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Thalwegs and Bottom Holes: Oil and Water Law Beneath the Mississippi River

by Robert H. Abrams

Louisiana v. Mississippi (Docket No. 86 Orig.)

To be argued January 16, 1984

ISSUES

Although shrouded in unfamiliar terminology, the central issue in this case is very simple: Where is the location of a very short segment of the Mississippi-Louisiana border? The usual answer to such a question is not difficult — the boundary is defined by the Mississippi and Pearl Rivers and a line between those two rivers along the 31st parallel. A slightly tougher question arises when occasional changes in the course of one of the boundary rivers occur, but these boundary issues are governed by fairly straightforward legal rules that determine whether or not the boundary moves with the change in the river's course. Indeed, all agree that the Mississippi River is, and has always been, the boundary line in the area under litigation in this case. This case instead asks a slightly different question — granting that the Mississippi River is the boundary, where in that great river is the precise demarcation between the two states?

One can state the legal rule that governs this case with relative ease — the precise point of demarcation between states is the thalweg of the river. (Thalweg is a term of Germanic origin defined as "the middle of the chief navigable channel of a waterway which constitutes a boundary line between states.") Ascertaining the location of the thalweg, however, is not easy to do because the Mississippi River's bottom contours are constantly changing, and with those changes the chief navigable channel changes its course. Thus, in this case, the Supreme Court is being asked to pinpoint the location of the thalweg of the Mississippi River from 1972 to the present.

The reason for the great curiosity about the precise location of the boundary lies beneath the surface — about 2000 feet beneath the surface in a pool of oil. The true concern in this case is who owns the oil that is being produced from a well which has its bottom hole directly beneath the river. The oil is being produced through a

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directionally drilled well that is situated on dry land in Mississippi, but the ownership of the oil is determined by the exact location of the well's bottom hole. If the bottom hole is on the Louisiana side of the exact interstate boundary, the oil belongs to the state of Louisiana, which has retained ownership of the lands lying beneath navigable rivers within its boundaries. If the bottom hole is in Mississippi, the oil belongs to the private Mississippi landowner to whom the property belongs. Of course, the state of Mississippi is not wholly disinterested in the outcome, for if the bottom hole is within its borders, Mississippi enjoys taxing jurisdiction over the oil production.

The sole issue in this case is to determine in which of the two competing states the bottom hole of the oil well has been located since the well began production in 1972 to the present.

FACTS

In July of 1970, the state of Louisiana executed an oil and gas lease covering a portion of the bed of the Mississippi River near the Giles Bend Cutoff a few miles north of Natchez, Mississippi. Six months later, Avery Dille, Jr., a Mississippi landowner, also executed an oil and gas lease for beds underlying the same portion of the river. Both leases were made to the same operator and both leases described the boundary of the leasehold as the state line. Drilling was completed in 1972 and oil has been produced continuously from the well ever since. The wellhead is on the Dille property, but the bore is directional and the bottom hole of the well is under the river several hundred feet from either shore. When the well was completed, its bottom hole was in Louisiana. Over time, however, the characteristics of the Mississippi River in the area have changed. Significantly, the deepest channels have migrated and with them the most desirable course for navigation has also moved.

In 1979, the state of Mississippi and Dille brought suit to determine whether the boundary between Mississippi and Louisiana had moved far enough to the west that the bottom hole was now in Mississippi. This initial lawsuit was filed in the Chancery Court for Adams County, Mississippi, against the state of Louisiana and persons holding working interests in the leasehold estates created by the Louisiana and Dille leases. The case was thereafter removed to the United States District Court for the Southern District of Mississippi. The state of Louisiana then initiated a separate suit invoking the

original jurisdiction of the United States Supreme Court. The Supreme Court accepted the case, and, in 1981, referred it to a special master, Charles J. Meyers. (Meyers, author of casebooks on both water law and oil and gas law, is now an attorney in private practice. He is a former Dean of the Stanford Law School and has served as counsel to the National Water Commission.) After hearing evidence on several occasions, the special master filed a report favoring Louisiana.

BACKGROUND AND SIGNIFICANCE

This case has very little significance to anyone other than the parties involved and the leasehold operators. The legal issues are not of broad doctrinal interest, for all agree that the so-called "Thalweg Rule" is the appropriate divining rod for the precise location of the boundary. Moreover, the parties even agree with the special master that the inquiry to be made in ascertaining the location of the live thalweg is to determine the "probable downstream course of river traffic." The major focus of the litigation has been on interpreting the evidence that was adduced — the bulk of which was a series of soundings of the depth of the Mississippi River in the area of the oil well. To a lesser extent, the proof also included materials about the navigational aids and marine information that are available to vessels navigating the stretch of river. In essence, the proof established a series of charts of the relevant stretch of river bed and then the

parties disputed the probable course of downstream river traffic on the basis of those charts.

ARGUMENTS

The State of Mississippi Exceptions to the Report of the Special Master

1. The Special Master erred in finding that at all times relevant to these proceedings the live thalweg of the Mississippi River lay to the east of the bottom hole of the oil well in question.
2. The special master erred in refusing to fix by precise geodetic coordinates the geographic location of the thalweg.

Reply of the State of Louisiana to Mississippi's Exceptions

1. The evidence presented by the numerous hydrographic studies introduced into evidence by both sides supports the findings of the special master.
2. The use made by mariners of the navigational aids in this stretch of river support the findings of the special master.
3. The Mississippi position disregards the physical evidence and channel reports and does not conform to the methodology recommended by Mississippi's own expert witness.
4. Adding the precise geodetic coordinates of the live thalweg in the disputed area is "an utter act of futility."



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