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WATER LOG

A Newsletter for the Mississippi-Alabama Sea Grant Consortium

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CINQUE BAMBINI v. STATE OF MISSISSIPPI AND MISSISSIPPI PUBLIC TRUST DOCTRINE

Introduction

Judicial interpretations of the public trust doctrine in Mississippi have alternately expanded and restricted its scope, depending on whether its focus was seen to be (1) protection of the public right to use the waters which cover Mississippi's wetlands, or (2) ownership of the submerged lands. With the single exception described in the 1967 case known as *Treuting v. Bridge and Park Commission of Biloxi*, the Mississippi Public Trust Doctrine has been interpreted to hold that the state cannot convey title to wetlands (those areas which are subject to the ebb and flow of the tide) in fee simple to private owners for private purposes. The aberration of the *Treuting* case disclosed the proposition that under certain circumstances, a conveyance of public trust lands to a private person need not "negate the comprehensive public purpose [where] the totality of the [proposed] development promotes the public interest." Thus, if private use was determined by the court not to interfere with the public's right of navigation, swimming, fishing, etc., then conveyance of wetlands is not necessarily inconsistent with the public trust doctrine as defined by Mississippi courts in the past.

This expansive interpretation was undone in 1972, when *International Paper Co. v. Mississippi State Highway Department* reaffirmed the doctrine as prohibitive of conveyances of public trust land to private individuals for private uses. *Treuting* was excepted as limited to its own facts, which arose from special legislation directed to the particular area.

Recently, the Honorable William L. Stewart, presiding over the Chancery Court of Hancock County, endorsed the *International Paper Co.* position in *Cinque Bambini v. State of Mississippi*. *Cinque Bambini* confirmed that "the Public Trust Doctrine in Mississippi has always held that the State of Mississippi is the absolute owner of the soil and of the minerals contained therein and in the beds of all its shores, arms and inlets of the sea wherever the tide ebbs and flows, as Trustee for the people of the State; and, as Trustee, cannot convey the title to the land beneath such waters below the mean high water mark in fee simple." Furthermore, "any deed issued by an official of the State of Mississippi, where that official had no authority of law to convey property in question, is void . . . ."

What seems clear after *Cinque Bambini* is that the focus of Mississippi's Public Trust Doctrine has returned to ownership of the wetlands, shifting away from the *Treuting* emphasis on the public right to use the waters covering such lands.

Cinque Bambini v. State of Mississippi

The Cinque Bambini Partnership, joined by lessee Phillips Petroleum, filed an action on December 5, 1978, to quiet and confirm title in some 600 acres of marshland in Hancock County. This acreage adjoins certain undisputed property which was settled in the 18th and early 19th centuries, and since utilized by a succession of landowners. The partnership members, heirs of the original property owner James L. Crump, claim title by deed to the peripheral portions of this property, which happen to be significantly affected by coastal tides.

The deeds in question purport to place into private ownership all of the "inland area" described. The landowners have for over 150 years paid taxes on the entire acreage in these claims and grants. Indeed, private ownership of the property was never questioned, until the Mississippi Marine Resources Council included the disputed areas in its preparation of a "Wetlands Map" of Hancock County in

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COASTAL WETLANDS PROTECTION LAW AMENDED

On March 1, 1982, the Mississippi Legislature passed a bill amending §49-27-51 of the Coastal Wetlands Protection Law. Originally, this section simply authorized the Attorney General, or a district, or county attorney having jurisdiction to bring a civil or criminal action to enforce the provisions of this Act.

The amendment, however, adds a new provision which may seriously compromise the enforcement of the Act. Essentially, it provides a mechanism for those who have done unauthorized work affecting the wetlands to obtain an after the fact permit. To do so one subsequently files a proper application with the Commission on Wildlife Conservation. If the Commission finds that the work has been conducted in accordance with the public policy set forth in §49-27-3, it must issue an after the fact permit for the work. This is the same standard under which normal permits are issued. At its discretion, the Commission may also order as punitive damages a fine ranging from fifty to one thousand dollars. Civil or criminal actions may no longer be initiated, unless the procedure described above fails to resolve the violation. This means that one who fails to get a permit before doing unauthorized work could escape the heavier civil penalties that can be levied daily against violators.

Moreover, the procedure for getting an after the fact permit appears to be much simpler than the one that is followed when a person makes an application before he begins work. For example, it is not clear whether interested members of the public will be entitled to demand a hearing before an after the fact permit may be issued. From the wording of the amendment, it would appear as though the decision to issue that permit is entirely at the discretion of the Commission. Of course, the decision to issue any permit is ultimately a matter of the Commissioner's discretion, but public participation is one way to insure that all sides of an issue will be considered before a final decision is made. Hopefully, the Commission and the courts will not construe this amendment in such a way that interested parties would be excluded from the decision-making process or that would allow willful violators to avoid civil liability.

Cathy Jacobs

SEA GRANT AWARDS

The national Sea Grant Association recently announced the winners of the Student Abstract Competition. We are proud to report that twenty-five percent of the papers chosen for recognition were submitted by students from the Mississippi-Alabama Sea Grant Consortium. In the Ph.D. category, Kenneth Anderson of the University of Southern Mississippi won an award for his paper entitled "Utilization of Chitin to Control Pesticide Mobility." In the same category, Stanton Fountain, Jr. of the University of Mississippi Law School received honorable mention for two of his works: "Public Rights in Coastal Lands: Three Common Law Theories Affecting Deer Island's Future" and "Littoral Rights: Rights of Property Owners Along Mississippi's Tidal Waters." In the M.S. category, Lois Crump of Jackson State University received honorable mention for her abstract entitled "Marine Algae in Production of Fuel/Chemical Feedstocks and Wastewater Renovation." Congratulations to each of these Sea Grant student scholars!

OPINION:
OIL AND GAS DEVELOPMENT IN THE MISSISSIPPI SOUND— ENVIRONMENTAL CONCERNS
by Michael T. Gibbs

The Mississippi Department of Natural Resources, through its Bureau of Geology and Energy Resources, has announced plans to lease almost all of the submerged lands in the Mississippi Sound for oil and gas exploration. New regulations have been promulgated and the leases are expected to be awarded in July, 1982. Although oil and gas exploration in the Mississippi Sound has been discussed in the past, this represents the first major attempt by the state to cash in on the increased effort to develop energy resources in this country.

The hope is that the oil and gas industry will closely scrutinize the Mississippi lands, and there should be increased interest in the Mississippi Sound as a potential source of oil and gas due to the productive wells drilled in Mobile Bay in 1980. Mississippi leaders could not resist the temptation to fill the state's coffers in the same way that the State of Alabama realized $400 million from the sale of gas leases in Mobile Bay. The irony is that while other states, principally Oregon and California, are attempting to restrict federal oil leasing off their coastal areas because of possible dangers to commercial fishing, there has been relatively little discussion of the potential impacts of oil and gas development in the Mississippi Sound.

While nearly everyone agrees that this country must undertake to become "energy independent," there are those who fear the possible environmental and socio-economic effects of oil and gas exploration so near the Mississippi Coast. Commercial fishing and related industries are very important to the coastal economy, and to the economy of the State of Mississippi.

For those who are concerned about the impact of energy activity on the coastal wetlands, there are some encouraging signs. The Mississippi Coastal Program, implemented in 1980, provides a framework for managing the physical, economic and social impacts of energy exploration. The Mississippi Bureau of Marine Resources has proven that it is capable of resisting overtures from those who continually point to short range benefits of development. This was clear in the Bureau's rejection of the plan to develop Deer Island. But the Bureau of Marine Resources will only be indirectly involved in offshore energy development, despite its role as the principal "overseer" of Mississippi's coastal wetlands. The Mississippi Oil and Gas Board regulates by permit the exploration, production and transfer of oil and gas in Mississippi. Like all state agencies, the Oil and Gas Board is bound by the Coastal Program, but the Board's emphasis is understandably placed on developing Mississippi's energy resources.

Existing federal and state environmental laws and regulations are applicable and should insure responsible decision-making. Even though the submerged lands in the Mississippi Sound are "owned" by the State of Mississippi, various federal agencies may be involved in the leasing process, and will certainly be involved when exploration and drilling begins. Those agencies should be less concerned with the Mississippi state treasury and more concerned with fulfilling their legislative mandates and protecting the coastal environment.

Oil and gas development could have a dramatic impact on the coastal economy. The Coastal Zone Management Act, passed by Congress in 1972 to encourage states to plan for development in their coastal areas, was amended in 1976 to include a provision providing funds to coastal communities affected by offshore energy development. Increased energy activity in coastal areas brought quick population increases resulting in crowded schools and strains on other community services. Mississippi coastal communities, like other communities in the country, benefited greatly from funds provided through the Coastal Energy Impact Program. Those funds are no longer available. Unfortunately, the impact on Mississippi coastal areas resulting from oil and gas exploration in the Mississippi Sound could be greater than anything that has been experienced in the past.

We do not know whether the Mississippi treasury will be replenished with oil money, but we do know that Mississippi leaders have often been shortsighted—with disastrous results. Any revenues realized from oil and gas exploration in the Mississippi Sound should be used to provide long-term educational and economic opportunities to the State's citizens. Oil or gas discoveries would undoubtedly bolster the coastal economy and would provide significant opportunities to Mississippi citizens, and if there is oil and gas under the Mississippi Sound, it should be developed. But planning for management of the possible adverse physical, economic and social impacts is essential if the Mississippi Coast is to remain "America's Riviera," and thoughtful concern for what will remain after the oil and gas is gone is essential if coastal citizens are to retain the lifestyles they enjoy.

Concern for economic productivity must not overshadow all other concerns. Mississippians should keep environmental concerns high on the agenda during the debate over development of energy resources in the Mississippi Sound.

The views expressed in OPINION are solely those of the authors and do not necessarily reflect those of any of the sponsors of the Water Log, including the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Mississippi-Alabama Sea Grant Consortium, or the Sea Grant Legal Program.

PROBLEMS ON THE ESCATAWPA RIVER
by William B. Carter*

The Escatawpa River, flowing southward from Alabama into the Pascagoula River in Mississippi, is an important fresh water resource for the coastal areas of both states. Within the last decade, a conflict over allocation of the Escatawpa River has arisen between the states. During the summer months, the lower Escatawpa in Southern Mississippi virtually dries up, causing heavier than normal pollution and damaging economically important aquatic life. There is concern among Mississippians that the problem is caused in part by the actions of the City of Mobile, Alabama. Mobile has for many years been drawing part of its municipal water supply from the Escatawpa's tributaries. Recently, the increasing withdrawal of that water has been identified as a contributing factor in the seasonal reduced flow of the river.

In response to this problem, the Mississippi Water Resources Research Institute has initiated a study to be conducted by the Mississippi Law Research Institute with the assistance of the Sea Grant Legal Program. A related study will be conducted in Alabama.

Interstate water disputes have traditionally been resolved in one of two ways. The feuding states may sue each other in the United States Supreme Court and the Court will simply allocate the water between the states. Such litigation is costly and time consuming, requiring in some cases up to ten years to complete. The alternative is for the states to negotiate an interstate compact; basically, a contract between the states aimed at resolving their differences over water use and allocation.

An interstate compact is the desired solution to the Ecatawpa problem. It is more practical and less expensive, providing an opportunity to the states to determine their own solution to their problems. In a suit before the Supreme Court the states must do what the Court orders, whether it is in their best interest or not. On the other hand, a compact allows the states to sit down and mutually agree to work out their differences, to the satisfaction of each.

Before negotiation of a compact can begin, the states must secure permission from Congress. Afterward, when the compact is successfully negotiated it must be submitted to each state's legislature for approval, subject to the Governor's veto. When each state's legislature approves, the compact must be submitted to Congress for its approval, subject to Presidential veto.

To ensure continued productive use of this important coastal water resource, it is important for Mississippi and Alabama to work together to protect the Escatawpa basin. Studies such as those presently being conducted are an important step in that process.

*(William B. Carter is a 1982 graduate of the University of Mississippi Law School and former Sea Grant Legal Program student assistant. He is presently employed as Legislative Assistant to Senator Thad Cochran in Washington, D.C.)

CINQUE BAMBINI *(Continued from page 1)*

compliance with the Mississippi Coastal Wetlands Protection Act. Based on the land descriptions contained therein, the Mississippi Mineral Lease Commission executed oil, gas, and mineral leases to Saga Petroleum U.S., Inc. in 1977. The various leases specified that the leased acreage, including all submerged land subject to the ebb and flow of the tide up to the mean highwater mark, was owned by the State by virtue of its classification as public trust land.

The object of this suit was to determine the extent of ownership of this area between the complainants (by virtue of conveyance in fee) and the State of Mississippi (by virtue of the public trust doctrine). The decision would inevitably turn on the court's interpretation of the public trust doctrine as applied in Mississippi.

Mississippi's Public Trust Doctrine

The Public Trust Doctrine has origins traceable to the Roman Empire, which recognized the public right to make free use of the seashore's tidal area, as it was unowned by either state or individual. English common law adopted this theory to the extent that lands lying between high and low tide were lands of the king, but held by him as trustee in his sovereign capacity for all the people, and not by him in a proprietary capacity. The common law doctrine was carried over into the United States, and, as early as 1857 (*Martin v. O'Brien,* 34 Miss. 21) Mississippi courts affirmed its acceptance, referring to 3 Kent's Comm. 427: "the shores of the sea below high water mark belong to the State as trustee for the public, and may, by grant, become private property, or the subject of an exclusive private right." The trusteeship of the State of Mississippi was thus held to be subject only to the paramount right of the federal government to control commerce and navigation.

As to the alienability of public trust lands, *Shively v. Bowlby,* 152 U.S. I, 11-13 (1894), interpreted the common law rule to mean that alienation of the State's title in tidelands *(jus privatum) was* permitted, although such lands remained subject to the public's rights *(jus publicum).* Two years earlier, *The Illinois Central Railroad Co. v. State of Illinois,* 146 U.S. 435 (1892), had stated similarly that the State, as trustee, had no power to dispose of the tidelands in any manner inconsistent with the purpose for which the trust exists.

Mississippi had an opportunity to use this "inconsistency of purpose" logic (which it had endorsed in *Martin v. O'Brien)* in *Money v. Wood,* 152 Miss. 17, 118 So. 357 (1928), but the court avoided it. Here, a private individual purchased submerged lands in the Mississippi Sound for the purpose of constructing an artificial island with hotels and residences. The court held the conveyance null and void, relying on section 81 of the Mississippi Constitution of 1890, which absolutely prohibits the authorization of permanent obstruction of any navigable waters of the state.

In a 1938 suit to determine ownership of sand and gravel removed from the bed of an inlet of the Mississippi Sound (*State ex rel. Rice v. Stewart,* 184 Miss. 202, 184 So. 44, 185 So. 247) the court held that the public trust doctrine prohibits conveyances of public trust lands in fee simple to private persons for private purposes, and riparian interests end at the ordinary high water mark. It was simultaneously acknowledged that the State possesses "the consequent right to use or dispose of any portion thereof, when that can be done without impairment of the interest of the public in the waters . . . and not inconsistent with Section 81 of our constitution . . . ." In this case, an emphasis on "intended purpose of the trust," (rather than property right) was expressed for the first time as an integral feature of Mississippi's Public Trust Doctrine.

More recently, the trend in this direction culminated with *Treuting v. Bridge and Park Commission of the City of Biloxi,* 199 So. 2d 627 (Miss. 1967). In this case, it appeared that the central issue as seen by the court was *not* may the State convey property rights in public trust land; and *not* whether the proposed development was inconsistent with the intended purpose of the trust; but whether the doctrine was dynamic, so as to allow the intended purpose to be changeable with the times.

Treuting concerned a fact situation almost identical to that in *Money v. Wood,* except that by act of general legislation the State had authorized the sale of submerged land to the Bridge and Park Commission, as well as the sale by the Commission to private persons or corporations of such lands that have become unnecessary for public use. The Commission's plan for development of the area included the following: 27 percent of the land devoted to public uses; 20 percent, streets and utilities; and the remaining 50-53 percent, residential, commercial, and resort development. Evidence indicated that the project would not interfere with fishing and navigation and would probably enhance these activities.

The court found that the proposed development would not constitute permanent obstruction of navigable waters within the meaning of section 81 of the constitution. Further, the court held that the state, which holds title to submerged lands in trust for the purposes of navigation, fishing, and bathing, may convey these lands for public purposes without interfering with the original trust. "If a use only *indirectly* served the public interest, that use is not necessarily inconsistent with the public trust doctrine," and if the overall development promotes the public interest, incidental private ownership is unimportant.

By 1972 however, the court retreated dramatically from this holding and restricted *Treuting* in its terms to the circumstances there existing which arose from special legislation directed to a particular area. *International Paper Company v. State Highway Department,* 271 So. 2d 395 (1972) concerned both submerged land and accreted portions of land which once had been submerged but were no longer subject to the ebb and flow of the tide, all of which International Paper acquired by mesne conveyances in 1967. International Paper and its predecessors had paid taxes on the property since 1884, when it was first sold pursuant to an act of legislature. The court held that the 1884 sale was invalid and that title to the marshlands (subject to the ebb and flow of the tide) as well as to the fast dry lands was in the State. Moreover, the State was not estopped from asserting its title.

This decision was based on an over-simplified view of Mississipi's Public Trust Doctrine as it stood before interpreted in *Treuting:* "the State cannot convey title to tidelands in fee simple to private owners for private purposes." A significant retrenchment after *Treuting, International Paper Company* completely disregards the rights of private parties. A 1975 article by J. J. Johnson and C. F. Johnson III ("The Mississippi Public Trust Doctrine: Public and Private Rights in the Coastal Zone", 45 M.L.J. 84, III) points out that "the possible ramifications of this decision are staggering . . . . Development in the coastal area would come to an abrupt halt . . ., [having] left individual property owners wondering whether they own the land upon which they have been paying taxes and perhaps making valuable improvement . . . . The decision departs from the common law doctrine which was purportedly adopted in Mississippi by placing too much emphasis on state title and ownership." It was hoped by many that this inequitable decision would not be allowed to stand.

Conclusions of Law in Cinque Bambini

The holding of *Cinque Bambini,* May 1982, froze the public trust doctrine into the rigid stance taken in *International Paper Co.*

Addressing first the question of the proper test to use when separating public trust land from private property, Chancellor Stewart found the "ebb and flow test" to be the appropriate one for application in this case, rather than "navigability in fact" as argued by complainants. Referring to the *Treuting* case, he stated that "this test appears implanted in the law of our State and as interpreted is flexible enough to allow the legislature of the state to effectively deal with state-owned waterbottoms and tidelands when a proper case is presented."

Then Chancellor Stewart proclaimed that "Mississippi's Public Trust Doctrine has always held that the State of Mississippi is the absolute owner of the title of the soil, and of the minerals therein contained, in the beds of all its shores, arms and inlets of the sea, wherever the tide ebbs and flows [and regardless of .actual navigability], as trustee for the people of the State."

Any deed which purports to convey such title without the authority of law to do so is void, and "the judicial department is [likewise] without power to grant title to trust property to private individuals, because tide lands may only be disposed of as authorized by the legislature within the narrow confines of the holding in *Treuting v. Bridge and Park Commission.*"

Finally, a decree was ordered confirming title to the 600 disputed acres in the State of Mississippi and Saga Petroleum. Thus, the 1972 *International Paper Co.* interpretation of Mississippi's Public Trust Doctrine, which emphasizes ownership of title to the wetlands instead of public usage of navigable waters, is reaffirmed in 1982.

Catherine Mills

UNCLOS III—Treaty Status

Introduction

The Third U.N. Conference on the Law of the Sea convened on April 30, 1982, in New York City to vote the approval of the Law of the Sea Treaty. With seventeen western and communist bloc nations abstaining, 130 member-states voted in favor and four (the U.S., Israel, Turkey, and Venezuela) opposed. Of those who accepted the treaty, Canada, France, and Japan are the only large non-communist states.

From the U.S. point of view, the treaty at this point looks as though it may "limp into force" (to borrow a phrase from noted authority J. Gamble) without genuine global acceptance. Further discussion of the implications of the treaty's current status requires some background information on the substance of the negotiation process and the U.S. position throughout.

Background

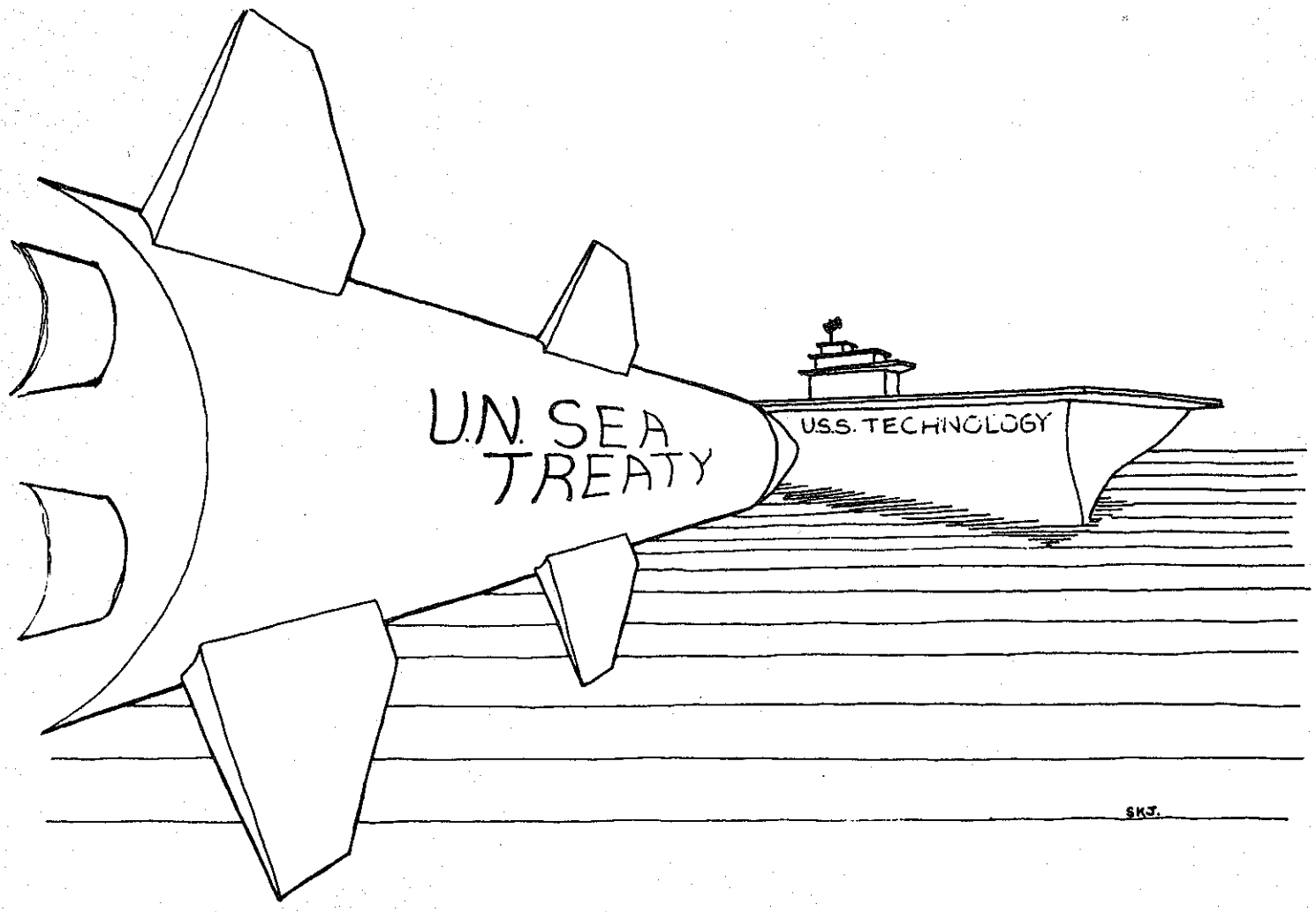
The tenth session of UNCLOS III was scheduled to meet in March 1981 to set the stage for the final drafting of the Law of the Sea Treaty, a comprehensive agreement which would govern all aspects of nations' activities at sea. This session was preceded by over fifteen years of preliminary negotiations in the form of draft articles on the territorial sea which were circulated by the U.S. and the U.S.S.R., and on fisheries by the U.S.; ten years prior, the U.N. General Assembly first decided that a comprehensive conference on the law of the sea was imperative, and requested preparation from its Seabed Committee; and for seven years before the Spring 1981 session, the Conference convened in annual and semi-annual sessions which totalled over a full year of meetings.

Having taken an active leadership role throughout this period, the United States unexpectedly put the brakes on the negotiation process on March 2, requesting the deferral of the termination of the Conference pending a complete and thorough policy review by the Reagan Administration. The Department of State's regrettably ill-timed statement explained that a "comprehensive policy review" was necessary before the previous U.S. position would be confirmed by the new administration. On March 7, Reagan abruptly replaced several senior members of the U.S. delegation and named Ambassador James L. Malone as the new Special Representative of the President for the Law of the Sea Conference.

The sudden stand-offishness of the United States met with much disfavor from the "Group of 77", the Chairman of which pointing out that "[t]he Conference concluded its 9th resumed session with the hope that the long and costly process of negotiating the Law of the Sea Convention both in terms of manpower and finances was nearing an end and that a new chapter of international understanding and cooperation was about to be written." Critics of the U.S. action maintained that it violated the spirit of the elaborate and tedious concensus method by which the "compromise package deal" was constructed, step by step, over the years.

In response, Ambassador Malone was careful to express U.S. sensitivity to the concerns of the other delegates that the United States would not continue good faith negotiation. However, from the Reagan administration's point of view, it was only reasonable and fair to allow a "clean break" by which the U.S. position could be fully analyzed, then either reinstated or withdrawn. Malone reasoned as follows:

> Many of the provisions of the draft convention prompted substantial criticism from industry, Congress, and the American public [particularly Part XI, concerning deep seabed mining]. There was also some question whether this draft Convention was consistent with the



stated goals of the Reagan Administration. Therefore, the Administration decided that it would be better to face criticism in the U.N. than to proceed prematurely to finalize a treaty that might fail to further our national interests.

Among the issues before the Conference at this point were major areas of agreement, including the delimitation of maritime boundaries, the exploitation of living resources in the sea, the conduct of marine scientific research, and the protection of the marine environment. On the other hand, areas of disagreement included deep seabed mining and various procedural issues concerning the treaty's implementation. In an effort to continue the negotiation process at its earlier pace, the resumed tenth session of August 1981 resolved several less significant issues: Jamaica was selected as the site for the Seabed Authority and Tribunal; the delimitation of the economic zone was redefined in equitable, rather than normative terms; a new proposition was made for the participation of international organizations; the revision of serious textual errors was deferred; and the Draft Treaty was reissued with a "higher status."

Meanwhile, the U.S. delegation spelled out its concerns with the deep seabed mining regime in greater detail in various ad hoc meetings scheduled to avoid the appearance of interference with the regular schedule of the Conference. Other provisions questioned by Malone included the balance of decision-making in the International Seabed Authority, the right of access to mining "without discrimination", the active promotion of deep seabed resources development, the provision calling for a review conference, financial and budgetary implications in the treaty, the mandatory transfer of technology, the criteria for the distribution of revenues, etc.

The Chairman of the Group of 77 defended the texts as representing maximal concessions of his group.

Finally, the Conference decided to postpone the final vote on the Draft Treaty until March 1982—giving the U.S. time to complete its policy review and return to the negotiating table as an active participant.

On January 21, 1982, President Reagan announced his intention to resume negotiations on the Law of the Sea Treaty. Without defining a U.S. ocean policy at that point, he specified six objectives without which the treaty would be considered unacceptable. The final agreement, he declared, must be one which:

—will not deter the development of any deep seabed mineral resources to meet national and world demands;
—will assure national access to these resources by current and future qualified entities to enhance U.S. security of supply, to avoid monopolization of the resources by the operating arms of the International Authority, and to promote the economic development of the resources;
—will provide a decision-making role in the deep seabed regime that fairly reflects and effectively protects the political and economic interests and financial contributions of participating states;
—will not allow for amendments to come into force without approval of the participating states, including in our case the advice and consent of the Senate;
—will not set other undesirable precedents for international organizations; and
—will be likely to receive the advice and consent of the Senate. In this regard, the convention should not contain provisions for the mandatory transfer of private technology and participation by and funding for national liberation movements.

By March, Attorney Leigh Ratiner, unofficial U.S. spokesman to the Conference and member of several past delegations under the Carter Administration, was qualifying the President's objectives as nothing new, but rather "the same as those held by every American delegation to this conference . . . since its inception." Ratiner's warm reception by the Group of 77 led to his announcement of a "more flexible" position, involving "the U.S. willingness to accept some limitation on the production of minerals from the seabed nodules the U.N. hopes will be mined."

In spite of Ratiner's outspoken gesture of good will, by the end of April it was clear that U.S. "flexibility" did not extend to the six objectives delineated by President Reagan, and it was this inflexibility which would cause the U.S. to reject the treaty.

After a split between Ratiner and the American delegation (who perceived Ratiner's actions as an effort towards the acceptance of a treaty per se, without regard for the six U.S. objectives), Ambassador Malone announced Ratiner's resignation. He then stated formally that the treaty in no way met the standards established by President Reagan for continued U.S. participation in the treaty process.

Thus, the United States stands clear of the Law of the Sea Treaty as accepted by 130 members of UNCLOS III on April 30, 1982. However, the impression of a divided stance may, quite reasonably, encourage the Group of 77 to believe that the United States will eventually accept the treaty simply for the sake of "world order". The United States has an opportunity at this point to more fully develop a clear-cut ocean policy and dispel that impression, perhaps even leading the non-joining countries to produce a consensus on some of the issues of the treaty which affect them all.

Implications of the Current Treaty Status

It is interesting to compare the 1982 results of UNCLOS III with earlier analyses of its chances of success. In an article written by John King Gamble in 1980 ("Where Trends the Law of the Sea?", 10 *Ocean Dev. & Int'l. L.J.* 61), predictions of the success of the treaty were pessimistic, leaning towards either complete failure of the treaty negotiations or, at best, ineffective entry into force. Comparing the UNCLOS III treaty process to the 1958 Geneva Conventions, Gamble based his pessimism on the observation that fewer nations actually signed the 1958 Conventions than accepted them, and fewer still completed the process by ratifying them. Given an average six-year delay before such ratification, only fourteen states either ratified, signed, *or* accepted *all five* 1958 treaties—and, he continued, the Law of the Sea Treaty is even more comprehensive than those five of the Geneva Conventions.

In sharp contrast was the representative opinion of Ambassador J. Evensen of Norway ("Banquet Address", in J. Gamble (ed.), *The Law of the Sea: Neglected Issues*, 1979, p. 535), who stated as follows:

> We have a good chance of success for many reasons. One reason is that there is an increasing understanding among all countries and delegates that it is essential that we succeed. The new problems which we face are of such magnitude that unless we are to find solutions to them we might enter into an era of unrest and severe international tension. Secondly, the United Nations, as such, has invested so much in terms of economic efforts, expertise, and prestige in this conference that it would be a severe blow to the United Nations as *the* world organization, if the Conference were a failure.

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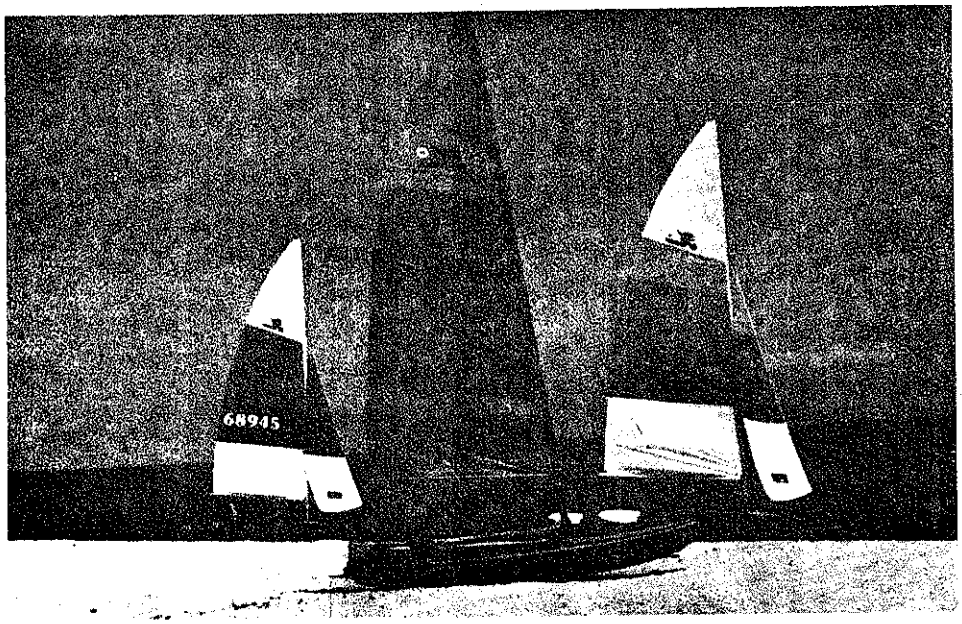

R. Doyel

WHO OWNS THE MISSISSIPPI SOUND?

Since 1960, the ownership of certain tracts of submerged land in the Mississippi Sound has been a bone of contention between the United States and the State of Mississippi. In 1978, the dispute intensified considerably when the Bureau of Land Management published a "Call for Nominations of and Comments on Areas for Oil and Gas Leasing" in the Federal Register. This announcement included a map of the Mississippi Sound indicating that certain tracts therein were under the exclusive jurisdiction of the federal government. The four tracts of land that were claimed by the Bureau consist of one small area north of Cat Island, a large one north of Ship Island, a small one north of Horn Island, and one north of Petit Bois and Dauphin Islands.

The Submerged Lands Act prevents the federal government from claiming any land within three miles of the Mississippi mainland or within a three mile area around the state-owned barrier islands. The tracts just described are the only areas in the Sound that are outside of these three mile territorial limits, and they are completely surrounded by submerged lands that unquestionably are owned by Mississippi. Undoubtedly, the federal government is contesting state ownership of these isolated pockets only because there is some indications that oil and gas fields may be present beneath the Mississippi Sound.

After the federal government had made its position clear, the State of Mississippi sought a supplemental decree which would quiet its title to all the submerged lands in the Mississippi Sound. This case is scheduled to be heard by a Special Master in Memphis later this year. This hearing is one part of a larger action, *United States v. Louisiana et.al.*, which began in 1979, and which involves similar claims by other states as well as Mississippi.

The State of Mississippi, in order to quiet its title to lands under the Sound, must convince the Court that the Sound is an "inland water." It has advanced three arguments, to be considered in the alternative, to support this contention.

First, the State has argued that its act of admission, The Mississippi Enabling Act, established as its southern boundary the Gulf of Mexico which lies seaward of the barrier islands. The State contends that this makes the Sound an inland water since it is within the State's original boundary. Under the case of *Pollard's Lessee v. Hagan*, all states entering the union after the Revolution are to have the same ownership rights to submerged lands as the original colonial had. This means that Mississippi, like the original states, should have title to its inland waters, including the Sound.

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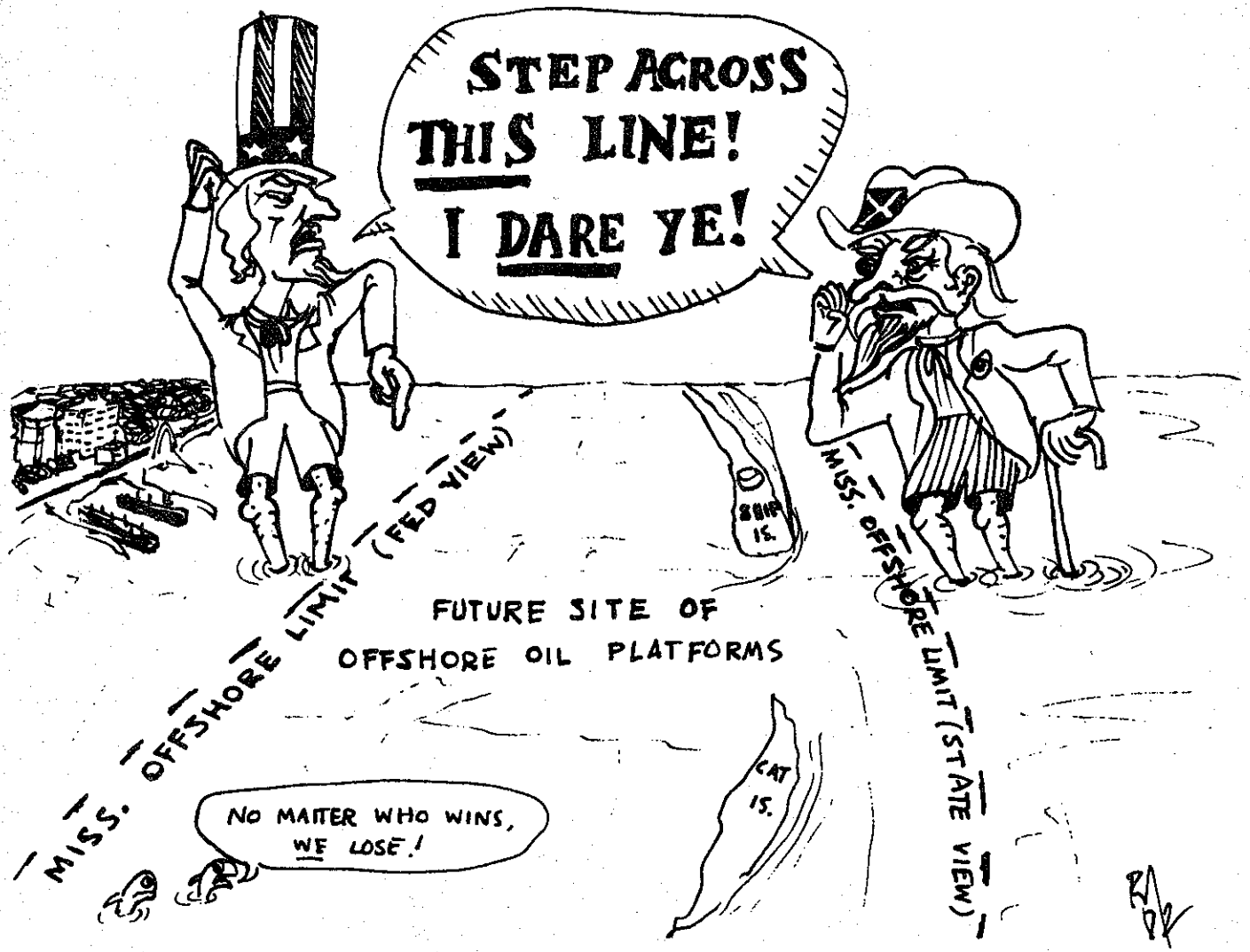
BOOK REVIEW

Preserving the Pascagoula
by Donald G. Scheuler
(Published in 1980 by University Press of Mississippi with cooperation and support of the Mississippi Wildlife Heritage Committee)

Preserving the Pascagoula is a well-written, informative and exciting account of the process that led to the State of Mississippi's acquisition of 32,000 acres of the magnificent Pascagoula Swamp in southeast Mississippi. It not only introduces the reader to the key figures responsible for the saving of the Pascagoula Swamp, but also details the successful political strategies used by them. The story of the legislative battle over House Bill 914, authorizing $15 million for the purchase of the Swamp, is particularly interesting. But the story is more than the retelling of the preservation of one of Mississippi's natural wonders. It is also the story of how Mississippi's Wildlife Heritage Committee has served as a model state heritage program for identifying and protecting unique and diverse ecosystems before they are destroyed forever. I highly recommend this book to all who have taken pleasure in nature's bounty and felt a need to preserve enough of its uniqueness as a heritage for future generations.

Casey Jarman



WATER LOG

This newsletter is a quarterly publication reporting on the activities of the Mississippi-Alabama Sea Grant Consortium and on issues and events affecting the Mississippi-Alabama coastal area. The purpose of the newsletter is to increase public awareness of coastal problems and issues.

If you would like to receive future issues of the *Water Log* free of charge, please send your name and address to: Sea Grant Legal Program, University of Mississippi Law Center, University, Mississippi 38677. We welcome suggestions for topics you would like to see covered in the Water Log.

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NOTES

Due to extensive criticism from state governments, environmental groups, and members of Congress, NOAA's regulations for determining whether federal activities that directly affect the coastal zone are consistent with approved state coastal zone management programs have been withdrawn.

The Mississippi/Alabama Sea Grant Consortium is again cooperating with the University of Miami (Florida) Marine Science Program in a summer course in field oceanography. Max Flandorfer, MASGC Program Manager, will teach in areas of marine chemistry and shipboard operations and will participate in the cruise. Two students from Jackson State University (a Consortium institution), Cornelius Griggs and Alexander Norman, will be attending the course. The course will run from July 5 through July 23 with July 11 through July 17 spent at sea in the Straits of Florida and the Bahamas.

The Mississippi Legislature has created a new fulltime position beginning July 1, 1982, of Environmental Permit Coordinator within the Mississippi Department of Economic Development. The Environmental Permit Coordinator will be responsible for coordinating and implementing the "one-stop permitting" legislation (MISS. CODE ANN. §§25-45-1 through 11) and to serve as a liaison between all agencies of the state affected by one-stop permitting.

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