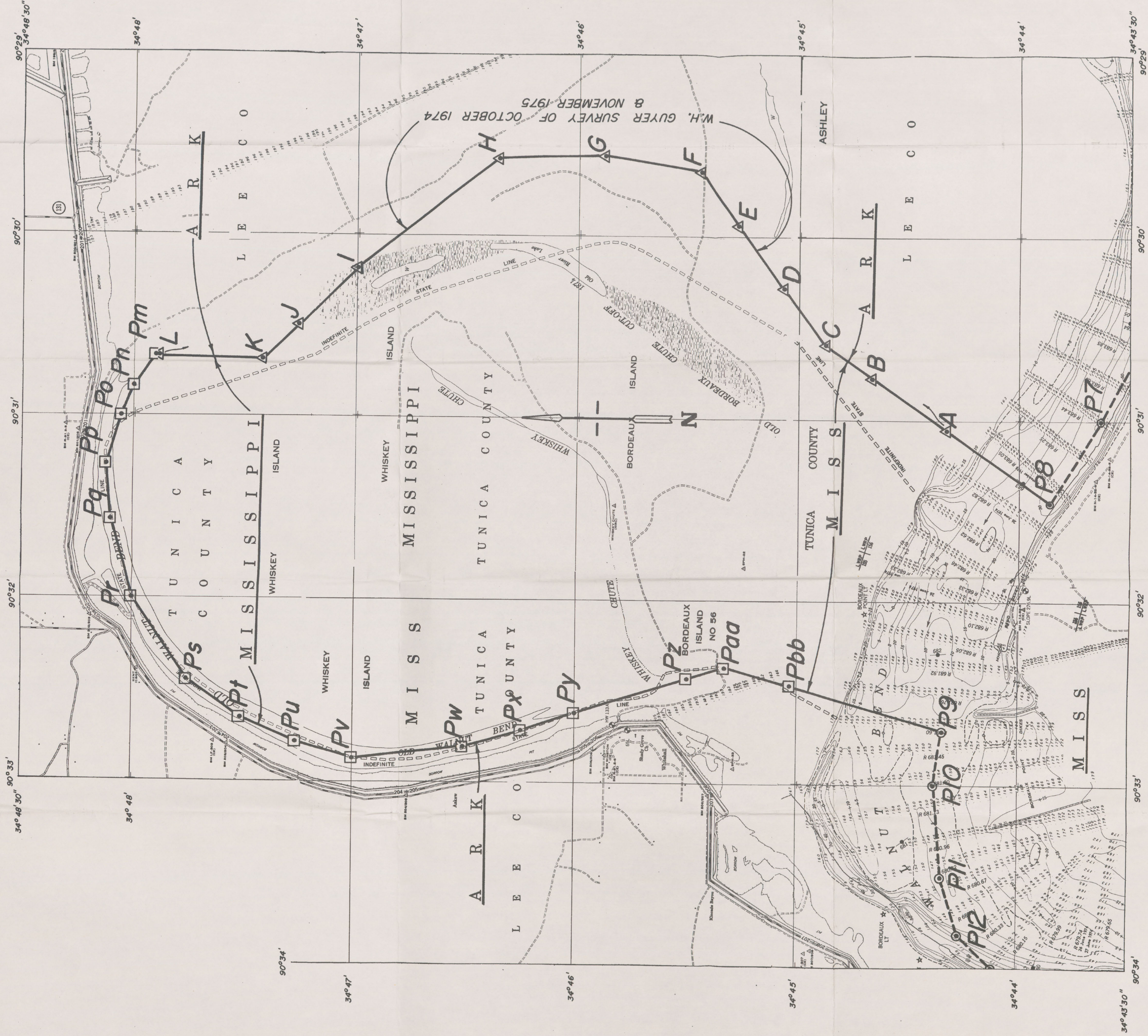
I certify that this line was surveyed by me in October 1974 and November 1975 using physical evidence of old surveys still discernible on the ground, court decisions and sworn testimony as to the location of various lines, and that this plat is a true representation of that survey.

W. H. Guyer, RLS

This plot is recorded at:

Plat Book 1, Page 183, Lee County, Ark. land records,  
and  
Plat Book 2, Page 25, Tunica County, Miss. land records.



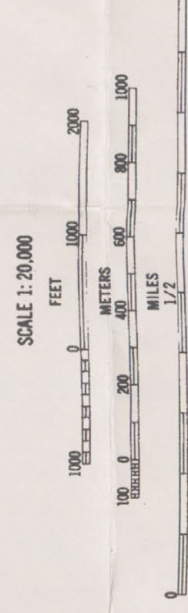


MAP COMPILED FROM:  
MISSISSIPPI RIVER  
HYDROGRAPHIC SURVEY  
1973-1975

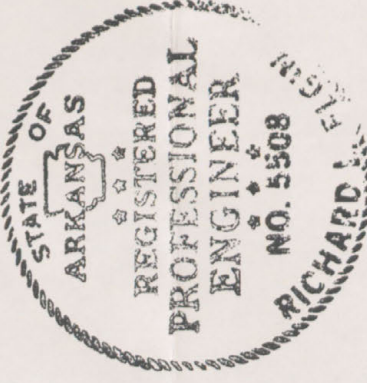
CAIRO, ILLINOIS TO MOUTH OF WHITE RIVER, ARKANSAS  
595 TO 954 MILES ABOVE HEAD OF PASSES  
IN 116 SHEETS  
U.S. ARMY ENGINEER DISTRICT, MEMPHIS, TENN.  
Prepared under the direction of  
THE DISTRICT ENGINEER  
Edition of 1976

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

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 from Great Lakes Hydrographic Survey 1972-1975.  
Polyconic projection, 1827 North American Datum. Corrections for  
MCC Doherty is indicated by crossed marks within body of sheet.  
Universal Transverse Mercator grid for zone 15 and 16 is indicated  
by ticks inside the headline 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



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